

ARTICLE 15. SIDEWALK CAFES

9-5.1501 Purpose.

This Article establishes the sidewalk cafe regulations. The purpose of these provisions is:

- (a) To encourage and promote the establishment of sidewalk cafes as visual amenities which in turn intensify pedestrian activity and make the street life more attractive, while protecting the public health, safety, and general welfare;
- (b) To ensure that all persons, including those with disabilities, may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference or hazard;
- (c) To avoid obstruction of views of traffic signs and pedestrians;
- (d) To ensure that damage to sidewalks is minimized and repaired;
- (e) To maintain the good appearance of public streets, sidewalks, and adjacent private property;
- (f) To allow the healthy growth of street trees and other landscaping;
- (g) To maintain access by emergency vehicles and personnel; and
- (h) To protect ingress and egress to properties adjoining the public right-of-way.

9-5.1502 Permit Required.

No person shall establish, operate, or maintain a sidewalk cafe without first obtaining a valid sidewalk cafe permit pursuant to this Article.

9-5.1503 Where Permitted.

Sidewalk cafes shall be permitted in any zoning district in which Restaurants are permitted or conditionally permitted. Parklets shall be permitted in any zoning district.

9-5.1504 Standards.

All sidewalk cafes shall conform to the following standards:

- (a) The sidewalk cafe shall adjoin and be operated in conjunction with a Restaurant licensed to sell food and beverages for consumption on the premises.
- (b) The permittee shall at all times comply with all federal, state, and local laws regarding the operation of the sidewalk cafe and the associated Restaurant.
- (c) The sidewalk cafe permit shall be posted in plain view within the Restaurant for which the permit has been issued.
- (d) The hours of operation of the sidewalk cafe shall not exceed the hours of operation of the associated Restaurant.
- (e) There shall be no food preparation or storage in the sidewalk cafe area.
- (f) All furniture and equipment associated with the sidewalk cafe shall be confined at all times to the sidewalk cafe area as shown on the approved site plan, and shall be removed

from the sidewalk cafe area at the end of each business day, except for semi-permanent barriers such as railings, fences, or planters, which are not required to be removed.

- (g) At least four feet of clear sidewalk width, or a greater width if deemed appropriate by the City, shall be maintained adjacent to the sidewalk cafe at all times. Such clear sidewalk width shall be free of any and all obstructions, including but not limited to street trees, tree wells and grates, street lights, signs, utility poles, fire hydrants, trash containers, kiosks, planters, benches, and news racks, and shall comply with any and all requirements for disabled access.
- (h) The sidewalk cafe shall be maintained in a clean, sanitary, and attractive condition at all times, free of dirt, grease, trash, and litter. Tables shall be bussed regularly. If disposable plates, cups, and utensils are used, a trash container shall be provided for the use of patrons. A final cleanup shall be conducted at the end of each business day, including litter removal from the sidewalk cafe area, adjacent sidewalk, and roadway gutter within 100 feet in each direction on the same side of the street. The sidewalk cafe area and adjacent sidewalk shall be swept clean at least daily, and shall be steam cleaned annually if required by the Public Works Director.
- (i) Amplified sound shall be prohibited in the sidewalk cafe.
- (j) Smoking shall be prohibited in the sidewalk cafe and within 25 feet of all entrances, windows, and vents of the associated Restaurant.
- (k) No changes to the layout, design, or operation of the sidewalk cafe shall be allowed without prior approval of the Planning Director.

9-5.1505 Alcoholic Beverages.

Alcoholic beverages may be served and consumed in a sidewalk cafe, provided that:

- (a) A valid license from the California Department of Alcoholic Beverage Control has been obtained and all requirements imposed by said Department have been met.
- (b) The permittee shall at all times comply with all federal, state, and local laws regarding the sale, service, and consumption of alcohol.
- (c) The sidewalk cafe shall be separated from the adjacent sidewalk by a substantial physical barrier, such as a railing, fence, or planter, that is at least 30 inches high and with openings no more than four feet wide.
- (d) Alcoholic beverages shall be consumed only within the sidewalk cafe area and associated Restaurant. The permittee shall not allow patrons to leave the confines of the sidewalk cafe with any alcoholic beverage and shall not allow patrons to give or sell alcoholic beverages to any person outside the sidewalk cafe.
- (e) The sidewalk cafe shall maintain full food service and shall operate as a bona fide eating place at all times that it is in operation. No sidewalk cafe may function as a bar, tavern, or cocktail lounge, and no sidewalk café shall be associated with a Bar/Nightclub/Lounge, as defined in Section 9-2.319(a).

9-5.1506 Application.

Application for a sidewalk cafe permit shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by the fee as set forth in the Master Fee Schedule and application materials as determined necessary by the Director, including but not limited to the following:

- (a) A site plan, dimensioned, clearly labeled, and drawn to a standard architectural or engineering scale, showing the entire area between the curb and the building containing the Restaurant, and adjacent properties, sidewalk areas, and public right-of-way within ten feet in all directions. The site plan shall clearly indicate:
 - (1) The proposed sidewalk cafe area, including its length, width, and square footage, and the adjacent sidewalk including the curb;
 - (2) The number and arrangement of tables and chairs, and any other proposed features including but not limited to umbrellas, heaters, trash containers, railings, planters and fencing;
 - (3) The relationship of the proposed sidewalk cafe to the Restaurant and adjacent businesses, including doors and windows;
 - (4) The location of any and all other features in the public right-of-way, including but not limited to street trees, tree wells and grates, street lights, signs, utility poles, fire hydrants, trash containers, kiosks, planters, benches, news racks, driveways, disabled access ramps, crosswalks, bus stops and shelters, loading zones, and on-street parking spaces, and indicating the clear sidewalk width required by Section 9-5.1504(g).
 - (5) The pedestrian circulation and disabled access path of travel through the proposed sidewalk cafe between the public sidewalk and the Restaurant.
- (b) Specifications for the design of all tables and chairs, and any other proposed features including but not limited to umbrellas, heaters, trash containers, railings, planters and fencing. Such specifications shall provide sufficient information for the Director to be able to ascertain the color, material, design, and general quality of these features, and may include actual color and material samples, manufacturer's specification sheets, color photographs, catalog entries, or other information as deemed appropriate by the Director.
- (c) Color photographs of the Restaurant, sidewalk area, and adjacent businesses and public right-of-way sufficient to illustrate conditions prior to establishment of the sidewalk cafe.
- (d) Proof of comprehensive liability insurance covering the sidewalk cafe area and the adjacent property on which the Restaurant is located in an amount of not less than one million dollars as a combined single limit for personal injury (including death) and property damage; an endorsement naming the City of Emeryville as an additional insured; a copy of the declarations or information page(s) for the policy; and a statement by the insurance carrier that 30 days' notice will be given to the City before any cancellation. The policy of liability insurance shall be kept in force during such time as the sidewalk cafe is maintained under the terms of this Article.
- (e) A statement in a form acceptable to the City Attorney that the permittee shall defend, indemnify, and hold harmless the City of Emeryville its agents, officers, and employees

from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Emeryville, its agents, officers or employees from any loss, liability, damage, or cost sustained by any person or property, arising from the operation, use, or maintenance of the sidewalk cafe as provided by this Article.

9-5.1507 Approval Procedure.

Applications for sidewalk cafe permits shall be considered by the Planning and Building Director, in consultation with the Public Works Director, Chief Building Official, Fire Marshal, and Police Chief. The Director, at his/her discretion, may give such notice as is deemed appropriate to adjacent property owners or other interested parties. However, the Director may, instead, refer any application to the Planning Commission for consideration. If considered by the Commission, the application shall be heard at a public hearing noticed by types C, D, and E and optionally by types A and F, as these notice types are defined in Section 9-7.208(b). The Director or Commission, as the case may be, may approve or disapprove an application or require changes or conditions of approval which, in his/her/its judgment, are necessary to ensure conformity with the provisions of this Article. The Director's decision may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7. If the Director refers the application to the Planning Commission for consideration, the Commission's decision may be appealed to the City Council pursuant to Article 14 of Chapter 7.

9-5.1508 Required Findings.

In order to approve a sidewalk cafe permit, all of the following findings shall be made:

- (a) The location, size, design and operating characteristics of the proposed sidewalk cafe will be compatible with and will not adversely affect or be materially detrimental to neighborhood character, with consideration given to the convenience and safety of pedestrians, property owners, occupants, customers, residents, and tenants of offices, stores, shops, and dwellings in the vicinity; harmony in design with nearby uses, buildings and structures; and the capacity and physical character of surrounding streets and sidewalks.
- (b) The proposed sidewalk cafe conforms to the standards in Section 9-5.1504.
- (c) If alcoholic beverages are to be served, the proposed sidewalk cafe conforms to the provisions of Section 9-5.1505.
- (d) The proposed sidewalk cafe conforms to the applicable provisions of the Emeryville Design Guidelines, including but not limited to the General Guidelines pertaining to Sidewalks and Landscaping, and the Area Specific Guidelines pertaining to the area in which the proposed sidewalk café is to be located; and to all other design guidelines applicable to the area in which the proposed sidewalk café is to be located.
- (e) The proposed sidewalk cafe is consistent with the General Plan.
- (f) The proposed sidewalk cafe complies with all applicable standards and requirements of this Title, the Emeryville Municipal Code, and local, state, and federal regulations.
- (g) The proposed sidewalk cafe conforms with the requirements of all applicable City departments, including but not limited to Planning and Building, Public Works, Fire, and Police.

9-5.1509 Renewal.

A sidewalk cafe permit shall expire on December 31st of the calendar year in which it was issued or renewed. A valid permit which has not been surrendered, suspended or revoked may be renewed for respective periods of not longer than one year upon the following terms and conditions:

- (a) All annual sidewalk cafe permits issued under this Article, except the first permit issued for a newly established sidewalk cafe, shall be considered to be issued on January 1st of each year and shall expire on December 31st of the same year.
- (b) The annual renewal application for an existing sidewalk cafe is hereby declared delinquent if not filed on or before March 1st of each year.
- (c) The City is not required to send a renewal, delinquency or other notice to any person subject to the provisions of this Article.
- (d) Every person subject to a sidewalk cafe permit shall, before the renewal application becomes delinquent, file with the Director a renewal application except as provided in subsection (h).
- (e) Application for renewal of a sidewalk cafe permit shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by a statement indicating whether any information required by Section 9-5.1506 has changed; and proof of comprehensive liability insurance, as detailed in Section 9-5.1506(d), for the renewal period.
- (f) The Director shall review the renewal application in consultation with the Public Works Director, Chief Building Official, Fire Marshal, and Police Chief, to ensure the sidewalk cafe's continued compliance with the provisions of this Article and any conditions of approval, and to assess any outstanding violations or complaints. The Director may request additional information in order to complete his/her review.
- (g) Upon completion of the review, the Director shall make a determination whether to renew the application, and shall promptly inform the permittee of his/her decision. If the permit is renewed, the Planning Director shall provide the permittee with a new permit for the renewal period, to be posted in the Restaurant as required by Section 9-5.1504(c). In renewing the sidewalk cafe permit, the Director may modify or delete any existing conditions of approval, and impose any new conditions of approval, as he/she deems appropriate. If the permit is not renewed, the Director shall provide a written explanation to the permittee detailing the reasons for the non-renewal. If the permit is not renewed, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Director's decision, unless appealed pursuant to Section 9-5.1511(c).
- (h) In the absence of any action by the City or the permittee to renew a sidewalk cafe permit prior to the delinquency date specified in subsection (b), the permit shall be deemed to be renewed for one year.

9-5.1510 Revocation.

A permit issued pursuant to this Article shall be subject to suspension, revocation, or modification for the violation of any provisions of this code or for any grounds which would warrant the denial of the issuance of such original permit. The Director may issue a notice of violation for any failure to comply with any requirement of this Article or any condition of the permit. Such notice shall set forth the action necessary to come into compliance and a time frame for compliance. If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may revoke, suspend, or modify the permit, upon 30 days' notice. If the Director decides to revoke or suspend the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Director's decision unless appealed pursuant to Section 9-5.1511(d).

9-5.1511 Appeals.

- (a) A decision of the Director on a new sidewalk cafe permit pursuant to Section 9-5.1507 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final.
- (b) If the Director refers a new sidewalk cafe permit application to the Planning Commission for consideration pursuant to Section 9-5.1507, the decision of the Planning Commission may be appealed to the City Council as provided in Article 14 of Chapter 7.
- (c) A decision of the Director on the renewal of a sidewalk cafe permit pursuant to Section 9-5.1509 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final. If the Commission decides not to renew the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Commission's decision.
- (d) A decision of the Director to revoke, suspend, or modify a sidewalk cafe permit pursuant to Section 9-5.1510 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final. If the Commission decides to revoke or suspend the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Commission's decision.

9-5.1512 Restoration of Sidewalk.

Upon cessation of the operations of a sidewalk cafe, the permittee shall restore the sidewalk to its original condition, including but not limited to the refilling of any holes drilled into the sidewalk. Any damage or alteration to the sidewalk caused by the use of the sidewalk cafe shall be repaired to the satisfaction of the Director of Public Works by the permittee at the permittee's sole expense.

9-5.1513 Amortization.

Any existing sidewalk cafe which does not comply with the provisions of this Article shall be removed or otherwise brought into conformance within six months of the effective date of this Article.

9-5.1514 Parklets.

Parklets shall require a sidewalk cafe permit and shall be subject to all of the regulations and procedures set forth in this Article for sidewalk cafes except that they are not required to be built and operated in conjunction with a Restaurant. In addition, parklets shall be subject to the following regulations:

- (a) A parklet shall require the approval of the City Council, upon the recommendation of the Transportation Committee, prior to the approval of a sidewalk cafe permit. Any conditions and requirements designated by the City Council in its approval shall become conditions of approval of the sidewalk cafe permit.
- (b) A parklet shall be available for use by the general public and shall not be reserved for the exclusive use an adjacent Restaurant or other use, even if built and operated in conjunction with that Restaurant or other use, nor for the exclusive use of any other private enterprise.
- (c) Table service shall not be permitted in a parklet.
- (d) Commercial signage and advertising shall not be permitted in a parklet.
- (e) Service and consumption of alcoholic beverages shall not be permitted in a parklet.
- (f) Design criteria for parklets may be issued administratively by the Director.
- (g) A building permit shall not be required for a parklet, but its design and construction shall comply with all applicable building regulations, including but not limited to disabled access, and any design criteria issued by the Director.

9-5.1515 Definitions.

As used in this Article:

- (a) “Parklet” shall mean the temporary use of space in the roadway, adjacent to the curb and typically located in a parking space, unused bus stop, or other vehicular zone, with or without a platform to extend the grade of the sidewalk into the roadway. A parklet may feature tables and chairs for public use, benches, planters and landscaping features, bicycle parking, and other public amenities, and may be built and operated in conjunction with an adjacent street-level Restaurant or other use. A parklet may also function as a “bicycle corral” with bicycle racks in the roadway for the on-street parking of bicycles.
- (b) “Person” shall mean and include individual, firm, association, partnership, joint venture or corporation (whether for-profit or nonprofit).
- (c) “Public right-of-way” shall mean the area dedicated to public use for public street purposes including but not limited to roadways, parkways, alleys and sidewalks.
- (d) “Restaurant” shall mean the use type defined in Section 9-2.319(b).
- (e) “Roadway” shall mean that portion of a public right-of-way improved, designed and ordinarily used for vehicular traffic and/or parking, including drainage gutters and curbs.
- (f) “Sidewalk” shall mean either:

- (1) That portion of a public right-of-way provided for the exclusive use of pedestrians, including planting areas or parkways, between the roadway and adjacent property lines; or
- (2) Any other publicly-accessible pedestrian area owned or controlled by the City of Emeryville including, but not limited to, greenways and parks.
- (g) “Sidewalk cafe” shall mean an area of the sidewalk used exclusively for eating, drinking, and related pedestrian circulation and located adjacent to, and operated in conjunction with, a street-level Restaurant.
- (h) “Sidewalk cafe permit” shall mean a permit to establish, operate, and maintain a sidewalk cafe or parklet issued pursuant to this Article. A sidewalk cafe permit may not be transferred or assigned, does not constitute a deed or grant of an easement by the City, shall be valid for one calendar year, and is revocable at any time.