

## Chapter 23.30

### Sidewalk Cafés in the Downtown Area

#### 23.30.010 Purpose.

The Del Mar Community Plan calls for the City's downtown area to serve the cultural, social, recreational and material needs of the community. In order to help achieve this goal, this Chapter of the Municipal Code is established to accommodate and regulate the safe operation of Sidewalk Cafés that encroach onto City rights-of-way. The City finds that Sidewalk Cafés encourage a pedestrian-oriented environment and helps to create a visually attractive atmosphere and streetscape. This Chapter identifies the design, operation and permitting requirements for the commercial use of a public right-of-way that a Sidewalk Café entails. The user fee, which is set by separate resolution of the City Council, is designed to secure fair and reasonable compensation to the City and its residents for permitting private use of the public rights-of-way. This Chapter also recognizes that public rights-of-way should continue to be available for use by the general public, including areas improved and shared for use for the patrons and employees of Sidewalk Cafés. [Established Ord. 810]

#### 23.30.020 Definitions.

The following words and terms are defined for the purpose of applying the provisions of this Chapter:

A. "Downtown Area" shall mean the commercial district of the Village Center District as defined and shown in the Del Mar Community Plan.

B. "Director" shall mean the Director of Planning and Community Development.

C. "Main Restaurant" shall mean that restaurant operation located on adjoining private property to which a Sidewalk Café is an attendant part.

D. "Permittee" shall mean the person or persons to whom a valid Sidewalk Café Permit is issued.

E. "Sidewalk Café" shall mean the activity and improvements associated with the sale and/or service of food or beverages for immediate on-site consumption in a portion of a public right-of-way where such activity is conducted by the operators of a lawfully established restaurant located on adjoining private property. Sidewalk Café shall also mean that portion of an outdoor dining area of a restaurant that extends over a private property line into a public right-of-way.

23.30.030 Sidewalk Café Permit Required/Allowed Location.

A. No person shall operate a Sidewalk Café without first obtaining a Sidewalk Café Permit in accordance with the provisions of this Chapter.

B. With authorization, as required in this Chapter, a Sidewalk Café may be located in the Downtown Area.

23.30.040 Required Application Materials.

An application for a Sidewalk Café Permit shall include all of the following materials:

A. An application, submitted on a form provided by the City, along with such information and drawings as required by the Director to accomplish the purposes of this Chapter.

B. A permit application processing fee, as set forth by resolution of the City Council.

C. A description of the proposed operation of the Sidewalk Café, including but not limited to the hours of operation, number of tables and the services to be rendered.

D. Plans for the improvements to be installed in the right-of-way and a plan for maintenance of such improvements.

E. The written consent of the owner of the real property located immediately adjacent to and street-ward of the right-of-way area subject to the application.

F. A copy of the licenses and authorizations required for operation of the Main Restaurant, including a City of Del Mar Business License.

23.30.050 Issuing Authority and Application Procedure for a Sidewalk Café Permit.

A. The City Council shall serve as the issuing authority for an application for a Sidewalk Café Permit. Upon receipt, the application shall be routed to each City Department, as deemed appropriate by the Director, for comment and suggested conditions. After receipt of comments and suggested conditions, the Director shall cause the application to be placed on the first available agenda of the City Council.

B. A staff report shall be prepared for the City Council, to include a recommendation from staff.

C. The City Council shall take action to approve, conditionally approve, or deny the application based on the standards of review contained in this Chapter. The City Council may also continue the application, as deemed necessary, in order to gain additional information to be used as the basis for making a determination on the application.

D. Provided all proposed improvements to be located in the public rights-of-way are included in the Sidewalk Café Permit application, a separate Encroachment Permit shall not be required for installation of the improvements or for conducting the activity authorized in the Sidewalk Café Permit.

23.30.060 Provision of Notice.

A. Notice of a Sidewalk Café Permit application shall contain the date, place, and time set for the scheduled City Council review of the application. The required notice shall also include all of the following:

1. The number assigned to the application;
2. A description of the proposed Sidewalk Café and its location; and
3. A brief description of the purpose of the City Council review and of the review process.

B. Notice of an application for a Sidewalk Café Permit shall be provided as follows:

1. Published once in a newspaper of general circulation within the City;
2. Mailed to all owners of real property within 300 feet of the location of the proposed Sidewalk Café, with ownership as identified on County Tax Assessors' rolls; and
3. Posting at City Hall by staff and posting at the site of the proposed Sidewalk Café by the applicant using a notification card provided by the City.

23.30.070 Sidewalk Café Design and Operation Parameters.

A Sidewalk Café shall comply with all of the following requirements:

A. The Sidewalk Café shall be located street-ward and adjacent to the Main Restaurant through which it is authorized to provide the sale/service of on-site consumption of food or beverages;

B. No Sidewalk Café shall be sited so as to block the direct perpendicular visibility of display windows or signage of a separate, adjacent business unless written authorization is provided from the owner of such adjacent business.

C. The authorized perimeter of the Sidewalk Café area shall be demarcated by planter boxes, railings or other measures deemed acceptable to the Director to visually define and secure the Sidewalk Café area. The demarcation measures shall be designed to ensure opportunities for use of the Sidewalk Café area by the general public as intended in this Chapter.

D. A Sidewalk Café area may be furnished with chairs, tables, and umbrellas which shall either be secured to the sidewalk pavement or removed when the Café is not open. The method of securing furniture to the sidewalk shall be subject to the prior approval of the City's Public Works Director. The furniture to be used shall be specified and described in the application for the Sidewalk Café Permit.

E. No portion of any Sidewalk Café furniture or amenity shall be affixed to any streetlights, trees or other improvements in the public rights-of-way unless prior written authorization is received from the City's Public Works Director.

F. The Sidewalk Café shall be located so as to provide an unobstructed sidewalk width of a minimum of five feet along the perimeter of the Sidewalk Café area. The required sidewalk width may be increased, if found necessary by the City, to ensure compliance with state and federal accessibility regulations.

G. The Sidewalk Café shall be located so as to provide a minimum, unobstructed walkway with a ten (10) foot radius at corner intersections of public rights-of-way;

H. A Sidewalk Café shall be designed with a minimum five (5) foot-wide clearance from city planters, bus shelters and/or trash containers.

I. No signage shall be allowed in a Sidewalk Café except as proposed and approved in the Sidewalk Café Permit application.

J. The Sidewalk Café operator shall maintain the site and adjacent area in a clean and safe condition at all times, and shall properly dispose of all trash and water generated by operation of the Sidewalk Café. The operators shall maintain all furnishings, planters and signs in safe and good condition.

K. Sidewalk Café operator shall comply with all applicable laws and local ordinances regarding the sale and service of food and beverages to the public.

L. No service, sale or consumption of alcohol shall be permitted within the Sidewalk Café area between the hours of 10:00 p.m. and 9:00 a.m. daily.

M. No food preparation, fire or fire apparatus shall be permitted in the Sidewalk Café area.

N. No live entertainment, amplification or sound system speakers shall be permitted in the Sidewalk Café area.

O. It shall be the duty of the Sidewalk Café operator to maintain the Sidewalk Café area in a quiet and good order. The Permittee shall not cause or create any noise or other nuisance in the outdoor area where the quiet and good order of the premises or the neighborhood are disturbed.

P. The placement or maintenance of a Sidewalk Café shall not obstruct or interfere with the installation or maintenance of underground utilities.

Q. All aspects of the Sidewalk Café shall be designed and maintained to comply with applicable state and federal laws regarding the provision of access for disabled persons.

R. The Sidewalk Café shall comply with provisions of Sidewalk Café guidelines as may be adopted or amended by resolution of the City Council.

23.30.080 Design of Sidewalk Café Furniture.

A. Tables and chairs shall be made of a safe, sturdy, durable material such as wrought iron, wood, steel or cast aluminum. All tables and chairs shall be commercial grade, manufactured for outdoor commercial use.

B. All furniture shall be properly maintained and cleaned regularly.

C. All tablecloths shall be stored indoors nightly and shall be cleaned on a regular basis. No vinyl tablecloths shall be permitted.

D. Individual canvas or other nonvinyl umbrellas are permitted. Umbrellas shall be designed for outdoor commercial use and maintained in a clean manner.

E. Each umbrella may include display of the name of the Sidewalk Café business so long as the name does not exceed six (6) inches in height. The total umbrella signage shall not cover more than 10 percent of the area of each umbrella and shall contain no advertising other than the name of the associated Main Restaurant.

23.30.090 Exemption for Requirement for Design Review of Sidewalk Café Improvements and Amenities.

Provided an application for a Sidewalk Café Permit contains detailed information to allow the Issuing Authority for the Permit to make a determination that the proposed Sidewalk Café demarcation measures and Sidewalk Café furniture and amenities will be in compliance with the parameters set forth in this Chapter, no Design Review Permit shall be required for installation of such improvements or amenities.

23.30.100 Standards of Review for Applications.

A. An application for Sidewalk Café shall be approved by the issuing authority identified in this Chapter unless the issuing authority makes one or more of the following findings of fact:

1. That the issuance of the Sidewalk Café Permit will endanger public health, safety or welfare of the surrounding property;
2. That the issuance of the Sidewalk Café Permit will unreasonably interfere with the intended use of a City right-of-way or Easement;
3. That the issuance of the Sidewalk Café Permit will have an adverse impact on the welfare of the community or on the community's appearance or aesthetics;
4. That the issuance of the Sidewalk Café Permit will cause an unnecessary change in the character of the community; or
5. That the issuance of the Sidewalk Café Permit will be to the detriment of the interests of the general public.

B. An approved Sidewalk Café Permit shall be subject to such conditions as the issuing authority deems necessary to protect the public health, safety and welfare and to preserve the intended use of the City right-of-way or Easement. Such conditions may include a requirement for recordation of a covenant against the deed for the adjacent

property on which the Main Restaurant is located acknowledging that the property owner agrees to remove the Sidewalk Café improvements installed within the right-of-way upon notice of request for removal from the City.

23.30.110 Term of Permit.

A. A Sidewalk Café Permit shall be valid for a period of three (3) years from the date of approval.

23.30.120 Renewal of Sidewalk Café Permits.

A. Notwithstanding the other provisions of this Chapter, the Permittee may request a renewal of the term of a Sidewalk Café Permit. The request shall be submitted on a form provided by the City and shall be accompanied by a processing fee, as established by resolution of the City Council.

B. Upon submittal, the Director shall review the request the Sidewalk Café Permit Renewal to determine if the circumstances and findings under which the original Sidewalk Café Permit application were issued are still applicable and can support findings for approval of a renewal of the Permit.

C. A Sidewalk Café Renewal shall be valid for a period of three (3) years from the date of approval.

D. Within three (3) months of the end of the period of a valid Sidewalk Café Permit Renewal, the Permittee may request another Sidewalk Café Permit Renewal.

23.30.130 Sidewalk Café User Fee.

A. As a condition of approval of a Sidewalk Café Permit, the applicant shall pay to the City a Sidewalk Café user fee for commercial use to the City's public right-of-way.

B. The amount of the Sidewalk Café user fee shall be set by resolution of the City Council.

C. The Sidewalk Café user fees collected by the City shall be deposited in an account to be used specifically and solely for installation and/or maintenance of streetscape improvements in the City's Downtown Area rights-of-way.

23.30.140 Public Use of Sidewalk Café.

A. All seating areas in a Sidewalk Café shall be available for the reasonable use and enjoyment of the public, including persons who are not patrons or employees of the Main Restaurant.

B. The Permittee shall be responsible for installing and maintaining signage to notify members of the public, patrons and employees of the Main Restaurant of the public's right to use and enjoy the seating in the Sidewalk Café. The required signage shall be subject to review by the Director, prior to installation, to ensure that the signage will adequately and conspicuously carry out the intent of this Section.

C. A Sidewalk Café operated in a manner consistent with the provisions and intent of this Chapter for general public use of the public right-of-way shall not be required to provide off-street parking spaces.

23.30.150 Insurance and Indemnification Requirements.

A. Prior to the issuance of a Sidewalk Café Permit, the Permittee shall provide the City with a certificate of insurance showing that the applicant is covered by general liability insurance in the amount of not less than, one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, for personal injury (including death) and property damage. The certificate shall include an endorsement naming the City of Del Mar, its Council, boards, commissions, officers, employees, volunteers and agents as additional insured. The general liability insurance shall cover the property on which the Main Restaurant is located and the area for which the Sidewalk Café Permit is authorized.

23.30.160 Requirement for Security Deposits.

A. As determined by the Director, the Permittee may be required to deposit with the City: cash, a certified or cashier's check, or an approved surety bond, as sufficient to assure performance with any permit conditions regarding the manner of installation of the authorized Sidewalk Café and to ensure removal of improvements from the right-of-way when deemed necessary by the City.

B. Any bond or cash deposit required pursuant to this Chapter shall be payable to the City. Upon satisfactory completion of all work authorized in the Permit, and fulfillment of all conditions of the Permit, the bond or cash deposit shall be released, save for any funds necessary to offset City costs in administering the bond or cash deposit, or for any work performed by the City to satisfactorily restore the public right-of-way to its condition prior to the installation of the improvements authorized under the Sidewalk Café Permit.

23.30.170 Revocation of Permit.

A Sidewalk Café Permit may be revoked upon a written finding by the Planning Director that the Sidewalk Café is being operated in violation of one or more of the conditions of the Sidewalk Café Permit or that the Sidewalk Café is being operated in violation of one or more of the provisions of this Chapter. A Sidewalk Café Permit may also be revoked upon a written finding by the Planning Director that the Sidewalk Café is being operated in a manner that constitutes a nuisance, or unduly impedes or restricts the movement of pedestrians. The decision of the Planning Director shall be appealable to the City Council in accordance with the provisions of the Del Mar Municipal Code.