

(O-90-23)

ORDINANCE NUMBER O- 17342 (NEW SERIES)

ADOPTED ON SEP 25 1989

AN ORDINANCE AMENDING CHAPTER X, ARTICLE I,
DIVISION 5, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 101.0550, RELATING TO
SIDEWALK CAFES.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter X, Article I, Division 5, of the San Diego Municipal Code be and the same is hereby amended by amending Section 101.0550 to read as follows:

SEC. 101.0550 SIDEWALK CAFES

A. PURPOSE AND INTENT

The sidewalk cafe regulations as established in this ordinance have City-wide applicability, are designed to encourage sidewalk cafes in commercial areas to promote and protect public health, safety and general welfare and to provide for the creation of a more urban pedestrian environment. These general goals include among others the following specific purposes:

1. To encourage and promote sidewalk cafes as visual amenities which in turn intensify pedestrian activities and make the street life more attractive.

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2. To preserve and enhance the character of neighborhoods throughout the City.

3. To ensure adequate space for pedestrians on the sidewalk adjacent to sidewalk cafes.

Sidewalk cafes will be permitted by the Planning Department only after review of the specific proposed location and the criteria listed herein.

B. DEFINITION

A "sidewalk cafe" is an area adjacent to a street level eating or drinking establishment, and is located within the sidewalk area of the public right-of-way, and is defined by a barrier consisting of railings, fencing, or a combination of railings or fencing and landscaping in planter boxes which separates the encroachment area from the remainder of the sidewalk, in place during hours of operation, and is used exclusively for dining, drinking and circulation therein. A sidewalk cafe may provide either waiter or waitress service or self-service.

C. DEVELOPMENT CRITERIA

1. Sidewalk Cafe Development and Design Criteria.

a. Clear Path.

There shall be a minimum clear distance of fifty percent of the distance from the property

line to the curb line, but in no event less than eight feet of paved sidewalk, free of all obstructions, in order to allow adequate pedestrian movement.

The minimum distance shall be measured from the portion of the sidewalk cafe frontage which is nearest either the curb line or the nearest obstruction within the sidewalk area. In no event may the recesses in the sidewalk cafe frontage be used to satisfy this unobstructed width requirement. A clearance of eight feet shall be maintained around the corners of sidewalk cafes, measured in radius.

For the purposes of the minimum clear path, parking meters, traffic signs, trees, and all similar obstacles shall constitute obstructions.

An exception to the minimum clear path distance and paved sidewalk width may be granted after a review of pedestrian volumes and existing street conditions subject to a traffic study pursuant to Chapter 13 of the 1985 Highway Capacity Manual by both the Planning Department and Engineering and Development Department.

b. Clearance at Intersections of Street Line.

A sidewalk cafe shall be permitted on one side of an establishment located at a street

intersection. There shall be a minimum of nine feet clearance, free of all obstructions measured from the outer edge of the sidewalk cafe to the curb side or obstruction. An exception to the nine foot clearance at intersections may be granted after a review of pedestrian volumes and existing street conditions subject to a traffic study pursuant to Chapter 13 of the 1985 Highway Capacity Manual by both the Planning Department and Engineering and Development Department.

c. Cafe Boundary.

No portion of a sidewalk cafe, such as gates, or any other objects placed within the sidewalk cafe, shall swing, or project beyond the designated exterior perimeter of the sidewalk cafe.

2. General Design Considerations.

a. Fixtures.

All fixtures, barriers, railings, landscaping or combination thereof shall be in place when the cafe is in operation and shall be stationary or permanent, fixed to the sidewalk and contiguous to define the cafe boundary and may be removed when the cafe is closed. The furnishings of the interior of a sidewalk cafe shall consist solely of moveable tables, moveable chairs, and moveable umbrellas. Landscaping may be placed

either in moveable planters or planted in the ground inside the defined cafe area adjacent to the barrier, railing fence, or combination thereof. Lighting fixtures may be permanently affixed onto the exterior front of the main building.

b. Signage.

No signs are permitted on a sidewalk cafe except that the name and the type of establishment may appear on umbrellas or the valance of an awning.

c. Refuse Storage Area.

No structure or enclosure to accommodate the storage of trash or garbage shall be erected or placed, adjacent to or separate from the sidewalk cafe on the public right-of-way.

3. Safety.

a. Lighting, Railings.

Adequate lighting and provision of barriers and railings for stairways, sunken sidewalks and sidewalk cafes shall be provided. The barriers shall be adequately designed so that unsafe conditions are not created for the physically disabled, blind and partially sighted. No cantilevered projections shall be permitted. A change in paving pattern and texture may be required to alert pedestrians of a change in sidewalk use.

b. Awnings or Umbrellas.

Awnings or umbrellas may be used in conjunction with a sidewalk cafe. Awnings shall be adequately secured, retractable and shall be constructed and installed in conformance with Section 91.02.4506 of the Municipal Code. At no point shall the height of the awning including the valance be less than seven feet from the floor of the sidewalk cafe.

4. Environmental Compatability.

a. General.

1) The sidewalk cafe should fit with the character of an area and reinforce the aspect of outdoor pedestrian plaza/park settings.

2) The scale of the cafe should be compact, suggest intimacy, charm and functionally through materials, landscaping, signs and use.

3) Musical instruments or sound reproduction devices shall not be operated or used within a sidewalk cafe. The boundary of the sidewalk cafe area, which is defined by barriers, railings or fences, shall be construed to be a property line solely for the purposes of enforcement of the Noise Abatement and Control Ordinance of this code, Section 59.5.0101 et seq.

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4) Cafes must remain clear of litter at all times.

5) The hours of operation of a sidewalk cafe shall be limited to the hours of operation of the associated eating or drinking establishment.

b. Barriers, Planter, Railings, Fences or Landscaping.

All barriers, railings, or fences placed around a sidewalk cafe shall be stationary or permanent, affixed and contiguous to the sidewalk and in place during hours of operation to clearly define the area. No solid walls will be permitted. Landscaping shall can be either in planters or planted in the ground. In order to maximize visual access and pedestrian safety, the height of the railing, barrier or planter shall not exceed three feet.

c. Elevation.

The sidewalk cafe should be at the same elevation as the adjoining sidewalk. However, in the event of a grade change, consideration may be given to permit the floor level of the sidewalk cafe to be elevated or depressed.

d. Minimum Distance Between Sidewalk Cafes and Adjacent Business Entrance.

No portion of a sidewalk cafe shall be located within eight feet of the entrance to a

ground floor commercial use other than to a sidewalk cafe.

An exception to the minimum distance between sidewalk cafes and adjacent business entrances may be granted up to zero feet after a review of existing conditions in that commercial area and on that particular street by both the Planning Department and Engineering and Development Department, unless the affected adjacent property owner(s) and first floor tenant(s) gives notarized written permission for an encroachment. The review will take into consideration the effect that the exception may have on the adjoining businesses in terms of visibility and access.

e. Enclosure.

A clear, transparent, shatterproof glass or similar substitute may be used to enclose the cafe to minimize windy or cold climatic conditions. The enclosure must meet the following requirements:

1. The transparent enclosure, including the railing or fences cannot be higher than five feet.
2. Awnings cannot be used as a cafe covering when an enclosure is also used.
3. The transparent enclosure must be removable or retractable.

D. ADMINISTRATION AND ENFORCEMENT

1. Administration

The Planning Director or his designated representative shall review, approve, conditionally approve or disapprove all applications for Sidewalk Cafe permits.

2. Requirements for Application.

Application for a sidewalk cafe permit shall be made to the Planning Department according to the following procedures:

a. Application for a Sidewalk Cafe Permit shall be made by the owner or owners or the property on which the development is proposed. The application is to be filed with the Planning Department and the appropriate form accompanied by adequate plans for improvements and a legal description of the property.

b. A fee or deposit schedule shall be established by the Planning Department and shall be sufficient to provide full cost recovery to the City for the total costs of review, issuance and administration of the permit.

c. The application shall be accompanied by plans indicating: the proposed use, materials and design; relationship of proposed encroachments to the curb, existing buildings, and buildings on either side; floor plans of the

existing building; location of utilities that might affect or be affected by the proposal; existing and proposed public improvements; existing or projected pedestrian traffic movements, and when expansion to adjacent properties public rights-of-way, a notarized statement from the affected property owner(s) and first floor tenant(s) granting permission to expand the cafe.

E. DECISION OF THE PLANNING DIRECTOR

1. If the Planning Director or his designee determines that the application is complete and conforms with all the City's regulations, policies, guidelines, and design standards, a Sidewalk Cafe Permit shall be granted.

The Planning Director shall consider the following in his decision:

a. The width of the sidewalk where the cafe will be located.

b. The design and relationship of the cafe to other existing or planned uses on a particular street.

c. The amount of pedestrian use on the sidewalk and the impact of the cafe's location on potential pedestrian activity pattern.

2. In order to approve the permit, after considering the criteria in (1) above, the

Planning Director or his designee shall make the following findings:

a. That the location of the sidewalk cafe in a particular location will not adversely affect the neighborhood, and will implement the goals of the Progress and General Plan and Community Plan.

b. That the proposed use will not be detrimental to persons residing, visiting or working in the area.

c. The proposed use will comply with all relevant regulations in the Municipal Code, and all applicable building laws including state laws and regulations.

3. The Planning Director shall not approve any Sidewalk Cafe Permit unless the proposed development has been publicly noticed at least thirty days prior to the decision of the Planning Director in the official City newspaper and by mail, to all property owners of record within three hundred feet of the proposed development, to the affected community planning groups and any other group or organization which has requested such notification.

F. APPEAL FROM THE DECISION OF THE PLANNING DIRECTOR

In the event that anyone is dissatisfied with any discretionary decision of the Planning Director, regarding the issuance of a Sidewalk Cafe Permit, an appeal as provide herein may be directed to the Committee of the City Council having jurisdiction over such matters by filing a notice with the City Clerk within ten calendar days following the such actions. Appeals shall be filed in writing with and on forms provide by the City Clerk. Such appeals shall state the nature and basis of the appeal. The City Clerk shall immediately transmit a copy of the appeal to the Committee Consultant who shall place the matter on the Committee docket for a hearing.

At the hearing, the Committee shall hear testimony of the appellant or any other persons desiring to be heard. Upon the conclusion of the hearing, unless the Committee and the appellant mutually agree that additional time is needed for further consideration, the Committee shall, within seven calendar days, declare its findings based on the testimony and documents placed before it. The Committee may sustain, modify, or reject, the recommendations of the Planning Director and may make such findings as are not inconsistent with state or local laws. The action of the Committee shall be final unless a hearing is set before the

City Council pursuant to Section 22.010, Rule 4, of this Code.

G. OTHER APPLICABLE REGULATIONS

1. Encroachment Permit.

An encroachment permit shall be required for a sidewalk cafe according to the provision of Municipal Code, Section 62.0301 et seq. and shall be applied for and processed concurrently with the application for the Planning Director Sidewalk Cafe Permit. An appeal from the decision of the City Engineer shall be governed by the provisions of Municipal Code Section 62.0115.

If an appeal is filed with the time period specified, it shall automatically stay proceedings in the matter.

2. Appeal Process for Exception to Sidewalk Clear Path Width and Distance Between Cafes and Adjacent Business Entrances.

An appeal from the decision of granting or denying an exception for either the clear path for sidewalk and the distance between sidewalk cafes and adjacent businesses shall be made to the Public Facilities and Recreation Committee accompanied by a report prepared both by the Planning Department and the City Manager's Office. Such appeal shall be governed by the provisions of Municipal Code Section 62.0115.

3. Insurance Policy.

A Public Liability Insurance Policy of at least \$1,000,000 shall be required before approval of an encroachment removal agreement. Such liability insurance shall be provided in a form and any and amount acceptable to the City Engineer. The Policy shall name The City of San Diego as an additional insured and shall be maintained at all times.

4. Permitted Location.

The sidewalk cafe shall only be permitted in conjunction with an eating or drinking establishment which is operating on the contiguous adjacent private property and to adjacent properties public right-of way if notarized written permission is granted from the property owner(s) and first floor tenant(s).

5. Access For Persons with Physical Disabilities.

A sidewalk cafe shall be accessible to the physically handicapped. The Building Official shall review every sidewalk cafe permit application in order to ensure compliance with Title 24, Part 2 of the California Administrative Code for making buildings accessible to the physically handicapped and any other state or local regulations which the Building Official

enforces. Permits from the Building Inspection Department may be requires as a result of achieving compliance.

H. TERM OF SIDEWALK CAFE PERMIT AND ENCROACHMENT PERMIT

All Sidewalk Cafe permits shall have an indefinite term, but shall be subject to termination at any time by thirty days prior written notice upon determination of the Planning Director that one or more of the conditions or provisions of the permit have been violated or that a change of circumstances has occurred which warrants or requires such termination. The decision of the Planning Director to terminate a permit is subject to the same appeal provisions contained above applicable to issuance of a Sidewalk Cafe Permit. All encroachment permits are likewise terminable by the City Engineer on thirty day prior written notice and any such termination is appealable as set forth in Paragraph G.1.

I. AMENDMENT TO SIDEWALK CAFE ORDINANCE

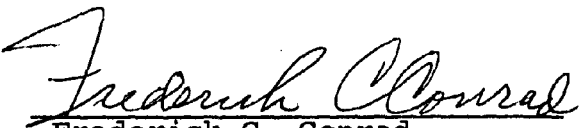
These regulations are subject to rescission or amendment at anytime by the City Council. No person or entity shall as a result of adoption of these Sidewalk Cafe regulations be entitled to the issuance of a permit and any and all permits shall

be granted or denied, rescinded or modified at the discretion of the City Engineer, Planning Director, Planning Commission or City Council as provided herein without liability of any kind whatsoever. Furthermore, no person or entity to which any permit has been granted hereunder shall have any vested interest in maintaining permitted improvements in the event it is determined pursuant to the provisions hereof to modify or terminate any such permit.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after the date the California Coastal Commission unconditionally certifies this ordinance as a local coastal program amendment. If this ordinance is not certified, or is certified with suggested modifications by the California Coastal Commission, the provisions of this ordinance shall be null and void.

Section 3. No permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefore was made prior to the date the California Coastal Commission unconditionally certified this ordinance as a local coastal program amendment.

APPROVED: JOHN W. WITT, City Attorney

By 
Frederick C. Conrad
Chief Deputy City Attorney

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Very truly yours,
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SEP 25 1989

Passed and adopted by the Council of The City of San Diego on.....
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Jana M. Martin*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

SEP 12 1989, and on SEP 25 1989

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Jana M. Martin*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0 17342 Adopted SEP 25 1989

CERTIFICATE OF PUBLICATION

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SAN DIEGO, CALIF.

CITY OF SAN DIEGO
202 C ST., 2ND FLOOR
SAN DIEGO, CA 92101
ATTN: TENA MARTIN

IN THE MATTER OF

NO.

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 5,
OF THE SAN DIEGO MUNICIPAL CODE . . .

ORDINANCE NUMBER O-17342 (NEW SERIES)

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 5, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 101.0550, RELATING TO SIDEWALK CAFES.

The ordinance is amended to include the following:

1. Require a barrier which defines the boundary of the sidewalk cafe which must be in place when the sidewalk cafe is in operation, and be affixed to the sidewalk and contiguous.
2. Permit expansion of sidewalk cafes to adjacent business if permission is granted from adjacent business owner and first floor tenants and meets with clear path and barrier requirements.
3. Amends the City's Local Coastal Program.

Introduced on SEP 12 1989

Passed and adopted by the Council of The City of San Diego on SEP 25 1989

AUTHENTICATED BY: MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By Tena Martin, Deputy

Pub. October 10

187280

I, THOMAS D. KELLEHER, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

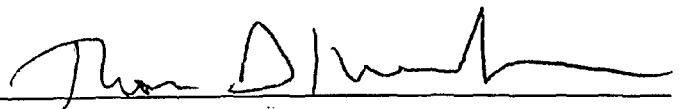
ORDINANCE NUMBER O-17342 (NEW SERIES)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

OCT. 10

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 10 day of OCT., 1989.



(Signature)

2" x 2 x 23.68 = 49.68