

Chapter 5.44

SIDEWALK DINING ON PUBLIC WALKWAYS

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5.44.010 Intent.

The City Council hereby acknowledges that the primary purpose of public sidewalks is to permit the free and unobstructed right of travel by pedestrians. However, the use of public walkways for limited sidewalk dining areas can improve the business environment and enhance the quality of life for Ripon residents, so long as such use does not impede travel and does not interfere with the rights of adjoining property owners. Therefore, the City may permit such uses after findings have been met that applicants comply with the standards of this chapter. For purposes of this chapter, sidewalk dining on the public walkways shall only be permitted within the C-1, C-2 and C-3 zones within the City of Ripon. (Ord. 607 § 1, 1999)

5.44.020 Definitions.

(a) "Abutting property" means the property and/or business directly abutting the portion of the public walkway in which the sidewalk dining area is placed, measured perpendicular to the property line or as determined by the Director.

(b) "Adjoining property" means a property

which both adjoins the abutting property and fronts with it on the same public walkway.

(c) "Director" means the Director of the Community Development Department or his or her designee.

(d) "Obstruction" means any object which completely or partially blocks a path of travel on a public walkway and includes all temporary structures, appurtenances, furnishings and furniture attendant to a permitted use under this article.

(e) "Permit" means the sidewalk dining permit created by this article.

(f) "Person" means any individual, firm, company, account, association, partnership, corporation, joint venture, or any other entity.

(g) "Public walkway" means all or any portion of territory within the City set apart and designated for the use of the public as a thoroughfare for primarily pedestrian travel, including but not limited to sidewalks.

(h) "Sidewalk dining area" means an area within the public walkway set up in conjunction with the use of the abutting property for dining and including both any obstructions and any activity related to dining as approved. (Ord. 607 § 1, 1999)

5.44.030 Extent of Zoning Compliance.

A permit granted under this article is not a land use entitlement that runs with the land. A sidewalk dining permit shall not be construed to increase the floor area, square footage, or number of seats of any business. Furthermore, a sidewalk dining permit shall only be issued in association with abutting properties with the following uses:

- (1) Bona fide public eating establishment (restaurant);
- (2) Coffee shop;
- (3) Donut shop;
- (4) Ice cream/frozen yogurt shop;
- (5) Bakery;
- (6) Pizza place;
- (7) Delicatessen;
- (8) Other similar uses as determined by the Director.

(b) Specifically excluded from applying for a sidewalk dining permit are the following uses:

- (1) Bar/cocktail lounge;
- (2) Night club. (Ord. 607 § 1, 1999)

5.44.040 Sidewalk Dining Permit.

No person shall establish or maintain any sidewalk dining area within a public walkway except pursuant to a written permit approved by the Director pursuant to this article. This 'article shall not be applicable to any activity performed pursuant to and permitted by other specific provisions of this code or to other encroachments prohibited by other specific provisions of this code. Sidewalk dining permits are not permits running with the land, but shall be considered personal in nature. Thus, in the event of a sale of a business whose owner possesses a valid sidewalk dining permit, the permit shall lapse, and the new owner shall be required to obtain a new permit pursuant to the provisions of this Chapter. (Ord. 607 § 1, 1999)

5.44.050 Application.

A person desiring a Sidewalk Dining Permit shall file an application with the Director and shall pay an application processing fee of \$100.00, which fee may be adjusted from time to time by resolution of the City Council. The Director shall establish the form for applications, including any application materials deemed necessary to enable complete review of the application. The application shall include a declaration under penalty of perjury that all information is true and correct and shall contain, at a minimum, the following information:

- (a) The name, business address and telephone number of the applicant and contact person if different from the applicant;
- (b) If the applicant is not the owner of the abutting property, then the applicant shall obtain a notarized letter of authorization by the owner for such purpose;
- (c) Plans satisfactory to the Director which show in detail the dimensions of the sidewalk dining area, a description of its use and the arrangement of the occupancy including, but without limitation, all objects to be placed upon the sidewalk and activities

in the public walkway with full dimensions, the number of seats, tables, a schedule of time of use, and all utility connections to be utilized in connection with such occupancy;

(d) Certification by the Planning Department that the abutting property has previously received all zoning entitlements consistent with the operation of a sidewalk dining area and is in compliance with all zoning regulations;

Sidewalk dining permits issued pursuant to this Chapter shall have a maximum duration of one year. A sidewalk dining permit may be renewed, at the discretion of the Director, upon the payment of a renewal fee in the amount of \$50.00. The renewal fee may be amended from time to time by resolution of the City Council. The Director shall establish forms for renewal application, including any information required thereon. (Ord. 607 § 1, 1999)

5.44.060 Change in Permitted Use.

Any permittee desiring to change the permitted use by increasing the size of the sidewalk dining area, by changing substantially the use or arrangement of the occupancy shall file a new application under this chapter. (Ord. 607 § 1, 1999)

5.44.070 Required Findings for Sidewalk Dining Permit.

No permit may be issued until the application is approved by the Director and all of the following findings are made by the Director:

- (a) The proposed sidewalk dining activity meets the standards of this article; and
- (b) The proposed sidewalk dining activity does not unduly interfere with the use of the public right-of-way or with adjoining property owners and tenants; and
- (c) The proposed sidewalk dining activity is compatible with the use and enjoyment of surrounding neighborhood uses; and
- (d) The proposed sidewalk dining activity does not impede travel on the public walkway or create a hazard to the health, safety or welfare of pedestrians; and
- (e) The proposed sidewalk dining activity does

not unlawfully alter the associated use of the abutting property; and

(f) The proposed sidewalk dining activity complies with all applicable codes, laws, rules and regulations, including health, safety, building, fire, sign, zoning and business license regulations of the City of Ripon. (Ord. 607 § 1, 1999)

5.44.080 Sidewalk Dining Permit Standards.

All permits issued pursuant to the terms of this article shall conform to all of the following requirements, and no permit may be issued which does not so conform:

(a) A fully dimensioned site plan of the proposed sidewalk dining area containing the size and locations of the proposed objects (i.e., tables, chairs, fencing, planters, trash receptacles, etc.) shall be submitted and approved by the Director.

(b) Plan approval is subject to the policies of the Planning Director and the City Engineer.

(c) A minimum width of at least five (5') feet of unobstructed area of public walkway, unless additional or lesser public walkway is approved by the Director on the basis of the considerations specified in this article, shall be required.

(d) The sidewalk dining area shall not extend beyond the boundaries of the abutting property. If written approval is given by the adjacent property owner, then the sidewalk dining area may extend beyond the adjoining property's storefront up to twenty-five (25%) percent of the subject site width.

(e) The maximum height of any object to be placed upon the sidewalk, with the exception of table umbrellas with properly weighted anchors, pursuant to the terms of this article shall be four (4') feet and all such objects shall be entirely portable.

(f) The sidewalk dining area shall not exceed three feet in width.

(g) The tables used for the sidewalk dining area shall not exceed thirty (30") inches in diameter.

(h) A permit may be issued only to the operator of a business on the abutting property.

(i) Use, occupation and obstruction of the public walkway which is permitted under this chapter may be temporarily suspended, without prior notice or hearing, when, in the discretion of the Director, the police chief, or the fire chief, any

such use, occupation or obstruction may interfere with public safety efforts or programs, street improvement activities, construction activities, cleaning efforts or other similar activities or with the health, welfare or safety of the citizens of the City. In addition, and without limiting the foregoing, the use, occupation and obstruction of the public walkway pursuant to a sidewalk dining permit, shall be suspended during the Ripon Almond Blossom Festival and Main Street Day.

(j) All objects used in conjunction with the sidewalk dining area shall be removed from the public right-of-way during closed business hours, except as otherwise approved by the Director.

(k) The sidewalk dining area shall be kept in a good state of repair and maintained in a clean, safe and sanitary condition.

(l) All fencing, dividers and obstructions shall also be reviewed and approved by the Director in order to ensure that they are in keeping with the aesthetic and architectural character of the area and with all approved design guidelines for the area.

(m) There shall be no alteration or modification to the surface of the public walkway.

(n) The sidewalk dining area may not be located within twenty (20') feet of an intersection (measured to the prolongation of the near curb of the intersecting street) nor within ten (10') feet of a driveway or alley (measured to the near end of the fully depressed portion of an apron-type driveway or to the prolongation of the near curb of the driveway).

(o) The sidewalk dining area shall be located in a manner which will not interfere with the visibility, vehicular or pedestrian mobility or access to City or public utility facilities. The determination of whether a sidewalk dining area or any part thereof interferes shall be made by the Director at the time of application based on the characteristics of each proposed site.

(p) The Director may, in his or her sole discretion, place additional conditions upon the issuance of the permit in order to insure the protection of the public rights-of-way and the rights of all adjoining property owners and the health, safety and welfare of the public.

(q) Permits shall be considered temporary in nature, and permittee shall have neither property interest in nor any entitlement to the granting or continuation of any such permit.

(r) No alcohol shall be served or consumed within any sidewalk dining area. (Ord. 607 § 1, 1999)

5.44.090 Indemnification of City.

As a condition of issuance, the permittee, and any person acting under or pursuant to said permit, agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, the City, its Council, and its officers, employees, commission members and representatives, from and against any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part result from, or arise out of any acts, negligence, errors or omissions (including, without limitation, professional negligence) of permittee, its employees, representatives, subcontractors, or agents by reason of or arising out of, or in any manner connected with, any and all acts, operations, privileges authorized, allowed or undertaken pursuant to the permit including, without limitation, any condition of property used in the operations.

The agreement to indemnify shall include, but is not limited to, personal injury (including death at any time) and property or other damage sustained by any person or persons (including, but not limited to, companies, or corporations, permittee and its employees or agents, and members of the general public).

As a further condition of issuance of the permit, the permittee shall covenant not to sue the City, its Directors, employees, agents, and representatives and shall cause its insurers to waive subrogation against the same with respect to any action, cause of action, claim or demand in any way resulting from or connected with any and all undertakings and operations conducted pursuant to the permit. (Ord. 607 § 1, 1999)

5.44.100 Liability Insurance.

The City shall require as a condition to the issuance of a Sidewalk Dining Permit the filing of a certificate of liability insurance evidencing coverage for bodily injury and property damage liability in an amount and form subject to the approval of the City Attorney. (Ord. 607 § 1, 1999)

5.44.110 Revocation and Violation Penalty Appeals

The Director may institute revocation proceedings for a permitted use upon the finding of any violation of any standard or condition in accordance with this article or any other applicable regulation or law to protect the health, safety, and welfare of the City. The Director shall deliver a Notice of Intent to revoke the permit and specify the time within which the revocation is to take place allowing a reasonable time 'to comply or correct a violation. In addition, the Notice of Intent shall specify the relevant time periods and filing information for appeals. The permittee may appeal any decision of the Director to revoke the permit by filing an appeal to the Planning Commission not later than 10 days after delivery of the Notice of Intent. Within 20 days after delivery of a notice of termination, unless an appeal has been filed, and in such case, within 20 days after final disposition of the appeal, the City shall have the right to require the removal of all obstructions in the public walkway in the time specified; and may perform such removal if the permittee fails to do so within such time as specified by the Director. The permittee shall reimburse the City for any expense incurred by the City in removing any obstruction in the event it is not removed by the permittee within the time required by the City. Should the permittee continue to use the public walkway after the permit has been revoked, the City may take appropriate action to restrain the use of the public walkway by permittee and, in such event, the permittee shall reimburse the City for its reasonable costs and expenses in connection therewith, including reasonable attorney's fees and court costs. (Ord. 607 § 1, 1999)