

CITY OF ENCINITAS SIDEWALK CAFE POLICY

*Adopted CC Resolution No. 2012-03 January 12, 2012
Amended CC Resolution No. 2022-28 March 16, 2022*

Policy Statement

Outdoor, sidewalk cafe dining provides a pedestrian-oriented activity that encourages an active street life and is an important benefit to the City of Encinitas ("City"). However, there is a need to balance the use of the sidewalk in the public right-of-way between pedestrians, sidewalk dining and sidewalk displays of retail merchandise. Pedestrians bring commerce to the businesses of the City, especially in the downtown area and along Coast Highway 101 in Leucadia where walkability is essential to maintain vitality of the downtown area and other commercial areas. The protection of accessibility for all ability levels is crucial to ensure that all can enjoy the amenities provided and to ensure compliance with the Americans with Disabilities Act (ADA).

Sidewalk Cafes throughout the City

The primary area of concern when addressing issues presented by sidewalk cafes on the public right-of-way is the downtown area, where existing development patterns, zero-foot setback requirements, and generous parking standards for sidewalk dining encourage this use. Many business frontages along Coast Highway 101 in downtown and some in Leucadia are used for sidewalk dining on the public right-of-way and outdoor dining on private property adjacent to Coast Highway 101. These districts, especially downtown, also receive the most pedestrian traffic. The commercial corridor of El Camino Real and similar commercial development along Encinitas Boulevard typically features buildings near the rear of properties with large parking lots between the street and the building. Outdoor patio dining adjacent to the businesses within these areas can be found in several places but the overall pattern of development is not typically conducive to sidewalk cafes on public rights-of-way. In the Cardiff area, existing outdoor dining areas are typically found on the private property adjacent to the associated restaurant. Front-yard setback requirements in the Cardiff area would support a development pattern of outdoor dining areas on private property adjacent to the building as opposed to sidewalk cafes in the public right-of-way. The Cardiff Specific Plan provides allowances for dining within front, street, and corner setback areas and does not require parking for sidewalk cafes confined to the restaurant storefront.

Eating Establishments Only

A sidewalk cafe may only be allowed in conjunction with eating establishments such as restaurants, traditional coffee shops, ice cream parlors or juice bars, or establishments with food retail sales such as grocery stores and convenience stores. A sidewalk cafe is not permitted in conjunction with a bar, private club, or similar use, or in conjunction with a liquor store.

Alcohol Service

Alcohol service may be allowed within the public right of way with approval of a Sidewalk Café Permit after a Minor Use Permit and State Department of Alcoholic Beverage Control (ABC) license are obtained. Existing restaurants with approved and permitted alcohol service shall amend their existing Minor Use Permit and ABC license prior to approval of a Sidewalk Café Permit with alcohol service.

Pedestrian Pathway

To ensure compliance with ADA regulations, maintain a minimum width for pedestrian usability, and still provide sufficient space for sidewalk cafe encroachments into the public right-of-way, a minimum pedestrian pathway width of five (5) feet shall be maintained free and clear for pedestrian passage at all times.

Adjacent to Associated Establishment Only

The encroachment of a sidewalk cafe into the public right-of-way shall be limited to the area directly in

front of and adjacent to the associated establishment. The encroachment of a sidewalk cafe shall not extend more than five (5) feet from the property line of the property where the associated establishment is located, with exceptions as may be allowed on a case-by-case basis as discussed under *Placement near the Curb*. In no case shall the service area of the sidewalk cafe extend beyond the width of the associated establishment.

Placement near the Curb

Along South Coast Highway 101 in the downtown area, vehicular and pedestrian traffic can be very busy. There is diagonal head-in parking in some areas and the sidewalks are relatively narrow and have street furniture (lights, benches, planters, etc.). Tables near the curb present significant issues to the safety of pedestrians, service staff, and patrons. Patrons and/or furniture near the curb and within the automobile parking overhang where parking is diagonal to the curb or door-opening area where parking is parallel to the curb greatly increase the chance of negative interaction between patrons and/or furniture and parking vehicles. Additionally, service to patrons across the pedestrian path can interfere with clear pedestrian access and service areas at the curb tend to "creep" together with service areas at the building.

For the above reasons, along South Coast Highway 101 in the downtown area where the sidewalk is improved for the full width from property line to curb, sidewalk cafe encroachments shall be limited to the width of the establishment conducting the sidewalk cafe and five (5) feet from the property line of the property where the associated establishment is located. In all cases, the required five (5) foot pedestrian pathway must be maintained.

Along some portions of South Coast Highway 101 in the downtown area, the sidewalk is not improved for the full width from property line to curb. Rather, the sidewalk is improved for compliant ADA pedestrian access only adjacent to the property line while the area adjacent to the curb is at best improved with non-ADA-compliant bricks or pavers. Because the ADA-compliant pedestrian pathway is limited to the area adjacent to the property line, the only opportunity for a sidewalk cafe would be near the curb. Additionally, on lettered side streets and Second Street in the downtown area, there is less pedestrian and vehicular traffic, sidewalks are wider, there is generally less street furniture, and many areas have parallel parking. These things are also true to some extent for other locations that have or may have sidewalk cafes, such as Cardiff and Leucadia.

For those portions of South Coast Highway 101 where the sidewalk is not improved for the full width from property line to curb, along the lettered side streets and Second Street in the downtown area and in other locations where sidewalk cafes may be located, placement of the sidewalk cafe service area, tables, chairs, and equipment near the curb may be allowed on a case-by-case basis. This determination would be based on site-specific review to assess pedestrian and vehicular traffic in the area, vehicular parking and access, and the ability to maintain and not inhibit flow along the five (5) foot pedestrian pathway. If review finds that placement of the sidewalk cafe service area, tables, chairs and equipment near the curb would not interfere with the traveled way, vehicular parking and access, or the required five (5) foot pedestrian pathway, and that pedestrian flow would not be inhibited by service to areas near the curb, sidewalk cafes near the curb may be permitted. Where sidewalk cafes are permitted near the curb along South Coast Highway 101 in the downtown area, the placement of the sidewalk cafe service area, tables, chairs, and associated equipment shall maintain a minimum of two (2) feet from the face of the curb to allow adequate space for the overhang of vehicles where parking is diagonal to the curb and for the opening of vehicle doors and exit/entry of passenger from vehicles where parking is parallel to the curb.

Railings

Sidewalks in the downtown area along Coast Highway 101 are only 12 feet wide. Railings shall maintain the required five (5) foot pedestrian pathway and maintain ADA compliance and if necessary, shall be modified to comply with this requirement when required for alcohol service. Railings shall meet ABC requirements. However, ADA compliance shall take precedence. No chain link railings shall be permitted.

Open Storefronts

Property owners desiring to interact with the pedestrian traffic without any encroachment into public right-of-way, or desiring to increase pedestrian connectivity, could fully or partially open the storefront to the sidewalk. Storefronts opened onto the sidewalk allow diners seated on the private property to enjoy the open-air feel of sidewalk dining without an impediment to pedestrian traffic. Establishments can utilize roll-up doors, fold-up doors, French doors, sliding doors, large windows, shutters, and other methods to open all or part of their street frontage to the sidewalk. Openings can be to the ground, allowing pedestrian traffic to flow in freely, or can be an intermediate height to separate pedestrian traffic flow from the tableside but allow an open window to the public sidewalk. Opening storefronts to the sidewalk and pedestrian traffic is strongly encouraged, and facade improvements to open a storefront could be eligible for DEMA Facade Grant funding.

Term

Maintaining an accessible pedestrian pathway is an important issue to the City and its residents, visitors, and business people. Frequent review of compliance with the Sidewalk Cafe Policy requirements is needed to ensure that pedestrian accessibility for users of all levels is preserved. To ensure continuing compliance of permittees to maintain a free and unobstructed walkway, permit review will be conducted on an annual basis and permits will be valid for a one (1) year period. Since the summer season is the busiest for pedestrian traffic, annual review prior to the beginning of the summer is important. To ensure annual review of permits prior to the summer season, the term of all Sidewalk Cafe Encroachment Permits shall expire on April 30 of each year. Permittees must file for a renewal of existing permits by April 1 of each year. New permits will expire the April following initial issuance; fees will be prorated for the initial permit term (see Fees below).

Fees

An application for a new Sidewalk Cafe Encroachment Permit shall require payment of a permit fee of \$388. For new permit applications received off of the April-to-April cycle of annual review and renewal, the fee for the initial permit period will be prorated on a monthly basis. New permit applications filed in May would pay 11/12 of the fee, in June 10/12 of the fee, in July 9/12 of the fee and so on. Renewal of an existing permit shall require payment of a renewal fee of \$124. The renewal fee for an existing sidewalk cafe that was found to be out of compliance with this Policy in the previous year shall be doubled to \$230.

Enforcement

Enforcement of the provisions of this policy is vital to maintain the balance of uses on the sidewalk within the public right-of-way and to ensure that users of all ability levels have access to the pedestrian pathway and the amenities located along it. The City plays the primary role in enforcing the provisions of this policy, but compliance with the policy and self-enforcement by restaurant owners is a necessary component of achieving compliance, and providing a safe, accessible pedestrian walkway. To assist with self-enforcement, a plaque, stating "A five (5) foot wide clear pedestrian path must be maintained along the sidewalk at all times," is required to be posted at the front of each establishment with an encroachment permit for a sidewalk cafe.

In the event of noncompliance, the City will take steps to enforce the requirements of this policy. The sidewalk cafe in question would be inspected. On confirmation that the sidewalk cafe is not in compliance with this Policy or provisions of the Municipal Code, a Stop/Correct Work Notice shall be delivered to the permittee. If no effort is made to comply within 24 hours, a written Notice of Intent to Revoke Encroachment Permit shall be mailed and hand delivered to the permittee, setting forth a date and time within 48 hours of the Notice upon which the permit shall become invalid if the encroachment infraction is not corrected. If two or more Stop/Correct Work Notices have been issued within the past 30 days, or if no effort is made to comply by the prescribed date, the permit shall be revoked and the City will remove any and all sidewalk obstructions and encroachments. Removed items would be stored for 30 days and then discarded if the permittee fails to retrieve them. If a sidewalk cafe encroachment permit is revoked, a Sidewalk Cafe Encroachment Permit shall not be issued for the same property for a period of one (1) year.

Encroachment Removal

Should the City have the need for the sidewalk cafe encroachments to be removed for infrastructure improvement or other projects, or for any other purpose, the permittee shall be given 30-days written notice to remove the encroachments.

Sidewalk Cafe Encroachment Permit Requirements

Each Sidewalk Cafe Encroachment Permit shall comply with the following requirements, which shall be reflected in permit conditions of approval:

1. Sidewalk Cafe Encroachment Permits shall be valid for one (1) year, from April of one year to April 30 of the next year. Applications for permit renewals shall be filed by April 1.
2. The operation of a sidewalk cafe shall comply with the City of Encinitas Sidewalk Cafe Policy and all other permits and appropriate provisions of the Encinitas Municipal Code and Specific Plans, including but not limited to conditions of use permit for alcohol services, parking, and sign regulations.
3. The operation of a sidewalk cafe shall meet applicable requirements of the San Diego County Department of Environmental Health.
4. A sidewalk cafe must maintain a pedestrian pathway of at least five (5) feet in width with free and clear passage for pedestrians at all times. The pedestrian pathway must exclude planter areas, fire hydrants, streetlights, other street furniture, two (2) feet from the face of the curb for on-street vehicle parking overhang and door-opening area along South Coast Highway 101 in the downtown area, and area for any approved A-frame signage. A plaque stating "A 5-FOOT WIDE CLEAR PATH MUST BE MAINTAINED ON SIDEWALK AT ALL TIMES" shall be posted in an unobstructed location at the front of establishment with the sidewalk cafe.
5. The area of a sidewalk cafe shall not remove any required parking areas and the cafe area shall not block access to the property or surrounding areas.
6. The hours of operation of a sidewalk cafe shall be limited to the hours of operation of the associated establishment or may be further limited through the Sidewalk Cafe Encroachment Permit review process.
7. A sidewalk cafe must be reviewed by and comply with the standards of the Encinitas Fire Marshal relative to access and flammability.
8. The number of tables and chairs allowed for a sidewalk cafe shall be established through the Sidewalk Cafe Encroachment Permit process. Tables, chairs, other furniture, heaters, cafe equipment, menu boards, etc. for a sidewalk cafe shall be located as shown on an approved site plan. Changes in the numbers of tables and chairs and/or changes in table, chair, furniture and/or equipment location shall require approval of a modification to the Sidewalk Cafe Encroachment Permit.
9. All furniture and equipment associated with a sidewalk cafe shall not extend beyond the width of the associated establishment, nor more than five (5) feet from the property line of the property where the associated establishment is located. Exception: sidewalk cafes may be allowed to have service areas, tables, chairs, and associated equipment near the curb on a case-by-case basis subject to site-specific review in accordance with this Policy. See Sidewalk Cafe Encroachment Permit Requirements No. 10 and No. 11. In no case may the area of a sidewalk cafe extend beyond the width of the associated establishment.
10. Along South Coast Highway 101 in the downtown area where the sidewalk is improved for the full width from property line to curb, sidewalk cafes shall be limited to the area adjacent to the associated establishment in accordance with Sidewalk Cafe Encroachment Permit Requirement No. 9; at no time shall any table, chair, or other piece of furniture or restaurant/cafe equipment be placed near a curb along a traveled way.
11. Along those portions of South Coast Highway 101 in the downtown area where the sidewalk is not improved for the full width from property line to curb, along lettered side streets

and Second Street in the downtown area, and in other locations throughout the City, the sidewalk cafe service area, tables, chairs, and associated equipment may be permitted near the curb on a case-by-case basis if site-specific review finds that curbside placement of these items would not interfere with the traveled way, vehicular parking and access, or the required five (5) foot pedestrian pathway, and that pedestrian flow would not be inhibited by service to curbside patrons. Where sidewalk cafes are permitted near the curb along South Coast Highway 101 in the downtown area, tables, chairs, and other associated equipment shall maintain a minimum of two (2) feet from the face of the curb.

12. A sidewalk cafe may be allowed one (1) menu board subject to the following:
 - a) The menu board shall be limited to five (5) feet in height.
 - b) The menu board shall be limited to three (3) square feet in area.
 - c) The menu board shall not be specifically illuminated with any type of illumination, internal or external.
 - d) The menu board shall be portable, self-supporting and stable, and weighted or constructed to withstand overturning by wind or contact.
 - e) The menu board shall be located within the approved sidewalk cafe encroachment area in the location shown on the approved site plan for the sidewalk cafe.
13. Any freestanding heaters, canopies, umbrellas, awnings, or similar structures for a sidewalk cafe shall maintain a minimum vertical distance of seven (7) feet from the sidewalk surface.
14. No sound amplification device, musical instrument or sound reproduction device shall be operated or used with a sidewalk cafe.
15. Outdoor lighting for sidewalk cafe areas shall not have a measured light standard in excess of one-foot candle at the edge of the curblin e or beyond the width of the establishment. Outdoor lighting fixtures shall be fully shielded so as to cause all emitted sustained light to be projected below an imaginary horizontal plane passing through the lowest point of the luminary, lamp or light source used in the fixture.
16. No service or consumption of alcoholic beverages shall be allowed on the public right-of-way without a valid Use Permit, ABC License, and Sidewalk Cafe Permit.
17. Storage of tables, chairs, or other furniture or equipment for a sidewalk cafe on the public right-of-way or visible therefrom shall be prohibited. All tables, chairs, and other furniture and equipment shall be stored inside the building or other approved enclosed area when the associated establishment is not open for business or preparing/closing down for the day.
18. A liability insurance policy for the sidewalk cafe establishment naming the City as additionally insured for \$1,000,000 shall be maintained at all times, a copy of which shall be kept on file with the Development Services Department. The term of a Sidewalk Cafe Encroachment Permit shall be limited to the dates that the liability insurance is valid.
19. After initial inspection, a sidewalk cafe will be inspected randomly at least one (1) time per year.
20. Violations, including not possessing a permit or possessing an invalid permit, may subject the permittee to a double fee assessment.
21. In the event of noncompliance, the City will take steps to enforce the requirements of this policy as follows:
 - a) Inspect the sidewalk café.
 - b) Issue a Stop/Correct Work Notice.
 - c) If no effort is made to comply within 24 hours: Mail and hand deliver a written Notice of Intent to Revoke Sidewalk Café Encroachment Permit to permittee, setting forth a date and time within 48 hours of the Notice upon which the permit will become invalid if the encroachment infraction is not corrected.
 - d) If two or more Stop/Correct Work Notices have been issued within the past 30 days, or if no effort is made to comply by the prescribed date, the City will revoke the permit and request Public Works to remove any and all sidewalk obstructions.

- e) If an encroachment permit is revoked, an encroachment permit shall not be issued for the same property for a period of one year.
- f) Revocation of Sidewalk Cafe Encroachment Permit may be appealed to the City Council within 15 days of the date of revocation. Appeals will be considered by the City Council pursuant to Chapter 1.12 of the Municipal Code.

Site Plan Requirements

Site plans for Sidewalk Cafe Encroachment Permits must include the following information. Please see the attached sample site plan.

1. The site plan must be legibly drawn and drawn to scale. Indicate the scale used.
2. The location of the associated eating establishment with the width of the building or suite occupied clearly shown and dimensioned.
3. The full width of the sidewalk shown and dimensioned from the building wall/property line to the face of the curb.
4. The location of the required five (5) foot wide pedestrian pathway, clearly dimensioned.
5. The width and depth of the overall proposed encroachment area clearly shown and dimensioned.
6. All proposed tables, chairs, furniture, equipment, and menu boards identified and location shown.
7. A table indicating the total number of tables and chairs proposed.
8. All street furniture, planters, trees, etc. identified and location shown.

Appeals

Approvals, denials, and revocations of Sidewalk Cafe Encroachment Permits may be appealed to City Council within 15 days of the date the action being appealed was taken. Appeals will be considered by the City Council pursuant to Chapter 1.12 of the Municipal Code.

Finding

Areas of the City where sidewalk cafes may be permitted include commercial and mixed-use zones. Proper conduct of a sidewalk cafe is necessary to ensure that the sidewalk cafe is compatible with, and will not adversely affect or be detrimental to, adjacent businesses, nearby residents, visitors to the City, or pedestrian users of the sidewalk. This Sidewalk Cafe Policy includes requirements to ensure that operation of a sidewalk cafe maintains adequate pedestrian passage, is limited to a confined area of the sidewalk, does not cause noise or light trespass onto adjacent properties, and is confined to eating establishments only. The City Council finds that the operation of a sidewalk cafe under the tenets of this Policy will be compatible with, and will not adversely affect or be detrimental to, adjacent businesses, nearby residents, visitors to the City, or pedestrian users of the sidewalk.