

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF PLACERVILLE ADOPTING AMENDMENTS TO THE ZONING
REGULATIONS APPLICABLE TO THE ESTABLISHMENT AND
REGULATION OF SIDEWALK SEATING AND DINING AREAS WITHIN THE
PUBLIC RIGHT-OF-WAY BY ADDING SECTION 10-4-19 TO CHAPTER 4 OF
TITLE 10 OF THE CITY CODE**

WHEREAS, the City has been approached by the general public and by business owners with the expressed desire that sidewalk dining areas be permitted and within the public right-of-way; and

WHEREAS, the City of Placerville enjoys a pedestrian oriented downtown business district and experiences mild weather months that are conducive to sidewalk dining areas for use by the public; and

WHEREAS, this ordinance allows the City Council to establish appropriate conditions and fees for use of the City's public sidewalks by private eating and drinking establishments for the benefit of customers; and

WHEREAS, this ordinance is intended to minimize adverse impacts on the walkability of public sidewalks by requiring specific setbacks and rules for placement of furniture and appurtenances on the public sidewalks; and

WHEREAS, a public workshop was conducted by the City of Placerville Planning Commission on September 15, 2015 to discuss the permitting of sidewalk dining areas and to receive public comment; and

WHEREAS, the Planning Commission considered a draft ordinance prepared by staff on September 20, 2016 and after public comment, directed staff to bring back to the Planning Commission a revised draft that considered comments of the Commission and the public; and

WHEREAS, on October 18, 2016, the Planning Commission considered the second draft ordinance and recommended forwarding said second draft to the City Council for adoption with an amendment to ban any smoking and/or vaping within any sidewalk dining area permitted under said ordinance.

**THE CITY COUNCIL OF THE CITY OF PLACERVILLE DOES ORDAIN AS
FOLLOWS:**

SECTION 1. Recitals Adopted

The foregoing recitals are true and correct and made a part of this ordinance as findings by the City Council.

SECTION 2. Purpose and Authority.

The purpose of this ordinance is to amend Title 10 of the Placerville City Code, adding Section 10-4-19 *Sidewalk Dining Regulations* to Chapter 4 *General Regulations* to allow and regulate the establishment of sidewalk dining areas within the public right-of-way.

SECTION 3. Action: Add Section 10-4-19 entitled *Sidewalk Dining Regulations* to Chapter 4 General Regulations of Title 10 Placerville Zoning Ordinance as follows.

10-4-19: Sidewalk ~~Outdoor~~ Dining Regulations

Sections:

- (A) Purpose and intent.
 - (B) Definitions.
 - (C) Sidewalk ~~Outdoor~~ dining areas.
 - (D) Location.
 - (E) Insurance.
 - (F) General standards for outside dining.
 - (H) Review process.
 - (I) Encroachment permit.
 - (J) Terms and renewal.
 - (K) Enforcement.
- (A) Purpose and intent: The purpose of this chapter is to establish regulations to allow limited dining areas to encroach into the public right-of-way as an ancillary component of an adjacent primary business that is located on private property. It is intended that such sidewalk ~~outdoor~~ dining areas will not unduly restrict public access or utilize a design that detracts from the image and appearance of the surrounding area.
- (B) Definitions: The following definitions shall apply in the interpretation of this chapter:

Sidewalk ~~Outdoor~~ dining area: Use of an adjacent, outside area by a food or beverage establishment for the same eating and drinking activities that occur within the establishment. The outdoor dining area may be located in a public right-of-way pursuant to this chapter.

Furniture: Collectively includes tables, chairs, benches, umbrellas, waiter stands, barriers, tray stands, planters, trash receptacles, or other furniture normally associated with dining.

Chair: A chair is further defined as either a distinct piece of furniture designed to allow one person to sit upon the same, or when seating is provided on a bench or other similar structure, then every 20 inches of seating space shall be considered as the equivalent of one chair for determining seating capacity.

Director: The Director shall mean the Director of Development Services Department.

(C) Sidewalk ~~Outdoor~~ dining areas permitted: Sidewalk ~~Outdoor~~ dining areas shall be permitted to encroach into the public sidewalks abutting eating establishments for sidewalk dining purposes within all commercial zone districts.

(D) Location:

1. Sidewalk ~~Outdoor~~ dining areas in the public right-of-way shall not extend beyond the boundaries of the primary business property to which such activity is subordinate.
2. Sidewalk ~~Outdoor~~ dining areas may extend into the public right-of-way; however, a clear pedestrian pathway shall be maintained the full width of the property. The pathway shall maintain a minimum unobstructed passageway of five feet as measured from the dining area to edge of curb or to any obstruction including but not limited to light standards, benches, street trees, trash containers, and news racks.

(E) Insurance: The permittee shall maintain general liability insurance for the benefit of the City of a type and amount as determined appropriate by the City Manager.

(F) General standards for sidewalk ~~outside~~ dining areas:

1. Development Standards.

- (a) Facilities and equipment shall be of a quality and style that is consistent with the Design Guidelines adopted by the City and any other applicable design standards and policies. The design, quality, materials and colors used for chairs, tables, lighting and other fixtures shall complement the architectural style and colors used on the adjacent buildings. Sidewalk dining furniture, equipment, and other amenities shall be constructed of metal, unless an alternative material is approved by the ~~Development Services~~ Director or the Planning Commission.
- (b) Sidewalk ~~Outdoor~~ dining areas that have more than four tables or more than eight chairs shall separate the dining area from the walkway with

fencing, swag roping, decorative plants, landscape planters, or other architectural barriers that prevent encroachment of tables and chairs into the five-foot pathway being maintained for pedestrian access. The Planning Commission may relax this standard when it is clear that there is no reasonable possibility of tables or chairs being moved to encroach on the required pedestrian pathway.

- (c) Lighting will be required for sidewalk ~~outdoor~~ dining areas where food will be eaten during the evening hours. The lighting fixtures must be decorative and complement the architectural character of the building and area. Lights mounted on the building shall not cause direct glare or other visual obstruction to pedestrians or vehicle drivers along the street and public walkway, and should illuminate only the sidewalk area.
- (d) Portable umbrellas may be permitted provided they do not obstruct the public right-of-way or walkway, and do not contain advertising. The minimum vertical clearance from the pedestrian surface for any overhead obstruction including umbrellas shall be eight feet.
- (e) Furniture shall not be attached, drilled into, adhered to, chained to, or otherwise affixed to the sidewalk tree, pole, or other furniture, or to any permanent structure or building.
- (f) Sidewalk dining furniture shall be placed immediately adjacent to and abutting the eating establishment and shall not be placed adjacent to the curb. Exceptions to this requirement may be made by the Development Services Director or Planning Commission for self-serve seating (i.e., no table service).
- (g) Dining areas serving alcohol shall delineate and separate the sidewalk dining area with a non-affixed, removable barrier/fence (e.g. a planter box, rope, fence, or other material) approved by the approving authority. Each such barrier shall be easy to remove and store. No barrier shall exceed 36 inches in height. Dining areas that do not serve alcohol are not permitted to delineate the sidewalk dining area with a barrier in order to keep the appearance of an open sidewalk.
- (h) Use of sound amplification on the exterior of an sidewalk ~~outdoor~~ dining area is prohibited.
- (i) Sidewalk dining area permits are interruptible and terminable licenses for use granted by the City. No property interest shall be conveyed to the eating establishment or to any other person. The City shall have the right and power, acting through the ~~Development Services~~ Director or Planning Commission, to revoke, prohibit, or limit operation and use of a sidewalk dining area permit at any time by reason of anticipated, threatened, or actual problems or conflicts in the use for the sidewalk area. Such circumstances may arise from, but are not limited to, changing patterns of sidewalk use, scheduled festivals or similar event, parades or marches, repairs to the street or sidewalk, or for any other reason.

- (j) Any sidewalk dining area shall be temporary in nature and designed so that the entire dining area can be easily removed. Sidewalk dining area furniture, equipment, and other amenities must be removed from the public sidewalk dining area for extended periods of eating establishment closure (two weeks or more). The City may require removal during special events, etc. The City shall have the right to unilaterally remove unapproved exterior furniture and/or equipment from the sidewalk dining area, and costs of removal shall be borne by the eating establishment.

2. Operational Standards:

- (a) The owner of the primary business is responsible for proper operation of the sidewalk ~~outdoor~~ dining area. ~~Sidewalk-Outdoor~~ dining shall be continuously supervised by management or employees. Food establishments serving alcoholic beverages shall have a supervisor, at least 21 years of age, on-site at all times of operation. Any behavior that disturbs customers or passersby on the sidewalk will constitute grounds for revocation of any permit(s) to operate an outdoor dining area.
- (b) Establishments are required to maintain all areas in and around the sidewalk dining area in a manner which is clean and free of litter and debris.
- (c) The sidewalk ~~outdoor~~ dining hours of operation shall be limited to the hours of operation of the associated food or beverage establishment.
- (d) All plans and permits for the sidewalk ~~outdoor~~ dining area approved by the City must be kept on the premises for public inspection at all times during which the associated establishment is open for business.
- (e) Sidewalk ~~Outdoor~~ dining areas shall be operated in a manner that meets all requirements of the El Dorado County Environmental Management Division and all other applicable regulations, laws, ordinances, and standards. Food establishments serving alcoholic beverages shall also obtain all necessary permits required by the State Alcoholic Beverage Control Department.
- (f) Smoking and/or vaping of any substance shall not be permitted within any sidewalk dining or seating area authorized pursuant to this Section.

(G) Application for Special Temporary Permit Required: Applications for each Sidewalk Dining Area Permit must include:

1. Description: A brief written description to include the name and address of the Eating Establishment, a description of the propertied sidewalk dining area, the number of tables and seats, whether the establishment intends to serve alcohol.
2. Site Plan: A plan, drawn to scale, showing the proposed sidewalk dining area including all tables, seats, associated furniture, and barrier; the plan shall

show all sidewalk clearance dimensions and elevation, Specifications shall be provided for all barriers, and for any sidewalk heaters. A seating and pedestrian routing plan with dimensions and the anticipated periods of use during the year.

3. Photos or Drawings: Color photos, renderings, and/or graphics shall show the setup, type of furniture, and materials to be used for all surfaces, including table clothes, barriers, and umbrellas.

(H) Review process: ~~A Special Temporary Use Permit Site Plan Review~~ shall be required as provided in Section 10-4-7 ~~10-4-9~~ of this code.

1. Review Authority:

(a) The ~~Development Services~~ Director shall have administrative authority to review and approve sidewalk ~~outdoor~~ dining areas that have not more than two tables or four chairs. For purposes of this chapter, each 20 inches of space on a bench shall be considered as one chair. The Development Services Director may impose reasonable conditions to assure that the dining area is not detrimental to the public health, safety and welfare and is consistent with applicable redevelopment plans and design guidelines.

(b) The Planning Commission shall have authority to review and approve sidewalk dining areas with more than two tables or more than four chairs and/or dining areas serving alcohol.

2. Conditions of Approval: The ~~Development Services~~ Director or Planning Commission, as applicable, may impose reasonable conditions of approval to ensure that sidewalk ~~outdoor~~ dining and display areas operate in a manner that is not detrimental to the public health, safety and welfare, is consistent with all applicable codes, policies and guidelines, and enhances the image, appearance and vitality of the area in which the use is located. This includes but is not limited to authority to regulate the design, layout, materials, colors, quality and appearance of outside dining and display areas; to require security deposits, insurance and other reasonable financial guarantees and to prescribe operating terms that the permittee must follow.

3. Appeal:

(a) The decision of the ~~Development Services~~ Director may be appealed to the Planning Commission.

(b) The decision of the Planning Commission may be appealed to the City Council.

(c) The above decisions must be appealed in writing to the City Clerk's office within 10 days after the decision is made.

4. Fees. Each sidewalk dining area permit shall require payment of two fees: (a) the Encroachment Permit fee; and (b) Special Temporary Use Permit application ~~an annual Sidewalk Dining License~~ fee associated with the continued use of the public sidewalk. The fees shall be determined by the City Council and adopted by resolution which may be amended from time to time.
- (I) Encroachment permit: An encroachment permit must be obtained from the City Engineer before any sidewalk ~~outdoor~~ dining is permitted.
- (J) Terms and renewal: A Special Temporary Use Permit for ~~an sidewalk outdoor~~ dining area may be approved for a maximum of one year. Renewal permits may be granted for one-year periods. Special Temporary Use Permits ~~Major permits~~ may be approved by the Planning Commission ~~may be extended by the Director for periods of up to five years.~~ The City reserves the right to temporarily suspend the permit upon seven days' notice because of anticipated or actual conflicts in the use of sidewalk areas due to street repairs, parades, festivals and other similar events.
- (K) Enforcement:
1. Penalties: Any person violating any the provisions of this Chapter is subject to Section 1-4-5, "Penalty," of this Code. In addition, the City may seek civil remedies for any violation, including but not limited to, the recovery of reasonable costs for the enforcement and correction of the violation.
 2. Revocation: Violation of any of the standards in this code or any of the conditions imposed under 10-4-19(H) shall be grounds for revocation of the permit to operate ~~an sidewalk outdoor~~ dining area. Such revocation shall require a majority vote of the Planning Commission at a regular meeting to which the permittee has been given at least 10 calendar days' notice. The decision of the Planning Commission may be appealed to the City Council.

SECTION 4. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6: Compliance with California Environmental Quality Act.

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because CEQA only applies to projects which have the potential for causing a significant effect on the environment and it can be seen with certainty that there is no possibility that the proposed ordinance allow for outdoor sidewalk dining areas within the public right-of-way may have a significant effect on the environment.

SECTION 7. Effective Date.

This ordinance shall become effective on and after the thirtieth (30th) day following adoption.

SECTION 8. Adoption.

The above ordinance was introduced at a regular meeting of the City Council of the City of Placerville on February 14, 2017, by Councilmember _____, and it was read for the first time. The Ordinance was read for the second time on _____, and introduced by Councilmember _____, who moved its adoption. The motion was seconded by Councilmember _____. A poll vote was taken, which stood as follows:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mayor John Clerici

Regina O'Connell, City Clerk