



## DRAFT ADMINISTRATIVE POLICY

Number: I-36

Issued:

Jurisdiction: City Council

### VILLAGE OUTDOOR DINING PROGRAM

#### I. PURPOSE

The purpose of this policy is to define the rules, regulations and conditions of an outdoor dining program on City right of way in the Central Village (MU-V Zoning District). The program allows eligible Village eating and drinking establishments to construct, operate, and maintain outdoor dining areas within on-street parking spaces, designated sidewalk areas, and specific areas on the Capitola Wharf.

This Administrative Policy is authorized under Capitola Municipal Code Section 17.96.170.F

#### II. POLICY

**General Requirements.** All outdoor dining areas shall be operated in conformance with the regulatory requirements of the Americans with Disability Act (ADA), California Building Code, California Department of Alcoholic Beverage Control, Santa Cruz County Environmental Health Department and all other applicable City, County, State and Federal laws. Capitola Municipal Code Section 17.96.170 Outdoor Dining in the Public Right of Way establishes the standards and permit requirements for outdoor dining within the public right of way. Section III of this policy is an overview of the municipal code requirements.

**Authorized Streets & Sidewalk Areas.** In Capitola Village (MU-V Zoning District), outdoor dining in the public right of way is permitted in the following areas:

Public Parking Spaces: Esplanade, Monterey Avenue, Capitola Avenue, San Jose Avenue

Sidewalk Areas: Monterey Avenue

Capitola Wharf: Immediately adjacent to the restaurant (Code section 17.96.170.C)

**Maximum Number of On-Street Parking Space.** The maximum number of public parking spaces that can be utilized for outdoor dining is 25. (Code section 17.96.170.D)

Public parking spaces utilized for the in-lieu bicycle parking shall count toward the maximum of 25 spaces.

**Size Limitation of Individual Outdoor Dining Areas.** No outdoor dining area shall occupy more than five public parking spaces or 900 square feet of street, sidewalk, or area on Capitola Wharf.

**Good Standing.** An applicant must be in good standing to apply for a permit for outdoor dining. For purposes of this section, "good standing" shall mean that within the twenty-four months directly preceding submission of a complete application for an Administrative Permit or Design

Permit, the applicant has not been issued a notice of abatement, violation, or been subject to any code enforcement proceedings related to an ABC license, entertainment permit, or use permit by the City or any other regulatory or permitting agency. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice. (Code section 17.96.170.E.4)

**Space Allocation Lottery.** If applications for outdoor dining located in public parking spaces exceeds the 25 maximum allocation, the City will hold a lottery to allocate the spaces, using the following procedures.

- Step 1. Open application period for 45 days, with a required \$500 deposit per space (credited towards maintenance deposit).
- Step 2. If the total requests are less than 25, award the spaces to the applicants.
- Step 3. If the total requests exceed 25, evenly distribute one to two spaces per business.
  - If there are less than twelve applicants, assign up to two spaces to each applicant, then proceed to step 4.
  - If there are more than twelve applicants, hold a lottery assigning up to two spaces to each applicant until all 25 spaces have been allocated.
- Step 4. Hold a lottery for the remainder of the spaces for those requesting additional spaces. All applicants that are not allocated their requested number of spaces in Step 3 above, will be given one ticket in the lottery.
- Step 5. The lottery will be held in rounds. If an applicant's ticket is chosen and they receive their requested number of spaces, their ticket will be removed prior to the next round. If the applicant has not reached their requested number of parking spaces, their ticket will be replaced into the hopper for the next round.
- Step 6. Rounds will continue until 25 parking spaces have been allocated.
- Step 7. If there are additional spaces available six months after the initial award, a second lottery will be held.
- Step 8. Thereafter, any available spaces will be allocated through a lottery. The lease will expire three and a half years from the first lottery.

**Permits.** Applicants must obtain all necessary permits to construct and operate an outdoor dining area. Necessary permits include but are not limited to:

1. A revocable encroachment permit;
2. An administrative permit or design permit pursuant to Capitola Municipal Code Section 17.96.170;
3. A coastal development permit; and
4. A building permit.

**Revocable Encroachment Permit.** Per Capitola Municipal Code 12.56, applicants must receive a revocable encroachment permit from the City of Capitola prior to construction of an outdoor dining area. The revocable encroachment will include, but not limited to, the following terms and conditions:

- 3-year term
- Inspection - City staff shall have the authority to enter the outdoor dining area for any purposes, including to inspect the condition, safety, and compliance with all City issued permits.
- Deposit - Each applicant shall pay a deposit to ensure the dining area is maintained as follows

- Sidewalk dining - \$500 deposit
  - 1-2 spaces - \$1000 deposit
  - 3-5 spaces - \$1,500 deposit
- Maintenance Standards - All dining areas shall be maintained, including but not limited to the following:
  - All trash must be picked up and properly disposed.
  - All flower boxes or planter must contain live, healthy vegetation.
  - All tables, chairs, equipment, and structures must be kept clean and operational.
- Applicants shall provide proof of insurance as specified by the City application form.
- Parking space payment – All tenants must pay \$3,400 per parking space, which is approximately \$18 per square foot, per year. This amount shall be adjusted upward annually by increases of the CPI. All rent must be paid in advance. Initial rents must be paid prior to the beginning of construction. The rent in subsequent years is due by January 10<sup>th</sup> for the calendar year. Any partial years rent amounts will be prorated.
- No-subletting - Outdoor dining spaces are for the use of the permit holder only and may not be sublet to any other vendor or business.
- Violations - Violations of the revocable encroachment permit shall be enforced as follows:
  - Upon a first violation by a permit holder, the city manager, or designee, shall mail a written warning to the eating and drinking establishment. The warning shall recite the violation, and advise that future violations may result in fines.
  - Upon a second or subsequent violation by the eating or drinking establishment, the following penalties will apply:
    - A fine not exceeding one hundred dollars for the first violation after the first warning.
    - A fine not exceeding two hundred dollars for the second violation.
    - A fine not exceeding five hundred dollars for the third violation.
    - A permit holder with more than three violations during the lease term may have their permit revoked and be required to remove any improvements associated with the outdoor dining area.
    - Permit holders whose permit is revoked may not receive another encroachment permit for outdoor dining for a period of two years, and only if there are available parking spaces under the 25 space cap. The revoked spaces will be placed back in the lottery system and available for allocation.

**Revocable Encroachment Permit Term Expiration.** All revocable encroachment permits issued for outdoor dining will have a term of three years **or less**. Six months prior to expiration the City and permit holder shall review past performance and use of the outdoor dining area. Upon review, either extension or termination may be possible. Extension of the program and any lease shall be at the sole discretion of the Capitola City Council.

**Authorization to Proceed.** Construction of an outdoor dining area may not begin until all required permits have been issued. Starting construction prior to receiving all permits may result in revocation of any applicable permits.

**Construction Timing.** Applicants with assigned parking spaces through the lottery, are required to acquire City permits and complete construction of their street dining deck within six months of the award. After six month, the spaces will be placed back in the lottery system and available for allocation.

III. ADMINISTRATIVE POLICY RELATIVE TO CAPITOLA MUNICIPAL CODE SECTION 17.96.170 OUTDOOR DINING IN THE PUBLIC RIGHT OF WAY

Capitola Municipal Code Section 17.96.170 establishes the standards and permit requirements for outdoor dining within the public right of way. The following is an overview of the municipal code requirements:

**A. Permits and Approvals.**

The following table shows permits required for sidewalk dining and street dining decks.

Type of Outdoor Dining	Permit Required	Zoning Code Chapter
Sidewalk Dining	Design Permit	17.120
Street Dining Decks		
Prototype Street Dining Deck	Administrative Permit	17.116
Custom Street Dining Deck	Design Permit	17.120

**B. Operating and Development Standards.** All Sidewalk Dining and Street Dining Decks shall comply with the following standards:

1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an “eating and drinking establishment” as defined in Chapter 17.160 (Glossary).
2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
3. **Limited to Eating Establishment Frontage.**
  - a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
  - b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
    - (1) Wholly or partially located in the right-of-way; and
    - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
  - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
    - (1) Due to the road and parking space layout, the outdoor dining area cannot be designed without extending the area beyond immediately adjacent parking spaces;
    - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
    - (3) Extending the outdoor dining area will not adversely impact coastal access.

4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
  - a. 5 feet in the MU-V zoning district; and
5. **Sidewalk Dining Areas.** Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation (fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.
6. **Signs.**
  - a. Commercial signs, including business identification signs are not permitted in or on any portion of the improvements of a sidewalk dining area or street dining deck.
  - b. One informational sign not to exceed two square feet providing information such as “watch your step” or “for paying customers only” is allowed.
7. **Stormwater Drainage.** All street dining decks must allow for adequate stormwater drainage.
  - a. Dining decks shall not block the drainage flow along the gutter line.
  - b. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.
8. **Utilities.** All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
9. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:
  - a. All trash must be picked up and properly disposed of.
  - b. All flower boxes and planters must contain live, healthy vegetation.
  - c. All tables, chairs, equipment, and structures must be kept clean and operational.
10. **Sound.** Music and amplified sound are not allowed in an outdoor dining area.
11. **Bicycle Parking for Street Dining Decks.**
  - a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
  - b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
  - c. As an alternative to providing the bicycle parking rack, the City may allow an applicant to pay an annual in-lieu fee of \$300 per year per bicycle parking space. Fee shall be deposited into the City’s in-lieu bike fund to create a central bicycle parking location. Also, a one-time fee of \$200 will be charged per bicycle parking space for materials and installation.
12. **Hours of Operation.**
  - a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
  - b. The City may allow extended hours for street dining decks for special events and holidays.

13. **Open for Use.** All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business.
14. **Materials.** Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are not allowed.