

CHAPTER 17.900
**STANDARDS FOR OUTDOOR DINING USES AND MERCHANDISE
DISPLAYS IN THE DOWNTOWN (DT) ZONE**

§ 17.900.001. Purpose and intent.

The purpose and intent of this chapter is to encourage new development in the downtown (DT) zone; to carefully consider the impacts of new commercial development on the viability on the downtown, to facilitate the expansion of existing businesses that will draw additional shoppers to downtown; to develop a design plan for the downtown to create a feeling of unity and destination so that buildings compliment each other; to establish development and operational standards for the review of outdoor dining uses and merchandise display in the downtown (DT) zone; and to encourage business organizations to sponsor retail events to bring shoppers to the downtown area on a regular basis.

(Ord. 853 § 9, 2008)

§ 17.900.002. Outdoor dining uses in the public right-of-way defined.

"Outdoor dining uses in the public right-of-way" means eating or drinking establishments which serves ready-to-eat food and/or beverages, having outdoor dining areas in or on a public right-of-way.

(Ord. 853 § 9, 2008)

§ 17.900.003. Outdoor merchandise displays in and out of the public right-of-way defined.

"Outdoor merchandise displays in and out of the public right-of-way" means retail commercial establishment displays of merchandise offered for sale, in the public right-of-way or that can otherwise be seen from ground level of a public right-of-way.

(Ord. 853 § 9, 2008)

§ 17.900.004. Applicability of outdoor dining uses and merchandise displays standards.

Establishment of an outdoor dining use or merchandise display in the public right-of-way shall require design review approval and issuance of an outdoor dining/merchandise display permit by the director of community development or designee and shall be prepared and submitted pursuant to Chapter 17.800 of the Brentwood Municipal Code. The director of community development or designee shall follow the procedures of this chapter prior to issuing an outdoor dining/merchandise display permit and notices for outdoor dining uses serving alcoholic beverages shall be sent to all property owners and businesses within three hundred feet of the proposed site. The director of community development or designee may establish conditions of approval for the outdoor dining use or merchandise display permit as necessary to achieve the requirements of this chapter. Upon receipt of an application for outdoor dining permit serving alcoholic beverages, the director of community development or designee shall refer the application to the chief of police for his or her review and comment. Approval of the outdoor dining permit by

the director of community development or designee shall also fulfill the requirements of Chapter 9.36 of the Brentwood Municipal Code.
(Ord. 853 § 9, 2008)

§ 17.900.005. Required standards.

No outdoor dining use or merchandise display in the public right-of-way may be approved unless all of the following development and operational standards are met:

- A. Outdoor dining use shall be permitted as allowed under the downtown core street alt. "B" flexible zone and as shown in the downtown specific plan, or on public sidewalks as long as all other applicable regulations are adhered to.
- B. A four-foot unobstructed sidewalk clearance for pedestrians and wheelchairs shall be maintained at all times from a table, chair, bench, display, planter, or any other appurtenance used as part of a sidewalk dining area or sidewalk decorative display. No sidewalk dining area or sidewalk decorative display shall be located so as to block access to or from a building. A minimum unobstructed clear area shall be maintained which extends two feet to either side of both door jambs and eight feet perpendicularly from the door in a closed position. On a corner lot, no sidewalk dining area or sidewalk decorative display shall be located within the area bounded by the extensions of the corner building walls between the building and the curb.
- C. Sidewalk decorative displays shall occupy no more than fifty square feet per business. All sidewalk decorative displays shall be removed daily after business hours. All sidewalk dining furniture, including planters or other approved barriers around a sidewalk dining area, may remain if unable to be easily moved. No portion of a sidewalk dining area or sidewalk decorative display shall be permanently attached to the sidewalk.
- D. Any umbrella, heater, or similar feature used in a sidewalk dining area or sidewalk decorative display shall maintain a minimum height clearance of seven feet and be safely secured to the satisfaction of the director of public works/city engineer and chief building official or their designees.
- E. Sidewalk dining areas and sidewalk decorative displays shall generally be located within the sidewalk area fronting the establishment. Such areas may be extended beyond the frontage with the approval of any affected business owner and the director of community development or designee.
- F. Outdoor dining and merchandise display in the public right-of-way shall not be required to provide additional parking spaces for the outdoor area.
- G. Any outdoor lighting associated with outdoor dining areas shall be subject to the approval of the director of community development or designee.
- H. Sound amplification devices and/or musical instruments providing background music for listening pleasure, shall be allowed in the outdoor dining areas to the approval of the director of community development or designee.

- I. The design and appearance of all proposed improvements or furniture, including, but not limited to, tables, chairs, benches, umbrellas, planters, and menu boards, to be placed in the sidewalk dining area shall present a coordinated theme and be compatible with the appearance and design of the principal building, as determined by the director of community development and chief building official or their designees. The use of plastic tables and chairs is prohibited. Sidewalk decorative displays shall be designed to enhance the appearance of a structure or site and shall present an attractive arrangement of merchandise sold within the store. Sidewalk dining and/or outdoor merchandise display may only occur during the hours of operation established for the individual businesses.
- J. The permittee shall maintain the sidewalk dining area or sidewalk decorative display area, and the adjoining street, curb, gutter, and sidewalk in a neat, clean, and orderly condition at all times. This shall include all tables, chairs, benches, displays, or other appurtenances placed in the public right-of-way. Provisions shall be made for trash receptacles to serve the sidewalk dining area, subject to the approval of the director of public works/city engineer and director of community development or designees. The permittee, on a regular basis, shall clean the surface of the sidewalk by washing or buffing to remove any stains, marks, or discoloring to the satisfaction of the director of public works/city engineer or designee. In the event damage does occur to the adjoining street, curb, gutter, or sidewalk the permittee shall notify the city of the damages and shall be responsible for all repairs of said damages subject to the review and approval of the director of public works/city engineer and chief building official or designees.
- K. Special Standards for Outdoor Dining Areas with Alcoholic Beverage Service.
 1. Alcoholic beverages may only be served in sidewalk dining areas which are established in conjunction with an eating or drinking establishment.
 2. The sidewalk dining area shall be physically separated from the rest of the sidewalk by a barrier no greater than three feet in height. The barrier shall be compatible with the appearance and design of the building and the rest of the sidewalk dining area and shall be subject to the approval of the chief of police, director of public works/city engineer and director of community development or designees. The barrier shall be portable and may consist of planters, removable bollards, or similar features which involve no alteration or damage to the sidewalk.
 3. A sign shall be posted within the establishment, subject to the approval of the chief of police and director of community development or designees, stating that alcoholic beverages must be kept within the sidewalk dining area at all times.
 4. The capacity of the sidewalk dining area shall be limited to the number of seats, as approved by the director of community development or designee.
 5. No bar shall be allowed in the sidewalk dining area.

6. A license shall be obtained from the Department of Alcoholic Beverage Control (ABC) prior to the operation of a sidewalk dining area serving alcoholic beverages and shall be maintained continuously as long as alcoholic beverages are served in the sidewalk dining area. Loss of such license shall automatically constitute termination of the city permit to serve alcoholic beverages in the sidewalk dining area.
- L. In addition to whatever signage may be permitted for the dining establishment use by the specific plan, and notwithstanding any provisions of the specific plan to the contrary, provided that the sign is attractively designed, maintain adequate pedestrian and vehicle sight clearance per subsection B of this section, does not block the visibility of display windows or signage of any adjacent business, is stored indoors after hours of operation, and is limited to no more than a thirty-six inch by eighteen inch area. Additional signage on umbrellas may also be permitted. Umbrella signage shall be limited to the business name only and shall consist of only one line of lettering not to exceed twelve inches in height. The director of community development or designee shall have design review authority for signs used in conjunction with outdoor dining uses and shall carry out such design review authority in conjunction with the overall review of the outdoor dining use.
- M. No outdoor dining or merchandise display in the public right-of-way, including furnishings and signs, shall block visibility of display windows or signage of adjacent businesses, unless written consent of any affected business owner to block visibility is obtained by the applicant and provided to the director of community development or designee.
- N. The permittee shall pay any applicable outdoor dining and merchandise display permit fee established by the city's cost allocation plan. Applications for an outdoor dining or merchandise display permit in the public right-of-way shall be filed by the operator of the use, or by an agent, trustee or attorney for the operator.
(Ord. 853 § 9, 2008; Ord. 882 § 2, 2010)

§ 17.900.006. Indemnification and insurance.

The permittee shall be required to defend, indemnify and hold harmless the city and its officers and employees from and against all claims, losses, damage, injury and liability for damages arising from the permit tee's use of the public right-of-way. The permittee shall provide to the city in a form and in amounts acceptable to the city attorney or designee, certificates of insurance evidencing the existence of a general liability policy covering the area subject to the permit.

(Ord. 853 § 9, 2008)

§ 17.900.007. Suspension of permit.

The director of public works/city engineer or designee shall have the right to suspend or prohibit the operation of a sidewalk dining area or require removal of a sidewalk decorative display at any time because of anticipated or actual problems or conflicts in the use of the sidewalk area. Such problems or conflicts may arise from, but are

not limited to, scheduled festivals, parades, marches and similar special events; repairs to the street, sidewalk or other public facility; or from demonstrations or emergencies occurring in the area. To the extent possible, the city will give prior written notice of any time period during which the operation of the sidewalk dining area or sidewalk decorative display must be suspended.

(Ord. 853 § 9, 2008)

§ 17.900.008. Violation of conditions.

- A. If any portion of a sidewalk dining area or sidewalk decorative display obstructs the public right-of-way beyond which is provided for in this chapter, the director of community development or designee shall immediately direct the permittee to move the obstruction. If the permittee fails to do so, the director of community development or designee is entitled to immediately move the obstruction.
- B. If the sidewalk dining area or sidewalk decorative display is not maintained in a neat, clean, and orderly condition, or as conditioned by the director of community development, the director of community development or designee shall direct that the permittee or property owner correct the condition and/or remove the furniture, displays, and appurtenances. If the director of community development or designee finds that it is necessary to remove the furniture, displays, or appurtenances in the interest of the public health, safety, or general welfare and the permittee fails to remove them, the director of community development or designee may immediately remove them at the expense of the permittee or property owner.
- C. A sidewalk dining/decorative display permit may be revoked by the director of community development or designee upon a determination that the permittee has not complied with the provisions of this chapter or the conditions of the design review approval. The director of community development or designee shall hold a hearing and, if not satisfied that the provisions or conditions are being complied with, shall revoke the permit or take such actions as may be necessary to ensure compliance with the regulation or condition.
- D. The director of community development or designee shall suspend the service of alcoholic beverages in the sidewalk dining area and shall hold a hearing on the matter as provided in Section 17.900.010(C), if a sidewalk dining area serving alcoholic beverages is not operated as required in this chapter, or if the restaurant operator is not able to control patrons consuming alcoholic beverages to the extent that patrons demonstrate a pattern of behavior of loud, offensive, or abusive actions, the physical or verbal harassment of passers-by, or the removal of alcoholic beverages from the sidewalk dining area.

(Ord. 853 § 9, 2008)

§ 17.900.009. Procedure for outdoor merchandise displays not in the public right-of-way.

Any business wanting to establish an outdoor merchandise display area that can otherwise be seen from ground level of a public right-of-way and is located on-site and

outside of the public right-of-way outdoor merchandise display area, as described in this chapter, shall submit a design review application for the outdoor merchandise display area to the city, for review and approval, pursuant to Chapter 17.820 of the Brentwood Municipal Code, prior to establishing the outdoor merchandise display area on-site. The purpose of this is to foster an attractive design for the outdoor merchandise display area through consideration of aesthetic and functional relationships to surrounding business establishments and in order to further enhance the city's appearance, and the livability and usefulness of the properties. The intent of this is to allow decorative outdoor display of merchandise and not outdoor storage of merchandise.

(Ord. 853 § 9, 2008)

§ 17.900.010. Appeal.

Action of the community development director may be appealed pursuant to Chapter 17.880 of the Brentwood Municipal Code.

(Ord. 853 § 9, 2008)