



CITY OF SAN ANTONIO

Policies and Procedures For Sidewalk Cafés In the Downtown Area

I Background

This document provides the procedures, terms, and conditions regarding sidewalk café permits at street level in Downtown San Antonio. Sidewalk café permits shall not include the Market Square, La Villita, or River Walk Area.

The Downtown Operations Department will manage and administer the permit process for sidewalk cafes and their use of public sidewalks.

II Definitions

Downtown Area: Start at the intersection of Salado and EL Paso Streets; north on Salado to its intersection with Frio Street; then northeast in a straight line to the intersection of IH-10 and Cadwalader; south on IH-10 to IH-35; northeast on IH-35 to a perpendicular point connecting with Cherry Street; south on Cherry Street to Durango Boulevard; west on Durango to the San Antonio River; south along the San Antonio River to Arsenal Street; west on Arsenal to El Paso Street; and then west on El Paso to Salado. **As defined in the Unified Development Code Article III Zoning ~ Sec. 35-310.11 “D” Downtown.**

Sidewalk Café: means any street level portion of public sidewalks in the downtown area in which tables, chairs, and associated exterior property are placed for the sole purpose of patrons consuming food and/or beverages (alcoholic or non-alcoholic beverages) served by a food establishment adjacent to the public sidewalk property. (As defined in Municipal Code Ch. 32, IV) This sidewalk café permit shall not include the Market Square, La Villita, or River Walk Areas.

Clear Path of Travel: Measured from the outside edge of the sidewalk café fencing, fence post base or other sidewalk café related obstruction (that limits passage) to the back of the curb or nearest obstruction (i.e., tree pit, parking meter, bike rack, light pole, etc.). Measurements must be clearly identified in the site plan.

III Permit Review and Approval Process

A) Sidewalk Café Permit

Applicant must complete and sign the sidewalk café permit application. To submit a complete permit application, the applicant must provide the following information to Downtown Operations Department:

- 1) Photograph of area to be used as sidewalk cafe
- 2) One copy of a legible site plan including the following information:
 - North Arrow
 - Site plan with clearly identified measurements
 - Name of adjoining street(s)
 - Outdoor seating plan
 - Width of adjacent sidewalk (s)

- Location of property lines and dimensions of sidewalk proposed for café use
- Location of existing improvements (e.g. utility poles, fire hydrants, parking meters or pay stations, bike racks, bus shelters, traffic signs, sign posts, tree pits) showing the distance of each to the sidewalk café.
- Sidewalk width remaining for clear path of travel.
- Location and dimensions of any proposed improvements associated with the sidewalk café. Such as: tables, seating, fencing and signs.
- Location of building entrances

- 3) Copy of the Historic and Design Review Commission (HDRC) approval for any alterations, lighting, furnishings, signs, goods, or other property to be placed on the permitted sidewalk space
- 4) Letter from insurance agent agreeing to provide coverage (see below) if applicant is approved for permit
- 5) Copy of Texas Alcoholic Beverage Commission license/permit (if applicable)
- 6) Letter of Authorization form signed by the property owner of food service establishment location

- Annual Fee

< 250 square feet	\$250 annual permit fee
250 – 500 square feet	\$500 annual permit fee
> 500 square feet	\$750 annual permit fee

- Sidewalk café permits are non-transferable and non-assignable. Renewal of existing sidewalk café permits will require a renewal application and annual fee. A new sidewalk café permit will be required when a business changes ownership.
- Applicant will be responsible for any fees associated with other applicable boards and/or commissions requirements that shall apply with the issuance of a sidewalk café permit such as obtaining approval of the Historic and Design Review Commission (HDRC), Texas Alcoholic Beverage Commission (TABC), preparation of site plans, photograph of area, insurance, building permits (if applicable), inspection permits (if applicable) and any other permits as may be required.

B) City staff will review application documents, conduct site visit, and contact applicant. If application is approved, City staff will issue invoice for permit fee.

C) Applicant will pay invoice and obtain original certificate of insurance and letter of endorsement from insurance provider. Applicant will deliver to City original certificate of insurance and letter of endorsement from insurance provider and proof of invoice payment.

D) City staff will review documents and, if documents complete, will issue permit.

IV Sidewalk Café Standards

The following standards will apply to all sidewalk cafes located on street level, public sidewalks in downtown San Antonio. Downtown Operations Department will have the discretion to require more strict standards depending on the specific site characteristics.

A) Clear Pedestrian Travel

- 1) A minimum of 6 feet clear path of travel is required on all public sidewalks with sidewalk cafes located within the downtown area.
- 2) Under certain conditions, Director may require clear path of travel wider than 6 feet.
- 3) If the sidewalk café causes change in the pedestrian travel, appropriate repairs in the immediate area may be required to accommodate the change or to assure compliance with ADA.
- 4) Cords, electric cords, strings and lights may not be strung over or be placed on the pedestrian path of travel.
- 5) Landscaping: planters must be contained within the footprint of the approved sidewalk café dimensions.
- 6) At least one accessible route shall connect accessible buildings, facilities, elements and spaces that are on the same site.

B) Accessibility Information

- The minimum space requirement for a standard wheelchair to make a 180-Degree turn is a clear space of 60 inches diameter.
- The minimum width for two wheelchairs to pass is 60 inches.
- The minimum clear floor or ground space required accommodating a single, stationary wheelchair and occupant is 30 inches by 48 inches.

C) Maintenance of Property

Applicant shall, at all times, maintain the sidewalk adjacent to the sidewalk cafe free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the sidewalk adjacent to the sidewalk cafe free and clear of any tables or other property, and applicant shall not use any of said sidewalk area in the exercise of privileges granted herein, except to pass to and from the sidewalk cafe; however, applicant use may at no time obstruct access to the six (6') foot clear path of travel.

- Applicant shall, at all times, keep or cause to be kept the sidewalk cafe free of litter, trash, paper and other waste including during special events held by other organizations.
- Applicant shall at its sole expense, keep the sidewalk café premises in good order, repair conditions at all times and shall promptly repair all damages to the sidewalk and sidewalk café or replace any broken improvements or property within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the City through the Director, Downtown Operations Department, or her designee, and any and all other necessary departments, boards, or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission. If Applicant does not promptly make such arrangements, City may, but is not required to, make such repairs and replacements and the costs paid or incurred by City for such repairs and replacements shall be payable in full within three (3) calendar days.

■ Applicant will, at the termination of the permit, return the sidewalk café premises to City in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only accepted.

■ Applicant agrees to hold City harmless for any theft, damages or destruction of signs, goods and/or other property of Applicant both during the term of this permit and as left on the sidewalk café premises after permit expiration date or applicant vacates the sidewalk café premises. If signs, goods and any other property placed by Applicant upon the sidewalk café premises are not removed within seven (7) calendar days after the sidewalk café permit expiration date, then the City may remove same without further notice or liability.

D) Rules and regulations and Prohibited Use of Sidewalk Café

■ Sidewalk café permit holders shall observe and comply with all applicable, local, state and federal rules and regulations.

■ No advertisements, signs, neon signs, decorations or displays shall be placed in, on, or about the sidewalk café premises without the prior written approval of the City through the Director, Downtown Operations Department, or her designee, and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission. Applicant agrees to remove all property, including signs from the sidewalk cafe when applicant vacates the sidewalk café premises.

■ Applicant shall be allowed to place only those chairs, tables, umbrellas, hostess stations, furnishings, lighting, and/or any other signs, goods, and other property as approved by City and all applicable boards and/or commissions of the City of San Antonio, including, but not limited to the Historic and Design Review Commission (HDRC).

■ Applicant may not obstruct any entrance or exit to the business establishment. City has the right to require the removal of any signs, goods, and other property if not presentable, as determined by the Director, Downtown Operations Department, or her designee.

■ Encroachment on the public sidewalk beyond the authorized sidewalk café premises or into the public right-of-way is not permitted. A fine or citation may be issued, permit terminated or not renewed.

■ Applicant may only use sidewalk café premises for dining and the service of non - alcoholic and alcoholic beverages.

■ No activity or method of operation shall be allowed in, on, or about the sidewalk café premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:

- Nudity means total absence of clothing or covering for the human body.
- Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.

■ The operation of massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the sidewalk café premises.

■ Discrimination because of race, color, sex, age, disability, or national origin, directly or indirectly, in employment or in the use of or admission to the sidewalk café premises is

prohibited.

■ Applicant shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

■ Applicant shall not place televisions, speakers or amplified music on or in sidewalk café. No outdoor music or entertainment is authorized in sidewalk cafes. Failure to comply with this section may, at **CITY'S** option, constitute default for the sidewalk café permit.

■ Applicant shall not engage in, or allow its employees, agents, invitees, guests or any other person to engage in vending on the premises, other than the ordinary and customary restaurant service with wait staff bringing food and beverages to customers seated at tables within the premises.

E) Hours of Operation

■ Sidewalk café may only operate during the food service establishment's business hours.

F) Sidewalk Café Inspections

■ Downtown Operations may conduct an initial inspection of the sidewalk café and verify that the applicant is in compliance with the sidewalk café permit conditions.

■ Downtown Operations may conduct inspections throughout permit period to determine if:

- Permit conditions are still met
- Original business is still in operation
- Site conditions require permit modifications

■ Fines/citations: Downtown Operations Department may issue a fine if any violation and non-compliance of City code and the sidewalk café rules and regulation are found. Fine for the first notice of violation is \$100, second notice \$150 and third notice may require sidewalk café to be removed.

V Insurance

Applicant agrees to hold City of San Antonio harmless for any theft, damages or destruction of signs, goods and/or other property of the applicant both during the term of the permit and as so left on the sidewalk café premises after applicant vacates the premises. If said signs, goods and any other property placed by applicant upon the sidewalk café are not removed by it within seven (7) calendar days after the applicant has vacated, then the City may remove same without further notice or liability therefore.

■ Prior to the commencement of sidewalk café use, applicant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's of San Antonio Downtown Operations Department, which shall be clearly labeled with applicant business name and address in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized

representative to the City. The City shall have no duty to perform under this agreement until such certificate and endorsements have been received and approved by the City's Downtown Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

■ The City reserves the right to review the insurance requirements of this Article during the effective period of the permit and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. In no instance will City allow modification where upon City may incur increased risk.

■ Applicant's financial integrity is of interest to the City; therefore, subject to applicant's right to maintain reasonable deductibles in such amounts as are approved by the City, applicant shall obtain and maintain in full force and effect for the duration of this agreement, and any extension hereof, at applicant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

■ The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). applicant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Applicant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

■ Applicant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Applicant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend applicant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this permit.
 - In addition to any other remedies the City may have upon applicant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order applicant to stop work hereunder, and/or withhold any payment(s) which become due to applicant hereunder until applicant demonstrates compliance with the requirements hereof
 - Nothing herein contained shall be construed as limiting in any way the extent to which applicant may be held responsible for payments of damages to persons or property resulting from applicant's or its subcontractors' performance of the work.
 - It is agreed that applicant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this permit.
 - It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this permit.
 - Applicant, his agent, contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

V INDEMNIFICATION

APPLICANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited

to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to APPLICANT'S activities under this Agreement, including any acts or omissions of APPLICANT, any agent, officer, director, representative, employee, consultant or subcontractor of APPLICANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT APPLICANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. APPLICANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or APPLICANT known to APPLICANT related to or arising out of Applicant's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at APPLICANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving APPLICANT of any of its obligations under this paragraph.

Applicant Signature: *I agree to comply with the rules, policies & procedures described above.*

Date

Printed Name