

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 6, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 126.0203 AND 126.0205; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 7 BY AMENDING SECTION 126.0704; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 7 BY AMENDING SECTIONS 129.0710 AND 129.0715; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY AMENDING SECTION 131.0222; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTION 131.0322; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 7 BY AMENDING SECTION 131.0707; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 141.0621 AND ADDING SECTIONS 141.0628 AND 141.0629; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6 BY AMENDING SECTION 142.0640, ALL RELATED TO THE IMPLEMENTATION OF THE “SPACES AS PLACES” PROGRAM TO ALLOW INCREASED OUTDOOR BUSINESS OPERATIONS AND CREATING AN ENHANCED EXPERIENCE FOR ACTIVE TRANSPORTATION.

§126.0203 When a Neighborhood Use Permit Is Required

- (a) An application for the following uses in certain zones may require a Neighborhood Use Permit. To determine whether a Neighborhood Use Permit is required in a particular zone, refer to the applicable Use Regulation Table in Chapter 13:

Artisan Food and Beverage Producer through Sidewalk cafes that deviate from the requirements of Section 141.0621(a) [No change in text.] ~~Signs~~

Signs with automatic changing copy

Active sidewalks (under certain circumstances described in Section 141.0621(c))

Streetaries (under certain circumstances described in Section 141.0621(b))

Temporary construction storage yards located off-site through *Wireless communication facilities* (under certain circumstances described in Section 141.0420) [No change in text.]

(b) [No change in text.]

§126.0205 Findings for Neighborhood Use Permit Approval

A Neighborhood Use Permit may be approved or conditionally approved only if the decision maker makes the following *findings*:

(a) through (c) [No change in text.]

(d) Supplemental Findings – Streetaries and Active Sidewalks

A Neighborhood Use Permit required in accordance with Section 141.0621(b)(5) and 141.0621(c)(7) may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings required in Section 126.0205(a):

(1) The proposed streetary or active sidewalk will not adversely impact the use of the public right-of-way by pedestrians or bicyclists;

- (2) The proposed streetary or active sidewalkis compatible with adjacent existing, permitted, or planned land uses; and
- (3) The proposed streetary or active sidewalkwill enhance the *public right-of-way* and encourage more pedestrian travel.

§126.0704 Exemptions from a Coastal Development Permit

The following *coastal development* is exempt from the requirement to obtain a Coastal Development Permit:

- (a) through (i) [No change in text.]
- (j) Outdoor dining on private property and promenades, streetaries, and active sidewalks designed in accordance with the Land Development Code and the Spaces as Places Design Manual.

§129.0710 How to Apply for a Public Right-of-Way Permit

An application for a Public Right-of-Way Permit shall be submitted in accordance with Sections 112.0102 and 129.0105. The submittal requirements for Public Right-of-Way Permits are listed in the Land Development Manual. A *development permit* is required prior to issuance of a Public Right-of-Way Permit for the following:

- (a) through (c) [No change in text.]
- (d) Notwithstanding Sections 129.0710(a)-(c), a *development permit* is not required prior to issuance of a Public Right-of-Way Permit for *placemaking* or a recreational amenity in the *public right-of-way* subject to the following regulations. For purposes of Section 129.0710, a recreational amenity is defined as any improvement that provides

recreational value to residents or visitors and that enhances the pedestrian or bicycle travel experience.

(1) through (7) [No change in text.]

(8) The *placemaking* ~~or recreational amenity~~ project shall not include commercial services, retail, or assembly and entertainment uses as *accessory uses*. If a *placemaking* project ~~or recreational amenity~~ is located within 15 feet of a permitted eating and drinking establishment ~~and is located on a City street with a posted speed limit no greater than 30 miles per hour, the establishment may conduct outdoor dining operations within the *placemaking* project or recreational amenity. The hours of operation of the outdoor operations shall be limited to the hours that the *kitchen* facilities of the associated eating and drinking establishment are open for meal ordering. Alcohol, food, or beverages shall not be served or permitted within the *placemaking* or recreational amenity area after 10:00 p.m. Sunday through Thursday, and after 11:00 p.m. Friday through Saturday, its use as a streetary in accordance with Section 141.0621(b) shall be allowed.~~

(9) through (10) [No change in text.]

§129.0715 Encroachment Maintenance and Removal Agreement

(a) An Encroachment Maintenance and Removal Agreement is required for any privately-owned and/or privately-maintained *encroachment* located in

the *public right-of-way* or in a *public service easement* subject to the following:

- (1) [No change in text.]
- (2) The *record owner* or *permit holder*, as applicable, shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney. For streetaries and active sidewalks allowed in accordance with Section 141.0621, the indemnification shall include any claims, damages, or injuries that occur to or within the streetary or active sidewalk area against the City or any utility provider whose facilities are located within the public right of way.
- (3) The *record owner* or *permit holder*, as applicable, shall agree to and shall remove or relocate the *encroachment* to the satisfaction of the City Engineer within 30 days after notice by the City Engineer, or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land, or the *record owner* or *permit holder*, as applicable, shall agree to an equivalent to the requirement for removal as determined by the City Engineer. The *record owner* or *permit holder*, as applicable, may also be required to remove a streetary to the satisfaction of the City Engineer at no cost to the City or any other utility provider that owns or maintains facilities within the public right of way to avoid flooding or to protect public health and welfare. The *record owner*

or permit holder, as applicable, may also be required to remove a streetary to provide non-emergency access to any utility provider that owns or maintains facilities located within the public right-of-way with 30 days notice. Active sidewalks allowed in accordance with Section 141.0621 shall not be required to be removed by the record owner or permit holder, as applicable.

(4) through (5) [No change in text.]

(6) Except as provided in Section 129.0715(a)(7), the *record owner* or *permit holder*, as applicable, shall maintain a minimum policy of \$1 million liability insurance, satisfactory to the City Engineer, to protect the City from any potential claims which may arise from the *encroachment*.

(7) through (11) [No change in text.]

(b) The City may require a *record owner* or *permit holder*, as applicable, to record the Encroachment Maintenance and Removal Agreement in the Office of the County Recorder. However, a *record owner* or *permit holder*, as applicable, shall record in the Office of the County Recorder any Encroachment Maintenance and Removal Agreement for a streetary and active sidewalk allowed in Section 141.0621 and a promenade allowed in Section 141.0629.

§131.0222 Use Regulations Table for Open Space Zones

The uses allowed in the open space zones are shown in Table 131-02B.

Legend for Table 131-02B

[No change in text.]

Table 131-02B

Use Regulations Table for Open Space Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones					
	1st & 2nd >>	OP-		OC-	OR ⁽¹⁾ -		OF ⁽¹¹⁾ -
	3rd >>	1-	2-	1-	1-	1-	
	4th >>	1	1	1	1	2	1
Open Space through Separately Regulated Institutional Uses – Placemaking on Private Property [No change in text.]	[No change in text.]						
<u>Outdoor Dining on Private Property</u>	≡		≡	≡	≡		
Separately Regulated Institutional Uses – Satellite Antennas through Separately Regulated Commercial Service Uses – Recycling Facilities: [No change in text.]							
<u>Sidewalk Cafes, Streetaries, and Active Sidewalks</u>	[No change in text.]						
Sports Arenas & Stadiums through <i>Signs</i> [No change in text.]	[No change in text.]						

§131.0322 Use Regulations Table for Agricultural Zones

The uses allowed in the agricultural zones are shown in Table 131-03B.

Legend for Table 131-03B

[No change in text.]

Table 131-03B**Use Regulations Table for Agricultural Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Open Space through Separately Regulated Institutional Uses – Placemaking on Private Property [No change in text.]		[No change in text.]			
<u>Outdoor Dining on Private Property</u>		=		=	
Separately Regulated Institutional Uses – Satellite Antennas through Separately Regulated Commercial Service Uses – Recycling Facilities: [No change in text.]		[No change in text.]			
<u>Sidewalk Cafes, Streetaries, and Active Sidewalks</u>		[No change in text.]			
Sports Arenas & Stadiums through <i>Signs</i> [No change in text.]		[No change in text.]			

§131.0422 Use Regulations Table for Residential Zones

The uses allowed in the residential zones are shown in the Table 131-04B.

Legend for Table 131-04B

[No change in text.]

Table 131-04B

Use Regulations Table for Residential Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																						
	1st & 2nd >>	RE-		RS-										RX-		RT-								
	3rd >>	1-		1-										1-		1-								
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4
Open Space through Separately Regulated Institutional Uses – Placemaking on Private Property [No change in text.]	[No change in text.]																							
<u>Outdoor Dining on Private Property</u>	=	=										=	=											
Separately Regulated Institutional Uses – Satellite Antennas through Separately Regulated Commercial Service Uses – Recycling Facilities [No change in text.]	[No change in text.]																							
<u>Sidewalk Cafes, Streetaries, and Active Sidewalks</u>	[No change in text.]																							
Sports Arenas & Stadiums through Signs [No change in text.]	[No change in text.]																							
Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																						
	1st & 2nd >>	RM-																						
	3rd >>	1-			2-			3-			4-		5-											
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12											
Open Space through Separately Regulated Institutional Uses – Placemaking on Private Property [No change in text.]	[No change in text.]																							
<u>Outdoor Dining on Private Property</u>	=	=			=			=		=		=												
Separately Regulated Institutional Uses – Satellite Antennas through Separately Regulated Commercial Service Uses – Recycling Facilities [No change in text.]	[No change in text.]																							

Sidewalk Cafes, <u>Streetaries</u> , and <u>Active Sidewalks</u>	
Sports Arenas & Stadiums through <i>Signs</i> [No change in text.]	[No change in text.]

§131.0522 Use Regulations Table for Commercial Zones

The uses allowed in the commercial zones are shown in Table 131-05B.

Legend for Table 131-05B

[No change in text.]

Table 131-05B

Use Regulations Table for Commercial Zones

Use Categories/Subcategories	Zone Designator	Zones																	
	[See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	1st & 2nd >>	CN ⁽¹⁾ -						CR-		CO-			CV-		CP-			
3rd >>		1-						1-	2-	1-	2-	3-	1-	1-					
4th >>		1	2	3	4	5	6	1	1	1	2	1	2	1	2	3	1	2	1
Open Space through Separately Regulated Institutional Uses – Placemaking on Private Property [No change in text.]		[No change in text.]																	
<u>Outdoor Dining on Private Property</u>	<u>L</u>						<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>
Separately Regulated Institutional Uses – Satellite Antennas through Separately Regulated Commercial Service Uses – Recycling Facilities [No change in text.]	[No change in text.]																		
<u>Sidewalk Cafes, Streetaries, and Active Sidewalks</u>	[No change in text.]																		
Sports Arenas & Stadiums through <i>Signs</i> [No change in text.]	[No change in text.]																		

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																																												
	1st & 2nd >>	CC-																																												
	3rd >>	1-			2-			3-			4-			5-																																
	4th >>	1	2	3	1	2	3	4	5	4	5	6	7	8	9	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6													
Open Space through Separately Regulated Institutional Uses – Placemaking on Private Property [No change in text.]	[No change in text.]																																													
<u>Outdoor Dining on Private Property</u>	<u>L</u>			<u>L</u>			<u>L</u>			<u>L</u>			<u>L</u>																																	
Separately Regulated Institutional Uses – Satellite Antennas through Separately Regulated Commercial Service Uses – Recycling Facilities [No change in text.]	[No change in text.]																																													
<u>Sidewalk Cafes, Streetaries, and Active Sidewalks</u>																																														
Sports Arenas & Stadiums through <i>Signs</i> [No change in text.]	[No change in text.]																																													

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in Table 131-06B.

Legend for Table 131-06B

[No change in text.]

Table 131-06B**Use Regulations Table for Industrial Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones									
	1st & 2nd >>	IP-			IL-			IH-		IS-	IBT-
	3rd >>	1-	2-	3-	1-	2-	3-	1-	2-	1-	1-
	4th >>	1	1	1	1	1	1	1	1	1	1
Open Space through Separately Regulated Institutional Uses – Placemaking on Private Property [No change in text.]	[No change in text.]										
<u>Outdoor Dining on Private Property</u>	=	<u>L</u>	=	<u>L</u>	<u>L</u>	<u>L</u>	=	<u>L</u>	<u>L</u>	<u>L</u>	
Separately Regulated Institutional Uses – Satellite Antennas through Separately Regulated Commercial Service Uses – Recycling Facilities [No change in text.]	[No change in text.]										
<u>Sidewalk Cafes, Streetaries, and Active Sidewalks</u>	[No change in text.]										
Sports Arenas & Stadiums through Signs [No change in text.]	[No change in text.]										

§131.0707 Use Regulations Table for Mixed-Use Zones

The uses allowed in the mixed-use zones are shown in Table 131-07A.

Legend for Table 131-07A

[No change in text.]

Table 131-07A**Use Regulations Table for Mixed-Use Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones					
	1st >>	RMX			EMX		
	2nd >>	1	2	3	1	2	3
Open Space through Separately Regulated Institutional Uses – Placemaking on Private Property [No change in text.]	[No change in text.]						
<u>Outdoor Dining on Private Property</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	

Separately Regulated Institutional Uses – <i>Satellite Antennas</i> through Separately Regulated Commercial Service Uses – Recycling Facilities [No change in text.]	[No change in text.]
Sidewalk Cafe, <u>Streetaries</u> , and <u>Active Sidewalks</u>	
Sports Arenas & Stadiums through <i>Signs</i> [No change in text.]	[No change in text.]

§141.0621 Sidewalk Cafes, Streetaries, and Active Sidewalks

~~Sidewalk cafes are outdoor dining spaces located in the *public right-of-way* that are associated with adjacent eating and drinking establishments. Sidewalk cafes are permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations. It is not the intent of this section to regulate outdoor eating and drinking establishment areas that are located on private property. The Sidewalk cafes, streetaries, and active sidewalks regulations establish requirements for outdoor dining and other uses located within the *public right-of-way*. For the purposes of this section, Sidewalk cafes are defined as outdoor dining spaces located within the sidewalk area of the *public right-of-way* that are associated with adjacent eating and drinking establishments. Streetaries are defined as outdoor spaces located in a *street* space formerly dedicated to parking spaces that serves as an extension of an eating and drinking establishment. Active sidewalks are defined as the permanent extension of the curb into the public right-of-way to facilitate activation of the *public right-of-way* through recreational amenities, landscaped areas, seating areas, farmers market, *artworks* or outdoor dining. Sidewalk cafes, streetaries, and active sidewalks are permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13,~~

Article 1 (Base Zones) subject to the following regulations. It is not the intent of this section to regulate outdoor eating and drinking establishment areas that are located on private property.

(a) Limited Use Regulations for Sidewalk Cafes

(1) Design requirements

(A) A sidewalk cafe shall be located within the sidewalk area adjacent to a street-level eating and drinking establishment.

(B) through (J) [No change in text.]

(K) Lighting fixtures may be permanently affixed to the front of the associated eating and drinking establishment but shall not protrude into the pedestrian path.

(L) The name and type of establishment may be placed on umbrellas or on the valance of an *awning* with an overhang not lower than 84 inches from the finished grade of the sidewalk. Other *signs* are not permitted on a sidewalk cafe.

(M) [No change in text.]

(2) through (3) [No change in text.]

~~(b)~~(4) A Process Two Neighborhood Use Permit may be requested in accordance with Section 126.0203 to deviate from the requirements in Section 141.0621(a) as follows:

~~(4)~~(A) The *applicant* shall identify any requirement in Section 141.0621(a) where a deviation is being requested and shall specify why the deviation is needed.

~~(2)~~(B) The decision maker will evaluate the request in accordance with the adopted *land use plan* and Land Development Manual to determine if a sidewalk cafe with the proposed deviation is a suitable use for the proposed site and will not infringe on use of the *public right-of-way* by pedestrians. In making the determination, the decision maker shall consider the following:

~~(A)~~(i) The width of the sidewalk;

~~(B)~~(ii) The design and relationship of the sidewalk cafe to other existing or planned uses in the vicinity;

~~(C)~~(iii) The amount of pedestrian use and the impact of the sidewalk cafe's location on pedestrian activity; and

~~(D)~~(iv) The sidewalk cafe's ability to fit the character of the area, create an outdoor pedestrian plaza, intensify pedestrian activity, and make the *street* activity more attractive.

(b) Limited Use Regulations for Streetaries

(1) Location Requirements

(A) Streetaries shall be located adjacent to eating and drinking establishments at the following locations:

(i) Within the curb lane on streets where on-street metered or unmetered parking spaces exist adjacent to the front of the eating and drinking

establishment, or along an adjacent neighboring on-street metered or unmetered parking spaces with the written permission from the adjacent property owner stating the permission is valid for the term of the Encroachment Maintenance and Removal Agreement.

(ii) At least 20 feet away from an intersection, street corner, alley or a driveway; and

(iii) Along curbs painted yellow, or green, or non-painted curbs or motorcycle parking areas.

(B) Streetaries shall not be allowed at any of the following locations:

(i) Along a street segment with a speed limit greater than 25 miles per hour.

(ii) Along a street with a street classified as major or greater.

(iii) Along a curb painted red, white, or blue.

(iv) Within or adjacent to an alley.

(v) Adjacent to a Metropolitan Transit System (MTS) stop or a bus lane.

(vi) Within an existing bike lane or within a proposed bike lane project identified in any comprehensive bicycle plan or adopted land use plan.

(vii) Within 5 feet of storm drain inlets or cleanouts.

(viii) Over utility access panels, manhole covers, handholes, transformers, water meters or water valves.

(ix) Within 5 feet of a fire hydrant and any emergency equipment.

(x) Within 5 feet of any natural gas or electric utility facility, including the perimeter of any manholes, handholes or vaults, and any surface-level structures such as natural gas meters, monitors, pressure regulators, protection stations, poles, curbside electric meters, transformers or green utility boxes

(2) Permit Requirements

(A) Prior to installation of any furniture or improvements in the public right-of-way and prior to operation of a streetary, an applicant shall obtain a Public Right-of-Way Permit in accordance with Section 129.0710(d) and an Encroachment Maintenance and Removal Agreement in accordance with Section 129.0715. Violations of a Public Right-of-Way Permit shall be subject to the permit revocation procedures set forth in Chapter 12, Article 1, Division 3.

- (B) The Public Right-of-Way Permit for streetaries shall be limited to a maximum two-year term period, after which a new application may be submitted in accordance with Section 141.0621(b).
- (C) Removal of parking spaces, with the exception of accessible parking spaces in accordance with Title 24 of the California Code of Regulations (California Building Standards Code), shall not be the basis of denial of a Public Right-of-Way Permit for a streetary.
- (D) The dimensions of a streetary shall be delineated on a site plan and documented in the associated Public Right-of-Way Permit.
- (E) Prior to the issuance of a Public Right-of-Way Permit for a streetary, the *applicant* shall pay a fee for the use of and operation within the *public right-of-way*, as adopted by San Diego City Council Resolution.
- (F) A streetary is subject to Development Impact Fees in accordance with Section 142.0640(b)(6).
- (G) Prior to issuance of a Public Right-of-Way Permit for a streetary, the *applicant* shall provide evidence of general liability insurance naming the City of San Diego as additional insured, which shall remain in effect during the operation of the streetary.

- (H) Alcohol, food, or beverages shall not be served or allowed within the streetary before 7:00 a.m. and after 10:00 p.m. Sunday through Thursday, and before 7:00 a.m. and after 11:00 p.m. Friday through Saturday and the day prior to a City Holiday.
- (I) Streetaries located within 150 feet of an adjacent residential use shall not serve or allow alcohol, food, or beverages within the streetary before 7:00 a.m. and after 9:00 p.m. Sunday through Thursday, and before 7:00 a.m. and after 10:00 p.m. Friday through Saturday.
- (J) Streetaries shall comply with all State of California Department of Alcoholic Beverage Control license requirements, as applicable.
- (K) Smoking and vaping shall not be permitted within the streetary. For purposes of this section, the terms smoke, smoking, vape, and vaping have the same meanings as set forth in San Diego Municipal Code section 43.1001.
- (L) Live entertainment is not permitted within a streetary unless a Conditional Use Permit is granted in accordance with Process Three and the Conditional Use Permit is in accordance with the provisions of Chapter 3, Article 3, Division 15. The Public Right-of-Way Permit holder for the streetary shall provide a noise impact analysis to the

City for consideration before approval of the Conditional Use Permit. The noise impact analysis shall be prepared by a qualified acoustical engineer and shall evaluate noise and vibration impacts to the surrounding neighborhood. A Conditional Use Permit shall not be granted for live entertainment before 8:00 a.m. and after 9:00 p.m. Sunday through Thursday, and before 9:00 a.m. and after 10:00 p.m. Friday through Saturday.

(L) Outdoor cooking and food preparation within the streetary is prohibited.

(M) Noise levels within the streetary shall comply with the sound level limits of the adjacent use of the eating or drinking establishment in accordance with Chapter 5, Article 9.5, Division 4.

(N) The Gaslamp Quarter Planned District Design Guidelines shall apply to streetaries located within the Gaslamp Quarter Planned District.

(O) The Public Right-of-Way Permit *permit holder* shall be responsible for maintaining the streetary. Maintenance shall include posting of the name, phone number, and email address of the *person* responsible for the streetary in a location visible from the *public right-of-way*, keeping the streetary free of litter, and preventing litter attributable to

the strectary from entering adjacent properties within the public right-of-way.

(P) Streetaries shall remain open to public during all non-operational hours.

(3) Design Requirements

Streetaries shall be designed in accordance with the Spaces as Places Design Manual and meet the following regulations to the satisfaction of the City Engineer:

(A) Streetaries shall be designed as an extension of the sidewalk with at least one minimum 48 inches wide entry for every 10 feet of strectary along the curbside edge.

(B) The width of the strectary shall not extend within 2 feet of the edge of the street travel lane.

(C) A strectary shall provide a setback of at least 4 feet from adjacent vehicle parking spaces.

(D) The deck of the strectary platform shall be flush with the sidewalk.

(E) Bolting into the street or penetrating into the surface of the road shall not be permitted.

(F) A minimum 36 inches wide emergency access gap with horizontal and vertical clearance shall be required for every 20 feet of the strectary or adjacent streetaries or other structures in the parking lane.

(G) The accessible path of travel through the streetary shall be a paved sidewalk that is at least 5 feet wide, the width identified in the applicable adopted land use plan, or the width required by the applicable zone or planned district, whichever width is greater.

(H) Drainage

(i) Streetaries shall not impede the flow of curbside drainage.

(ii) An 8 inch by 6 inch minimum clear gutter space shall be provided along the entire length of the streetary adjacent to the curb.

(iii) The applicant shall ensure that the drainage area between the curb and the platform remains clear of debris and proper drainage occurs at all times.

(I) A 42 inch high railing shall be placed at the edge of the streetary to serve as a barrier from vehicular traffic.

(J) No horizontal or vertical structure shall be placed above 42 inches from the surface of the streetary except for stanchions needed to provide lighting.

(K) Umbrellas with an overhang of a minimum of 84 inches from the finished grade of the sidewalk may be used in conjunction with a streetary, but no permanent roof or shelter is permitted over the streetary. The canopy of the

umbrella shall be contained within the streetary and shall not protrude into the sidewalk, adjacent parking spaces, adjacent streetaries or the travel or bike lane.

(J) Solar powered lights shall be permitted but electrical lighting elements that contain wires that cross the clear path of travel shall not be permitted.

(K) The placement of the name and type of establishment on umbrellas is allowed. Other signs shall not be permitted on a streetary.

(L) Streetaries shall be designed in accordance with the Spaces as Places Design Manual.

(M) The Gaslamp Quarter Planned District Design Guidelines shall apply to streetaries located within the Gaslamp Quarter Planned District.

(4) Accessibility

(A) Accessible Path of Travel

(i) An accessible path of travel shall connect the sidewalk to the accessible entry, deck surface, wheelchair turning space, and wheelchair resting space.

(ii) The accessible path of travel shall be a minimum of 60 inches wide on the sidewalk and shall not pass over tree wells.

- (iii) The accessible path of travel shall be free of obstruction and protruding objects.

(B) Accessible Deck Surface

- (i) The accessible path of travel on the deck surface shall be a minimum of 44 inches wide.
- (ii) The portion of the streetary deck connected by the accessible path of travel to the wheelchair turning space and wheelchair resting space shall be level.
- (iii) The accessible deck surface maximum cross slope (perpendicular to the sidewalk or curb) and the maximum running slope (parallel to the curb) shall not exceed 2 percent.
- (iv) The surface of the accessible route, clear floor spaces, and turning spaces shall be firm, stable, and slip resistant.
- (v) Openings in floor or deck surface shall not be greater than 6 inches. Elongated openings shall be placed so that the long dimension is perpendicular to the direction of travel.

- (C) A clear area of 60 inches in diameter located entirely within the streetary shall be provided for wheelchair turning with a maximum overlap of 12 inches on the curb and sidewalk.

- (D) A clear floor area of 36 inches by 48 inches shall be provided for wheelchair resting space with a maximum overlap of 24 inches with the wheelchair turning space in any orientation.
- (E) The wheelchair resting space shall provide shoulder-to-shoulder alignment adjacent to one side of the fixed seat to serve as wheelchair user companion seating.
- (F) A minimum head height clearance of 84 inches from the finished grade of the streetary is required at all times.
- (G) Equivalent Facilities
- (i) Where tables, counters, or drink rails are provided, at least one of each feature shall be wheelchair accessible.
- (ii) The top surface height of wheelchair accessible tables, counters and or drink rails shall be 28 inches to 34 inches above the deck surface.
- (iii) Wheelchair accessible tables and counters shall be approachable from the front and provide an unobstructed knee clearance that is at least 27 inches high, 30 inches wide, and 19 inches deep.
- (iv) When movable tables are provided in lieu of fixed tables, at least one of the movable tables shall be accessible.

(v) Where drink rails are provided, a 60 inch long portion of a drink rail shall have 36 inch wide and level space adjacent to it for a side-approach by a wheelchair user.

(H) Terraced or Multi-Level Streetaries

(i) Streetaries on streets with grades that exceed 5 percent may construct a terraced streetary with two or more decks.

(ii) At least one of the terraces shall be wheelchair accessible and provide equivalent seating, tables, and countertop facilities to those found in other terraces.

(iii) The wheelchair accessible terrace shall provide a wheelchair accessible entry from the sidewalk.

(iv) The wheelchair accessible entry shall include a structure on the sidewalk within the sidewalk furnishing zone that provides a transition between the sidewalk and streetary deck.

(v) Passage between terrace levels shall provide a ramp with a running slope not to exceed 5%.

(vi) Any step or stair shall contain a warning strip at the nose of the step and handrails in accordance with the California Building Code.

(5) Deviation Process

A deviation from the requirements in Section 141.0621(b) may be permitted with a Neighborhood Use Permit decided in accordance with Process Two, as follows:

(A) The applicant shall identify any requirement in Section 141.0621(b) where a deviation is being requested and shall specify why the deviation is necessary.

(B) Deviations related to the following shall not be granted:

(i) Addition of an overhead structure;

(ii) Storm water requirements;

(iii) Hours of operation;

(iv) Engineering standards; and

(v) Accessibility requirements.

(c) Limited Use Regulations for Active Sidewalks

(1) Location Requirement:

(A) Active sidewalks shall be located along the curbside on streets where metered or unmetered parking exists.

(B) Active sidewalks shall be located only on streets with a curb-to-curb width sufficient to accommodate a Class IV bicycle lane after installation of the active sidewalk.

(C) Active sidewalks shall meet the locational requirement to the satisfaction of the City Engineer to ensure public health and safety.

- (2) The following uses shall be permitted within an active sidewalk:
- (A) Recreational amenities, including landscaped and seating areas, in accordance with Section 129.0710(d).
 - (B) Artworks.
 - (C) Outdoor Dining in accordance with Section 141.0621(c)(6).
 - (E) Farmers Markets in accordance with Section 141.0503.
 - (F) Other uses approved through a deviation in accordance with Section 141.0621(c)(7).
- (3) Permit Requirements:
- (A) Prior to installation of any furniture or improvements in the public right-of-way and prior to operation of an active sidewalk, the applicant shall obtain a Public Right-of-Way Permit in accordance with Section 129.0710(d) and an Encroachment Maintenance and Removal Agreement in accordance with Section 129.0715 to the satisfaction of the City Engineer. Violations of a Public Right-of-Way Permit shall be subject to the permit revocation procedures set forth in Chapter 12, Article 1, Division 3.
 - (B) Removal of parking, with the exception of accessible spaces in accordance with Title 24 of the California Code of Regulations (California Building Standards Code), shall not be a basis of denial of a Public Right-of-Way Permit for a social club.

- (C) Prior to issuance of a Public Right-of-Way Permit for an active sidewalk, the *applicant* shall provide evidence of general liability insurance naming the City of San Diego as additional insured, which shall remain in effect during the operation of the active sidewalk.
- (D) Alcohol, food, or beverages shall not be served or allowed within the active sidewalk before 7:00 a.m. and after 10:00 p.m. Sunday through Thursday, before 7:00 a.m. and after 11:00 p.m. Friday through Saturday.
- (E) Active sidewalk located within 150 feet of an adjacent residential use shall not serve or allow alcohol, food or beverages within the active sidewalk before 7:00 a.m. and after 9:00 p.m. Sunday through Thursday, and before 7:00 a.m. and after 10:00 p.m. Friday through Saturday and the day prior to a City Holiday.
- (F) Live entertainment is not allowed within an active sidewalk unless a Conditional Use Permit is granted in accordance with Process Three and the Conditional Use Permit is in accordance with the provisions of Chapter 3, Article 3, Division 15. The Public Right-of-Way Permit *permit holder* for the active sidewalk shall provide a noise impact analysis to the City for consideration before approval of the Conditional Use Permit. The noise impact analysis shall be

prepared by a qualified acoustical engineer and shall evaluate noise and vibration impacts to the surrounding neighborhood. A Conditional Use Permit shall not be granted for live entertainment before 8:00 a.m. and after 9:00 p.m. Sunday through Thursday, and before 9:00 a.m. and after 10:00 p.m. Friday through Saturday.

(G) All programming along active sidewalk shall be in accordance with the Special Events Ordinance, Chapter 2, Article 2, Division 40.

(H) Smoking and vaping shall not be permitted within the active sidewalk. For purposes of this section, the terms smoke, smoking, vape, and vaping have the same meanings as in San Diego Municipal Code section 43.1001.

(I) Active sidewalks shall comply with all State of California Department of Alcoholic Beverage Control license requirements, as applicable.

(J) Active sidewalks shall comply with the sound level limits of the adjacent use in accordance with Chapter 5, Article 9.5, Division 4.

(K) The Public Right-of-Way Permit *permit holder* shall be responsible for maintaining the active sidewalk. Maintenance shall include, but not be limited to, posting of the name, phone number, and email address of the *person*

responsible for the active sidewalk in a location visible from the *public right-of-way*, keeping the active sidewalk free of litter, and preventing litter attributable to the active sidewalk from entering adjacent properties and the *public right-of-way*.

(4) Design Requirements:

Active sidewalks shall be designed in accordance with the Spaces as Places Design Manual and meet the following regulations to the satisfaction of the City Engineer:

(A) Permanent expansion of the curb line for an active sidewalk into the parking lane starting at the corner or in the middle of the *street* shall be designed to the satisfaction of the City Engineer.

(B) The length of an active sidewalk shall be at least 54 feet.

(C) The design and placement of *street* furniture, trees, and plantings on an active sidewalk shall not impede pedestrian flow, or be placed within 10 feet from an intersection to avoid interfering with *visibility area*, emergency operations, or sight lines, to the satisfaction of the City Engineer.

(D) The placement of the name and type of the associated establishment on umbrellas shall be permitted. Other *signs* shall not be permitted on an active sidewalk.

- (E) Active sidewalks shall be designed in accordance with current Storm Water standards.
 - (F) Active sidewalks shall be designed in accordance with the Spaces as Places Design Manual, Street Design Manual, and all applicable engineering standards.
 - (G) The Gaslamp Quarter Planned District Design Guidelines shall apply to active sidewalks within the Gaslamp Quarter Planned District.
- (5) Active sidewalks shall comply with all State and Federal accessibility requirements.
- (6) The exclusive use of a portion of an active sidewalk for outdoor dining, including fixed or moveable furniture placed closer to the adjacent eating and drinking establishment or closer to the adjacent travel lane within the active sidewalk, is allowed so long as:
- (A) The accessible path of travel is a paved sidewalk that is at least 5 feet wide, the width identified in the applicable adopted land use plan, or the width required by the applicable zone or planned district, whichever width is greater;
 - (B) 42-inch-high railing is provided along the active sidewalk facing the travel lane when seating for outdoor dining is placed adjacent to the *street* travel lane;

- (C) No horizontal or vertical *structure* is placed above 42 inches from the surface of the active sidewalk except for stanchions needed to provide lighting; and
- (D) The portion of the active sidewalk used for outdoor dining remains open to public during all non-operational hours.

(7) Deviation Process

A deviation from the requirements in Section 141.0621(c) may be permitted with a Neighborhood Use Permit decided in accordance with Process Two, as follows:

- (A) The *applicant* shall identify any requirement in Section 141.0621(c) where a deviation is being requested and shall specify why the deviation is necessary.
- (B) Deviations related to the following shall not be granted:
 - (i) Addition of an overhead *structure*;
 - (ii) Storm Water requirements;
 - (iii) Hours of operation;
 - (iv) Engineering standards; and
 - (v) Accessibility requirements.

§141.0628 Outdoor Dining on Private Property

The permanent use of a private property for outdoor dining is permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), subject to the following regulations:

- (a) Permit Requirements:

- (1) Written permission from the *record owner of the premises* is required.
- (2) A Building Permit shall be obtained in accordance with Chapter 12, Article 9, Division 2.
- (3) The Building Permit *permit holder* shall be responsible for maintaining the outdoor dining area. Maintenance shall include posting of the name, phone number, and email address of the party responsible for the outdoor dining area in a location visible from the *public right-of-way*, keeping the outdoor dining area free of litter, and preventing litter attributable to the outdoor dining area from entering adjacent properties, in *alleys*, or within the *public right-of-way*.
- (4) The use of an *alley* for the purposes of outdoor dining shall not be permitted.
- (5) Removal of *off-street parking spaces* on a *premises* where any portion of the *premises* is located within a *transit priority area*, with the exception of any existing accessible spaces in accordance with Title 24 of the California Code of Regulations (California Building Standards Code), shall not be a basis of denial of the permit.
- (6) The hours of operation of the outdoor dining operations shall be limited to the hours that the *kitchen facilities* of the associated eating and drinking establishment are open for meal ordering.

Alcohol, food, or beverages shall not be served or permitted within the outdoor dining area before 7:00 a.m. and after 10:00 p.m.

Sunday through Thursday, and before 7:00 a.m. and after 11:00 p.m. Friday through Saturday and the day prior to a City Holiday.

(7) Outdoor dining located within 150 feet of an adjacent residential use shall not serve or allow alcohol, food, or beverages within the outdoor dining area before 7:00 a.m. and after 9:00 p.m. Sunday through Thursday, before 7:00 a.m. and after 10:00 p.m. Friday through Saturday.

(8) Outdoor dining shall comply with the sound level limits of the associated eating and drinking establishment in accordance with Chapter 5, Article 9.5, Division 4.

(9) Live entertainment is not allowed within outdoor dining areas unless a Conditional Use Permit is granted in accordance with Process Three and provided that the Conditional Use Permit is in accordance with the provisions of Chapter 3, Article 3, Division 15. The Building Permit *permit holder* for Outdoor Dining area shall provide a noise impact analysis to the City for consideration before approval of the Conditional Use Permit. The noise impact analysis shall be prepared by a qualified acoustical engineer and shall evaluate noise and vibration impacts to the surrounding neighborhood. A Conditional Use Permit shall not be granted for live entertainment before 8:00 a.m. and after 9:00 p.m. Sunday

through Thursday, and before 9:00 a.m. and after 10:00 p.m.

Friday through Saturday.

(b) Design Requirements:

(1) Outdoor dining on private property shall be delineated by a barrier from the off-street parking spaces by a railing, fence, or a combination of railing and fence, and planter boxes that are at least 3 feet in height. Solid walls are not permitted.

(A) The barrier may be either permanently installed or moveable. If it is moveable, it shall be affixed to a sidewalk while the eating and drinking establishment is open for business.

(B) Awnings or umbrellas may be used in conjunction with an area for eating and drinking but shall not be used as a permanent roof or shelter over the area for eating and drinking.

(2) Outdoor dining on private property shall be designed and operated so that it may be used by people of all abilities by complying with

all of the following:

(A) The surface of the outdoor dining area shall be level and have a running slope and a cross slope that do not exceed 2 percent (1 unit vertical in 48 units horizontal).

(B) The outdoor dining area shall not be located on a raised platform or in a sunken area, unless an accessible ramp is

provided in accordance with the California Building Code, or the Americans with Disabilities Act, whichever provides greater accessibility.

(C) At least one wheelchair accessible seating space shall be provided for every 20 seats, or portion thereof.

(D) When multiple wheelchair accessible seating spaces are provided, they shall be distributed and integrated within the outdoor dining area.

(E) Wheelchair accessible seating spaces shall have a minimum unobstructed maneuverability dimension of 30 inches in width by 48 inches in depth.

(F) Access to designated wheelchair seating spaces shall be provided through an accessible path with not less than 36 inches unobstructed width.

(3) Base Zone regulations for setbacks, and minimum lot coverage, and emergency access in accordance with the California Fire Code shall apply.

§141.0629 Promenade

For the purposes of this section, a promenade is defined as the partial or complete street closure to vehicular traffic to facilitate active transportation uses such as walking, biking, recreation, outdoor dining, and enjoyable public interaction. Promenades enhance pedestrian safety, encourage non-motorized transportation, and foster neighborhood interaction and outdoor activities, increasing the

likelihood that more pedestrians will travel by foot or bicycle. A promenade initiated by the City shall not be subject to the additional requirements of this Section.

(a) The following uses and other similar uses shall be permitted within a promenade:

- (1) Recreational amenities in accordance with Section 129.0710(d).
- (2) Artworks.
- (3) Outdoor Dining in accordance with Section 141.0621.
- (4) Farmers Markets in accordance with Section 141.0503.

(b) Permit Requirements:

(1) The creation of a promenade may be initiated by any applicant.

(A) For a promenade initiated by a public agency, prior to the installation of any furniture or improvements in the public right-of-way and prior to operation of a promenade, the applicant shall obtain a Public Right-of-Way Permit in accordance with Section 129.0710(d), and a plan for maintenance shall be provided to the satisfaction of the Transportation Director. Violations of a Public Right-of-Way Permit shall be subject to the permit revocation procedures set forth in Chapter 12, Article 1, Division 3.

(B) For a promenade initiated by a private applicant, prior to the installation of any furniture or improvements in the public right-of-way and prior to operation of a Promenade,

the applicant shall obtain a Public Right-of-Way Permit in accordance with Section 129.0710(d) and an Encroachment Maintenance and Removal Agreement in accordance with Section 129.0715. Violations of a Public Right-of-Way Permit shall be subject to the permit revocation procedures set forth in Chapter 12, Article 1, Division 3.

(C) For a promenade where the public right-of-way lies within one ownership for the entirety of the promenade, the applicant shall obtain a public right-of-way vacation in accordance with Chapter 12, Article 5, Division 9 prior to installation of any furniture or improvements in the public right-of-way and prior to operation of a promenade,

(2) Removal of parking, with the exception of accessible spaces in accordance with Title 24 of the California Code of Regulations (California Building Standards Code), shall not be a basis of denial of the permit.

(3) Full access for emergency service vehicles shall be provided at all times to ensure public health and safety to the satisfaction of the City Engineer.

(4) All programming of activities within the promenade shall be in accordance with the Special Events Ordinance, Chapter 2, Article 2, Division 40.

- (5) Smoking and vaping shall not be permitted within the Promenade. For purposes of this section, the terms smoke, smoking, vape, and vaping have the same meanings as set forth in San Diego Municipal Code section 43.1001.
- (6) A promenade shall comply with all State of California Department of Alcoholic Beverage Control license requirements, as applicable.
- (7) The promenade shall comply with the sound level limits of adjacent uses in accordance with Chapter 5, Article 9.5, Division 4.
- (8) The Gaslamp Quarter Planned District Design Guidelines shall apply to a promenade located within the Gaslamp Quarter Planned District.
- (9) The Public Right-of-Way Permit *permit holder* shall be responsible for maintaining the promenade. Maintenance shall include, but not be limited to, posting of the name, phone number, and email address of the *person* responsible for the promenade in a location visible from the *public right-of-way*, keeping the promenade area free of litter, and preventing litter attributable to the promenade from entering adjacent properties within the *public right-of-way*.
- (c) Design requirements:
- (1) The design and placement of *street* furniture, trees, and plantings along a promenade shall not impede pedestrian flow.

- (2) The placement of the name and type of the associated establishment on umbrellas shall be permitted. Other signs shall not be permitted on a promenade.
 - (3) The design of a promenade shall be in conformance with current Federal and State accessibility guidelines.
 - (4) The design of a promenade shall be in accordance with current storm water standards.
 - (5) Promenades shall be designed in accordance with the Spaces as Places Design Manual.
 - (6) The Gaslamp Quarter Planned District Design Guidelines shall apply to a promenade located within the Gaslamp Quarter Planned District.
- (d) Exclusive use of a section of the promenade for outdoor dining shall comply with the following:
- (1) Alcohol, food, or beverages shall not be served or permitted within the promenade before 7:00 a.m. and after 10:00 p.m. Sunday through Thursday, and before 7:00 a.m. and after 11:00 p.m. Friday through Saturday;
 - (2) Outdoor dining within 150 feet of an adjacent residential use shall not serve or allow alcohol, food, or beverages within the promenade before 7:00 a.m. and after 9:00 p.m. Sunday through Thursday, and before 7:00 a.m. and after 10:00 p.m. Friday through Saturday; and

- (3) The portion of the promenade used for outdoor dining remains open to public during all non-operational hours.

§142.0640 Impact Fees for Financing Public Facilities

- (a) [No change in text.]
(b) Payment of Fees

Development Impact Fees (as defined in California Government Code Section 66000) for applicable *development* shall be paid at the time required building permit fees are paid and no later than the first inspection of the *development* performed by the City in areas where Development Impact Fees have been established by City Council resolution or ordinance. Notwithstanding the above, the City Manager may also require the payment of Development Impact Fees for *development* that would increase demand for public facilities and/or result in the need for new public facilities, including outdoor dining. Development Impact Fees shall not be required for inclusionary *dwelling units* provided pursuant to Chapter 14, Article 2, Division 13 if the *applicant* has satisfied all the requirements of Division 13 for inclusionary *dwelling units* on the same *premises* as the market-rate *dwelling units*. The Development Impact Fee required by the City Manager shall be paid at the time required building permit fees are paid and no later than the first inspection of the *development* performed by the City.

Exemptions:

- (1) through (5) [No change in text.]

- (6) For development of a streetary, in accordance with Section 141.0621, the DIFs shall be assessed at a rate of 1/15th of the Development Impact Fees established by City Council resolution or ordinance, and shall be collected every two years with the issuance of the applicable Public Right of Way Permit.
- (7) Active sidewalks developed in accordance with Section 141.0621 are exempt from DIFs.

Table 142-06A

[No change in text.]

(c) through (g) [No change in text.]

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