

Chapter 8 ¹

SEASONAL OUTDOOR SEATING FOR FOOD SERVICE ESTABLISHMENTS IN THE CORE BUSINESS DISTRICT

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4-8-1: Purpose

- A. These seasonal outdoor seating regulations are designed to allow cafes, restaurants, taverns and other food and beverage service establishments to place outdoor seating within public rights-of- way in certain locations and under certain circumstances defined within this section in order to: (Ord. 2-2-2020, eff. 6/9/2020)
1. Provide additional space for cafes, restaurants and taverns to expand their operations; (Ord. 2-2-2020, eff. 6/9/2020)
 2. Promote planned and orderly outdoor seating in public spaces as a means of encouraging pedestrian activity and enhancing the pedestrian experience in the downtown; (Ord. 2-2-2020, eff. 6/9/2020)

4-8-2: Definitions

- A. These seasonal outdoor seating regulations are designed to allow cafes, restaurants, taverns and other food and beverage service establishments to place outdoor seating within public rights-of- way in certain locations and under certain circumstances defined within this section in order to: (Ord. 2-2-2020, eff. 6/9/2020)
1. Provide additional space for cafes, restaurants and taverns to expand their operations; (Ord. 2-2-2020, eff. 6/9/2020)
 2. Promote planned and orderly outdoor seating in public spaces as a means of encouraging pedestrian activity and enhancing the pedestrian experience in the downtown; (Ord. 2-2-2020, eff. 6/9/2020)

¹ Title 4 is amended by the addition of Chapter 8 (Ord. 2-2-2020, eff. 6/9/2020)

4-8-3 Permit Procedures

- A. The Town Manager is hereby authorized to issue permits to operate a sidewalk cafe or parklet, collectively referred to hereafter as “outdoor seating”, within Town-owned rights-of-way, provided that the applicant has complied with all standards set forth in this Chapter. (Ord. 2-2-2020, eff. 6/9/2020)
- B. All applications for outdoor seating shall be reviewed and approved by the Town Manager. The Town Manager reserves the right to forward an outdoor seating permit application to the Board of Trustees for its review and consideration. (Ord. 2-2-2020, eff. 6/9/2020)
- C. All permits shall be issued on a calendar year basis and shall expire on December 31st of the calendar year in which the permit was issued. Unless another time frame is specified in the permit, or by the requirements of this Chapter, the permit shall allow the operation of an outdoor seating from June 1st up to and including October 31st of the calendar year for which the permit is issued. (Ord. 2-2-2020, eff. 6/9/2020)
- D. Any person or establishment granted a permit by the Town Manager to operate an outdoor seating area shall pay to the Town Clerk a fee in the amount established by resolution of the Board of Trustees. The Town Manager shall not issue a permit unless the fees required by this section are paid. (Ord. 2-2-2020, eff. 6/9/2020)
- E. Each permit application for outdoor seating shall be accompanied by an insurance policy or certificate of insurance, in an amount that shall be at a minimum \$1,000,000.00 combined single limit for bodily injury and property damage each occurrence, and \$2,000,000.00 annual aggregate, naming the Town as an additional insured party. An insurance company authorized to do business in the State of Colorado shall issue such insurance. (Ord. 2-2-2020, eff. 6/9/2020)
- F. The insurance certificate required by this Chapter shall be in effect for any period during which the outdoor seating is in operation. Failure to provide a current insurance certificate shall be cause for denial, suspension, or revocation of an outdoor seating permit. No establishment shall operate a sidewalk cafe or provide outdoor seating without filing proof of proper insurance. Denied, suspended, or revoked permits may be re-instated upon submittal of proof of proper insurance. (Ord. 2-2-2020, eff. 6/9/2020)
- G. An outdoor seating permit application must be submitted to the Town Manager for review and approval. No outdoor service of food and/or beverages shall be established on public property, except in conformance with an application reviewed and approved by the Town Manager pursuant to the requirements of this Chapter. An outdoor seating permit application must include, but is not limited to including, the following information: (Ord. 2-2-2020, eff. 6/9/2020)
1. Name of Applicant;
 2. Name of Associated Business;
 3. Address of Associated Business;
 4. Contact Information of Applicant, Property Owner and Associated Business to include:

- a. Telephone Numbers;
- b. Email Addresses;
- c. Physical Addresses;
5. Proposed hours of operation within the public right-of-way;
6. Copy of certificate of insurance pursuant to the provisions of this Chapter;
7. Written authorization from the owner of the property where the applicant is not the owner of the associated property;
8. An 11"x17" site plan that shall include, at a minimum, the following information:
 - a. The boundaries of the associated property in its entirety along with adjacent properties;
 - b. Streets and sidewalks for a distance of at least 25 feet from the boundaries of the associated property at a scale showing detail sufficient for proper review.
 - c. The location of all temporary structures such as, but not limited to, planters, landscaping, railings, tables, chairs and umbrellas;
 - d. All points of ingress and egress;
 - e. For proposed parklets, the design of all curb extensions and platforms to accommodate the special design needs of the disabled in accordance with current ADA standards;

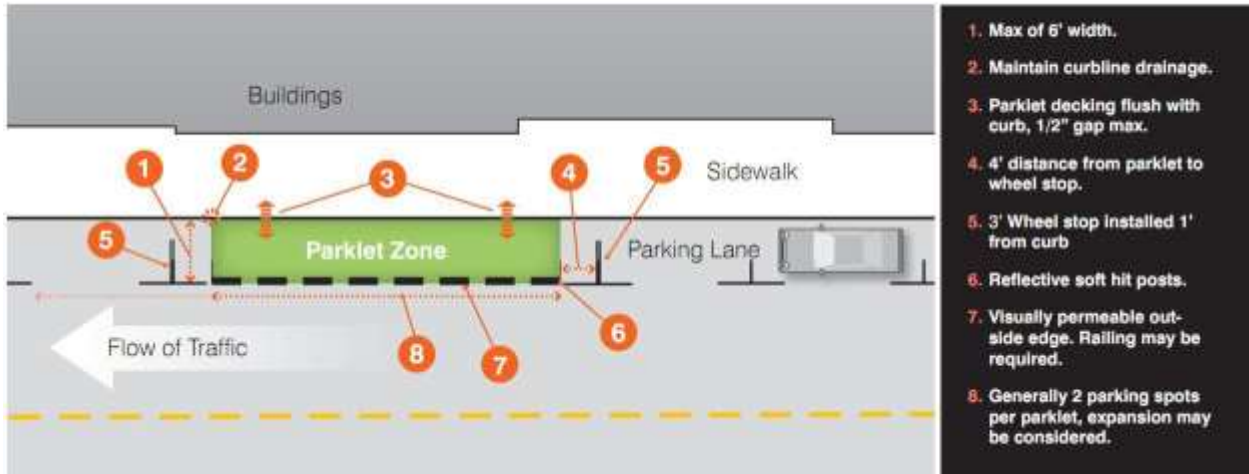
- H. The Town Manager shall distribute copies of all application materials to the Town Planning and Zoning Departments and other applicable Town staff members and/or consultants for review and comments; (Ord. 2-2-2020, eff. 6/9/2020)
- I. Based upon review comments from Town staff, the Town Manager may approve, approve with conditions, refer the application back to the applicant for modification, deny the application or refer the application to the Board of Trustees. If approved, the Town Manager shall issue the outdoor seating permit. If the Town Manager denies the application, the reason for this determination shall be stated in a letter to the applicant issued not more than ten (10) business days after the final determination has been made. The applicant may appeal the decision of the Town Manager during a duly called Board of Trustees meeting. The determination of the Board shall be final. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-4 Standards

- A. There shall be a minimum of 42 inches, exclusive of the area occupied by proposed outdoor seating, designed to allow adequate pedestrian movement. Outdoor seating shall only be permitted only when it is determined that the proposed seating areas will not create a hazard, a sight distance obstruction for motor vehicle operators, nor unduly impede pedestrian traffic. The Town Manager shall determine when a hazardous condition exists. (Ord. 2-2-2020, eff. 6/9/2020)
- B. Outdoor seating may only be located adjacent to the establishment with which it is associated and may not extend past the associated property frontage. Outdoor seating areas must remain clear of litter, food scraps and soiled dishes at all times. (Ord. 2-2-2020, eff. 6/9/2020)

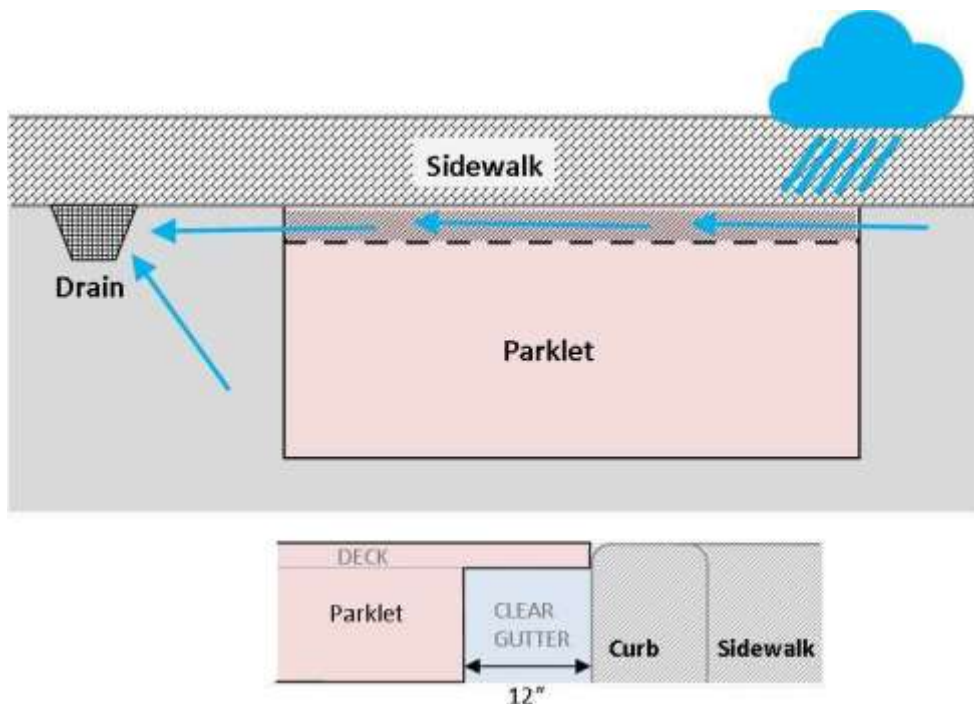
- C. Employees of the associated business shall continuously supervise outdoor dining areas.
- D. Parklets shall not extend past the frontage of the associated business and shall not be more than 6' wide x 14' long as shown in Figure 1 below. (Ord. 2-2-2020, eff. 6/9/2020)

Figure 1:
DESIGN AND PLACEMENT GUIDELINES



- E. Parklets must utilize 3" curb stops on either end to prevent vehicular encroachment for adjacent parking spaces. (Ord. 2-2-2020, eff. 6/9/2020)
- F. Parklets must utilize removable decking that makes the seating area level with the adjacent curb. (Ord. 2-2-2020, eff. 6/9/2020)
- G. Parklet platforms must be constructed so as not to impede drainage as shown in Figure 2 below. (Ord. 2-2-2020, eff. 6/9/2020)

Figure 2: Parklet Drainage



4-8-4**4-8-5**

- H. Parklet boundaries must be delineated with barriers such as planters or a railing to physically separate patrons from pedestrian and vehicular traffic. (Ord. 2-2-2020, eff. 6/9/2020)
- I. Furnishings for outdoor seating shall consist solely of readily removable railings, posts, tables, chairs, planters, table umbrellas and associated anchors. Furnishings may only be attached or secured in a manner approved by the Town Manager. (Ord. 2-2-2020, eff. 6/9/2020)
- J. No structure or enclosure to accommodate the storage of accumulated garbage may be erected or placed adjacent to or near the outdoor seating area. Each establishment shall be responsible for providing appropriate containers for disposing of garbage or waste and employees shall not use town trash containers for disposing of garbage or waste. (Ord. 2-2-2020, eff. 6/9/2020)
- K. An outdoor seating area shall not interfere with any public service facility, such as a mailbox, fire hydrant, designated pedestrian crossing or bench located on a sidewalk or public property. (Ord. 2-2-2020, eff. 6/9/2020)
- L. Operation of an outdoor seating area shall not adversely impact adjacent or nearby residential, religious, educational, or commercial properties and shall be in accordance with all applicable codes and regulations. (Ord. 2-2-2020, eff. 6/9/2020)
- M. Tables, chairs, table umbrellas, railings, planters, and any other objects provided with the sidewalk cafe or outdoor seating shall be of quality design, materials, and workmanship both to ensure the safety and convenience of users and to enhance the visual and aesthetic quality of the area. Such equipment shall be routinely cleaned, painted, or replaced and may be inspected by the Town Manager. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-5 Operating Restrictions

- A. Outdoor seating areas shall only be permitted in the Core Commercial Zone. (Ord. 2-2-2020, eff. 6/9/2020)
- B. All outdoor seating areas shall be allowed to operate during the regular business hours of the associated business. (Ord. 2-2-2020, eff. 6/9/2020)
- C. No alcoholic beverages shall be allowed in any areas beyond the established boundaries of the parklet. (Ord. 2-2-2020, eff. 6/9/2020)
- D. All food to be served within an outdoor seating shall be prepared within the associated establishment. (Ord. 2-2-2020, eff. 6/9/2020)
- E. The outdoor seating permit issued in accordance with this Chapter shall be prominently displayed within the existing establishment along with other required permits and licenses. (Ord. 2-2-2020, eff. 6/9/2020)

- F. From November 1st to May 31st, chairs, railings, posts, planters, table umbrellas, and other items shall be removed from the public right-of-way. It shall be the responsibility of the establishment to secure adequate storage of these items. (Ord. 2-2-2020, eff. 6/9/2020)
- G. The maintenance of an outdoor seating area shall be the responsibility of the associated establishment including, but not limited to, surface treatment and cleaning, litter control, sweeping and snow and ice removal. The outdoor seating area shall be kept neat and clean at all times and free from any substance that may cause damage to the sidewalk or public property or cause pedestrian injury. (Ord. 2-2-2020, eff. 6/9/2020)
- H. During periods of snow accumulation, the placement of tables, chairs, table umbrellas, railings, posts, planters, and other equipment associated with the operation of an outdoor seating shall be removed and all activities shall cease. (Ord. 2-2-2020, eff. 6/9/2020)
- I. The operation of an outdoor seating area shall not interfere with the set up or the operation of any special event. When there is a conflict, the outdoor seating area must be removed in its entirety for the duration of said conflict. Conflicts shall be determined by and in the sole discretion of the Town Manager. (Ord. 2-2-2020, eff. 6/9/2020)
- J. All tables, chairs, table umbrellas, railings, posts, planters, and other equipment associated with the operation of an outdoor seating area shall be removed and stored inside of the associated establishment each night. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-6 Denial, Revocation and Suspension—Causes enumerated

- A. The issuance of an outdoor seating permit may be denied by the Town Manager, and permits issued may be revoked or suspended by the Town Manager at any time, for any of the following causes: (Ord. 2-2-2020, eff. 6/9/2020)
1. Fraud, misrepresentation or any false statement made in the permit application. (Ord. 2-2-2020, eff. 6/9/2020)
 2. Conducting a business in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to the health, safety or welfare of the public. (Ord. 2-2-2020, eff. 6/9/2020)
 3. Failure or inability of an applicant to meet and satisfy the requirements and provisions of this Chapter and every other ordinance of the town. (Ord. 2-2-2020, eff. 6/9/2020)
 4. Any violation received during the previous permit period. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-7: Hearing; Demand; Review; Trustee Powers.

- A. Any person whose permit is revoked or suspended, or any person whose application for a permit is denied, shall have the right to a hearing before the Board of Trustees,

provided a written request is filed with the Town Manager within ten days following the delivery or mailing of the notice of revocation or suspension, or within ten days following the denial of the permit application. No person shall operate any outdoor seating area during any time when the permit therefore has been suspended, revoked, or canceled. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-8: Revocation or Suspension; Notice Required; Service.

- A. Written notice of suspension or revocation, stating the causes therefore, shall be delivered to the permittee personally or mailed to the address as shown in the permit application. Upon revocation of a license, all furnishings and fixtures shall be removed from public property within 24 hours. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-9: Renewal considered as original application.

- A. Unless otherwise provided in this article, an application for renewal of an outdoor seating permit shall be considered in the same manner as an original application. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-10: Transferal.

- A. No permit issued under the provisions of this article or any other ordinance of the town shall be transferable. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-11. Violations.

- A. Any person who operates a sidewalk cafe or outdoor seating on public sidewalks or public property without a permit, or who shall violate any of the provisions of this article shall be subject to penalties as provided in the Town of Westcliffe municipal code. (Ord. 2-2-2020, eff. 6/9/2020)

4-8-12. Severability.

- A. If any clause, sentence, paragraph or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy and in which such judgment shall have been rendered. (Ord. 2-2-2020, eff. 6/9/2020)