ARLINGTON COUNTY

Updated August 2023



Community Planning, Housing and Development





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The following information is provided for informational purposes to assist the public, business owners, and landowners. The main objective of this document is to clarify and illustrate current planning and zoning guidance for all outdoor cafes in Arlington. This document cannot cover every circumstance, and does not modify any ordinance, law, easement, or special exception approval that applies to a property. It is intended as general information to help with understanding current practices, policies, and regulations affecting outdoor café applications. Outdoor cafés who already possess County approvals and do not meet these guidelines may continue to operate in accordance with their approved permits. However, if they are located in a public space, they require an outdoor café license.



Arlington County's Master Transportation Plan (MTP), a part of the Comprehensive Plan, calls for streets and sidewalks that are comfortable and interesting places that encourage people to walk instead of drive, and to linger, socialize, and patronize local businesses. Outdoor cafés, whether located on private property or on public sidewalks, are desirable streetscape features if adequate pedestrian movement is retained. Outdoor cafés provide activity for many hours of the day and are increasingly seen as business essentials by restaurants. This document provides guidance to business owners, residents, and County staff on existing County policies on the use of outdoor café areas, both on private property and in public rights-of-way.

The guidelines in Section 3 apply to all outdoor cafés. Section 4 is for outdoor cafés on public sidewalks. Section 5 is for privately owned public spaces. Section 6 includes guidelines for outdoor cafés on private property with no public easements. Section 7 includes guidelines for outdoor cafés located on private parking spaces.

PURPOSE AND GOALS

The COVID-19 pandemic changed how the community uses public spaces and how it views outdoor dining. It's important to recognize the need for flexibility for the restaurant community. As such, three main overarching themes helped shape the County recommendations for updating Arlington's permanent outdoor dining program:

- Restaurants as a Public Good: An economically viable food service sector is a critical component of sustainable and active mixed-use neighborhoods.
- Restaurant Recovery and Resiliency: Expanded outdoor dining options with fewer regulatory hurdles will assist in recovery from pandemic-related losses and adaptation to a longer-term "new normal".
- Different Places and Spaces: Expanded outdoor dining is not one-size fits all. Some neighborhoods and the public realm within those neighborhoods may be more appropriate for outdoor dining than others.

Outdoor cafés can bring benefits to both businesses and customers, including creating an inviting atmosphere for people to gather, having extra seating during peak hours, and improving storefront visibility. These guidelines will help businesses establish an outdoor café that has curb appeal while being functional, safe, and permitted. The following guidelines and standards should be carefully reviewed before submitting an application. Application materials are provided in the Appendix and available online.



2.1 STEP-BY-STEP PROCESS

















2.2.1 APPROVAL PROCESS FLOWCHART OUTDOOR CAFÉS ON PUBLIC SIDEWALKS

Outdoor Café Admin. **Approval Process** Outdoor cafés in Public Space require **Concurrent Reviews/Approvals** an Outdoor Café License from the **Get Ready** Arlington County Real Estate Bureau and payment of an annual license fee for use of the space. Applications for an Outdoor Café License must be Plan Your Project submitted separately from Building **Outdoor Café** Permit and Certificate of Occupancy License Conditionally Café License Review applications. Refer to Section 8.2 Issued Consultation of the Appendices if desired for more information. Set Up Outdoor **Building Permit Final Building Permit Submit Applications** Café/Request Building Review/Issued Approval Inspection(s) Certificate of **Occupancy Permit** Request CO **Occupancy Permit** Issued Inspection(s) Review **Open Outdoor** Café

2.2.2 APPROVAL PROCESS FLOWCHART OUTDOOR CAFÉS ON PRIVATELY OWNED PUBLIC SPACES (POPS)

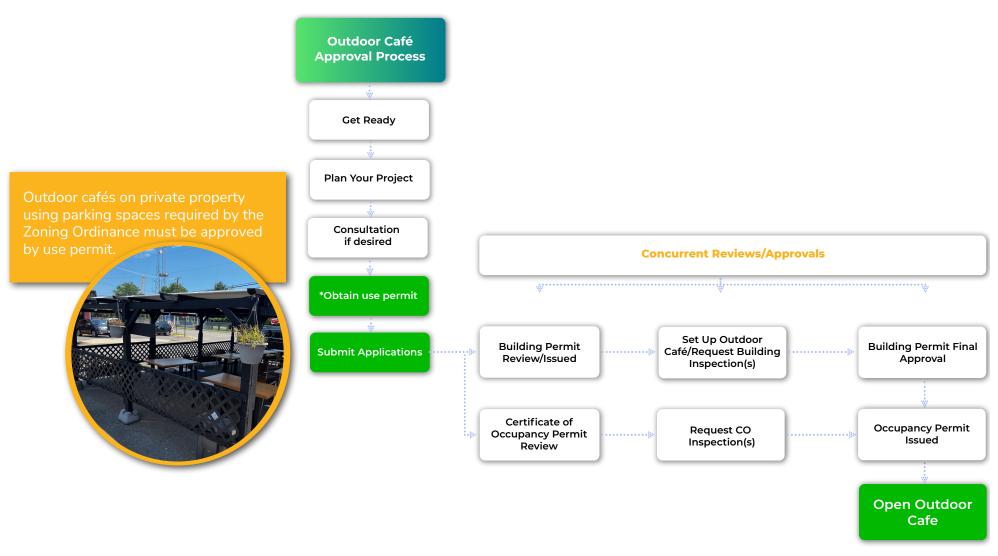
Outdoor Café Approval Process Outdoor cafés in a privately-owned space with a public easement dedicated for public use (plazas, courtyards, pocket parks, etc.) will be required to obtain a **Get Ready** Use Permit approval by the County Board. In some cases, a site plan amendment may also be required. **Concurrent Reviews/Approvals Plan Your Project** • Consultations with staff prior to submission are encouraged Design guidelines for Privately Consultation Owned Public Spaces in the Public if desired Spaces Master Plan (pg. 235). Outdoor Café License Conditionally Café License Review Information about Use Permits Issued *Obtain use permit Information about Site Plan Amendments Set Up Outdoor **Building Permit Building Permit Final** Café/Request Building **Submit Applications** Review/Issued Approval Inspection(s) Certificate of **Occupancy Permit** Request CO Occupancy Permit Issued Inspection(s) Review **Open Outdoor** Cafe

^{*}Requires County Board Approval prior to administrative review.

2.2.3 APPROVAL PROCESS FLOWCHART OUTDOOR CAFÉS ON PRIVATE PROPERTY



2.2.4 APPROVAL PROCESS FLOWCHART OUTDOOR CAFÉS ON PRIVATE PROPERTY USING OFF-STREET PARKING AREAS



^{*}Requires County Board approval prior to administrative review if parking spaces to be used for outdoor café are needed to meet the total parking requirement for the uses on site.

Design Guidelines

2.3 APPLICATIONS AND FEES

2.3.1 BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY

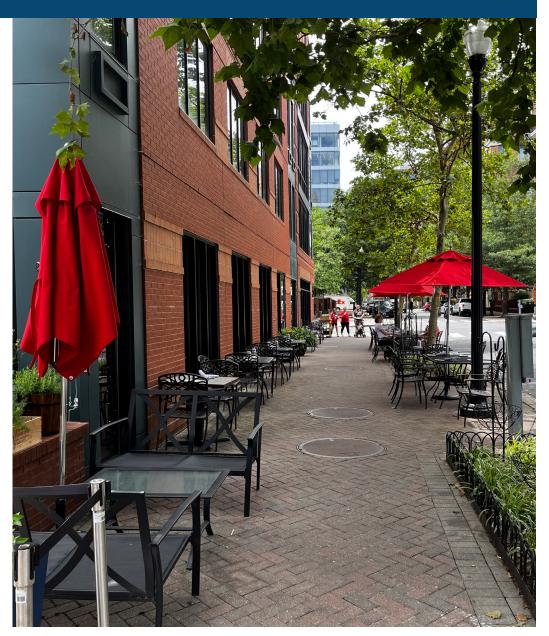
- a. A Building Permit and Certificate of Occupancy is required for all outdoor cafés.
- b. Fees may vary and are dependent on the square footage of the outdoor café.
- c. Consultations with staff prior to submission are encouraged.

2.3.2 OUTDOOR CAFÉ LICENSE

- a. An Outdoor Café License is required for any outdoor café that is located in public space (i.e., public sidewalk) or a Privately Owned Public Space (e.g., plazas, courtyards, pocket parks, etc.)
- b. The one-time License Application Fee will be \$150. The County Board will establish the annual Outdoor Café License fee when acting on the FY2025 Budget, and will be payable annually commencing on July 1, 2024.

2.3.3 OTHER FEES

- a. Separate electrical or plumbing permits and fees will be required for any new gas or electrical work associated with lighting or permanent gas heaters in the outdoor café area.
- b. Some cafés may require amendments to their current site plan conditions or use permit. Under those situations, additional filing fees will apply.



2.4 PERMITTING AND APPROVAL PROCESS

PERMITS NEEDED	Outdoor Cafés on Public Sidewalks	Outdoor Cafés on Privately Owned Public Spaces (POPS)	Outdoor Cafés on Private Property	Outdoor Cafés on Private Property using Parking Areas**
Use Permit*		✓		✓
Outdoor Café License	✓	✓		
Building Permit	✓	✓	✓	✓
Inspection	✓	✓	✓	✓
Certificate of Occupancy	✓	✓	✓	✓
Annual Outdoor Café License Renewal	✓	✓		

^{*}Requires County Board Approval prior to administrative review.

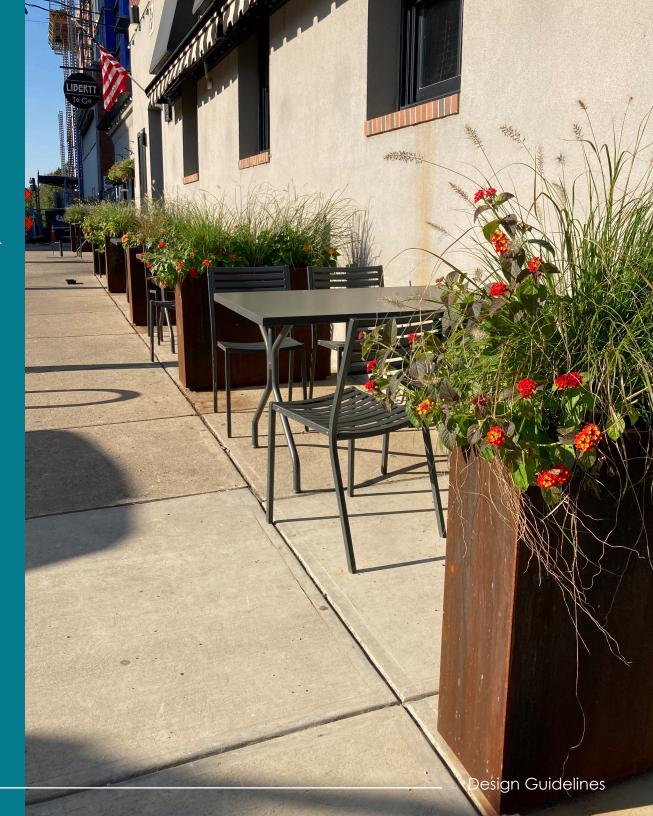
^{**}Use Permit is only necessary when the parking spaces to be displaced by the cafe are needed to meet the parking requirements for uses on site.



Outdoor cafés are permitted in Arlington only as accessory uses to the main use of a food establishment. As such, they must be adjacent to the main use, either on private property or on a public sidewalk and not encroach on neighboring uses. Note: Dining areas on rooftops are not considered outdoor cafés for the purposes of these guidelines. The following guidelines apply to all outdoor cafes, regardless of type.

Outdoor cafés are subject to the following:

- Arlington County Zoning Ordinance Section 12.9.15.
- Arlington County Code- Chapter 70 Encroachments into Public Spaces
- Virginia Uniform Statewide Building Code (USBC)
- Virginia Statewide Fire Prevention Code (VAFPC)
- Virginia Statewide Fire Prevention Code (VAFPC)
 Guidance on Tents and Heaters





3.1 OPERATIONAL GUIDELINES

- a. For businesses with both an indoor CO and an outdoor CO, the total patrons served at any one time cannot exceed the combined capacities of both CO's.
- b. All outdoor dining activities must obtain the proper permits or licenses from Arlington County.
- c. No food preparation is permitted in the public right-of-way.
- d. Outdoor dining operations may be shut down if found to be a nuisance for neighbors.
- e. Establishments serving alcohol must meet requirements outlined by Virginia Alcoholic Beverage Control (ABC).
- f. Outdoor cafés involving an ABC permit may not be shared by multiple establishments.
- g. Outdoor cafés consist of tables and chairs, placed for the consumption of food by customers. Service may be self-service or by a waiter.
- h. The hours of operation of an outdoor café shall not extend past the normal operating hours of the main food establishment.
- i. Outdoor cafés shall follow any other applicable zoning regulations (signs, etc.).
- j. Live entertainment, gaming activities, TVs, and piped-in or amplified music are permitted between 9 a.m.-10 p.m. Sundays through Thursdays, and between 9 a.m.-11 p.m. on Fridays and Saturdays. Piped-in music does not include broadcasting of live entertainment events that are taking place inside the establishment.
- k. For outdoor cafés located on private property in side or rear yards abutting or across an alley from an R or RA district, such sound or audio or video entertainment are not permitted.

3.2 LOCATION AND DESIGN

- Outdoor cafés should not be located in any fire lanes, bicycle, or vehicle travel ways, loading dock areas, transit stops, or emergency vehicle access areas.
- b. Pathways to and from restroom facilities must be clear and accessible and are subject to inspection.
- c. The outdoor café should be located on a smooth, ADA-compliant paved surface.
- d. Outdoor cafés should not be located in any tree pits or planting strips.
- e. All tables, chairs, and barriers should not impact any utilities, parking meters, signs, streetlights, or street trees.
- f. An outdoor café may be under a canopy or awning.
- g. Heating elements shall not be installed as part of the canopy or awning.
- h. Outdoor cafés shall not be enclosed, which is defined in the Zoning Ordinance as "any roofed-over structure or attachment to a structure is enclosed if sides (other than the side or sides where a structure is attached to a main building) are more than forty (40) percent enclosed with any material other than customary wire or mesh screening."



3.2 LOCATION AND DESIGN

- h. An outdoor café that is enclosed according to the definition in the Zoning Ordinance shall be considered a permanent part of the food establishment and therefore subject to all setback, parking, and other applicable requirements of the Zoning Ordinance.
- i. Outdoor cafés must be 5-feet from exit doors and adjacent sidewalk cafés.
- j. Outdoor cafés must be 4-feet from existing light poles and 6 feet from base of street trees.
- k. Barrier may not exceed 5-feet in height.
- A minimum 6-foot-wide ADA accessible route adjacent to the outdoor café must be maintained for pedestrian passage.
- m. If the outdoor café is part of a County Board-approved site plan or use permit with conditions that require greater clear path dimensions, the restaurant must comply with the County Board approved conditions. A Site Plan Amendment is required if the property owner wants to change the approved conditions.
- n. Maintain a 3-foot clearance around Fire Department Connections (FDC) on buildings and a 3-foot-wide path must be provided from the FDC to the curb.
- o. Maintain a 5-foot clearance around fire hydrants.
- p. Maintain a 5-foot clearance between bicycle racks.
- q. Maintain a 10-foot distance from any transit stops or shelters.

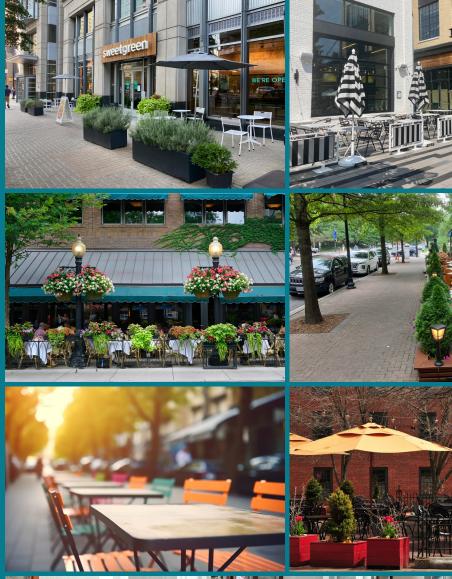






3.3 FURNISHINGS

- a. Furniture and fixtures used in outdoor dining must be specifically made for outdoor use.
- b. Tables, seating, barriers, and other furniture are not required to be removed at the end of every business day, unless otherwise required as a condition of a special exception use permit.
- All chairs used in an outdoor seating area should match each other by being of visually similar design, construction, and color.
- d. Outdoor grills are not permitted in outdoor cafés.
- e. Table umbrellas are permitted if they are fully contained within the outdoor café area and do not extend over the sidewalk clear width. When fully extended, the umbrellas must maintain a minimum vertical clearance of 6-feet, 8-inches above the café area to allow for patron and server circulation.
- f. Any lighting fixtures shall not protrude into the clear pedestrian path.
- g. Cafés in public space should include only improvements (including furnishings and equipment) that are designed and constructed so they are readily removeable without damage to the surface of the public space.
- h. Fire pits with a permanent or fixed gas line require a permit and inspection from the Inspection and Services Division (ISD). A propane tank falls under ACFD for review and inspection.
- i. A wood- burning fire pit will likely need a structure to contain it, such as masonry or brick. This will require a building permit.
- j. A mounted heater on the facade of building will became a permanent fixture and will require a permit and inspection from ISD. Any changes to the facade will be reviewed by Zoning.







4.1 GENERAL GUIDELINES

No elements of the café are permitted to be permanently affixed to the sidewalk, including, among other items, canopies or awnings, fences, tables and chairs, or heating or cooling elements, associated with the café; however, low fences or low barriers (less than three (3) feet tall) that are within and along the café area are permitted to be affixed to the ground, using a sleeve system, so long as they are removable and upon removal, the area where the fence or barrier is affixed can be capped or filled in a manner resulting in a surface that is flush with the surface of the sidewalk.

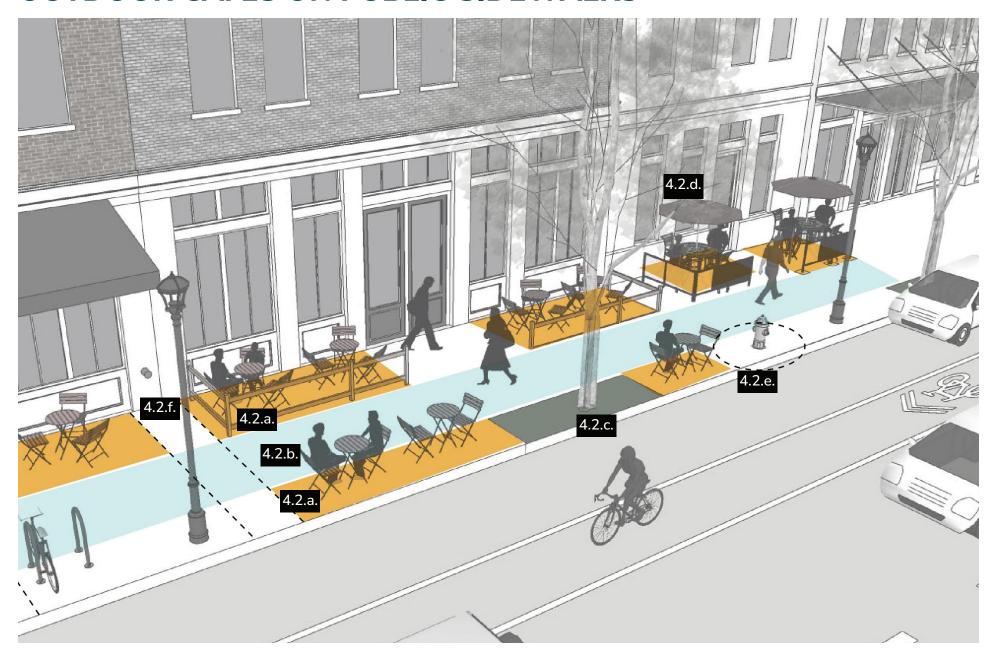
4.2 ADDITIONAL GUIDELINES ON CLEAR ZONES

- a. Outdoor cafes may be located along the building façade and/or in the furnishing zone.
- b. A minimum six-foot-wide accessible sidewalk must be maintained for pedestrian passage unless a greater width is required by site plan or use permit conditions (see diagram on page 34).
 - i. A clear zone is an area for unimpeded pedestrian mobility. The clear sidewalk cannot contain any obstructions, including but not limited to parking meters, sidewalk signs, streetlights, street trees, tree pits, or tree grates. Any part of the proposed seating, fencing or barriers, and umbrellas associated with the outdoor café must also be outside of the clear zone.
 - ii. If the outdoor café is part of a County Board-approved site plan or use permit with conditions that require greater clear path dimensions, the restaurant must comply with the County Board-approved conditions. A Site Plan Amendment or new Use Permit would be required if the property owner wants to change the approved conditions.
- c. Outdoor cafes should not be located in any tree pits or planting strips.
- d. Table umbrellas are permitted if they are contained within the outdoor café area, and when fully extended maintain a minimum vertical clearance of 6-feet, 8-inches above the sidewalk to allow for patron and server circulation.
- e. Maintain 5-foot clearance around fire hydrants.
- f. Maintain 3-foot clearance around Fire Department Connections (FDC) on buildings and a 3-foot wide path must be provided from the FDC to the curb.
- g. Locate private encroachments in the sidewalk area with sensitivity to sidewalk width, to historic structures, and to other obstructions, and subject to periodic review. Safe and convenient pedestrian travel should not be impeded (MTP Pedestrian Element p. 6).

4.3 ACCESSIBILITY GUIDELINES

- a. The outdoor café must comply with the Building Code and ADA accessibility requirements.
- b. The surface of the sidewalk shall be level and have a running slope and cross slope that do not exceed 2%.
- c. An outdoor café shall not be located on a raised platform or a sunken area unless an accessible ramp is provided. Platforms or other site-leveling structures shall be provided only when there is a demonstrated need to make outdoor seating feasible, such as slope or sidewalk condition. Platforms or other site-leveling structures shall comply with the requirements of the applicable version of the Virginia Uniform Statewide Building Code.

OUTDOOR CAFÉS ON PUBLIC SIDEWALKS





BACKGROUND

The <u>Public Spaces Master Plan</u>, another element of the Comprehensive Plan, adopted in 2019 defines privately owned public space (POPS) as "a privately developed space that remains under private ownership but has an easement or license that guarantees it is open and accessible to the public." POPS are typically built with new development projects and are dedicated by a deed of public access easement or by a site plan condition.

5.1 LOCATION GUIDELINES

- a. Outdoor cafés shall not be located in a privately owned public space (POPS) with an approved deed of easement for public access and/or park use, or other legal instrument such as site plan condition(s) unless approved by the County Board through a use permit. In general, outdoor cafés should not be located in POPS unless they meet the following criteria in addition to receiving use permit approval.
 - i. A privately owned public space with public access and/or park use easement that has not been identified in a County Board adopted plan (Comprehensive Plan element, park master plan, sector plan, etc.).
 - ii. A POPS which was not provided for as a public access easement in exchange for additional development density.

5.2 **DESIGN GUIDELINES**

- a. The <u>Public Spaces Master Plan</u> identifies a set of design guidelines for Privately Owned Public Spaces that provides direction for the following aspects of the public space.
 - i. Planning and Layout
 - ii. Access and Circulation
 - iii. User Comfort
 - iv. Landscaping
 - v. Amenities
 - vi. Signage
- b. The design guidelines begin on page 235.
- c. Staff will use these standards as the criteria for review of any applications.





6.1 LOCATION GUIDELINES

- a. Outdoor cafés shall not be enclosed, except as specified elsewhere in the Zoning Ordinance.
- b. Outdoor cafés located in side or rear yards abutting or across an alley from an R or RA zoning district shall operate only between the hours of 9 a.m.-11 p.m.
- c. An outdoor café, including any canopies or covers, is only permitted within the required setback.
- d. Fixtures and furnishings in the outdoor café, such as canopies, tables, chairs, server stations, bars, heating/cooling elements, fences, and barriers, may be affixed to the ground.







7.1 LOCATION GUIDELINES

- a. The outdoor café should not be located in ADA spaces.
- b. The outdoor café location should not obstruct vehicular travel aisles and pedestrian pathways in the parking area.
- c. The outdoor café should not block points of egress or pedestrian circulation paths.
- d. Outdoor cafés may be located in private off-street parking spaces, as long as the outdoor café does not occupy parking spaces needed to meet the required parking specified in the Zoning Ordinance.
- e. If there is more parking than what is required by the Zoning Ordinance, the outdoor café can be reviewed and approved administratively by the Zoning Administrator.
- f. Outdoor cafés should be located in parking spaces that the applicant has the legal right to use.
- g. A Use Permit option may provide food establishments with the ability to use up to four required parking spaces for outdoor cafes through a modification.

7.2 DESIGN GUIDELINES

- a. The outdoor café shall occupy no more than 612 square feet (equivalent of four parking spaces measured 8 feet 6 inches by 18 feet.
- b. Tents are permitted for shade with proper permits.
- c. Planters and or protective barriers should be provided.
- d. The outdoor café location should not obstruct access to loading areas where access to adjacent uses.

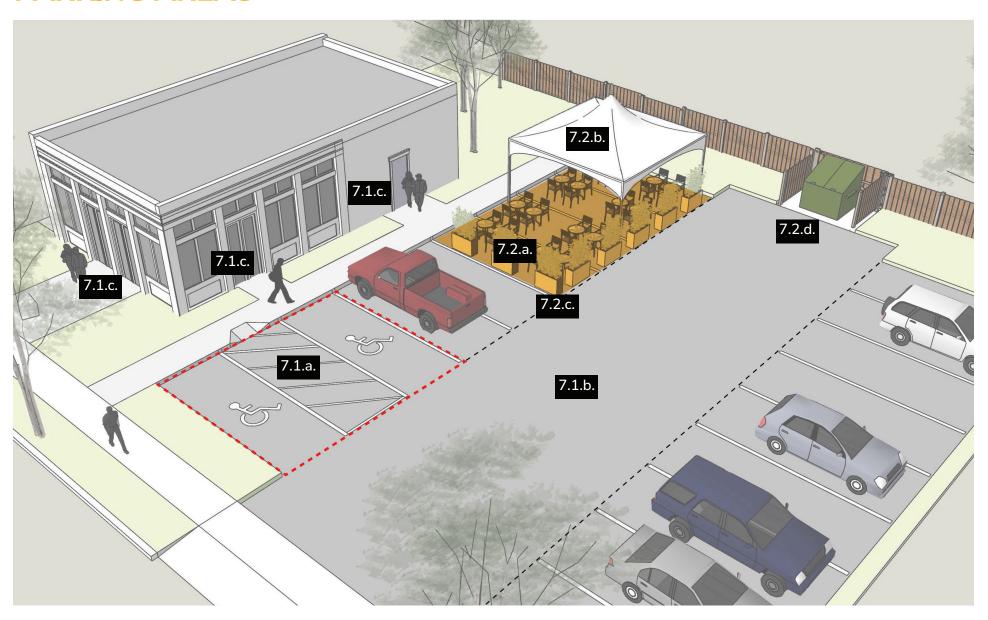
7.3 ACCESSIBILITY GUIDELINES

- a. The outdoor café must comply with Virginia Uniform Statewide Building Code and ADA accessibility.
- b. The surface of the outdoor dining area shall be level with a running slope and cross slope that do not exceed 2%.





GUIDELINES FOR OUTDOOR CAFES ON OFF-STREET PRIVATE PARKING AREAS





8.1 **OVERVIEW**

Any restaurant that operates an outdoor café must comply with all applicable County, state, and federal laws and regulations. Failure to comply is a class one misdemeanor with a fine of up to \$2,500 or jail sentence up to 12 months. Restaurants with outdoor seating must meet accessibility guidelines and comply with the Americans with Disabilities Act (ADA).

The community may report an outdoor dining area that is:

- Abandoned
- Blocking required sidewalks or street travelways
- Blocking neighboring building entrances
- Lacking required barriers
- Not accessible for people with disabilities
- Serving alcohol without a license
- The exact street address of the restaurants must be included in the report.

8.2 **ENFORCEMENT**

Any complaint about an outdoor café will be investigated by staff in the Zoning Division of the Arlington County Department of Community Planning, Housing and Development. Violations may result in citations and potential revocation of permits or outdoor café license.

There are two methods to report appearance of code violations:

- By email (<u>zoningenforcement@arlingtonva.us</u>)
- Zoning Division phone line (703-228-3883) Counter Services staff

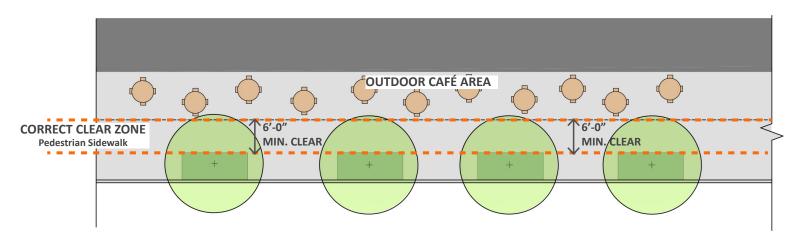


9.1 APPLICATION MATERIALS AND CHECKLIST

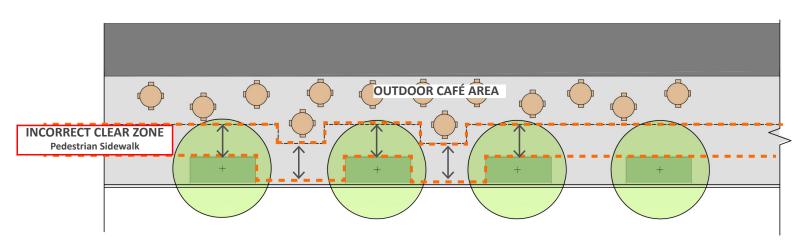
Note: Clearly label all drawings, maps, and photos

	Provide a copy of existing Certificate of Occupancy issued for interior restaurant (seating chart not required).
	If applicable, provide a copy of the existing Certificate of Occupancy and a seating chart for the outdoor dining area.
	Provide a Statement of Consent from the property owner to include the owner's name, title, address, phone number, and email.
	Provide the following items that depict the EXISTING site, including area where outdoor seating is proposed:
	☐ Aerial map ☐ Photographs ☐ If available, a survey plat, drawings, or existing plans ■ Provide a plat/site plan that shows the PROPOSED outdoor sets. The plat/site plan must be includive and show the fallowings.
ш	Provide a plat/site plan that shows the PROPOSED outdoor cafe. The plat/site plan must be inclusive and show the following:
	☐ A dimensioned site plan drawing showing the general layout of the sidewalk area and building frontage. See Figure 9.2 for an example sidewalk café site plan. ☐ Existing site conditions, including any streetscape items previously listed (tree pits, etc.)
	Location and number of seats and tables
	Clearly defined entry and exit points
	Dimensions of outdoor café (length and width)
	Minimum clear sidewalk width of 6 feet for pedestrian passage on public sidewalk and in public space or greater dimension if required by approved site plan conditions
	Location of the barrier surrounding outdoor cafe (required if subject to ABC license)
	Distance between outdoor café and restaurant entrance (must be less than 100 feet if subject to ABC license)
	Other temporary elements, such as tents, canopies, umbrellas, planters, etc.
	Portable outdoor heaters and/or heating elements
	Plans must establish that the approved means of egress from the existing building are not blocked, diminished, or altered because of the outdoor café.

9.2 **DIAGRAMS**



The Clear Zone is measured in a consistently straight path from the closest obstructions on both sides. Six feet minimum must be left clear for pedestrians. Site Plan Conditions or Sector Plans may call for a wider clear zone.



The Clear Zone must be a straight path. The Clear Zone cannot zigzag or be measured from varied obstruction points along the pedestrian path.

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9.2 **FAQs**

GENERAL

What should I do if I have an existing use permit for outdoor dining? If you have an existing use permit, you have two options:

- 1) You can set up your outdoor café to be consistent with the approved use permit on file, including the number of seats, furnishings layout, and width of clear sidewalk.
- 2) If you want to change or expand your seating from what is in the approved use permit, you may need a use permit amendment.

If the café is on a public sidewalk, you will need to obtain an Outdoor Café License, which can be done administratively.

APPLICATION

When can I apply for my permit(s) and/or license?

The initial application period for TOSA permit holders begins September 1, 2023. All TOSA permit holders must submit an application or be actively working with County staff on their application by **October 16, 2023**, to maintain their outdoor dining. Moving forward, the new outdoor dining permit and license process will remain in place for all restaurants interested in having outdoor seating.

What type of permit(s) do I need?

The permits vary on a case-by-case basis depending on the location of the outdoor café. See the chart on Page 13 for information on each café type.

How do I apply for the permit?

Applications for a Building Permit and a Certificate of Occupancy must be submitted through <u>Permit Arlington</u>.

Applications for an Outdoor Café License must be submitted to the DES Real Estate Bureau.

You can find links to both permits, along with how-to videos for Permit Arlington, on the outdoor dining webpage.

REVIEW PROCESS

How long does the new review process take?

The review process timeline depends on the required permits. Generally, the review time for a Building Permit and a Certificate of Occupancy can take 30-60 days, while a Use Permit, which requires County Board approval, typically takes three months.

FEES

How much do the permit(s) and license cost?

The costs can vary depending on your café type and its requirements. All outdoor cafes will be required to pay application fees to obtain a Building Permit and Certificate of Occupancy. The Building Permit fee includes the first inspection when the café is completed. In addition, if the café is in public space, restaurants will need to pay the Outdoor Cafe License application fee. Some cafés also may require a Use Permit or Site Plan Amendment. See the current fee schedules for updated information.

Do I have to pay an annual fee?

An annual encroachment fee is only required for cafés located on public property. There is a one-time license application fee of \$150 for the Outdoor Café License. The annual fee will be established by the County Board during the FY2025 budget process. It will be payable annually beginning July 1, 2024.

DESIGN GUIDELINES

Can I have a tent over my outdoor seating?

Yes, in most cases, tents are allowed; however, any tent must comply with the Virginia Statewide Fire Prevention Code (VAFPC). All tents reviewed under the fire code will be inspected by ACFD. All tents must be separated from the building.

What if I want to put up outdoor heaters in the winter?

An annual Fire Prevention Code Permit is required for the storage and/ or use of gas heaters. You can apply for permit through the <u>Arlington County Fire Department</u>. Wood burning fire pits will likely need an enclosure which will require a building permit. Heaters attached to the building will require a permit and inspection from ISD and review of the façade impact from Zoning.

For questions about using tents and heaters together, contact the Fire Prevention Office at fire-firecodeinquiry@arlingtonva.us or 703-228-4644.

Can I use the on-street parking lane for my outdoor café?

No. The public, on-street parking lane cannot be use for an outdoor café. A business could install a parklet, but the space must always be open to the public, and there cannot be any advertising, alcohol, or table service in the parklet. More information on parklets can be found <u>online</u>.

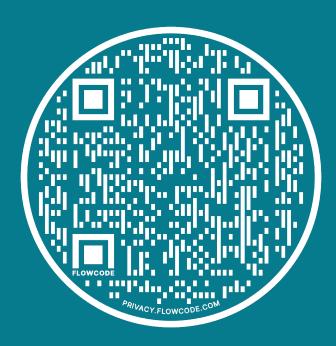
CONTACT US

2100 Clarendon Boulevard, Suite 700

Arlington, VA 22201 Phone: 703-228-3525

Email: outdoorcafes@arlingtonva.us

Web: https://www.arlingtonva.us/Government/Programs/Building/Permits/Outdoor-Dining





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