

ZOCO Memo – Outdoor Cafes

FOOD Study Regulatory and Administrative Recommendations

As a result of this study, Staff is now recommended Planning Commission and/or County Board consideration of regulatory changes and supporting documents reflecting proposed changes based on staff analysis and community feedback. These elements together will provide for a unified and clear process for businesses that wish to have outdoor cafés on public and private property into the future.

- Encroachment Ordinance & Outdoor Café License (Subject of a separate June 2023 report)
 - A new Chapter 70 (Encroachment into Public Spaces) of the Code of Arlington County.
 - Administrative process and requirements for outdoor café licenses, and related applications, approvals and renewals.
- Zoning Ordinance Amendments (Attachment 1)
 - Transition the approval path for permitting outdoor cafés in public rights-of-way (i.e. sidewalk cafes) from County Board to administrative approval.
 - Addition of new use standards regulating placement of outdoor café tables and seats in public spaces and on private property, permitted through administrative approval by the Zoning Administrator.
 - Expanded options for County Board-approved use permits for outdoor cafés to allow modifications, including for parking requirements for tables and seats located on required private parking spaces.
 - New term definition for *Public space, privately-owned* to distinguish privately-owned public spaces (POPS) from other public easement areas.
- Update the County’s Outdoor Café Guidelines (last updated in 2013)
 - Updated Design Guidelines document to include the following elements:
 - Introduction, Purpose & Goals
 - Application & Permit Process
 - Standards for clear sidewalk widths
 - Pedestrian Safety, ADA & Accessibility
 - Fire & Building Code, Tents & Heaters

FOOD Study Overview: Begun in 2022, the primary goal of the FOOD Study was to examine which aspects of the more flexible Temporary Outdoor Seating Area Program (TOSA) administered by the County during the COVID-19 emergency should be incorporated into Arlington’s established regulations for “permanent” outdoor cafés. Outcomes of the study informed other changes to the County’s current regulatory approach for managing outdoor cafés, including those located within public space or rights-of-way. A main objective was to consider how lessons learned from the TOSA experience since May 2020 could help improve and advance Arlington’s outdoor café framework, together balancing business and public interests.

Another study objective was to identify recommended changes to the Zoning Ordinance and Outdoor Café Guidelines that strike an optimal balance between commercial resiliency and

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public and community interest in how outdoor cafés are permitted on public and private property. Additionally, this study also sought to identify and address other potential changes to how the use of public land for cafés may best be managed and seeks potential improvements to the related approval processes.

An additional objective was to determine which TOSA elements may be incorporated into established regulatory provisions for outdoor dining, based in part on the extent to which such elements may or may not have resulted in adverse community impacts since being temporarily permitted beginning in May 2020.

Elements relating to outdoor cafés that were evaluated during the study include the following topics:

- Pedestrian Safety, ADA and Accessibility: Competition for Sidewalk Space (e.g. canopies & awnings, street trees, streetlights, bike racks)
- Parking Implications (on-street and off-street)
- Curb Space Management and Pick Up and Drop Off (PUDO) zones
- Encroachments
- Privatization of Public Spaces/Plazas
- Building Code/Fire Protection Prevention Codes
- Regulatory Construct and Approval Process
- Land Use Considerations (including adjacency to residential uses)
- Enforcement Challenges
- Site Plan Implications
- Role of Design Guidelines

Overarching Study Themes

TOSAs were established to help restaurants and business establishments expand outdoor seating capacity during the COVID-19 pandemic, especially when indoor seating in restaurants was prohibited or limited. This included relief from certain County zoning regulations and guidelines for private property and the public right-of-way. This relief has provided support to Arlington’s restaurant community during a very challenging three years. As we consider how the community utilizes the public realm following the pandemic, it’s important to recognize the potential role that extending increased flexibility to Arlington’s restaurant business community may have in the resiliency of individual business and the industry at large. As such, early in the process staff developed three main overarching themes that shaped the 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”.

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- *Different Places and Spaces*- Expanded outdoor dining is not one-size fits all – different neighborhoods and the public realm within those neighborhoods may be more appropriate for outdoor dining than others.

Background

Continuity of Governance Ordinance (COGO) and TOSAs

Section 15.2-1413 of the Code of Virginia authorizes localities to adopt an ordinance to assure continuity in its government in the event of a disaster. On March 14, 2020, the County declared a local emergency to respond to the public health threat posed by COVID-19. On March 24, 2020, the County Board adopted its first edition of a COGO, which it had subsequently acted to amend on several occasions during the term of the local emergency. Up to and at the time of adoption, the Code of Virginia had permitted locally adopted COGOs to be in effect for up to six (6) months following the end of a declared disaster. In 2021, during a special session, the Virginia General Assembly amended §15.2-1413 to extend the six-month period to a 12-month period during which a COGO may be in effect following the end of a disaster.

At the July 19, 2022, recessed County Board meeting, the County Manager announced that on August 15, 2022, he would be rescinding the local declaration of emergency established for COVID-19. In his report, the County Manager recognized that, with respect to the TOSA provision (section 5 of the COGO), he may return to the County Board to request an extension of the Ordinance. During its January 21, 2023, meeting, the County Board voted to adopt the resolution to extend Arlington’s COGO for the maximum term of 12 months after the end of the local emergency, meaning that TOSAs would continue to be permitted until August 15, 2023, at which time they would be rescinded in its temporary status.

Overview of Existing Zoning Standards for Outdoor Cafes¹

Definition: Section 18.2 (General Terms Defined) of the ACZO defines an outdoor café as “an area that contains portable seating and tables, intended solely for the consumption of food and beverages that are also included in the standard menu of the restaurant, outside the exterior walls of the restaurant, excluding rooftops.”

Outdoor cafes are permitted as an accessory use in the ACZO, meaning that the outdoor café needs to be associated with an established restaurant.

Approval Process: Outdoor cafes are currently approved by two different means in Arlington:

1. By-right, approved by Arlington County staff, when the outdoor café is to be located on private property that is not within an easement area for public use. Outdoor cafes on

¹ The background provided includes guidance and regulations in place before the COVID-19 pandemic and are currently in place today for applicants if not pursuing a TOSA.

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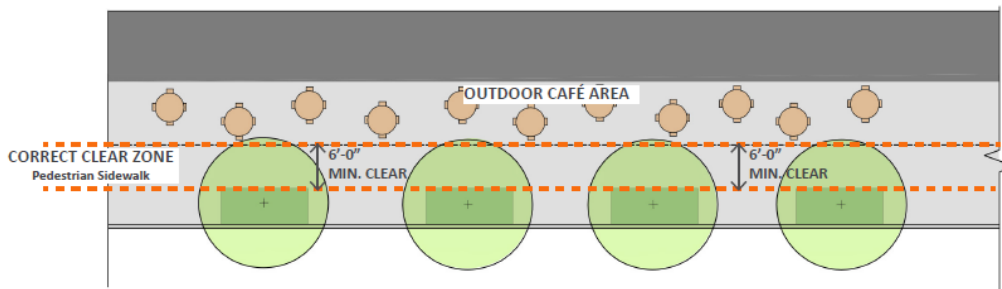
private property are reviewed for compliance with the ACZO by the Zoning Administrator, and the café's operator is issued a Certificate of Occupancy (CO) specifying the maximum number of seats permitted for the outdoor café.

2. Through County Board approval of a use permit, when the outdoor café is located within the public right-of-way or within an easement area dedicated for public use. Such easement areas are often plazas, courtyards, or similar open spaces provided by developers as part of the special exception site plan process in the form of privately owned public spaces (POPS).

Existing Zoning Standards for Outdoor Cafes

History: The ACZO was amended in 1978 to establish regulations for the administration and approval of outdoor cafes. The review and approval of outdoor cafes has evolved over the past 40 years.

In 2012, the County published Guidelines for Outdoor Cafes to provide guidance to business owners, citizens, 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 included recommendations for establishing sidewalk clear zones and for managing encroachments of canopies into public rights-of-way or easements. In 2013, the Guidelines for Outdoor Cafes were updated and the County Board approved a zoning ordinance amendment which included the current definition for outdoor cafés found in Article 18 (Definitions).



2013 Design Guidelines Layout Diagrams

In 2017, the County Board further amended the zoning ordinance to permit modifications of certain use standards as part of the use permit review process, which included the ability of the County Board to permit the number of seats in the outdoor café to exceed the number of seats inside the restaurant. This modification also included the provision regulating the hours of operation for piped-in music and entertainment.

Use Standards: Outdoor cafés which are permitted by-right must comply with the use design standards specified in §12.9.15. of the ACZO. The standards specify that the outdoor café may be located within a required setback, and that the fixtures and furnishings are not permanent and cannot be affixed to the ground. The café cannot be enclosed and can be open throughout the

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calendar year. The hours of operation of the café should be consistent with the hours for the restaurant. The hours of operation are restricted if the café is in a side yard, rear yard, or across an alley from a R or RA district. There are also restrictions for sound, audio, or video entertainment. Since outdoor cafés are accessory to the main restaurant, they must have fewer seats than the indoor portion of the restaurant (unless subject to an approved modification), and cafés are exempt from the parking requirements specified in Article 14 of the ACZO.

Use Permit Review: Typically, the ACZO use standards for outdoor cafés are used as a basis from which to develop use permit conditions for outdoor cafés subject to County Board approval. Staff on CPHD's Current Planning team review individual use permit applications for consistency with the outdoor café use standards in §12.9.15 as well as the general standards for use permit approval specified in §15.4 (Use Permits). Based on the specificities of each application, which can include proximity to pedestrians, proximity to residences, or other locational factors which have the potential to create adverse land use impacts, staff will recommend site-specific development conditions for approval by the Board to mitigate such impacts.

Modification Authority of Use Standards: Operators with outdoor cafés on private property may request County Board use permit approval for their outdoor café if they wish to provide different formats of audio/video entertainment than otherwise permitted in accordance with §12.9.15.A.7. Typical requests for modifications to this standard are from operators who intend to provide amplified music to the café patrons, or to modify the required operating hours so that audio/video entertainment can be provided later than 10:00pm Sunday-Thursday and/or 11:00pm on Friday and Saturday. The County Board's modification authority also extends to the use standard specified in §12.9.15.A.8 which requires the outdoor café to have fewer seats than the indoor portion of the restaurant with which the café is associated.

Existing Review Process for Outdoor Cafés

Outdoor cafés in Arlington face one of two approval paths. Cafés on private property are eligible for administrative approval per the Zoning Ordinance requirements. In contrast, outdoor cafés proposed within public rights-of-way (or other public spaces) require County Board special exception use permit approval. Applicable guidelines and regulations for outdoor dining may vary based on these two principal types:

1. *Cafés on Private Property: Approval by the Zoning Administrator:* Currently, if a proposed outdoor café is located on private property and complies with the use standards summarized above, it may be approved by the Zoning Administrator. The applicant is then required to submit a request for a Certificate of Occupancy (CO) through Zoning with involvement from the Inspection Services Division (ISD) and may need to obtain a building permit if it is determined that one is required during the review process. The fee for the CO application may vary and is dependent on the number of seats in the process outdoor café. The application process is currently administered through the Permit Arlington system.

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2. *Cafés in Public Rights-of-Way or easements for public use:* If the outdoor café is located in the public right-of-way or easements for public use, a use permit approval by the County Board is required in accordance with §15.4 (Use Permits). The applicant would follow the use permit application process and submit online through the Permit Arlington system. The use permit process typically takes three months from application submission to County Board consideration, and County Board meeting filing and advertisement deadlines dictates the timing for the review. Use permits for outdoor cafés are typically reviewed and approved on the County Board meeting's consent agenda. On average, there are approximately five outdoor café use permits reviewed per year. Following the public hearing and approval by the County Board, the applicant may proceed with filing for a Certificate of Occupancy and building permit if needed. The typical fee an applicant must pay the County to file for a use permit is approximately \$2,000.00. Actual costs may be greater due to costs associated with preparing the application and associated drawings, attorneys fees, and other related costs. and fixtures and furnishings for the café installation.

Temporary Outdoor Seating Areas (TOSAs)

In March 2020, the COVID-19 emergency led to strict, widespread public health measures to manage the spread of the virus during the global pandemic. Early on, the Governor of Virginia issued multiple executive orders, which included an initial prohibition against indoor dining at restaurants. This measure challenged restaurants and almost instantaneously affected the way most could do business. To help mitigate impacts to restaurants, between March and May 2020 the Commonwealth developed administrative regulations and guidelines for a streamlined approval process to permit temporary outdoor seating areas, conditioned upon the locality's approval. In response, Arlington County amended its COGO to set the foundation for establishing its own program for Temporary Outdoor Seating Areas (or TOSAs), established in late May 2020. This action unlocked the flexibility offered by the Commonwealth, while providing a means to accept applications from restaurants for expanded outdoor dining areas, which were then evaluated and often provided a special permit issued by the County Manager, on a case-by-case basis.

To date, Arlington's TOSA program has been considered a great success, providing hard-hit food and beverage establishments the resiliency to seat and serve patrons in outdoor areas previously used for parking, public space, sidewalks, alleys, lawns, and other areas. While no specific economic value has been ascribed to these metrics, business owners have consistently communicated how important the TOSA program has been to the economic sustainability and resiliency of their business. As of the date of this report, approximately 120 Arlington restaurants, bars, and cafés are currently operating TOSAs in response to experiences over the past three years during the COVID-19 pandemic.

While there may be general support for the TOSA program, there have also been concerns raised throughout the TOSA program and through the engagement process for the FOOD Study related

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to congested and/or blocked sidewalks and accessibility issues. In more densely populated areas, reducing sidewalk clear travel widths to a minimum of six-feet has constrained space for pedestrian circulation – leading to increased sidewalk congestion. Even worse, when outdoor seating areas are mismanaged or otherwise not managed in accordance with approved plans, they may narrow the clear zone to less than six-feet, or in some cases obstruct the sidewalk entirely. These sidewalk clearance challenges may be exacerbated by other objects often found blocking sidewalks as well, including shared mobility devices and A-frame signs. Other specific concerns raised during the TOSA program have primarily related to nuisances of noise and other undesirable activities in TOSAs established in parking lots abutting residential properties.



Examples of TOSAs located on public rights-of-way/ public sidewalks



Examples of TOSAs located on private off-street parking areas

TOSAs on Private Property

During the pandemic, (when indoor dining was limited or not permitted at all) many restaurants got creative and searched for any space they could find outdoors to offer expanded dining options for their customers. Many of the TOSAs installed on private property repurposed off-

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street parking spaces and converted them to outdoor dining patios with movable furnishings, shade structures, barriers, planters, and decorative lighting. Staff estimates there to be approximately ten of these types of TOSAs that remain in operation today. This type of TOSA was only allowable due to provisions within the COGO that set forth the temporary suspension of enforcing certain zoning regulations, such as parking requirements. In addition, for parking lots not exclusively controlled (leased) by the business, to be permitted TOSAs also needed to secure the owner’s permission for using such parking spaces for this use. Currently, under the existing ACZO (Article 14- Parking), this type of TOSA using parking spaces needed to meet a use’s parking requirement as an outdoor café would not be permitted. If adopted, the proposed ACZO text amendments would enable the County Board to allow the use of private parking for outdoor cafés.

TOSAs on Public Right-of-Way or Public Easement Areas

Like the TOSAs on private property, many of the restaurants found creative ways to provide expanded space for outdoor dining in the public right-of-way on sidewalks, on-street parking spaces, and plazas and courtyards subject to public easements. A majority of these TOSAs are in the transit corridors or Metro station areas where there is limited space on the sidewalk for outdoor dining. Streetscape elements, such as street trees, benches, bike racks, light-poles, utilities, and scooters are all competing for limited sidewalk space, and many TOSA operators faced limited options to expand. In some cases, TOSAs took up the entire sidewalk while accommodating through pedestrian movements in the parking lane or street for circulation. Other businesses with narrow sidewalks sought and received County permission to use on-street parking spaces in front of their business for outdoor dining. In such cases, the County provided reflective, protective bollards to make these spaces more visible and safer to use.



Examples of TOSAs located in on-street parking areas.

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Examples of TOSAs that utilized the entire sidewalk with pedestrian circulation temporarily relocated in the on-street parking area.

Review Process: Over the past few years, TOSAs have been reviewed administratively by staff using design and operational guidelines developed in 2020 at the beginning of the pandemic. Restaurants were required to submit an electronic application and obtain a TOSA permit. As State-level restrictions on indoor dining were relaxed or eliminated, restaurants with TOSAs could also request a Temporary Certificate of Occupancy (TCO) if they wanted to seat indoor dining rooms at or near 100 percent capacity and operate a TOSA at any capacity. A free code consultation with Inspection Services Division (ISD) was encouraged to discuss capacity, layout, and related details to ensure applicable codes were complied with. The County did not charge any fees to review and process TOSA applications during this time. TOSA permits have been approved and issued by the County Manager.

Analysis

Encouragement of Outdoor Cafes in Adopted Policies

Arlington Retail Plan- - The 2015 [Retail Plan](#) encourages the establishment of outdoor cafés in Arlington as measures to improve the pedestrian experience in key retail corridors. Outdoor cafés have been permitted and regulated by the ACZO in the majority of commercial/mixed use districts since 1978. The Retail Plan’s Action Plan encourages a study of “the application process that licenses the use of the public realm, with sufficient criteria to best accommodate outdoor cafés, design elements, merchandise displays, vendors and food trucks.” The implementation plan identifies this administrative license process as a short-long term action.

The Master Transportation Plan (MTP) Pedestrian Element (2011)- The MTP 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. The MTP policies encourage

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sidewalk cafés and other streetscape enhancements in the sidewalk, and to locate private encroachments in the sidewalk area with sensitivity to clear sidewalk widths.

Clear Zones: the MTP defines clear zones as the portion of the public sidewalk space provided expressly for accessible pedestrian mobility. It is usually located between the “landscape & utility” zone and the building shy or “café” zone. The clear zone should be unobstructed and a relatively smooth surface that complies with ADA-accessibility standards. The MTP requires a minimum clear zone of six feet wide in commercial, mixed-use, or other high-density areas, however, the plan recognizes that clear zones may be specified by County sector plans, streetscape standards, or site plan conditions, and in many cases the specified required width will exceed the six-foot minimum.

Public Spaces Master Plan (PSMP)- Several goals are identified in the PSMP that reference outdoor dining in parks and privately owned public spaces (POPS).

- Goal 1.5.18 identifies that private businesses are appropriate in POPS in certain contexts, but that they should be identified early in the process, not retrofitted through a later program.
- Goal 1.10.1 encourages activation of POPS, though mostly as one-off events, rather than permanent outdoor seating.

FOOD Study Analysis

During Phase 1 of the FOOD study, staff evaluated which aspects of the TOSA program experience should be considered in updating the County’s established regulations and policies for outdoor cafés. Through this evaluation, several opportunities to improve outdoor dining were noted, and common issues were also documented in the Phase 1 Engagement. Related feedback included concerns with congested sidewalks, safety, accessibility, circulation and parking. The staff analysis and considerations for each of these topic areas are summarized in the following tables:

Pedestrian Safety & Accessibility

Identified Issue	Opportunities	Constraints
Clear Sidewalks	<ul style="list-style-type: none"> ▪ Establish a minimum 6’ clear path dimension, or as approved in site plan conditions or use permit for greater clear widths ▪ Clear path should be flat, paved surface & ADA compliant ▪ Clear path should be straight and avoid jogs 	<ul style="list-style-type: none"> ▪ Competing streetscape elements (street trees, furnishings, utilities, etc.) ▪ Existing conditions with narrow sidewalks that do not have space for 6’ clear & a café
Pedestrian Circulation	<ul style="list-style-type: none"> ▪ Provide safe, accessible circulation on sidewalks only 	<ul style="list-style-type: none"> ▪ Existing conditions with narrow sidewalks that do not have space for 6’ clear & a café

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	<ul style="list-style-type: none"> ▪ Sidewalk circulation activates building frontage and streetscape 	<ul style="list-style-type: none"> ▪ Some TOSAs currently using street or parking lane for circulation
Barriers	<ul style="list-style-type: none"> ▪ Use barriers to define café area ▪ Barriers as detective elements for the visually impaired ▪ Need to ensure barriers stay in place as approved 	<ul style="list-style-type: none"> ▪ Barriers not affixed to the ground may move or expand creating narrower clear paths

Parking and Curb Space Management

Identified Issue	Opportunities	Constraints
On-street parking (public right-of-way)	<ul style="list-style-type: none"> ▪ Improve safety by maintaining on-street parking as buffer between street traffic and cafes ▪ Parklets may be installed, but must remain open to the public-not used as outdoor café for business 	<ul style="list-style-type: none"> ▪ Cafés that utilize the furnishing zone (space between clear sidewalk and curb) need to provide adequate space for access to parked vehicles
Off-street parking (private property)	<ul style="list-style-type: none"> ▪ Establish clear ACZO standards to permit café seating in parking spaces ▪ Cafés in parking areas help activate the space ▪ Cafés provide eyes on the street providing a safer environment ▪ Ensure that accessible parking spaces, loading and access are not impacted 	<ul style="list-style-type: none"> ▪ Consider shared parking lots and adjacent commercial uses with varying parking requirements ▪ Consider neighboring residential properties and adverse impacts, such as noise
Pick-up/ drop-off (PUDO) zones	<ul style="list-style-type: none"> ▪ Ensure that existing PUDOs in the public right-of-way are not affected by the expiration of TOSAs, but could be reconsidered on a case-by-case basis as part of the County’s normal curb space management process 	<ul style="list-style-type: none"> ▪ Impacts to on-street parking ▪ Enforcement
Curbside pick-up/ delivery operations	<ul style="list-style-type: none"> ▪ Maintain a five-foot-wide clear path, which should be provided from the building entrance to the curb 	<ul style="list-style-type: none"> ▪ Competing streetscape elements (street trees, furnishings, utilities, etc.)

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Key Framework Elements

Encroachment Ordinance & Outdoor Café License

The 2015 Arlington County Retail Plan identified in its implementation plan a recommendation to study how to develop an administrative process to license the private use of the public right-of-way and to undertake a major revision to the County’s Encroachment Ordinance process. Recently, DES Real Estate Bureau staff has worked with the County Attorney’s Office to draft a proposed ordinance (new Chapter of the County Code) that would allow encroachment of certain types of private structures into certain public spaces without requiring County Board approval. A request to advertise a public hearing on this proposed Encroachment Ordinance is the subject of another staff report for the June 2023 County Board Meeting. The ordinance (if adopted) would require a County-issued license for the private outdoor café use of any public space, as well as future consideration of a payment application fee and annual license fee, based on the amount of the café square footage encroaching into the public rights-of-way or easement areas. The draft code chapter includes specific design standards and other requirements applicable to café use of public space. Adoption of this new chapter of the County Code would allow the County to align its practices with, and apply similar processes to, those already available in other Virginia local jurisdictions. The outdoor café and the License Holder will also be required to comply with all the terms and conditions of the proposed Ordinance and with all applicable provisions of the Zoning Ordinance, Building Code, and any County, state, or federal laws and regulations, including any applicable use permit and/or certificate of occupancy.

Zoning Ordinance Amendments (Attachment 1)

Staff analyzed the Zoning Ordinance and is proposing the following changes for expanded outdoor dining options on public and private property.

Proposed Text Changes:

§7.1.3- Commercial Mixed Use (C) Districts Use Table- Staff has drafted updates to the use table to reflect proposed changes for the approval process for outdoor cafés on private property, public right-of-way and private property within a public easement or other real property interest dedicated or conveyed for public use.

§8.1.3- Industrial (M) Districts Use Table- Staff has drafted updates to the use table to reflect proposed changes for the approval process for outdoor cafés on private property, public right-of-way and private property within a public easement or other real property interest dedicated or conveyed for public use.

§12.9.15- Outdoor Cafés Use Standards- Staff has drafted amendments to the ACZO, Sections (§) 12.9.15 Outdoor Cafés to reflect proposed changes based on staff analysis and community feedback.

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1. For outdoor cafes on public rights-of-way, the proposed provisions would:
 - Permit outdoor cafés by administrative approval subject to the proposed revisions to the AZCO use standards, which include:
 - Outdoor cafes subject to a new proposed County Code Chapter 70: Encroachments into Public Spaces
 - Prohibit sound and audio or video entertainment when the outdoor café is located in side or rear yards abutting or across an alley from an R or RA district
 - A clear, unobstructed sidewalk in a straight path with a minimum of 6-feet in width;
 - The location of the outdoor café should be immediately in front of the restaurant and not in front of adjacent uses; and

2. For outdoor cafes on private property only (property that is not subject to County easements or rights-of-way), the proposed Ordinance revision would:
 - Permit outdoor café furniture to be affixed to the ground
 - Prohibit sound and audio or video entertainment when the outdoor café is located in side or rear yards abutting or across an alley from an R or RA district
 - Permit outdoor cafés on private property within parking spaces provided that the outdoor café does not occupy ACZO required parking spaces for the interior portion of the restaurant
 - Allow modification of ACZO-required parking for outdoor cafés subject to approval of a use permit by the County Board and compliance with the proposed standards that include:
 - Maximum size of the outdoor café not to exceed 612 square feet (the equivalent of four parking spaces);
 - Location of the outdoor café not to obstruct accessible parking spaces, vehicular drive aisles, pedestrian pathways, loading and access to adjacent uses;
 - Demonstration that the modified parking is sufficient to meet the restaurant’s parking demand and will not create negative impacts to on-street parking nearby; and
 - The outdoor café would remain paved in accordance with improvements required in Article 14 and shall comply with provisions of the Virginia Uniform Statewide Building Code (VUSBC) and the Arlington County Fire Prevention Code.

3. For outdoor cafes on private property within a public easement or other real property interest dedicated or conveyed for public use (plazas, courtyards, etc.), the proposed Ordinance revision would:
 - Continue to maintain the ability to consider proposed outdoor cafés in public easement areas such as plazas, courtyards, etc. through special exception use permit approval by the County Board. Special exception use permit review and approval by

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the County Board is practiced currently, and it is expected that these types of cases would be renewed periodically to ensure there are no negative impacts to the public space.

§14.3 Parking- Staff has drafted changes to permit outdoor cafés located within parking spaces in a private parking area subject to use standards proposed in §12.9.15 summarized above. The proposed provisions would:

- Allow the conversion of parking space to be utilized as an outdoor café;
- Allow outdoor cafés accessory to a restaurant as an encroachment into parking spaces; and
- Allow for the use of required parking spaces for use as an outdoor café.

Article 18 - Definitions, §18.2- Staff recommends a new term definition for Public space, privately-owned:

- *“An open space such as a park, plaza, trail, or other recreational use on privately-owned property that has been conveyed or granted as an amenity for public access and use through an easement, license agreement, or other similar legal instrument, excluding sidewalk, street and utilities easements.”*

Draft Design Guidelines for Outdoor Cafes

Staff is recommending several key updates to the administrative Design Guidelines (last updated in 2013) that reflect the proposed changes to the process review and approval processes as well as the ACZO use standards for outdoor cafes on (1) private property, (2) within the public right-of-way, and (3) on private property within a public easement or other private property interest dedicated or conveyed for public use. The Design Guidelines will demonstrate how all spaces can be activated to create an enhanced experience for people of all abilities while increasing opportunities for businesses to expand indoor dining operations into outdoor operations. The updated guidelines will serve as an all-in-one document and resource for applicants with clear step-by-step information about the process, permitting, design guidelines and relevant policies and regulations applicable to all outdoor cafés.

In addition, the Design Guidelines will serve as a comprehensive guide and resource and will outline the responsibilities and requirements for restaurant owners, provide step-by-step instructions to apply for a permit and provide a menu of design options to fit the needs of individual businesses, commercial districts and neighborhoods. Other helpful and applicable resources, such as guidance on tents and heaters, furniture, fences/barriers, operational and accessibility requirements will be included.

All information in the guidelines document will also be provided on a new County web page to streamline the submission process for applicants. Applicants will be strongly encouraged to read the Design Guidelines and web page before they begin the process of developing or transitioning their outdoor space. The guidelines will be updated periodically to be consistent with and respond to relevant changes in the industry, relevant design standards and policies.

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The draft Design Guidelines (Attachment 2) will be reformatted with graphic design updates and editorial changes in July prior to the County Board action on the proposed zoning ordinance amendments.

Key Elements of the Framework for a Permanent Outdoor Dining Program

The three key elements outlined above including: 1) Outdoor café licenses approved through an Encroachment Ordinance, 2) Zoning Ordinance Amendments, and 3) Design Guidelines, combined, will provide a menu of options to allow for the creation of a variety of quality outdoor places for dining, walking, biking, and other enjoyable public interaction for the post-pandemic world. The proposed framework also provides opportunities to support businesses to ensure that outdoor dining investments that improve public spaces can be equitably enjoyed across the County.

Proposed Outdoor Café Permit Process:

All new outdoor cafés, whether on public or private property, will need to comply with applicable County Codes and the ACZO. The business owner will need to obtain a Building Permit and a Certificate of Occupancy (CO) for the outdoor seats. If the café is in the public right-of-way or other space with a public real estate interest (such as an easement), an Outdoor Café License will be required.

All new outdoor cafés in the public right-of-way or easement area for public use

For any restaurant that wishes to provide a new outdoor café in the public right-of-way or public easement area will need to comply with the ACZO and obtain an Outdoor Café License, a Building Permit and a CO for the outdoor seats.

All outdoor cafés on private property

Outdoor cafés on private property will need to comply with the ACZO use standards. Any outdoor café that wishes to use ACZO-required parking spaces will need to submit for a use permit subject to approval by the County Board.

Existing Outdoor Café Use Permits (with no TOSA)

For existing businesses with an approved outdoor café use permit, staff will review the CO permits to ensure compliance as well as the outdoor dining plan on file. If the CO is met and there are no code violations, the business will need to obtain an Outdoor Café License when the use permit is due for renewal, at which time the use permit will be discontinued, and the business will need to comply with the Outdoor Café License, VUSBC and ACZO.

Existing Outdoor Café Use Permits (with TOSA)

For existing businesses with an approved outdoor café use permit and an active TOSA, staff will review to determine if the TOSA can be modified to match the approved use permit and the approved seating capacity on the CO. If the TOSA cannot be modified to match these two items,

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the business owner will need to adjust the layout of the outdoor café to match, or pursue a use permit or site plan amendment, whichever is the appropriate case.

Outdoor café located in a privately owned public space (POPS)

The Public Spaces Master Plan adopted in 2019 defines privately-owned public space 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.” These spaces typically have a public access easement or are governed by site plan conditions to allow the public use of the space. Any outdoor café that is proposed within a POPS will be required to submit for a use permit subject to approval by the County Board. This is the current practice today and staff is recommending continuing this process. Staff would refer to the Public Spaces Master Plan Design Guidelines for POPS as part of the review, along with any site plan conditions or community discussions that helped shaped the design.

Community Engagement

This study was primarily informed by community engagement that involved a broad range of Arlington’s community, including businesses, residents, and other stakeholders. Staff developed a community engagement plan consisting of the following phases:

Phase 1: Preliminary Information Gathering, Analysis and Community Engagement Design

Early in Phase 1 of the study, staff conducted research on both permanent and temporary outdoor café approval frameworks which enabled staff to identify key differences between them. Staff also identified several benchmark urban communities that recently amended their outdoor café regulations, to better understand emerging trends.

As part of the information gathering process, staff developed a survey to understand more from the community TOSA experience and received approximately 2,000 public feedback form responses from September 21 through November 4, 2022. Two virtual roundtable events, held on October 26, 2022, and November 3, 2022, provided additional means for input. The input received was used to inform a draft framework with recommendations that was presented back to the community in Phase 2. A summary of the Phase 1 Community Engagement is attached to this report as Attachment 3.

Phase 2: Community Review of Future of Outdoor Dining in Arlington Alternatives

In this phase, staff synthesized research and findings from Phase 1 into a framework for preliminary recommendations for outdoor dining in the future. Development of these preliminary recommendations was further informed by staff site visits of TOSAs (and permanent outdoor cafés, as necessary) capturing what is and isn’t working well.

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Phase 3: Advisory Commission Review Prior to Advertisement

Zoning Committee (ZOCO) of the Planning Commission – At the May 9, 2023, ZOCO meeting, staff provided an overview of the study purpose and goals including: background of existing policies and zoning regulations for outdoor cafes, an overview of the TOSA program, a summary of feedback received during Phase 1 of the study, and preliminary recommendations for both public and private property. The Commissioners present at the meeting expressed general support for the recommendations as presented, and also asked a range of related questions. Staff will present draft ACZO text amendments to ZOCO at its next meeting on June 6, 2023.

Transportation Commission (TC): Staff presented the study recommendations to the TC for information on May 25, 2023. The commission was supportive of the proposed recommendations and noted the need for a comprehensive transportation study of commercial parking ratios as an item that needs to be prioritized. A commissioner recommended that staff consider adding a reference in the Design Guidelines that includes the recent U.S. Food and Drug Administration update to the food code that allows dogs on restaurant patios and other outdoor dining areas. Staff will consider and will present to the TC for action on June 29, 2023.

Pedestrian Advisory Committee (PAC): Staff will be presenting the study recommendations to the PAC on June 5, 2023.

Arlington Chamber of Commerce: Staff will be presenting the study recommendations to the Chamber on June 7, 2023.

Outreach Methods: Since the establishment of TOSAs, staff has continued to provide updates to the Chamber of Commerce and Arlington’s business community about the status of TOSAs. As this is a request to advertise, prior to the public hearing, staff will do additional targeted outreach regarding the proposed amendments.

Staff also established a project web page to provide updates and general information for restaurants and the broader community. The web page provides a summary and brief background on the impetus for the study, while also providing full access to meeting materials including recordings, staff presentations and analyses. The web page also provided a means of making the process and study progress more accessible to those unable to attend the virtual meetings. The webpage also provides access to pertinent written correspondence.

Conclusion

Outdoor cafés activate the street-level pedestrian environment, increase vibrancy and economic stability in commercial districts, and make public places more social and active. During the COVID-19 pandemic, the County implemented the TOSA program to support local businesses through flexible design and operational guidelines, a streamlined permitting process, and

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additional support where needed. This resulted in increased outdoor dining in neighborhoods across the County, and prompted the updates proposed with the requested advertisement.

Staff's review of the proposed use standards in §12.9.15 and the proposed administrative review process for cafés in the public right-of-way and public easement areas minimize the potential for adverse impacts on surrounding properties, and the 2015 Arlington County Retail Plan advocates for the establishment of outdoor cafés to promote the retail and pedestrian experience. For these reasons, staff recommends that the County Board adopt the attached resolution to authorize advertisement of public hearings by the Planning Commission on July 3, 2023, and the County Board on July 15, 2023.

Anticipated Schedule

- June 6, 2023: ZOCO Meeting
- June 10/13, 2023: County Board Request to Advertise
- 3, 2023: Planning Commission final consideration and recommendation
- July 15, 2023: County Board final consideration and action

Note: Several other commissions and committees will also be engaged before July County Board meeting.

Attachments

- Attachment 1: Draft Zoning Text

Zoning Ordinance Amendment – Outdoor Cafes

Proposed amendments are shown with **bold underline** to denote new text, and **~~bold strikethrough~~** to denote deleted text.

Article 7. Commercial/ Mixed Use (C) Districts

§7.1. Commercial/Mixed Use (C) Districts Use Tables

§7.1.3. Commercial/mixed use (C) districts accessory use table

Accessory uses in commercial/mixed use (C) districts shall include the following uses, activities and structures:

COMMERCIAL/MIXED USE (C) DISTRICTS ACCESSORY USE TABLE

Use Types	RA4.8	R-C	RA-H	RA-H-3.2	C-1-R	C-1	MU-YS *	C-1-O	C-O-1.0	C-O-1.5	C-O-2.5	C-O	C-O-A	C-O ROSSLYN	C-O CRYSTAL CITY	C-2 *	C-TH *	C-3 *	C-R *	Use Standards
KEY: P = allowed by-right; U = requires use permit approval; S = requires site plan approval; Blank cell = not permitted																				
Outdoor cafés associated with a <u>food establishment</u> restaurant on private property <u>or within public sidewalk, street and/or utilities easement</u>	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	§12.9.15
Outdoor cafés associated with a <u>food establishment</u> restaurant <u>within privately owned public spaces on public right-of-way or easement for public use</u>	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	§12.9.15

Article 8. Industrial (M) Districts

§8.1. Industrial (M) Districts Use Tables

§8.1.3. Industrial (M) districts accessory use table

Accessory uses in Industrial (M) districts shall include the following uses, activities and structures:

INDUSTRIAL (M) DISTRICTS ACCESSORY USE TABLE

Use Types	CM*	M-1*	M-2*	Use Standards
KEY: P = allowed by-right; U = requires use permit approval; S = requires site plan approval; Blank cell = not permitted				
Outdoor cafes <u>associated with a food establishment on private property or within public sidewalk, street and/or utilities easements</u>	P	P	P	§12.9.15
<u>Outdoor cafes associated with a food establishment within privately owned public spaces</u>	U	U	U	§12.9.15

Article 12. Use Standards

§12.2. Use Categories

§12.2.4. Public, civic and institutional use categories

F. Parks and open space

1. ...

2. Examples

Examples of parks and open space include botanical gardens; cemeteries and mausoleums; community gardens; country clubs and golf courses; mini-parks; memorial parks; forest and nature preserves; neighborhood parks; parks and play fields; privately owned public spaces; reservoirs; squares, plazas or greens; and tot lots and playgrounds.

§12.9. Accessory Use Standards

§12.9.15. Outdoor cafés

Outdoor cafes may be allowed only as accessory to otherwise allowed food establishments ~~restaurants~~, subject to the following requirements:

A. ~~On private property; no easement or other real property interest dedicated or conveyed for public use~~ Outside of public rights-of-way or easements for public use

Outdoor cafes are ~~permitted~~ allowed, subject to approval by the Zoning Administrator, when they are located on private property, outside of any public easement or any other real property interest dedicated or conveyed for public use, subject to the following standards: outside of public rights-of-way or easements for public use and comply with the following, except that the County Board may modify the requirements of §12.9.15.A.7 and §12.9.15.A.8 by use permit or site plan, pursuant to §15.4 and §15.5, respectively.

1. An outdoor cafe, including any canopies or covers associated with such a café, shall be permitted within the required setback. Fixtures and furnishings in the outdoor café, such as but not limited to said canopies, or covers tables, chairs, server stations, bars, heating/cooling elements, fences and barriers may be affixed to the ground.

~~2. Except as provided in §12.9.15.A.1 above, all fixtures and furnishings in the outdoor café including, but not limited to, tables, chairs, bar, server stations and sources of heat shall be portable and not affixed to the ground, building or other permanent structures. Permanent railings or fences may be permitted only where and to the extent that the building code requires an affixed fence for safety purposes.~~

~~3.2.~~ Outdoor cafés shall not be enclosed, except as specified elsewhere in the ordinance.

~~4.3.~~ Except as may be required by site plan or use permit condition or as otherwise provided in §12.10.5.B.2(b), outdoor cafés ~~are not required to be closed during a season and~~ may be open any day during the year.

51 **54.** The hours of operation of an outdoor café shall not extend past the normal operating
52 hours of the principal main-use, the food establishmentrestaurant.

53 **65.** Outdoor cafés located in side or rear yards abutting or across an alley from an “R” or
54 “RA” district shall ~~not~~ operate only between the hours of 9:00am-11:00pm~~before 9~~
55 ~~am or after 11 pm.~~

56 **76.** Sound or audio or video entertainment, including but not limited to television or
57 audio device playing of music and/or sports events, may be piped into or played so
58 as to be visible or audible from the outdoor café area between the hours of 9:00am-
59 10:00pm on Sundays through Thursdays, and between the hours of 9:00am-
60 11:00pm on Fridays and Saturdays. For outdoor cafes located in side or rear yards
61 abutting or across an alley from an R or RA district, such sound or audio or video
62 entertainment shall be prohibited.~~No sound or audio or video entertainment,~~
63 ~~including but not limited to television or radio playing of music and/or sports~~
64 ~~events, may be piped into, or played so as to be visible or audible from the outdoor~~
65 ~~café area before 9 am or after 11 pm on Fridays and Saturdays and before 9 am or~~
66 ~~after 10 pm on Sundays through Thursdays.~~

67 **(a)** The County Board may modify this requirement subject to the approval of a use
68 permit as specified in §15.4.

69 **87.** Outdoor cafés shall have fewer seats than the indoor portion of the food
70 establishmentrestaurant.

71 **(a)** The County Board may modify this requirement subject to the approval of a use
72 permit as specified in §15.4.

73 **98.** Outdoor cafés shall be exempt from any parking requirements, unless otherwise
74 required by the County Board when approving a use permit or site plan.

75 **9.** Outdoor cafés may be located within off-street parking spaces, so long as the
76 outdoor café does not occupy parking spaces necessary to meet the required
77 amount of parking specified in §14.3.7.A.

78 **(a)** Subject to the approval of a use permit by the County Board as specified in §15.4,
79 outdoor cafes of up to 612 square feet may be located within required parking
80 spaces when the County Board finds that:

81 **(1)** The outdoor café is located in a manner that would not obstruct vehicular
82 travel aisles and pedestrian pathways within the parking area;

83 **(2)** The remaining available off-street parking is sufficient to meet the principal
84 food establishment’s parking demand and would not cause unreasonable
85 traffic congestion or reduced on-street parking access on nearby streets;

86 **(3)** The outdoor café would not obstruct required loading spaces or access to
87 adjacent uses;

88 **(4)** The parking spaces upon which the outdoor café is located remain
89 improved in accordance with the paving and other associated
90 improvements as specified in §14.3.4 for the duration of the use permit’s
91 validity; and,

92 (5) The outdoor café is located within parking spaces that the applicant has the
93 legal right to utilize through lease agreement or similar authorization.

94 **B. On public sidewalks located within public sidewalk, street and/or utilities**
95 **easements. Within public rights-of-way or easements for public use.**

96 Outdoor cafes ~~may be are~~ permitted on public sidewalks located within easements for public
97 sidewalks, utilities and/ or street easements so long as they are not in a street travelway or
98 public parking space, within public rights-of-way or easements for public use subject to
99 approval of a use permit by the County Board as provided in §15.4 the following
100 standards:

101 1. Outdoor cafes on public sidewalks located within public sidewalk, street and/or
102 utilities easements shall be subject to the standards specified in Arlington County
103 Code Chapter 70: Encroachments into Public Spaces.

104 2. Outdoor cafes shall not be enclosed, except as specified elsewhere in this ordinance.

105 3. Except as may be required by site plan or use permit condition or as otherwise
106 provided in §12.10.5.B.2(b), outdoor cafes may be open any day during the year.

107 4. The hours of operation of an outdoor café shall not extend past the normal
108 operating hours of the principal use, the food establishment.

109 5. Sound or audio or video entertainment, including but not limited to television or
110 audio device playing of music and/or sports events, may be piped into or played so
111 as to be visible or audible from the outdoor café area between the hours of 9:00am-
112 10:00pm on Sundays through Thursdays, and between the hours of 9:00am-
113 11:00pm on Fridays and Saturdays.

114 (a) The County Board may modify this requirement subject to the approval of a use
115 permit as specified in §15.4.

116 6. Outdoor cafes shall have fewer seats than the indoor portion of the food
117 establishment.

118 (a) The County Board may modify this requirement subject to the approval of a use
119 permit as specified in §15.4.

120 7. Outdoor cafes shall be exempt from any parking requirements, unless otherwise
121 required by the County Board when approving a use permit or site plan

122 8. The location of the outdoor café shall allow for an unobstructed pedestrian clear
123 zone of at least 6 feet wide on the public sidewalk. The pedestrian clear zone must
124 be a consistently straight path from the closest obstructions on both sides. In
125 instances where a site plan or use permit condition would require a pedestrian clear
126 zone greater than 6 feet in width, the site plan or use permit condition shall
127 supersede this use standard.

128 9. Outdoor cafes shall be located immediately in front of the food establishment and
129 shall not be located in front of adjacent ground-story uses.

- 130 C. In privately owned public spaces
131 1. Outdoor cafes are permitted within privately owned public spaces as defined in
132 §18.2 subject to the approval of a use permit as specified in §15.4 when the County
133 Board finds that:
- 134 (a) The privately owned public space was not provided as a community benefit or
135 amenity for the purpose of earning additional height or density in accordance
136 with §7.15.4, §7.16.5, and/or §15.5.9;
 - 137 (b) The outdoor café’s location would not unreasonably obstruct or deter public
138 access to and use of pedestrian pathways within the privately owned public
139 space;
 - 140 (c) The outdoor café’s location would not unreasonably obstruct or deter public
141 access to and use of points of interest and other landmark design features within
142 the privately owned public space; and,
 - 143 (d) The outdoor café would be a minor, subordinate feature that occupies a limited
144 amount of square footage relative to the overall size of the privately owned
145 public space.
- 146 2. Outdoor cafes within privately owned public spaces shall be subject to the
147 standards specified in Arlington County Code Chapter 70: Encroachments into Public
148 Spaces.

149 **CD.** In M districts
150 In addition to the provisions of §12.9.15.A, ~~and~~ §12.9.15.B, ~~and~~ **§12.9.15.C**, outdoor cafes
151 in M districts may be enclosed up to ten months per year, subject to approval of a use
152 permit by the County Board as ~~specified~~**provided** in §15.4.
153

Article 14. Site Development Standards

§14.3. Parking and Loading

§14.3.2. Reduction of parking, standing or loading areas

No parking area, parking space, standing space or loading space which existed at the time this zoning ordinance became effective or which subsequent thereto is provided shall thereafter be relinquished or reduced in any manner below the requirements established in this zoning ordinance except as may be permitted by **§12.9.15 or** §16.5.

§14.3.3. Reduction of parking, standing or loading areas

The requirements set forth in this article with respect to the location or improvement of parking, standing and loading space shall apply to all such space that is provided for any use, whether said space is provided in accordance with the requirements of this zoning ordinance, or said space is voluntarily provided. Parking, standing and loading space shall comply with the following regulations:

- 167 A. ...
168 ...
169 J. **Conversion of parking, standing or loading spaces**
170 No parking areas, parking spaces, standing spaces or loading spaces required by this
171 zoning ordinance shall be converted to any other use, which other uses include, without
172 limitation, living space, storage, home occupation or other uses.
- 173 **1. Notwithstanding the provision specified in §14.3.3.J, parking spaces and/or a**
174 **portion of a private parking area may be utilized as an outdoor café accessory to a**
175 **food establishment as specified in §12.9.15.**
- 176 K. ...
177 L. **Encroachment into parking spaces**
178 No encroachment into parking spaces that reduces the parking spaces' width, length or
179 height clearance shall be permitted unless otherwise allowed by the zoning administrator.
- 180 **1. Notwithstanding the provision specified in §14.3.3.L, outdoor cafés accessory to a**
181 **food establishment may encroach into parking spaces as specified in §12.9.15.**

182 **§14.3.5. Required off-street parking and standing space**

183 Parking or standing spaces shall be provided for each use, as permitted in its respective
184 classification, in not less than the amounts set forth herein for every building, or addition
185 thereto, and for all uses of land hereafter established or expanded:

- 186 A. **Use of parking or standing space**
187 Parking or standing space required by this zoning ordinance shall be used only for those
188 purposes. Any other use of said space, including any repair work or servicing of any kind,
189 shall be deemed to constitute a separate commercial use of said space in violation of the
190 provisions of this zoning ordinance.
- 191 **1. Notwithstanding the provision specified in §14.3.5.A, required parking or standing**
192 **spaces may be used as an outdoor café accessory to a food establishment as**
193 **specified in §12.9.15.**

195 **Article 18. Definitions**

196 **§18.2. General Terms Defined**

197 **Public space, privately owned. An open space such as a park, plaza, trail, or other recreational use on**
198 **privately-owned property that has been conveyed or granted as an amenity for public access**
199 **and use through an easement, license agreement, or other similar legal instrument, excluding**
200 **sidewalk, street and utilities easements.**