



Department Source: Community Development - BSD

To: City Council

From: City Manager & Staff

Council Meeting Date: December 2, 2019

Re: Sidewalk Cafes with Right of Use Agreements

Executive Summary

This report is a companion to the Council report on the recent Council bill to amend chapters 4 and 24 of the municipal code as they pertain to sidewalk cafes. Because there are selected cafes that have right-of-use permits approved through a separate process, this report reviews the standards and enforcement applicable to those cases. The ordinance has minimal direct impact on the existing right of use agreements. Council may review those agreements individually, however, and take appropriate action should issues be identified.

Discussion

Sidewalk cafes are permitted downtown subject to compliance with standards for the placement and operation of those areas. Ordinarily fixed improvements are not permitted, however the Council may consider right of use permits for proposed encroachments on the public right of way. These may take several forms, including installation of steps, decorative planters, overhead walkways, and in the case of sidewalk cafes, fixed enclosures.

When in season, the downtown has approximately 29 sidewalk cafes in front of businesses. The majority of the cafes place movable tables and chairs and often a simple barrier; the latter is a requirement if alcoholic beverages are served. These are approved administratively. Several restaurant operators have taken the additional step of requesting a right-of-use permit and agreement from the City Council to place fixed improvements within the public right-of-way. The three "right-of-use" sidewalk cafés are:

- Room 38 (January 2017)
- Fuzzy's Taco Shop (April 2018)
- Glenn's Café/Tiger Hotel (May 2013)

The sidewalk café ordinance amendments do not change the status of the right-of-use agreements. Each operates according to its own agreement. Room 38 (S.B.J. Holdings L.L.C) entered two agreements as steps to approval of its café area. The first agreement authorized removal of a parking space on Walnut and associated redesign of the Avenue of the Columns streetscape on the southeast corner of Eighth & Walnut, to coordinate with the intersection redesign that included removal of a traffic signal, shorter crosswalks, and a pedestrian crossing signal – and accommodate the future café area. The second agreement granted the owner of Room 38 a right-of-use permit for "installation and maintenance of awning and fencing associated with an outdoor patio."



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What is described as an outdoor patio in the agreement operates in fact as a three-season room for the restaurant. The 60-inch clear path for sidewalk accessibility winds around the café and there is not visible accessibility (that is, the continuity of the sidewalk cannot be seen from either side of the cafe). This differs from the standard in the sidewalk café ordinance for ordinary sidewalk cafes

Section 4.4 of the agreement allows the city, in the exercise of the public interest, to require that the Licensee relocate or reinstall any of the private facilities upon reasonable notice. The private use is subordinate to the public need for the sidewalk.

Fuzzy's Taco Shop (Columbia Restaurant Investors #1 LLC) was granted a right-of-use agreement to allow installation and maintenance of a private railing, posts, and string lighting in the Locust Street right-of-way. This café was installed as the Rise on 9th sidewalk restoration was nearing completion. The barrier was originally specified as a floating (not fastened) fence. The fence required a change from the original plan dimensions to accommodate the 60 inch clear zone near the street intersection as a replacement signal pole was put in place. The sidewalk around the café has better visible continuity but occasionally the parking of bicycles outside the confines of a nearby bike rack cuts into the 60-inch clear area.

The Fuzzy's Taco Shop right of use agreement has the same relocation or removal of facilities provisions (Section 4.4) as the agreement with Room 38.

The outdoor café outside of Glenn's Café may be thought of as placement of unfixed seating and tables and chairs after the Tiger Hotel received authorization for a "heated sidewalk loop, architectural planters, and electrical service to four tree grates" in 2013 (with additional approval of the heated sidewalk system in 2016).

The 60-inch clear pathway between this café and the restaurant is straight and generally clear of obstructions. Care must be taken entering the Eighth Street crosswalk on foot however because the café is close to the street corner.

The enforcement provisions in the Tiger Hotel agreement are formatted differently but are similar to the other two agreements. City use of the right-of-way for public purposes remains the priority. The agreement is in effect until canceled by the City of Columbia, which must provide a minimum six-month notice in the event the City elects to terminate the agreement.

As staff has worked with the Downtown Community Improvement District on amendments to the sidewalk café ordinance, it has become apparent that the more intensive cafes with the right-of-use agreements have driven the desire to tighten up the sidewalk café standards. Since right-of-use agreements are by nature exceptions to the ordinance (for example allowing improvements to be fastened to the sidewalk), more detailed plan and elevation drawings should be made part of future agreements.



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Nationally urban downtowns are challenged with competing demands for public sidewalk and curb space. While this competition is an indicator of a vibrant downtown, ordinances and agreements concerning the use and management of public right of way should be reviewed periodically.

Fiscal Impact

Short-Term Impact: None

Long-Term Impact: None

Vision & Strategic Plan Impact

Vision Impacts:

Primary Impact: Downtown, Secondary Impact: Community Character, Tertiary Impact: Economic Development

Strategic Plan Impacts:

Primary Impact: Economy, Secondary Impact: Infrastructure, Tertiary Impact: Tertiary

Legislative History

Date	Action
01/03/2017	Ord. 023047 authorizing a right of use license permit with Room 38
04/16/2018	Ord. 020513 authorizing a right of use permit with Columbia Restaurant Investors #1 (Fuzzy's Taco)
05/21/2013	Ord. 021692 authorizing an agreement with Columbia Hotel Investments

Suggested Council Action

This report is for the Council's information.