



**Version: #2**

**Authors:** Mayor Mills, Commissioner Gossett, Matt Janis, Howard Rothstein, and Evan Miller

**Topic:** Proposed Edits to Design Manual for Outdoor Dining on Public Space

**Date:** November 17, 2022

**Presentation:** Commissioners Regular Meeting on November 18, 2022

## CITY OF REHOBOTH BEACH DESIGN MANUAL FOR OUTDOOR DINING ON PUBLIC SPACE

### APPLICABILITY FOR OUTDOOR DINING ON PUBLIC SPACE.

Restaurants which meet the criteria set forth by the City of Rehoboth Beach may apply for a license to locate outdoor dining areas on public space.

### TERMS DEFINED

Unless the particular provision or the context otherwise requires, the definition provisions contained in this design manual shall govern the construction, meaning and application of words and phrases used in this design manual.

### **BUFFER**

The area between the curbline and the pedestrian access route, which may contain obstacles such as ADA access ramps, benches, bike racks, brick, crosswalks, fire hydrants, grass, news racks, parking meters, pavers, planter boxes, stone, streetlights, street signs, street trees, transformers, tree wells, utility poles, etc.

### **OUTDOOR DINING AREA DEPTH**

The maximum dimension perpendicular to the building façade on which a permitted outdoor dining area can be located on a portion of a city sidewalk [or property](#).

### **OUTDOOR DINING AREA ON PUBLIC SPACE**

A permitted outdoor dining area on a portion of a city sidewalk [or property](#).

### **PEDESTRIAN ACCESS ROUTE (PAR)**

The primary pedestrian way within a sidewalk defined by parallel sides, free of obstacles.

### **PUBLIC SPACE**

City owned sidewalks [or property](#) excluding the Boardwalk.

### **RESTAURANT**

As found in §270-4.

### **SIDEWALK**

An impervious surface parallel to a street between a curb line and a property line intended for use by pedestrians.

### **SIDEWALK DEPTH**

The measurement from the outer edge of the pedestrian access route (PAR) closest to the street, to the face of the building, excluding any buffer area. Sidewalk depths are

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43 established by the City Building and Licensing Department and will vary from location to  
44 location.

45  
46 **SEPARATION BARRIER.**

47 A physical, freestanding obstruction designed to define a dining area and constrain entry  
48 and exit to the dining area. [Separation barriers must comply with 270-19B \(6\), be self-](#)  
49 [supporting without the use of attachments to the sidewalk or other structures and must be](#)  
50 [substantive enough to withstand strong winds or other pressures.](#)

51  
52 **SERVICE AISLE**

53 Open space without obstruction between a table or seating [area](#) and the separation barrier  
54 [or between a table or seating area and the front façade of a building](#) that is at least 3 feet  
55 in depth and used for accessing and servicing tables.

56  
57 **~~BASIS FOR POLICY ON OUTDOOR DINING ON PUBLIC SPACE~~**

- 58 ~~• Indoor restaurant capacity has returned to 100% after the restrictions imposed by Governor's~~  
59 ~~Emergency Order were lifted.~~
- 60 ~~• Pedestrians' use of public sidewalks is expected to return to pre-COVID density or greater.~~
- 61 ~~• Safe transit of pedestrians on the sidewalk including passage around on-sidewalk outdoor dining~~  
62 ~~areas is a priority.~~
- 63 ~~• The pedestrian access route (PAR) shall have parallel sides and be void of any obstacles such as~~  
64 ~~ADA access ramp, benches, bike racks, brick, crosswalks, fire hydrants, grass, news racks,~~  
65 ~~parking meters, pavers, planter boxes, stone, streetlights, street signs, street trees,~~  
66 ~~transformers, tree wells, utility poles, etc.~~
- 67 ~~• Maintaining a minimum sufficient width of unobstructed ADA-compliant pedestrian ways on~~  
68 ~~public sidewalks is required.~~
- 69 ~~• A minimum sidewalk depth is required for the ability to establish outdoor dining areas on public~~  
70 ~~space on city-owned sidewalks.~~
- 71 ~~• Only restaurants that can maintain a required minimum pedestrian access route (PAR) within~~  
72 ~~the sidewalk depth after placing tables, a service aisle, and separation barrier around the seating~~  
73 ~~area may be permitted to have outdoor dining on public space provided all criteria are met.~~
- 74 ~~• The minimum pedestrian access route (PAR) in front of any property/business is as determined~~  
75 ~~by Building & Licensing Department. The minimums may vary by block (See Appendix A).~~
- 76 ~~• Pedestrian access routes (PAR) on public sidewalks are required to be located on the street side~~  
77 ~~of the sidewalk.~~
- 78 ~~• Outdoor dining areas are required to be located against the front building façade, or structure,~~  
79 ~~when adequate room for the dining area is afforded and other criteria are in compliance.~~  
80 ~~Only those restaurants that comply with all criteria for outdoor dining on public space~~  
81 ~~may apply for a license for this purpose.~~
- 82 ~~• The operation of an outdoor dining area will not be conducted in such a way as to~~  
83 ~~become a public nuisance and the operation of such business will not interfere with the~~  
84 ~~circulation of pedestrian or vehicular traffic on the adjoining streets. The dining will not~~  
85 ~~interfere with access to adjacent tenants of a building, with required fire egress or access~~  
86 ~~by persons with disabilities.~~

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- 87 ~~• Use of full depth of the public sidewalk for outdoor dining is not permitted.~~
- 88 ~~• Parking spaces may not be used for pedestrian access routes (PAR).~~
- 89 ~~• Split outdoor dining areas are not permitted.~~
- 90 ~~• By example, having a pedestrian access route (PAR) bisect two outdoor dining areas for~~
- 91 ~~the same dining establishment.~~
- 92 ~~• Parklets, or in street dining areas, are not permitted.~~
- 93 ~~• For dining establishments located within an alley, no outdoor dining areas shall be~~
- 94 ~~permitted on public space, except for dining establishments fronting on public space.~~
- 95 ~~• Outdoor dining on public space is prohibited on the Boardwalk.~~

#### DESIGN STANDARDS FOR OUTDOOR DINING AREAS ON PUBLIC SPACE

- 98 • Restaurants that can maintain the required minimum pedestrian access route (PAR)
- 99 within the sidewalk depth after placing tables, a service aisle, and separation barrier
- 100 around the seating area, may apply for outdoor dining.
- 101 ~~• The specific seating design for any dining area must be approved by the Building &~~
- 102 ~~Licensing Department.~~
- 103 • Permittable seating examples are illustrated in Appendix B available from Building &
- 104 Licensing (See Appendix B).
- 105 • The minimum pedestrian access route (PAR) in front of any property/business is as
- 106 determined by Building & Licensing Department. The minimums may vary by block (See
- 107 Appendix A).
- 108 • The pedestrian access route (PAR) shall be completely clear of all tables, chairs and other
- 109 encroachments and must maintain parallel sides. The pedestrian access route (PAR) may
- 110 not encroach on any areas which may contain any obstacles such as benches, brick, fire
- 111 hydrants, grass, news racks, parking meters, pavers, planter boxes, stone, streetlights,
- 112 street signs, street trees, transformers, tree wells, utility poles, etc. Pedestrian access
- 113 routes (PAR) on public sidewalks are required to be located on the street side of the
- 114 sidewalk.
- 115 • The outdoor dining area will be located adjacent to the building façade, with the
- 116 minimum allowable clear pedestrian access route (PAR) provided between the separation
- 117 barrier and edge of the buffer area.
- 118 ~~• Sidewalk depths are established by the City Building and Licensing Department and will~~
- 119 ~~vary from location to location.~~

#### DIMENSIONS OF OUTDOOR DINING AREAS

- 122 • Sidewalk dimensions are established by the City Building and Licensing Department and
- 123 will vary from location to location.
- 124 • Maximum width of the allowable outdoor dining area on public space, is the width of the
- 125 property minus allowances for entrances equal to or greater than the existing approved
- 126 egress and a 3-foot setback from corners if a corner property.
- 127 • Maximum depth of the allowable outdoor dining areas on public space is measured from
- 128 outside of the separation barrier to the building façade, or structure and must include:

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- 129           o A distance of six feet when two-top tables are used allowing for a two-foot-deep  
130 table, three-foot service aisle and up to a one-foot-deep barrier.  
131           o A distance of eight feet when four-top tables are used allowing for a four-foot-  
132 deep table, three-foot service aisle and up to a one-foot-deep barrier.  
133       • Minimum depth of sidewalk to establish an outdoor dining area on public space equals  
134 the sum of:  
135           o ~~The~~ The minimum designated depth of the pedestrian access route as determined by  
136 Building & Licensing ~~plus~~ **plus** ~~(PLUS)~~ the required minimum depth of the dining  
137 area including separation barrier per this ~~policy~~ **design manual**.  
138           o ~~(See Appendix C.)~~

#### 140 SEPARATION BARRIER REQUIRED

- 141       • All restaurants, whether they serve alcohol or not, shall define the boundaries of their  
142 outdoor dining areas by use of physical separation barriers.  
143       • The separation barrier around the perimeter of the dining area shall be no less than 42  
144 inches high constructed of wood, concrete, plastic, wrought iron, dense vegetation, or  
145 other approved material such that entry and exit will be restricted to no more than one  
146 location. Stanchion style barriers shall not be used.  
147       • Barriers shall not encroach into the pedestrian access route (PAR).  
148       • Barriers shall be solid and continuous, except for allowances for entry and exit to the  
149 outdoor dining area.  
150       • Barriers shall be self-supporting without the use of attachments to sidewalks or other  
151 infrastructure and shall be constructed substantive enough to withstand wind or other  
152 strong pressures.  
153

#### 154 TABLE AND CHAIR PLACEMENT

- 155       • Outdoor dining areas must all be adjacent to the building façade and must be continuous.  
156       • Only 2-top and/or 4-top dining tables may be used  
157           o 2 top tables shall be placed so that their longest dimension is parallel to either the  
158 façade of the building or the separation barrier.  
159           o 4 top tables shall be placed so that their shortest dimension is parallel to either the  
160 façade of the building or the separation barrier.  
161       • Tables and chairs shall be oriented so that chairs pull out parallel to the sidewalk.  
162       • ~~Maximum dimensions of each table must not exceed 2'6" by 4'.~~  
163       • Tables larger than four tops ~~or tables that are not placed against the building façade~~ are  
164 not permitted.  
165       • A 3-foot minimum service aisle shall be maintained between the outermost edge of any  
166 table or seat and the separation barrier around the seating area or between the innermost  
167 edge of any table or seat and the front façade of the building. A service aisle is defined as  
168 an open area without obstruction between a table or seating and the separation barrier that  
169 permits waitstaff to serve customers and perform other service functions and provides  
170 access to seating for patrons.

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- 171 • Fire Department connections (WYE) shall not be obstructed with a minimum clearance  
172 of 3 feet on each side.
- 173 • Tables must not be placed within 6' of a take-out window.
- 174 • The specific seating design for any dining area must be approved by the Building and  
175 Licensing Department.
- 176

#### 177 AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE

- 178 • The dining area on public space shall comply with all ADA standards.
- 179 • Tables & chairs must not block any exit or entrance or ADA accessible areas.
- 180 • Aisle widths must meet ADA & Fire Code requirements within the outdoor dining area.
- 181
- 182

#### 183 OUTDOOR DINING RULES

- 184 • The restaurant owner/operator will be responsible for ~~always~~ maintaining the sidewalk  
185 within or adjacent to the dining area in a clean and orderly manner. All food or drink  
186 spills, and trash of any kind, must be immediately removed from the sidewalk area.  
187 Outdoor dining trash must be collected and deposited in private trash receptacles, not  
188 placed in City trash receptacles.
- 189 • Applicable provisions of Section 270-19 (Zoning) Use Restriction (B) Dining Patios shall  
190 apply to outdoor dining on public space:
  - 191 • Food and beverages may be served only to seated patrons.
  - 192 • There shall be no live entertainment in the outdoor dining area.
  - 193 • There shall be no external speakers or amplifiers in the outdoor dining area
  - 194 • No internal speakers from the premises are to be directed to the outdoor dining  
195 area.
  - 196 • There shall be no bar in the outdoor dining area.
  - 197 • There shall be no food and or beverage preparation in the outdoor dining area.
- 198 • ~~The permitted outdoor dining area shall end at~~ All food and beverage service in the  
199 outdoor dining area ~~and shall end and~~ close by 11:00 P.M., and all patrons must vacate  
200 the area by 11:30 P.M.
- 201 • *City of Rehoboth Beach Code Chapter 189* Noise will be strictly enforced.
- 202 • Only directional signage, not to exceed 2 square feet, identifying entrance and exit, are  
203 permitted in the outdoor dining area.
- 204 • For all outdoor dining areas on public space, the blocking of the public ways, pedestrian  
205 or vehicular, by related activities is prohibited.
- 206 • Outdoor heaters use must comply with the following:
  - 207 • Only propane fuel is permitted
  - 208 • No electric heaters
  - 209 • No open flame heaters
  - 210 • Must be securely placed or weighted in such a way not to be affected by winds.
  - 211 • Only be in place and operated during open hours.
  - 212 • Must not block any entrance or ADA accessible areas.

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- 213 • Must be a minimum of 60” from exits and entrances.
- 214 • Umbrellas shall maintain seven (7) feet vertical clearance, eight (8) feet maximum
- 215 diameter, have a weighted base and cannot extend beyond the perimeter of the designated
- 216 outdoor dining area.
- 217 • Establishments using outdoor seating on public sidewalks shall have readily identifiable
- 218 and visible property markers at the front, outer corners of their property.
- 219

220 FOLLOWING ARE NOT PERMITTED:

- 221 ~~Use of full depth of the public sidewalk for outdoor dining is not permitted.~~
- 222 ~~Parking spaces may not be used for pedestrian access routes (PAR).~~
- 223 ~~Split outdoor dining areas are not permitted.~~
- 224 ~~By example, having a pedestrian access route (PAR) bisect two outdoor dining areas for the~~
- 225 ~~same dining establishment.~~
- 226 ~~Parklets, or in-street dining areas, are not permitted.~~
- 227 ~~No tables may be placed within 6’ of a take-out window.~~
- 228 ~~For dining establishments located within an alley, no outdoor dining areas shall be permitted on~~
- 229 ~~public space, except for dining establishments fronting on public space.~~
- 230 ~~Outdoor dining on public space is prohibited on the Boardwalk.~~
- 231 ~~Overhead wiring over the pedestrian pathway is not permitted.~~
- 232 ~~Overhead wiring affixed to street trees is not permitted.~~
- 233 ~~Operational items, i.e. hostess stands, menu stands may not be permitted outside of the barriers~~
- 234 ~~or outside of the designated outdoor dining area but shall not be placed within the PAR.~~
- 235 ~~No tents or canopies are permitted.~~

- 236 • Utilizing the full depth of the public sidewalk for outdoor dining.
- 237 • Utilizing parking spaces for pedestrian access routes (PAR).
- 238 • Having split outdoor dining areas.
  - 239 ○ By example, having a pedestrian access route (PAR) bisect two outdoor dining
  - 240 areas for the same dining establishment.
- 241 • Using Parklets, or in-street dining areas.
- 242 • Establishing outdoor dining areas within an alley or on the Boardwalk.
- 243 • Affixing anything from the outdoor dining area to street trees or across the PAR.
- 244 • Encroachments into the PAR including umbrellas, heaters, or any other component of the
- 245 outdoor dining space.
- 246 • Operational items (i.e. hostess stands, menu stands, benches, etc.) outside of the
- 247 designated outdoor dining area or anywhere else within the PAR.
- 248 • Tents or canopies.
- 249

250 EFFECTIVE DATES

- 251 • A license for outdoor dining on public property may be issued annually from January 1 to
- 252 December 31.
- 253 • Outdoor dining may be suspended by the City Manager for community or special events,
- 254 utility, sidewalk or road repairs, or emergency situations or violation of provision

Commented [EM1]: SM: Allow menu stands or other operational items to be placed outside of separation barriers provided the items are not located within the PAR or area beyond the PAR such as within the buffer between the PAR and the roadway?

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255 contained in this ~~policy~~[design manual](#). The length of the suspension will be for a duration  
256 as determined necessary by the City Manager.

- 257 • [When the outdoor dining area is closed for the season](#)
- 258     1. [The PAR is to be maintained clear of snow;](#)
- 259     2. [The dining patio is not to be used for storage of materials other than tables and](#)  
260 [chairs;](#)
- 261     ~~3. Operational items, e.g., hostess stands and menu stands, usually placed outside of~~  
262 [the designated outdoor dining area shall be removed.](#)
- 263 • ~~When the outdoor dining area is closed longer than 30 consecutive calendar days or~~  
264 ~~closed by the City Manager or Code Enforcement Officer, removal of tables, chairs,~~  
265 ~~related equipment, and obstructions will be at the direction of a city official and the~~  
266 ~~removal of stated items from the public space is the responsibility of the restaurant~~  
267 ~~owner/operator.~~

#### 269 FEES

- 270 • A [non-refundable](#) fee of \$150.00 shall accompany any [new](#) application [or reapplication](#)  
271 seeking a license for outdoor dining on public space.
- 272 • Upon granting of the license, the applicant shall pay an additional [non-refundable](#) annual  
273 fee of ~~\$163.00 for non-alcohol establishments and~~ \$325. [Fees will not be pro-rated.](#)  
274

#### 275 ENFORCEMENT

- 276 • The City Code Enforcement Officer will be responsible for monitoring and [ens](#)uring  
277 compliance.  
278

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**VIOLATIONS**

- ~~• An outdoor dining license is conditional at all times.~~
- ~~• Noncompliance with approved policy shall constitute grounds for withdrawal of the license authorizing establishment of an outdoor dining area on public space.~~
- ~~• An outdoor dining license may be suspended by the City Manager upon a finding that one or more conditions of this policy have been violated, the outdoor dining in not operated in a manner that is consistent with the approved license, the outdoor dining is being operated in a manner which constitutes a nuisance, that unduly impedes or restricts the movement of pedestrians, or that in any way is detrimental to the public health, safety or welfare of the residents of the city.~~
- ~~• The notice of suspension will be in writing, setting forth specific reasons and providing an effective date.~~

**APPEALS**

- ~~• Challenges to denial of a license authorizing establishment of an outdoor dining area on public space shall be in writing to the City Manager.~~

**EVALUATION OF POLICY**

- ~~• The Commissioners and Building & Licensing shall develop criteria for evaluating the Outdoor Dining on Public Property Policy. Building & Licensing shall present a report at the request of the Mayor and Commissioners.~~

LICENSING PROCEDURE FOR OUTDOOR DINING ON PUBLIC SPACE

LICENSE APPLICATION

1. Authority to utilize outdoor dining areas on public space is by license issued on an annual basis.
  2. Licenses are valid from January 1 through December 31 for the year issued.
  3. Favorable issuance of a license to establish an outdoor dining area on public space is based on meeting all ~~design manual~~ policy criteria.
  4. The City Manager may revoke a permit for failure to maintain compliance with the ~~design manual~~ policy criteria or failure of an establishment to observe City ordinances.
  5. As part of the license evaluation, the Building and Licensing Department will conduct a design review of the proposed outdoor dining area to verify the designs are safe, that the materials are suitable, and that the design will not damage or restrict access to existing sidewalks, street trees or other infrastructure.
  6. As a part of the design review, the Building and Licensing Department will also review the cumulative impact to the general area to verify that adequate space remains for the other sidewalk functions that exist at and around the site.
- ~~1) In granting a license the following factors also shall be considered:~~
- ~~a) Whether the applicant has demonstrated that the establishment's primary purpose will be that of a restaurant.~~
  - ~~b) Whether the establishment meets all of the City's applicable zoning and licensing provisions.~~

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- e) ~~Whether the establishment would be a detriment to the peace, order and quiet of the neighborhood and the City.~~
- d) ~~Whether the establishment will have an adverse impact on the neighboring properties or on the City of Rehoboth Beach, considering the impact on traffic, parking, and noise.~~
- e) ~~Whether the applicant had made any false representation or statements to the City's employees or the Commissioners in order to induce or prevent action by the City not only in regard to the pertinent pending application under this policy, but also in regard to the issuance of a building permit or business license for the subject establishment.~~
- f) ~~If proposed to be located within the State's right of way, whether such location has been approved by the Delaware Department of Transportation in writing.~~
- g) ~~If access from a State Road will be altered or blocked, whether the Delaware Department of Transportation has approved the proposal in writing.~~
- h) ~~Whether proper access to the property for all emergency services will be maintained.~~
- i) ~~Whether the proposal complies with the Americans with Disabilities Act.~~

#### FEES

~~A fee of \$150.00 shall accompany an application seeking a license for outdoor dining on public space. Upon granting of the license, the applicant shall pay an additional annual fee of \$163.00 for non-alcohol establishments and \$325 for restaurants serving alcohol (subsequent changes would be subject to existing plan review fee and application processing fees)~~

#### CRITERIA FOR ANNUAL LICENSE AUTHORIZING OUTDOOR DINING ON PUBLIC SPACE

1. A current City-issued business license.
2. An approved Permit of Compliance for indoor food service operation, if serving alcohol.
3. If possessing a valid Delaware OABBC license, must abide by all existing rules and regulations for the service of alcohol as directed by the Delaware Office of the Alcohol Beverage Control Commissioner (OABBC).
4. Restaurants using dining areas on public space must meet all codes and regulations of all City, State, and Federal Agencies, including but not limited to City of Rehoboth Beach Code, State Fire Code, State Department of Public Health, ~~Office of Alcohol Board Control~~, American with Disabilities Act.
5. All applications for outdoor dining areas on public space received from establishments with liquor licenses ~~or applying for a liquor license~~, once approved by the City, will then be provided to the Delaware Office of Alcohol Beverage Control for their approval. For restaurants serving alcohol, a city outdoor dining on public space license becomes effective only upon approval of state licensing by the OABC.
6. The outdoor dining license shall not be in effect unless and until the applicant files with the City:
  - a. A certificate of liability insurance confirming that the applicant has procured a policy of commercial general liability insurance issued by an insurance company authorized to do business in the state of Delaware. The policy shall provide in substance that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, or employees. The insurance shall provide coverage in an amount of not less than \$1,000,000.00 for each single occurrence. The policy of insurance shall name both the applicant and the City of Rehoboth Beach as

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365 insured parties to the full amount of the policy limits. If the policy is not kept in  
366 full force and effect throughout the term of this sidewalk dining license, the  
367 license may be terminated by the City upon providing written notice of  
368 termination to applicant.  
369 b. A complete and valid waiver of indemnification agreement.  
370

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### Appendix A

Location	Minimum PAR
Rehoboth Avenue – 1 <sup>st</sup> Block	10'
Rehoboth Avenue – 2 <sup>nd</sup> Block	8'
<u>Rehoboth Avenue – 3<sup>rd</sup> Block to Canal Street</u> Baltimore Avenue Wilmington Avenue North 1 <sup>st</sup> Street South 1 <sup>st</sup> Street <u>North 2<sup>nd</sup> Street</u> South 2 <sup>nd</sup> Street <u>Lake Avenue (between Rehoboth Avenue and Third Street)</u> <u>Christian Street</u>	7'

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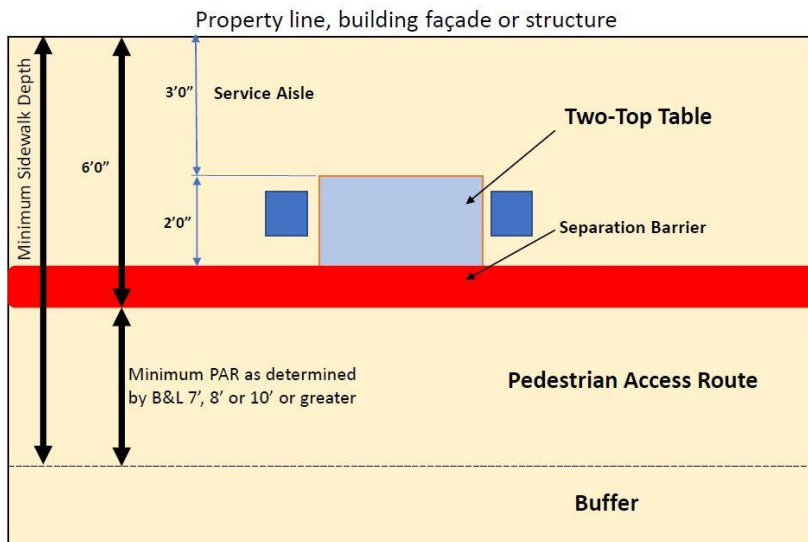
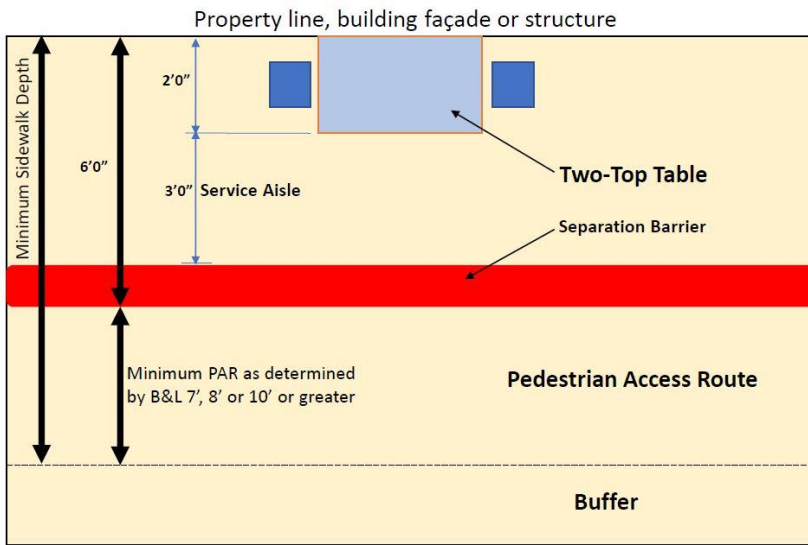
## Appendix B

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### Two-Top Table Configuration



Ado  
Ame

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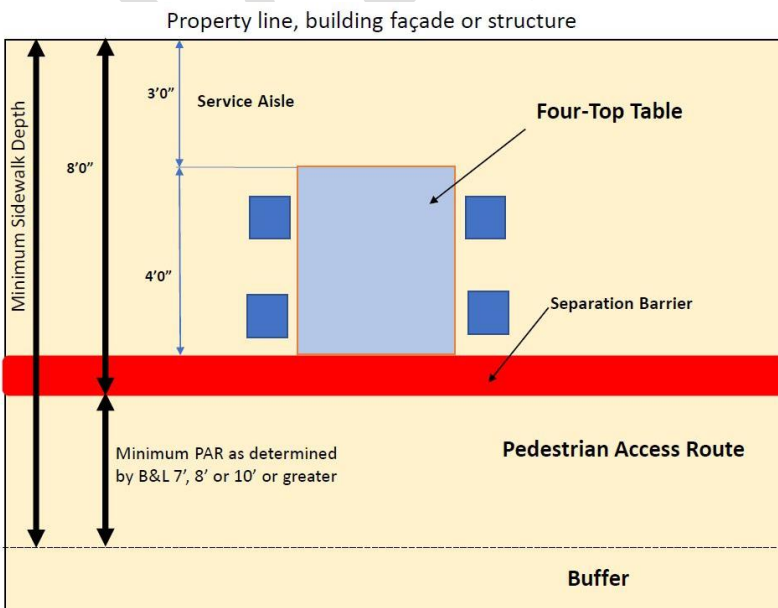
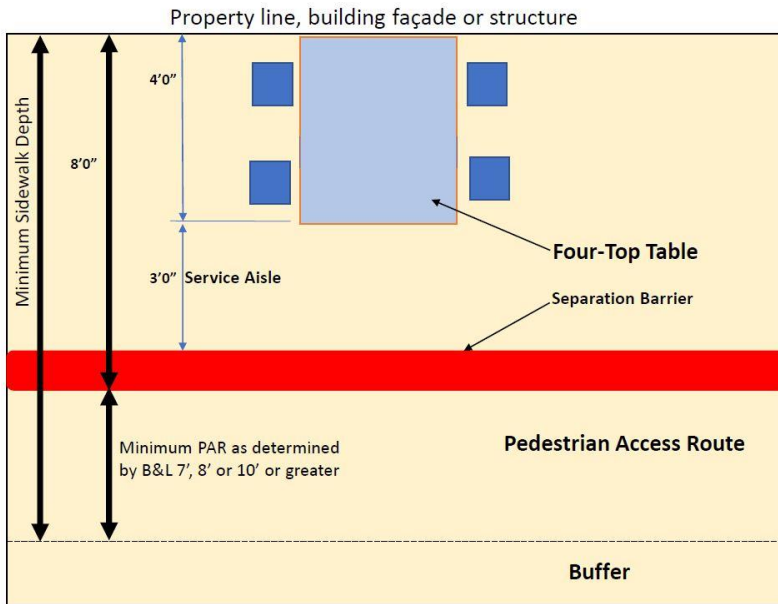
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381

## Four-Top Table Configuration



Adopt  
Amend

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## Appendix C

### How do I determine if my restaurant can have outdoor seating on public space?

1. Identify the outer edge of the Pedestrian Access Route (PAR). This is a line generally parallel to the street and which separates the main pedestrian route from the buffer which contains obstacles.



### How do I determine if my restaurant can have outdoor seating on public space?

2. Measure sidewalk depth from outer edge of pedestrian access route (PAR) to building façade or structure.



Adopted: March 18, 2022

Amendments Proposed: November 17, 2022





Version: #2

Authors: Mayor Mills, Commissioner Gossett, Matt Janis, Howard Rothstein, and Evan Miller

Topic: Proposed Edits to Design Manual for Outdoor Dining on Public Space

Date: November 17, 2022

Presentation: Commissioners Regular Meeting on November 18, 2022

385  
386

**How do I determine if my restaurant can have outdoor seating on public space?**

3. Subtract either 6 feet (for two-top table layout) OR 8 feet (for four-top table layout) from sidewalk depth.



**How do I determine if my restaurant can have outdoor seating on public space?**

4. If balance meets or exceeds minimum PAR as determined by Building & Licensing, then the two-top or four-top table layout may be permissible if other criteria are met.



Adopted: March 18, 2022  
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