



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: April Miller, Director of Public Works

City Manager Approval: \_\_\_\_\_

**TOPIC: "STREETARIES" OUTDOOR EATING AREAS ORDINANCE**

**SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING CHAPTER 11.70 ("STREETARIES" OUTDOOR EATING AREAS) TO TITLE 11 (PUBLIC WORKS) OF THE SAN RAFAEL MUNICIPAL CODE; AMENDING SECTION 14.16.277 OF CHAPTER 14.16 (SITE USE AND REGULATIONS), SECTION 14.17.110 OF CHAPTER 14.17 (PERFORMANCE STANDARDS), SECTION 14.05.020 OF CHAPTER 14.05 (COMMERCIAL AND OFFICE DISTRICTS), SECTION 14.06.020 OF CHAPTER 14.06 (INDUSTRIAL DISTRICTS) AND SECTION 14.08.020 OF CHAPTER 14.08 (MARINE DISTRICT) OF TITLE 14 (ZONING) OF THE SAN RAFAEL MUNICIPAL CODE; AND AMENDING TABLE 2.3.070.A (USE TABLE) OF CHAPTER 9 (DOWNTOWN FORM-BASED CODE) OF THE DOWNTOWN SAN RAFAEL PRECISE PLAN RELATING TO OUTDOOR EATING AREAS IN THE PUBLIC RIGHT-OF-WAY**

**RECOMMENDED ACTION:** Waive further reading and introduce the ordinance of the City of San Rafael adding Chapter 11.70 ("Streetaries" Outdoor Eating Areas) to Title 11 (Public Works) of the San Rafael Municipal Code; amending Section 14.16.277 of Chapter 14.16 (Site Use and Regulations), Section 14.17.110 of Chapter 14.17 (Performance Standards), Section 14.05.020 of Chapter 14.05 (Commercial and Office Districts), Section 14.06.020 of Chapter 14.06 (Industrial Districts) and Section 14.08.020 of Chapter 14.08 (Marine District) of Title 14 (Zoning) of the San Rafael Municipal Code; and amending Table 2.3.070.a (Use Table) of Chapter 9 (Downtown Form-Based Code) of the Downtown San Rafael Precise Plan relating to outdoor eating areas in the public right-of-way.

**BACKGROUND:** Outdoor dining on City sidewalks and in the public right of way was authorized by the City Council in April 2000 through adoption of [Ordinance 1751](#), codified at SRMC Section [14.16.277](#), *Use of City Sidewalks and Rights-of-Way for Outdoor Eating Areas*. This ordinance allows the Community Development Director to license outdoor dining on sidewalks and in other rights of way subject to certain conditions and subject to performance standards under [Section 14.17.110\(C\)](#), *Outdoor Eating Areas Proposed in Conjunction with Food Service Establishments*.

On August 17, 2015, the City Council adopted [Resolution 13995](#), establishing a 3-year pilot program to expand the Outdoor Dining Program to include parklets in the streets, which provided a process for businesses to use parking spaces for outdoor dining purposes. [On December 3,](#)

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

2018, the City Council authorized the on-street dining to continue under the same limitations. Prior to the COVID-19 pandemic, three (3) merchants received approval to operate outdoor dining parklets in parking spaces.

To help local businesses during the COVID-19 emergency, on June 1, 2020, the City Council adopted Resolution 14809 authorizing the City Manager, at their discretion, to streamline the approval of permits or other entitlements for use of City sidewalks and on-street parking spaces for business activities of restaurants and retail businesses, waive or reduce application fees, and close portions of designated City streets up to two evenings per week in order to facilitate outdoor dining and allow dining establishments to continue to operate when indoor dining was not allowed during the COVID-19 emergency. Twenty-nine (29) additional merchants utilized the streamlined program, thereby maintaining economic stability during challenging COVID-19 pandemic restrictions.

Temporary Outdoor Dining Program permits approved under the COVID-19 emergency streamlined process are valid through November 30, 2022. Staff were tasked with creating a program beginning December 1, 2022, for the continuance of the Outdoor Dining Program that sets clear and fair rules, parameters, and processes to ensure a positive impact on the City's economic vitality.

On June 21, 2022, staff presented the Draft Streetary Program Guidelines to the City Council, setting forth staff's recommendations for design and development standards, operational standards, fees, and other related requirements for new Streetary Encroachment Permits that would apply after current permits expire on November 30, 2022. The City Council concurred with the presented draft design guidelines. The City Council expressed interest in offering merchants an incentive to remove unused installations by absorbing the cost of removal if removed by December 1, 2022. In addition, and as an added incentive to promote and improve Streetaries, the City Council supported a proposal to waive the application fee through December 31, 2023 and discount the annual permit fee for the first year by 50% (between December 1, 2022 until December 31, 2023) and for the second year by 25% (between January 1, 2024 until December 31, 2024).

This report recommends that the Council consider public comment/testimony and introduce the Ordinance to establish the parameters and operational authorities for the program. If introduced, the Council may adopt the Ordinance at the regular meeting on October 3, 2022. Staff will also present a resolution for the City Council to adopt design and development standards regulating the form, design, safety and maintenance of streetaries (also known as Streetary Program Guidelines) and the fee amounts.

**ANALYSIS:** The goal of the proposed Ordinance is to maintain the economic vitalization gained by the existing streetaries while strengthening safety standards, creating consistent design aesthetic, and ensuring fairness in the way that the public right of way is being used.

The proposed Ordinance was carefully crafted through a collaborative team effort between Public Works, Community Development, Parking Services, Economic Development, Fire, Police, and the City Manager's and City Attorney's Offices. The proposed Ordinance authority would be congruent with other encroachment permits where the Director of Public Works is the established authority. Under the direction of the City Manager, the Public Works Department will administer the program and will keep track of any unanticipated issues and suggest any necessary revisions in the future.

There are 32 food service establishments with existing streetaries in San Rafael. Most of these streetaries were established under the emergency program with self-certification requirements. The Temporary Outdoor Dining Program was designed to be more flexible in nature to

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accommodate everchanging dining regulations during the COVID-19 Pandemic. The adjustments needed to bring these existing streetaries in compliance with the new proposed design guidelines required time and careful handling for a still-recovering food service industry.

The initial survey of the 32 existing streetaries indicated a wide variance in the amount of work needed to bring streetaries in compliance with the new guidelines. Staff sent a letter to current operators of streetaries notifying them of the draft guidelines. The operators were asked to indicate their interest in continuing to operate their streetary under the proposed new program. The letter was sent on August 10, 2022 and operators were asked to respond by September 1, 2022. Staff have only heard from about a third of the streetaries by this date, so staff is continuing to work on other ways to contact the existing streetaries before the City Council meeting and will provide a summary of responses to date.

With the new ordinance in effect, staff will have the authority to accept and process applications from existing businesses intending to make modifications to existing structures and continue participating in the streetary program, as well as applications from businesses that wish to operate new streetaries. All existing streetaries, including those permitted before and during the COVID-19 emergency authorization, will be subject to the new ordinance and design standards.

Fees required under the ordinance are an application fee, annual encroachment lease fee, and a one-time refundable deposit, in amounts to be established by separate resolution of the Council. The initial fee amounts will be presented at a near future City Council meeting as a separate consideration. The fee amounts may be changed from time-to-time by subsequent resolutions of the Council.

For operators who would like to remove the streetaries and not participate in the new program, staff intends to offer support to remove the streetary before December 1, 2022. The City would remove the streetary and absorb the cost of removal. This program would be implemented by staff, within the City Manager’s existing programmatic authority, without further City Council action.

**Summary of the Ordinance**

Following is a summary of the ordinance.

- 1) Adds Chapter 11.70 “Streetaries” Outdoor Eating Areas, to the SRMC, including but not limited to the following provisions:

Permit required (§ 11.70.020)	Requires a streetary encroachment permit issued by the Director of Public Works  Permit issued to applicant with a valid business license to operate adjacent food service establishment
Fees (§ 11.70.040)	Application fee, annual encroachment lease fee, and one-time refundable deposit  Amounts to be determined by separate resolution of the Council
Where permitted/locations (§ 11.70.050)	Permits streetaries in parking spaces within right-of-way in all commercial districts

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	<p>Does not permit streetaries on streets with peak hour parking restrictions or speed limits greater than 25 mph</p> <p>Does not permit streetaries in certain restricted parking spaces – e.g., ADA designated, colored curb zones, blocking utility access, obstructing bicycle facilities</p>
Location criteria (§ 11.70.060)	<p>Requires minimum parking availability – e.g., 70% of on-street parking based on a three-block average must remain available for vehicles</p> <p>Streetaries must be adjacent to storefront, setback from travel lane and sides, and not block utility access</p>
Design and development standards (§ 11.70.070)	<p>City Council may adopt design and development standards* regulating the form, design, safety and maintenance of streetaries</p> <p>Authorizes the Director to make minor modifications to the standards</p> <p>* Streetary Guidelines will include the design and development standards. Will be proposed for adoption at the October 3, 2022 meeting. These guidelines will be substantially in keeping with the draft guidelines presented to the City Council at the June 21, 2022 meeting.</p>
Criteria for issuance (§ 11.70.080)	<p>Director must find that all fees have been paid and the proposed use is i) in compliance with the ordinance; ii) will ensure protection of public health, safety and general welfare and prevent interference with users of the right-of-way and other permit holders; and ii) will comply with development standards</p> <p>The Director may grant exceptions or minor modifications to the standards where the Director determines that a strict application of standards cannot be met by a proposed streetary and the streetary, as proposed, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons or injurious to property and improvements in the neighborhood</p>
Operational standards (§ 11.70.100)	<p>Sets operational standards on live entertainment or amplified music, outdoor food preparation, alcohol service, noise and disruptive behavior, site maintenance, ADA compliance, hours of operation, insufficient usage</p>
Enforcement (§ 11.70.120)	<p>Violation of the ordinance is a misdemeanor and all other enforcement proceedings or remedies are available to the City</p> <p>Director may revoke permit for non-compliance or to protect public interest, health, safety and/or welfare of community</p>
Appeal (§ 11.70.130)	<p>Provides permittee right of appeal to City Manager upon Director's action on permit application or revocation</p>

- 2) Makes conforming amendments to Title 14 (Zoning) of the SRMC.

At their September 13, 2022 meeting, the Planning Commission adopted a resolution recommending the City Council adopt the proposed ordinance making corresponding amendments to sections of Title 14 (Zoning), summarized below.

Provisions of Sections 14.16.277, 14.17.110, 14.05.020, 14.06.020, and 14.08.020 of Title 14 (Zoning) are amended to conform with the new Chapter 11.70 governing streetaries. All provisions in this title that previously governed outdoor eating areas in the streets or parking spaces have been deleted. References to the new Chapter 11.70 have been added, where appropriate. Through these changes, permitting authority of streetaries has been changed from the Director of Community Development to the Director of Public Works because of their locations in the right-of-way.

Note that permitting of outdoor eating areas within sidewalk locations have been retained in Title 14. At this time, staff is not recommending changing the ordinance permitting sidewalk eating areas.

- 3) Makes conforming amendment to Chapter 9 of the Downtown Precise Plan.

At their September 13, 2022 meeting, the Planning Commission adopted a resolution recommending the City Council adopt the proposed ordinance making a corresponding amendment to Table 2.3.070.A of the Downtown San Rafael Precise Plan to conform with the new Chapter 11.70 governing streetaries.

**ENVIRONMENTAL DETERMINATION:** The proposed ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15304 (Class 4), 15305 (Class 5) and 15183, as summarized below.

Class 4 categorical exemptions (Minor Alterations to Land) consist of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes, including “minor temporary uses of land having negligible or no permanent effects on the environment . . .” (CEQA Guideline § 15304(e).) The proposed ordinance will involve the temporary, non-permanent use of land; all uses authorized pursuant to this ordinance would involve temporary, non-permanent improvements in the public right-of-way including temporary structures, tables and seating.

Class 5 categorical exemptions (Minor Alterations in Land Use Limitations) covers projects that consist of minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density including but not limited to issuance of minor encroachment permits. (CEQA Guideline § 15305.) The proposed ordinance will result in the issuance of permits for use and encroachment into the public right-of-way.

Section 15183 provides that when a proposed project is consistent with a General Plan or community plan for which an Environmental Impact Report (EIR) was certified, subsequent environmental review may only be required to examine “project-specific significant effects, which are peculiar to the project or its site.” On July 19, 2021, the City Council approved a resolution certifying the EIR that was prepared to analyze the environmental impacts of the City’s General Plan 2040 and Downtown Precise Plan. The City Council adopted both Plans as well as a statement of overriding considerations on August 2, 2021. As the conversion of on-street parking for use as outdoor dining is part of a strategy identified in the Downtown Precise Plan for creating

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civic spaces in infill conditions, this ordinance is consistent with the Downtown Precise Plan and associated EIR. The project is therefore, exempt from CEQA pursuant to section 15183 of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this ordinance or its implementation would have a significant effect on the environment.

The proposed ordinance is consistent with these exemptions, because the requested action will not result in a direct or reasonably foreseeable change in the environment and because there is no possibility that the activity in question may have a significant effect on the environment.

Additionally, at their September 13, 2022 meeting, the Planning Commission adopted a resolution finding that the proposed amendments to the SRMC and Downtown Precise Plan are consistent with the San Rafael General Plan 2040 Goal EV-1: A Healthy and Resilient Economy because the program would streamline the permitting process, strengthen public safety standards, create a consistent design aesthetic, and ensure equity in the use of the public right of way.

**FISCAL IMPACT:** Section 11.70.040 of the proposed ordinance provides for the following fees: i) permit application fee; ii) annual encroachment lease fee, and iii) a one-time, refundable deposit. These fees will be presented at a near future City Council meeting as a separate consideration.

For businesses who do not opt to participate in the new streetaries program and would like help from the City to remove their existing streetary, the cost to the City of removal of each streetary is estimated at \$1,500. We anticipate up to six streetaries to choose this option of early removal. A total estimated cost of \$9,000 would be absorbed by the Department of Public Works operating budget.

### **OPTIONS:**

1. Consider public comment/testimony and introduce the ordinance.
2. Consider public comment/testimony and introduce the ordinance, with amendments.
3. Do not introduce the ordinance and provide alternative direction to staff.

### **RECOMMENDED ACTION:**

Waive further reading and introduce the ordinance of the City of San Rafael adding Chapter 11.70 ("Streetaries" Outdoor Eating Areas) to Title 11 (Public Works) of the San Rafael Municipal Code; amending Section 14.16.277 of Chapter 14.16 (Site Use and Regulations), Section 14.17.110 of Chapter 14.17 (Performance Standards), Section 14.05.020 of Chapter 14.05 (Commercial and Office Districts), Section 14.06.020 of Chapter 14.06 (Industrial Districts) and Section 14.08.020 of Chapter 14.08 (Marine District) of Title 14 (Zoning) of the San Rafael Municipal Code; and amending Table 2.3.070.a (Use Table) of Chapter 9 (Downtown Form-Based Code) of the Downtown San Rafael Precise Plan relating to outdoor eating areas in the public right-of-way.

### **ATTACHMENTS:**

1. [DRAFT Ordinance](#)

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING CHAPTER 11.70 (“STREETARIES” OUTDOOR EATING AREAS) TO TITLE 11 (PUBLIC WORKS) OF THE SAN RAFAEL MUNICIPAL CODE; AMENDING SECTION 14.16.277 OF CHAPTER 14.16 (SITE USE AND REGULATIONS), SECTION 14.17.110 OF CHAPTER 14.17 (PERFORMANCE STANDARDS), SECTION 14.05.020 OF CHAPTER 14.05 (COMMERCIAL AND OFFICE DISTRICTS), SECTION 14.06.020 OF CHAPTER 14.06 (INDUSTRIAL DISTRICTS) AND SECTION 14.08.020 OF CHAPTER 14.08 (MARINE DISTRICT) OF TITLE 14 (ZONING) OF THE SAN RAFAEL MUNICIPAL CODE; AND AMENDING TABLE 2.3.070.A (USE TABLE) OF CHAPTER 9 (DOWNTOWN FORM-BASED CODE) OF THE DOWNTOWN SAN RAFAEL PRECISE PLAN RELATING TO OUTDOOR EATING AREAS IN THE PUBLIC RIGHT-OF-WAY**

**WHEREAS**, the City Council has determined that outdoor eating areas within certain of the City’s rights-of-way provide economic vitality to the City and businesses, create community gathering spaces, contribute to the enjoyment of public spaces, and increase opportunities for more enjoyable pedestrian travel in the City; and

**WHEREAS**, the City Council desires to permit outdoor eating areas within parking spaces of the public right-of-way – known as “Streetaries” – through Streetary Encroachment Permits; and

**WHEREAS**, outdoor dining in the public right-of-way was authorized by the City Council in April 2000, through adoption of [Ordinance 1751](#), codified at San Rafael Municipal Code (“SRMC”) Section [14.16.277](#), *Use of City Sidewalks and Rights-of-Way for Outdoor Eating Areas*, by authorizing the Community Development Director to license outdoor dining in “sidewalks and other rights-of-way” under certain conditions and subject to performance standards under [Section 14.17.110\(C\)](#), *Outdoor Eating Areas Proposed in Conjunction with Food Service Establishments*; and

**WHEREAS**, on August 17, 2015, the City Council adopted [Resolution 13995](#), establishing a 3-year pilot program to expand the outdoor dining program to include parklets in the streets, which provided a process for businesses to use parking spaces for outdoor dining purposes; and

**WHEREAS**, on December 3, 2018, the City Council authorized the on-street dining program to continue under the same limitations and three (3) merchants participated in the pilot program; and

**WHEREAS**, on June 1, 2020, to help local businesses during the Covid-19 emergency, the City Council adopted [Resolution 14809](#) authorizing the City Manager, at their discretion, to streamline the approval of permits or other entitlements for use of City sidewalks and on-street parking spaces for business activities of restaurants and retail businesses, waive or reduce application fees, and close portions of designated City

streets up to two evenings per week in order to facilitate outdoor dining and allow dining establishments to continue to operate when indoor dining was not allowed during the Covid-19 emergency; and

**WHEREAS**, twenty-nine (29) additional merchants participated in the streamlined program, thereby maintaining economic stability during challenging Covid-19 pandemic restrictions; and

**WHEREAS**, Temporary Outdoor Dining Program permits approved under the streamlined process are valid through November 30, 2022; and

**WHEREAS**, the City Council desires to transition pre-existing Streetaries that were established prior to and during the Covid-19 pandemic into new Streetary Encroachment Permits when current permits expire on November 30, 2022; and

**WHEREAS**, [on June 21, 2022](#), staff presented Draft Streetary Guidelines to the City Council with staff's recommendations for design and development standards, operational standards, fees, and other related requirements for new Streetary Encroachment Permits that would apply after current permits expire on November 30, 2022; and

**WHEREAS**, the City Council has determined that the Director of Public Works should be the City's designated representative to issue Streetary Encroachment Permits because of their locations within the City's streets and parking spaces; and

**WHEREAS**, the City Council aims to balance the desire for outdoor dining in the public right-of-way with adequate public parking and pedestrian and bicycle access; and

**WHEREAS**, pursuant to Vehicle Code section 22507(a), cities may, by ordinance or resolution, restrict or otherwise remove parking from city streets during all or certain hours of the day; and

**WHEREAS**, the proposed Ordinance to add Chapter 11.70 ("Streetaries" Outdoor Eating Areas) to Title 11 (Public Works) and amend corresponding sections of Title 14 (Zoning) of the SRMC and Chapter 9 of the Downtown Precise Plan relating to outdoor eating areas in the public right-of-way through Streetary Encroachment Permits qualify for the exemptions set forth in CEQA Guidelines sections 15304 and 15305 and statutory exemption section 15183; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on September 13, 2022, at which time it reviewed the proposed amendments to Title 14 (Zoning) of the SRMC and Chapter 9 of the Downtown Precise Plan, considered all public comments on the revisions and related CEQA exemptions, and recommended the proposed ordinance; and

**WHEREAS**, the City Council held a duly noticed public hearing on September 19, 2022, considered all public comments on the revisions and related CEQA exemptions,



and determined that the amendments are consistent with the General Plan and that the revisions would be internally consistent with all other provisions of the SRMC.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:**

**Division 1.** The above findings are adopted and incorporated herein.

**Division 2. Addition of Chapter 11.70 to the San Rafael Municipal Code.**

Chapter 11.70 – “Streetaries” Outdoor Eating Areas is hereby adopted and made a part of Title 11 (“Public Works”) of the San Rafael Municipal Code as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

**Division 3. Amendments of Section 14.16.277 of Chapter 14.16 (Site Use and Regulations), Section 14.17.110 of Chapter 14.17 (Performance Standards), Section 14.05.020 of Chapter 14.05 (Commercial and Office Districts), Section 14.06.020 of Chapter 14.06 (Industrial Districts) and Section 14.08.020 of Chapter 14.08 (Marine District) of Title 14 (Zoning) of the City of San Rafael Municipal Code.**

**Section 1. Amendment of Section 14.16.277 of the San Rafael Municipal Code.**

Section 14.16.277 (“Use of city sidewalks and rights-of-way for outdoor eating areas”) of Chapter 14.16 (“Site and Use Regulations”) of Division IV (“Regulations Applying in All or Several Districts”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in ~~strike through~~, and additions are in underline.

**14.16.277 Use of city sidewalks ~~and rights-of-way~~ for outdoor eating areas.**

A. Applicability. This section applies to the use of city sidewalks located within the public right-of-way for outdoor eating areas. Any outdoor eating area located within or using parking spaces within the public right-of-way shall not be subject to the provisions of this section, but shall be regulated as provided in Chapter 11.70 of Title 11.

~~A.B.~~ Notwithstanding any other provisions of this title, the use of city sidewalks ~~or other city rights-of-way~~ for outdoor eating areas is prohibited without a license agreement between the adjacent food service establishment and the city, which license agreement shall be in lieu of any environmental design review permit, use permit, administrative use permit, encroachment permit or other permit required for use of the city sidewalk ~~or right-of-way~~ for such purpose.

~~B.C.~~ Such license agreements shall be in a form approved by the city attorney, and shall include the applicable standards provided in Section 14.17.110(C), indemnification of the city, and liability insurance naming the city as an additional insured in an

amount not less than one million dollars (\$1,000,000.00) and in a form as approved by the city's risk manager.

~~C.D.~~ Such license agreement also shall be subject to such regulations hereafter deemed necessary by the community development director to protect the public health, safety, and welfare, and as approved by resolution of the city council.

~~D.E.~~ Such license agreements may be approved by the community development director and may be revoked at the pleasure of the city council.

~~E.F.~~ The placement of outdoor seating area barriers shall allow a minimum six-foot (6') wide clear pathway for sidewalks located within the public rights-of-way.

~~F.G.~~ In lieu of the aforementioned license agreement, the city council may enter into a lease agreement between the adjacent food service establishment at a rate and term to be determined by the city council, and as approved by resolution of the city council.

(Ord. 1751 § 6, 2000).

## **Section 2. Amendment of Section 14.17.110 of the San Rafael Municipal Code.**

Subsection B (“Applicability”) of Section 14.17.110 (“Outdoor eating areas proposed in conjunction with food service establishments”) of Chapter 14.17 (“Performance Standards”) of Division IV (“Regulations Applying in All or Several Districts”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in ~~strikethrough~~, and additions are in underline.

### **14.17.110 Outdoor eating areas proposed in conjunction with food service establishments.**

#### **B. Applicability.**

1. This section applies to outdoor eating areas proposed in conjunction with food service establishments, with the exception of outdoor eating areas within parking spaces within the public right-of-way. Any outdoor eating area located within or using parking spaces within the public right-of-way shall not be subject to the provisions of this section, but shall be regulated as provided in Chapter 11.70 of Title 11.

2. Performance standards for outdoor eating areas proposed in conjunction with restaurants or other food service establishments shall apply in any zoning district where food service establishments are permitted uses (as of right or by conditional use permit). Compliance with performance standards for outdoor eating areas shall be reviewed through an administrative use permit and administrative environmental and design review permit process for any existing food service establishment. In cases where the restaurant or food service establishment is being proposed as a new use and is subject to a conditional use

permit in the zoning district is which it is located, the performance standards shall be incorporated into the required use permit. Notwithstanding the foregoing, any outdoor eating area located on city sidewalks ~~or rights-of-way~~ shall not be subject to the administrative use permit or use permit process, but shall be regulated as provided in Section 14.16.277.

(Ord. 1751 §§ 4, 5, 2000; Ord. 1663 § 1 (part), 1994; Ord. 1625 § 1 (part), 1992).

(Ord. No. 1882, Exh. A, § 61, 6-21-2010)

**Section 3. Amendment of Section 14.05.020 of the San Rafael Municipal Code.**

Table 14.05.020 of Section 14.05.020 (“Land Use Regulations (GC, NC, O, C/O, R/O, FBWC)”) of Chapter 14.05 (“Commercial and Office Districts”) of Division II (“Base District Regulations”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in ~~striketrough~~, and additions are in underline. Unless indicated below, no other cells or rows within Table 14.05.020 shall be modified by this amendment.

**Table 14.05.020**

Type of Land Use	GC	NC	O	C/O	R/O	FBWC*	Additional Use Regulations
<b>Commercial Uses</b>							
Outdoor eating areas	A*	A*	A*	A*	A*	A*	For outdoor eating areas on private property see Section 14.17.110 standards. For outdoor seating areas located on city sidewalks <del>or rights-of-way</del> , see Section 14.16.277 standards. <u>For outdoor eating areas on parking spaces within the public right-of-way, see Chapter 11.70 – “Streetaries” Outdoor Eating Areas.</u>

**Section 4. Amendment of Section 14.06.020 of the San Rafael Municipal Code.**

Table 14.06.020 of Section 14.06.020 (“Land Use Regulations (I, LI/O, CCI/O, LMU)”) of Chapter 14.06 (“Industrial Districts (I, LI/O, CCI/O, LMU)”) of Division II (“Base District Regulations”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is

hereby amended as set forth below. Deletions are in ~~strike through~~, and additions are in underline. Unless indicated below, no other cells or rows within Table 14.06.020 shall be modified by this amendment.

**Table 14.06.020**

Types of Land Use	I	LI /O	CCI /O	LM U	Additional Use Regulations
<b>Commercial Uses</b>					
Outdoor eating areas	A	A	A	A	For outdoor eating areas on private property, see Section 14.17.110 standards. For outdoor seating areas located on city sidewalks- <del>or rights-of-way</del> , see Section 14.16.277 standards. <u>For outdoor eating areas on parking spaces within the public right-of-way, see Chapter 11.70 – “Streetaries” Outdoor Eating Areas.</u>

**Section 5. Amendment of Section 14.08.020 of the San Rafael Municipal Code.**

Table 14.08.020 of Section 14.08.020 (“Land Use Regulations (M)”) of Chapter 14.08 (“Marine District”) of Division II (“Base District Regulations”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in ~~strike through~~, and additions are in underline. Unless indicated below, no other cells or rows within Table 14.08.020 shall be modified by this amendment.

**Table 14.08.020**

Type of Land Use	M	Additional Use Regulations
<b>Commercial</b>		
Outdoor eating areas	A	For outdoor eating areas on private property, see Section 14.17.110 standards. For outdoor seating areas located on city sidewalks- <del>or rights-of-way</del> , see Section 14.16.277 standards. <u>For outdoor eating areas on parking spaces within the public right-of-way, see Chapter 11.70 – “Streetaries” Outdoor Eating Areas.</u>

**Division 4. Amendment of Table 2.3.070.A of the Downtown San Rafael Precise Plan.**

Footnote 17 of Table 2.3.070.A (“Use Table”) of Article 2 (“Downtown Form-Based Zones”) of Chapter 9 (“Downtown Form-Based Code”) of the August 2021, Downtown San Rafael Precise Plan is hereby amended as set forth below. Deletions are in ~~strike through~~, and additions are in underline. Unless indicated below, no other cells, rows or footnotes within Table 2.3.070.A shall be modified by this amendment.

<sup>17</sup> For outdoor eating areas on private property, see SRMC Section 14.17.110 (Outdoor Eating Areas Proposed in Conjunction with Food Service Establishments) standards. For outdoor seating areas located on city sidewalks ~~or rights-of-way~~, see SRMC Section 14.16.277 (Use Of City Sidewalks ~~and Rights-of-way~~ for Outdoor Eating Areas) standards. For outdoor eating areas on parking spaces within the public right-of-way, see SRMC Chapter 11.70 (“Streetaries” Outdoor Eating Areas).

**Division 5. Compliance with California Environmental Quality Act (CEQA).**

The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15304 (Class 4), 15305 (Class 5) and 15183.

Class 4 categorical exemptions (Minor Alterations to Land) consist of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes, including “minor temporary uses of land having negligible or no permanent effects on the environment . . .” (CEQA Guideline § 15304(e).) This Ordinance will involve the temporary, non-permanent use of land; all uses authorized pursuant to this ordinance would involve temporary, non-permanent improvements in the public right-of-way including temporary structures, tables and seating.

Class 5 categorical exemptions (Minor Alterations in Land Use Limitations) covers projects that consist of minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density including but not limited to issuance of minor encroachment permits. (CEQA Guideline § 15305.) This Ordinance will result in the issuance of permits for use and encroachment into the public right-of-way.

Section 15183 provides that when a proposed project is consistent with a General Plan or community plan for which an Environmental Impact Report (EIR) was certified, subsequent environmental review may only be required to examine “project-specific significant effects, which are peculiar to the project or its site.” On July 19, 2021, the City Council approved a resolution certifying the EIR that was prepared to analyze the environmental impacts of the City’s General Plan 2040 and Downtown Precise Plan. The City Council adopted both Plans as well as a statement of overriding considerations on August 2, 2021. As the conversion of on-street parking for use as outdoor dining is part

of a strategy identified in the Downtown Precise Plan for creating civic spaces in infill conditions, this Ordinance is consistent with the Downtown Precise Plan and associated EIR. The project is therefore, exempt from CEQA pursuant to section 15183 of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance or its implementation would have a significant effect on the environment.

The proposed Ordinance is consistent with these exemptions, because the requested action will not result in a direct or reasonably foreseeable change in the environment and because there is no possibility that the activity in question may have a significant effect on the environment.

**Division 6. Severability.**

The City Council hereby declares every section, paragraph, sentence, clause, and phrase of this Ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this Ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

**Division 7. Publication; Effective Date.**

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for or against the Ordinance.

**THE FOREGOING ORDINANCE** was first read and introduced at a regular meeting of the San Rafael City Council on the 19th day of September 2022, and was passed and adopted at a regular meeting of the San Rafael City Council on the \_\_\_\_ day of \_\_\_\_\_ 2022 by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

KATE COLIN, Mayor

Attest:

LINDSAY LARA, City Clerk

## Exhibit A

### **Chapter 11.70 – “STREETARIES” OUTDOOR EATING AREAS**

#### **11.70.010 - Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meaning set forth below. Unless in direct conflict with terms defined herein, other words and phrases shall be interpreted as defined in the Streets and Highways Code:

- A. “Outdoor eating area” shall have the same meaning as set forth in Section 14.03.030 of Title 14.
- B. “Parking spaces within the public right-of-way” shall mean the designated on-street or off-street area where parking of vehicles does not violate any posted parking restriction and the use of the space does not interfere with the safety nor the passage of persons and vehicles.
- C. “Permittee” shall mean the permit holder of a valid streetary encroachment permit issued by the city.
- D. “Streetary” or “streetaries” shall mean an outdoor eating area that operates within and uses parking spaces within the public right-of-way directly adjacent to the food service establishment street frontage. Outdoor eating areas operating within or using sidewalks within the public right-of-way are not covered under this chapter and are subject to the applicable standards under Section 14.16.277 of Title 14.

#### **11.70.020 - Permit required.**

Any person desiring to erect, construct, place or maintain an encroachment upon any existing parking spaces within the public right-of-way for a streetary must first obtain an annual streetary encroachment permit pursuant to this chapter. Each applicant for an annual streetary encroachment permit shall comply with the requirements of this chapter, any other applicable laws, and any regulations and policies adopted pursuant to this chapter.

Permits shall only be issued to applicants with a valid business license issued by the city to operate a food service establishment directly adjacent to the parking spaces within the right-of-way for which a streetary encroachment permit is sought.

All persons operating and/or maintaining a streetary as of the effective date of this ordinance shall be required to obtain a streetary encroachment permit and pay applicable fees no later than December 1, 2022. Failure to obtain a streetary encroachment permit within this time period shall constitute a violation of this chapter and may subject the current streetary operator to closure and/or enforcement pursuant to this chapter.

#### **11.70.030 - Permit application.**



The director of public works (the "director") shall establish an application form for an annual streetary encroachment permit, including any application materials deemed necessary to enable complete review of the application. The application shall be accompanied by a permit application fee required under Section 11.70.040.

The director shall transmit a copy of each application for an annual streetary encroachment permit to the director of community development (the "planning director"). The planning director shall review the application for compliance with all applicable design and development standards.

#### **11.70.040 - Fees.**

Each permit application shall be accompanied by a permit application fee. Prior to permit issuance, the permittee shall pay an annual encroachment lease fee and a one-time, refundable deposit. Fees shall be in amounts established by separate resolution of the City Council.

#### **11.70.050 - Where permitted.**

- A. Streetaries are permitted in existing parking spaces within the right-of-way in all commercial districts.
- B. Streetaries are only permitted in the parking spaces within the right-of-way directly adjacent to the food service establishment street frontage.
- C. Notwithstanding subsection A, above, streetaries shall not be permitted along streets with (1) peak hour parking restrictions or (2) speeds limits greater than 25 miles per hour.
- D. Notwithstanding subsection A, above, streetaries shall not be permitted in parking spaces that (1) are ADA designated, (2) are adjacent to curbs designated for no parking (red curb), passenger loading zones (white curb), commercial loading zones (yellow curb), limited parking zones (green) and/or any other colored curb zones with restrictions, (3) would block or obstruct any fire hydrant, fire department sprinkler or standpipe hose, or other public safety infrastructure, (4) would obstruct utility access panels, manhole covers, storm drains, street valves, or any other type of utility assets, or (5) would obstruct any bicycle facility.

#### **11.70.060 - Location criteria.**

- A. Maximum parking stalls. A maximum of two parallel parking spaces shall be used for each streetary.
- B. Parking sufficiency. Seventy percent (70%) of on-street parking on any three-block average (the streetary location's block and one block in either direction) must remain available for vehicles at any given time. The director may make an exception if the entrance to a public parking garage or lot is within 300 feet of the streetary location.
- C. Adjacency to storefront. Streetaries may only be permitted in parking spaces within the right-of-way that are directly in front of the permittee's food service

establishment business. If a food service establishment fronts more than one but less than two parking spaces and fronts more than fifty percent (50%) of the second parking space, the permittee is eligible to apply for two parking spaces for use as a streetary.

- D. Travel lane setback. Streetaries shall have an eighteen inch (18") minimum setback from the travel lane measured from the parking striping adjacent to the travel lane. In cases where no striping exists, the maximum length of the streetary measured from the face of the curb shall be determined by the director or their designee.
- E. Side setback. Streetaries shall have a two-foot minimum side setback to each wheel stop located at each end of the parking space.
- F. Utilities. A minimum clearance of four feet (4') from either side of utility access panels, manhole covers, storm drains, street valves, or any other type of utility assets will be required to allow for maintenance access. Streetaries proposed under overhead utility lines shall meet the minimum vertical distance requirements as established by the California Public Utility Commission. Streetaries that block the outlet of a sidewalk underdrain shall ensure the outlet is functional and flowing. Permittees shall take a thorough inventory of utility access covers in the proposed streetary area by checking under parked cars. Permittees shall provide for access to any city or public utility company that may have underground conduits beneath the constructed streetary. Access to utilities may require that a permittee temporarily remove all or a portion of the constructed streetary. Permittees shall be responsible for the cost of removing, re-installing and restoring any damage to the streetary.

#### **11.70.070 - Design and development standards.**

The city council shall, by separate resolution, adopt design and development standards regulating the form, design, safety and maintenance of streetaries. The director may, from time to time, make minor modifications to the design and development standards.

#### **11.70.080 - Criteria for issuance.**

- A. The director, in acting upon any application for a streetary encroachment permit, shall either approve, approve with conditions or deny the issuance of a permit based on the following principles and standards:
  - 1. That the applicant has paid all fees required under Section 11.70.040.
  - 2. That the proposed use of the parking spaces within the public right-of-way is in compliance with all applicable provisions of this chapter;
  - 3. That the proposed use of the parking spaces in the public right-of way is so arranged as to ensure the protection of public health, safety and general welfare, and prevent interference with users of the sidewalks, streets and holders of other permits; and

4. That the proposed use will properly comply with the provisions and development standards prescribed in this chapter, or as prescribed by the director and/or planning director.
- B. The streetary encroachment permit may be subject to additional conditions where the city has documented any violation of this chapter, other applicable laws and regulations, or the streetary is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood.
  - C. Deviations from adopted standards. Where the director determines that (1) a strict application of standards set forth in this chapter cannot be met by a proposed streetary, and (2) the streetary, as proposed, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or injurious to property and improvements in the neighborhood, the director may grant exceptions or minor modifications to the standards set forth in this chapter.

#### **11.70.090 - Limited to food service establishments.**

All permits issued pursuant to this chapter shall be limited to streetaries established in conjunction with and abutting food service establishments.

#### **11.70.100- Operational standards.**

- A. No live entertainment or amplified music. No live entertainment or amplified music shall be permitted in streetaries established pursuant to this chapter without first obtaining all required permits including but not limited to those issued pursuant to Section 8.13.060 of Title 8.
- B. No outdoor food preparation, flames, heating. Outdoor food preparation, food heating mechanisms, cooking and open flames, hotpots, candles, open flames, and barbecues shall not be permitted in streetaries.
- C. Alcohol service. Alcohol service shall be permitted subject to the acquisition of all required local and State permits and licenses.
- D. Noise and disruptive behavior. Permittees shall be responsible for ensuring their patrons minimize noise and disruptive behavior while using their streetary space.
- E. Site maintenance. Streetaries shall be maintained free of litter, refuse and debris. The area shall be scrubbed and mopped daily by the permittee to remove any food or drink stains. Such cleaning shall be in accordance with the City's Storm Water Management and Discharge Control Program, which prohibits any discharge other than rainwater into the storm water drainage system.
- F. ADA compliance. Streetary seating areas must, at all times, comply with all requirements of the Americans with Disabilities Act (ADA) and provide sufficient clearance and walkway space to allow safe access and egress. For multi-level streetaries, a minimum of one level of ADA access shall be required.

- G. Hours of operation. The streetary shall adhere to the same approved hours of operation as the associated food service establishment business, with the following limitations:
1. For streetaries that are within 150-foot horizontal or vertical distance from residences: Streetaries shall not commence operations prior to 7 a.m. on Saturdays, Sundays, and holidays; Streetaries shall not commence operations prior to 6 a.m. Monday through Friday; Streetaries shall not operate after 10 p.m. on Fridays and Saturdays; Streetaries shall not operate after 9 p.m. Sunday through Thursday and holidays. For purposes of this section, "holidays" shall have the same meaning as set forth in chapter 8.13 (Noise) of title 8.
- H. Insufficient usage. Streetaries must demonstrate adequate usage in order to contribute to the economic vitality of the city. The city requires these streetaries to be set up and readily available for use during the operational hours of the food service establishment associated with the streetary, except in inclement weather and subject to the hours of operation limitations under subsection G. The city has the right to notify any streetary permittee in writing of insufficient usage and invoke the enforcement procedures set forth in this chapter.

#### **11.70.110 - Indemnification and insurance.**

As a condition of the issuance of an annual streetary encroachment permit, the permittee shall defend, indemnify and hold harmless the City of San Rafael and shall present, along with each application or renewal application for an annual permit, evidence of liability insurance in a form acceptable to the director.

#### **11.70.120 – Enforcement.**

- A. Any person who violates this chapter shall be guilty of a misdemeanor and may be subject to any and all enforcement proceedings or remedies, including the imposition of penalties as authorized by law. The provisions of this chapter are cumulative to any other remedies authorized by law. Any streetary may be subject to inspection by the city on an annual basis or as needed to ensure compliance with this chapter and permits issued pursuant to this chapter.
- B. The city retains the right to revoke a streetary encroachment permit at any time where a violation of this chapter has occurred and/or revocation is necessary to protect the public interest, health, safety and/or welfare of the community. If the director believes that a permittee is in violation of this chapter, the director may issue a notice of violation to the permittee. The notice of violation shall be served on the permittee, either in person or by first class mail. The notice shall indicate that the permit is subject to termination unless, within 30 days of service of the notice of violation, the violation is corrected or a hearing pursuant to this chapter is requested in writing. If the director or his designee determines that a permittee will not be able to continue to meet the requirements of this chapter because of a proposed public highway right-of-way improvement, the director or their

designee shall notify the permittee, either in person or by first class mail, that the permit will be terminated within 30 days of service of the notice of termination.

**11.70.130 – Appeals.**

Any person aggrieved by the director's action on a streetary encroachment permit application or revocation may appeal by submitting a written appeal to the city manager, along with any applicable appeal fee as provided in the city's master fee schedule, within fifteen (15) days of the date on which the permit was issued or on which the application was denied or on which the permit was revoked. The city manager, or his designee, shall hold a hearing on the appeal within thirty (30) days of receipt of the appeal, and shall give the applicant and the appellant at least ten (10) days' written notice of the time of the hearing. The decision by the city manager or his designee on the appeal shall be final.

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING CHAPTER 11.70 (“STREETARIES” OUTDOOR EATING AREAS) TO TITLE 11 (PUBLIC WORKS) OF THE SAN RAFAEL MUNICIPAL CODE; AMENDING SECTION 14.16.277 OF CHAPTER 14.16 (SITE USE AND REGULATIONS), SECTION 14.17.110 OF CHAPTER 14.17 (PERFORMANCE STANDARDS), SECTION 14.05.020 OF CHAPTER 14.05 (COMMERCIAL AND OFFICE DISTRICTS), SECTION 14.06.020 OF CHAPTER 14.06 (INDUSTRIAL DISTRICTS) AND SECTION 14.08.020 OF CHAPTER 14.08 (MARINE DISTRICT) OF TITLE 14 (ZONING) OF THE SAN RAFAEL MUNICIPAL CODE; AND AMENDING TABLE 2.3.070.A (USE TABLE) OF CHAPTER 9 (DOWNTOWN FORM-BASED CODE) OF THE DOWNTOWN SAN RAFAEL PRECISE PLAN RELATING TO OUTDOOR EATING AREAS IN THE PUBLIC RIGHT-OF-WAY**

**WHEREAS**, the City Council has determined that outdoor eating areas within certain of the City’s rights-of-way provide economic vitality to the City and businesses, create community gathering spaces, contribute to the enjoyment of public spaces, and increase opportunities for more enjoyable pedestrian travel in the City; and

**WHEREAS**, the City Council desires to permit outdoor eating areas within parking spaces of the public right-of-way – known as “Streetaries” – through Streetary Encroachment Permits; and

**WHEREAS**, outdoor dining in the public right-of-way was authorized by the City Council in April 2000, through adoption of [Ordinance 1751](#), codified at San Rafael Municipal Code (“SRMC”) Section [14.16.277](#), *Use of City Sidewalks and Rights-of-Way for Outdoor Eating Areas*, by authorizing the Community Development Director to license outdoor dining in “sidewalks and other rights-of-way” under certain conditions and subject to performance standards under [Section 14.17.110\(C\)](#), *Outdoor Eating Areas Proposed in Conjunction with Food Service Establishments*; and

**WHEREAS**, on August 17, 2015, the City Council adopted [Resolution 13995](#), establishing a 3-year pilot program to expand the outdoor dining program to include parklets in the streets, which provided a process for businesses to use parking spaces for outdoor dining purposes; and

**WHEREAS**, on December 3, 2018, the City Council authorized the on-street dining program to continue under the same limitations and three (3) merchants participated in the pilot program; and

**WHEREAS**, on June 1, 2020, to help local businesses during the Covid-19 emergency, the City Council adopted [Resolution 14809](#) authorizing the City Manager, at their discretion, to streamline the approval of permits or other entitlements for use of City sidewalks and on-street parking spaces for business activities of restaurants and retail businesses, waive or reduce application fees, and close portions of designated City

streets up to two evenings per week in order to facilitate outdoor dining and allow dining establishments to continue to operate when indoor dining was not allowed during the Covid-19 emergency; and

**WHEREAS**, twenty-nine (29) additional merchants participated in the streamlined program, thereby maintaining economic stability during challenging Covid-19 pandemic restrictions; and

**WHEREAS**, Temporary Outdoor Dining Program permits approved under the streamlined process are valid through November 30, 2022; and

**WHEREAS**, the City Council desires to transition pre-existing Streetaries that were established prior to and during the Covid-19 pandemic into new Streetary Encroachment Permits when current permits expire on November 30, 2022; and

**WHEREAS**, [on June 21, 2022](#), staff presented Draft Streetary Guidelines to the City Council with staff's recommendations for design and development standards, operational standards, fees, and other related requirements for new Streetary Encroachment Permits that would apply after current permits expire on November 30, 2022; and

**WHEREAS**, the City Council has determined that the Director of Public Works should be the City's designated representative to issue Streetary Encroachment Permits because of their locations within the City's streets and parking spaces; and

**WHEREAS**, the City Council aims to balance the desire for outdoor dining in the public right-of-way with adequate public parking and pedestrian and bicycle access; and

**WHEREAS**, pursuant to Vehicle Code section 22507(a), cities may, by ordinance or resolution, restrict or otherwise remove parking from city streets during all or certain hours of the day; and

**WHEREAS**, the proposed Ordinance to add Chapter 11.70 ("Streetaries" Outdoor Eating Areas) to Title 11 (Public Works) and amend corresponding sections of Title 14 (Zoning) of the SRMC and Chapter 9 of the Downtown Precise Plan relating to outdoor eating areas in the public right-of-way through Streetary Encroachment Permits qualify for the exemptions set forth in CEQA Guidelines sections 15304 and 15305 and statutory exemption section 15183; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on September 13, 2022, at which time it reviewed the proposed amendments to Title 14 (Zoning) of the SRMC and Chapter 9 of the Downtown Precise Plan, considered all public comments on the revisions and related CEQA exemptions, and recommended the proposed ordinance; and

**WHEREAS**, the City Council held a duly noticed public hearing on September 19, 2022, considered all public comments on the revisions and related CEQA exemptions,

and determined that the amendments are consistent with the General Plan and that the revisions would be internally consistent with all other provisions of the SRMC.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:**

**Division 1.** The above findings are adopted and incorporated herein.

**Division 2.** **Addition of Chapter 11.70 to the San Rafael Municipal Code.**

Chapter 11.70 – “Streetaries” Outdoor Eating Areas is hereby adopted and made a part of Title 11 (“Public Works”) of the San Rafael Municipal Code as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

**Division 3.** **Amendments of Section 14.16.277 of Chapter 14.16 (Site Use and Regulations), Section 14.17.110 of Chapter 14.17 (Performance Standards), Section 14.05.020 of Chapter 14.05 (Commercial and Office Districts), Section 14.06.020 of Chapter 14.06 (Industrial Districts) and Section 14.08.020 of Chapter 14.08 (Marine District) of Title 14 (Zoning) of the City of San Rafael Municipal Code.**

**Section 1.** **Amendment of Section 14.16.277 of the San Rafael Municipal Code.**

Section 14.16.277 (“Use of city sidewalks and rights-of-way for outdoor eating areas”) of Chapter 14.16 (“Site and Use Regulations”) of Division IV (“Regulations Applying in All or Several Districts”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in ~~strike through~~, and additions are in underline.

**14.16.277 Use of city sidewalks ~~and rights-of-way~~ for outdoor eating areas.**

A. Applicability. This section applies to the use of city sidewalks located within the public right-of-way for outdoor eating areas. Any outdoor eating area located within or using parking spaces within the public right-of-way shall not be subject to the provisions of this section, but shall be regulated as provided in Chapter 11.70 of Title 11.

~~A.B.~~ Notwithstanding any other provisions of this title, the use of city sidewalks ~~or other city rights-of-way~~ for outdoor eating areas is prohibited without a license agreement between the adjacent food service establishment and the city, which license agreement shall be in lieu of any environmental design review permit, use permit, administrative use permit, encroachment permit or other permit required for use of the city sidewalk ~~or right-of-way~~ for such purpose.

~~B.C.~~ Such license agreements shall be in a form approved by the city attorney, and shall include the applicable standards provided in Section 14.17.110(C), indemnification of the city, and liability insurance naming the city as an additional insured in an



amount not less than one million dollars (\$1,000,000.00) and in a form as approved by the city's risk manager.

~~C.D.~~ Such license agreement also shall be subject to such regulations hereafter deemed necessary by the community development director to protect the public health, safety, and welfare, and as approved by resolution of the city council.

~~D.E.~~ Such license agreements may be approved by the community development director and may be revoked at the pleasure of the city council.

~~E.F.~~ The placement of outdoor seating area barriers shall allow a minimum six-foot (6') wide clear pathway for sidewalks located within the public rights-of-way.

~~F.G.~~ In lieu of the aforementioned license agreement, the city council may enter into a lease agreement between the adjacent food service establishment at a rate and term to be determined by the city council, and as approved by resolution of the city council.

(Ord. 1751 § 6, 2000).

## **Section 2. Amendment of Section 14.17.110 of the San Rafael Municipal Code.**

Subsection B (“Applicability”) of Section 14.17.110 (“Outdoor eating areas proposed in conjunction with food service establishments”) of Chapter 14.17 (“Performance Standards”) of Division IV (“Regulations Applying in All or Several Districts”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in ~~strikethrough~~, and additions are in underline.

### **14.17.110 Outdoor eating areas proposed in conjunction with food service establishments.**

#### **B. Applicability.**

1. This section applies to outdoor eating areas proposed in conjunction with food service establishments, with the exception of outdoor eating areas within parking spaces within the public right-of-way. Any outdoor eating area located within or using parking spaces within the public right-of-way shall not be subject to the provisions of this section, but shall be regulated as provided in Chapter 11.70 of Title 11.

2. Performance standards for outdoor eating areas proposed in conjunction with restaurants or other food service establishments shall apply in any zoning district where food service establishments are permitted uses (as of right or by conditional use permit). Compliance with performance standards for outdoor eating areas shall be reviewed through an administrative use permit and administrative environmental and design review permit process for any existing food service establishment. In cases where the restaurant or food service establishment is being proposed as a new use and is subject to a conditional use

permit in the zoning district is which it is located, the performance standards shall be incorporated into the required use permit. Notwithstanding the foregoing, any outdoor eating area located on city sidewalks ~~or rights-of-way~~ shall not be subject to the administrative use permit or use permit process, but shall be regulated as provided in Section 14.16.277.

(Ord. 1751 §§ 4, 5, 2000; Ord. 1663 § 1 (part), 1994; Ord. 1625 § 1 (part), 1992).

(Ord. No. 1882, Exh. A, § 61, 6-21-2010)

**Section 3. Amendment of Section 14.05.020 of the San Rafael Municipal Code.**

Table 14.05.020 of Section 14.05.020 (“Land Use Regulations (GC, NC, O, C/O, R/O, FBWC)”) of Chapter 14.05 (“Commercial and Office Districts”) of Division II (“Base District Regulations”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in ~~striketrough~~, and additions are in underline. Unless indicated below, no other cells or rows within Table 14.05.020 shall be modified by this amendment.

**Table 14.05.020**

Type of Land Use	GC	NC	O	C/O	R/O	FBWC*	Additional Use Regulations
<b>Commercial Uses</b>							
Outdoor eating areas	A*	A*	A*	A*	A*	A*	For outdoor eating areas on private property see Section 14.17.110 standards. For outdoor seating areas located on city sidewalks <del>or rights-of-way</del> , see Section 14.16.277 standards. <u>For outdoor eating areas on parking spaces within the public right-of-way, see Chapter 11.70 – “Streetaries” Outdoor Eating Areas.</u>

**Section 4. Amendment of Section 14.06.020 of the San Rafael Municipal Code.**

Table 14.06.020 of Section 14.06.020 (“Land Use Regulations (I, LI/O, CCI/O, LMU)”) of Chapter 14.06 (“Industrial Districts (I, LI/O, CCI/O, LMU)”) of Division II (“Base District Regulations”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is

hereby amended as set forth below. Deletions are in ~~strike through~~, and additions are in underline. Unless indicated below, no other cells or rows within Table 14.06.020 shall be modified by this amendment.

**Table 14.06.020**

Types of Land Use	I	LI /O	CCI /O	LM U	Additional Use Regulations
<b>Commercial Uses</b>					
Outdoor eating areas	A	A	A	A	For outdoor eating areas on private property, see Section 14.17.110 standards. For outdoor seating areas located on city sidewalks- <del>or rights-of-way</del> , see Section 14.16.277 standards. <u>For outdoor eating areas on parking spaces within the public right-of-way, see Chapter 11.70 – “Streetaries” Outdoor Eating Areas.</u>

**Section 5. Amendment of Section 14.08.020 of the San Rafael Municipal Code.**

Table 14.08.020 of Section 14.08.020 (“Land Use Regulations (M)”) of Chapter 14.08 (“Marine District”) of Division II (“Base District Regulations”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in ~~strike through~~, and additions are in underline. Unless indicated below, no other cells or rows within Table 14.08.020 shall be modified by this amendment.

**Table 14.08.020**

Type of Land Use	M	Additional Use Regulations
<b>Commercial</b>		
Outdoor eating areas	A	For outdoor eating areas on private property, see Section 14.17.110 standards. For outdoor seating areas located on city sidewalks- <del>or rights-of-way</del> , see Section 14.16.277 standards. <u>For outdoor eating areas on parking spaces within the public right-of-way, see Chapter 11.70 – “Streetaries” Outdoor Eating Areas.</u>

**Division 4. Amendment of Table 2.3.070.A of the Downtown San Rafael Precise Plan.**

Footnote 17 of Table 2.3.070.A (“Use Table”) of Article 2 (“Downtown Form-Based Zones”) of Chapter 9 (“Downtown Form-Based Code”) of the August 2021, Downtown San Rafael Precise Plan is hereby amended as set forth below. Deletions are in ~~strike through~~, and additions are in underline. Unless indicated below, no other cells, rows or footnotes within Table 2.3.070.A shall be modified by this amendment.

<sup>17</sup> For outdoor eating areas on private property, see SRMC Section 14.17.110 (Outdoor Eating Areas Proposed in Conjunction with Food Service Establishments) standards. For outdoor seating areas located on city sidewalks ~~or rights-of-way~~, see SRMC Section 14.16.277 (Use Of City Sidewalks ~~and Rights-of-way~~ for Outdoor Eating Areas) standards. For outdoor eating areas on parking spaces within the public right-of-way, see SRMC Chapter 11.70 (“Streetaries” Outdoor Eating Areas).

**Division 5. Compliance with California Environmental Quality Act (CEQA).**

The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15304 (Class 4), 15305 (Class 5) and 15183.

Class 4 categorical exemptions (Minor Alterations to Land) consist of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes, including “minor temporary uses of land having negligible or no permanent effects on the environment . . .” (CEQA Guideline § 15304(e).) This Ordinance will involve the temporary, non-permanent use of land; all uses authorized pursuant to this ordinance would involve temporary, non-permanent improvements in the public right-of-way including temporary structures, tables and seating.

Class 5 categorical exemptions (Minor Alterations in Land Use Limitations) covers projects that consist of minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density including but not limited to issuance of minor encroachment permits. (CEQA Guideline § 15305.) This Ordinance will result in the issuance of permits for use and encroachment into the public right-of-way.

Section 15183 provides that when a proposed project is consistent with a General Plan or community plan for which an Environmental Impact Report (EIR) was certified, subsequent environmental review may only be required to examine “project-specific significant effects, which are peculiar to the project or its site.” On July 19, 2021, the City Council approved a resolution certifying the EIR that was prepared to analyze the environmental impacts of the City’s General Plan 2040 and Downtown Precise Plan. The City Council adopted both Plans as well as a statement of overriding considerations on August 2, 2021. As the conversion of on-street parking for use as outdoor dining is part

of a strategy identified in the Downtown Precise Plan for creating civic spaces in infill conditions, this Ordinance is consistent with the Downtown Precise Plan and associated EIR. The project is therefore, exempt from CEQA pursuant to section 15183 of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance or its implementation would have a significant effect on the environment.

The proposed Ordinance is consistent with these exemptions, because the requested action will not result in a direct or reasonably foreseeable change in the environment and because there is no possibility that the activity in question may have a significant effect on the environment.

**Division 6. Severability.**

The City Council hereby declares every section, paragraph, sentence, clause, and phrase of this Ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this Ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

**Division 7. Publication; Effective Date.**

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for or against the Ordinance.

**THE FOREGOING ORDINANCE** was first read and introduced at a regular meeting of the San Rafael City Council on the 19th day of September 2022, and was passed and adopted at a regular meeting of the San Rafael City Council on the \_\_\_\_ day of \_\_\_\_\_ 2022 by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

KATE COLIN, Mayor

Attest:

LINDSAY LARA, City Clerk

## Exhibit A

### **Chapter 11.70 – “STREETARIES” OUTDOOR EATING AREAS**

#### **11.70.010 - Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meaning set forth below. Unless in direct conflict with terms defined herein, other words and phrases shall be interpreted as defined in the Streets and Highways Code:

- A. “Outdoor eating area” shall have the same meaning as set forth in Section 14.03.030 of Title 14.
- B. “Parking spaces within the public right-of-way” shall mean the designated on-street or off-street area where parking of vehicles does not violate any posted parking restriction and the use of the space does not interfere with the safety nor the passage of persons and vehicles.
- C. “Permittee” shall mean the permit holder of a valid streetary encroachment permit issued by the city.
- D. “Streetary” or “streetaries” shall mean an outdoor eating area that operates within and uses parking spaces within the public right-of-way directly adjacent to the food service establishment street frontage. Outdoor eating areas operating within or using sidewalks within the public right-of-way are not covered under this chapter and are subject to the applicable standards under Section 14.16.277 of Title 14.

#### **11.70.020 - Permit required.**

Any person desiring to erect, construct, place or maintain an encroachment upon any existing parking spaces within the public right-of-way for a streetary must first obtain an annual streetary encroachment permit pursuant to this chapter. Each applicant for an annual streetary encroachment permit shall comply with the requirements of this chapter, any other applicable laws, and any regulations and policies adopted pursuant to this chapter.

Permits shall only be issued to applicants with a valid business license issued by the city to operate a food service establishment directly adjacent to the parking spaces within the right-of-way for which a streetary encroachment permit is sought.

All persons operating and/or maintaining a streetary as of the effective date of this ordinance shall be required to obtain a streetary encroachment permit and pay applicable fees no later than December 1, 2022. Failure to obtain a streetary encroachment permit within this time period shall constitute a violation of this chapter and may subject the current streetary operator to closure and/or enforcement pursuant to this chapter.

#### **11.70.030 - Permit application.**

The director of public works (the "director") shall establish an application form for an annual streetary encroachment permit, including any application materials deemed necessary to enable complete review of the application. The application shall be accompanied by a permit application fee required under Section 11.70.040.

The director shall transmit a copy of each application for an annual streetary encroachment permit to the director of community development (the "planning director"). The planning director shall review the application for compliance with all applicable design and development standards.

#### **11.70.040 - Fees.**

Each permit application shall be accompanied by a permit application fee. Prior to permit issuance, the permittee shall pay an annual encroachment lease fee and a one-time, refundable deposit. Fees shall be in amounts established by separate resolution of the City Council.

#### **11.70.050 - Where permitted.**

- A. Streetaries are permitted in existing parking spaces within the right-of-way in all commercial districts.
- B. Streetaries are only permitted in the parking spaces within the right-of-way directly adjacent to the food service establishment street frontage.
- C. Notwithstanding subsection A, above, streetaries shall not be permitted along streets with (1) peak hour parking restrictions or (2) speeds limits greater than 25 miles per hour.
- D. Notwithstanding subsection A, above, streetaries shall not be permitted in parking spaces that (1) are ADA designated, (2) are adjacent to curbs designated for no parking (red curb), passenger loading zones (white curb), commercial loading zones (yellow curb), limited parking zones (green) and/or any other colored curb zones with restrictions, (3) would block or obstruct any fire hydrant, fire department sprinkler or standpipe hose, or other public safety infrastructure, (4) would obstruct utility access panels, manhole covers, storm drains, street valves, or any other type of utility assets, or (5) would obstruct any bicycle facility.

#### **11.70.060 - Location criteria.**

- A. Maximum parking stalls. A maximum of two parallel parking spaces shall be used for each streetary.
- B. Parking sufficiency. Seventy percent (70%) of on-street parking on any three-block average (the streetary location's block and one block in either direction) must remain available for vehicles at any given time. The director may make an exception if the entrance to a public parking garage or lot is within 300 feet of the streetary location.
- C. Adjacency to storefront. Streetaries may only be permitted in parking spaces within the right-of-way that are directly in front of the permittee's food service



establishment business. If a food service establishment fronts more than one but less than two parking spaces and fronts more than fifty percent (50%) of the second parking space, the permittee is eligible to apply for two parking spaces for use as a streetary.

- D. Travel lane setback. Streetaries shall have an eighteen inch (18") minimum setback from the travel lane measured from the parking striping adjacent to the travel lane. In cases where no striping exists, the maximum length of the streetary measured from the face of the curb shall be determined by the director or their designee.
- E. Side setback. Streetaries shall have a two-foot minimum side setback to each wheel stop located at each end of the parking space.
- F. Utilities. A minimum clearance of four feet (4') from either side of utility access panels, manhole covers, storm drains, street valves, or any other type of utility assets will be required to allow for maintenance access. Streetaries proposed under overhead utility lines shall meet the minimum vertical distance requirements as established by the California Public Utility Commission. Streetaries that block the outlet of a sidewalk underdrain shall ensure the outlet is functional and flowing. Permittees shall take a thorough inventory of utility access covers in the proposed streetary area by checking under parked cars. Permittees shall provide for access to any city or public utility company that may have underground conduits beneath the constructed streetary. Access to utilities may require that a permittee temporarily remove all or a portion of the constructed streetary. Permittees shall be responsible for the cost of removing, re-installing and restoring any damage to the streetary.

#### **11.70.070 - Design and development standards.**

The city council shall, by separate resolution, adopt design and development standards regulating the form, design, safety and maintenance of streetaries. The director may, from time to time, make minor modifications to the design and development standards.

#### **11.70.080 - Criteria for issuance.**

- A. The director, in acting upon any application for a streetary encroachment permit, shall either approve, approve with conditions or deny the issuance of a permit based on the following principles and standards:
  - 1. That the applicant has paid all fees required under Section 11.70.040.
  - 2. That the proposed use of the parking spaces within the public right-of-way is in compliance with all applicable provisions of this chapter;
  - 3. That the proposed use of the parking spaces in the public right-of way is so arranged as to ensure the protection of public health, safety and general welfare, and prevent interference with users of the sidewalks, streets and holders of other permits; and

4. That the proposed use will properly comply with the provisions and development standards prescribed in this chapter, or as prescribed by the director and/or planning director.
- B. The streetary encroachment permit may be subject to additional conditions where the city has documented any violation of this chapter, other applicable laws and regulations, or the streetary is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood.
  - C. Deviations from adopted standards. Where the director determines that (1) a strict application of standards set forth in this chapter cannot be met by a proposed streetary, and (2) the streetary, as proposed, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or injurious to property and improvements in the neighborhood, the director may grant exceptions or minor modifications to the standards set forth in this chapter.

#### **11.70.090 - Limited to food service establishments.**

All permits issued pursuant to this chapter shall be limited to streetaries established in conjunction with and abutting food service establishments.

#### **11.70.100- Operational standards.**

- A. No live entertainment or amplified music. No live entertainment or amplified music shall be permitted in streetaries established pursuant to this chapter without first obtaining all required permits including but not limited to those issued pursuant to Section 8.13.060 of Title 8.
- B. No outdoor food preparation, flames, heating. Outdoor food preparation, food heating mechanisms, cooking and open flames, hotpots, candles, open flames, and barbecues shall not be permitted in streetaries.
- C. Alcohol service. Alcohol service shall be permitted subject to the acquisition of all required local and State permits and licenses.
- D. Noise and disruptive behavior. Permittees shall be responsible for ensuring their patrons minimize noise and disruptive behavior while using their streetary space.
- E. Site maintenance. Streetaries shall be maintained free of litter, refuse and debris. The area shall be scrubbed and mopped daily by the permittee to remove any food or drink stains. Such cleaning shall be in accordance with the City's Storm Water Management and Discharge Control Program, which prohibits any discharge other than rainwater into the storm water drainage system.
- F. ADA compliance. Streetary seating areas must, at all times, comply with all requirements of the Americans with Disabilities Act (ADA) and provide sufficient clearance and walkway space to allow safe access and egress. For multi-level streetaries, a minimum of one level of ADA access shall be required.

- G. Hours of operation. The streetary shall adhere to the same approved hours of operation as the associated food service establishment business, with the following limitations:
1. For streetaries that are within 150-foot horizontal or vertical distance from residences: Streetaries shall not commence operations prior to 7 a.m. on Saturdays, Sundays, and holidays; Streetaries shall not commence operations prior to 6 a.m. Monday through Friday; Streetaries shall not operate after 10 p.m. on Fridays and Saturdays; Streetaries shall not operate after 9 p.m. Sunday through Thursday and holidays. For purposes of this section, "holidays" shall have the same meaning as set forth in chapter 8.13 (Noise) of title 8.
- H. Insufficient usage. Streetaries must demonstrate adequate usage in order to contribute to the economic vitality of the city. The city requires these streetaries to be set up and readily available for use during the operational hours of the food service establishment associated with the streetary, except in inclement weather and subject to the hours of operation limitations under subsection G. The city has the right to notify any streetary permittee in writing of insufficient usage and invoke the enforcement procedures set forth in this chapter.

#### **11.70.110 - Indemnification and insurance.**

As a condition of the issuance of an annual streetary encroachment permit, the permittee shall defend, indemnify and hold harmless the City of San Rafael and shall present, along with each application or renewal application for an annual permit, evidence of liability insurance in a form acceptable to the director.

#### **11.70.120 – Enforcement.**

- A. Any person who violates this chapter shall be guilty of a misdemeanor and may be subject to any and all enforcement proceedings or remedies, including the imposition of penalties as authorized by law. The provisions of this chapter are cumulative to any other remedies authorized by law. Any streetary may be subject to inspection by the city on an annual basis or as needed to ensure compliance with this chapter and permits issued pursuant to this chapter.
- B. The city retains the right to revoke a streetary encroachment permit at any time where a violation of this chapter has occurred and/or revocation is necessary to protect the public interest, health, safety and/or welfare of the community. If the director believes that a permittee is in violation of this chapter, the director may issue a notice of violation to the permittee. The notice of violation shall be served on the permittee, either in person or by first class mail. The notice shall indicate that the permit is subject to termination unless, within 30 days of service of the notice of violation, the violation is corrected or a hearing pursuant to this chapter is requested in writing. If the director or his designee determines that a permittee will not be able to continue to meet the requirements of this chapter because of a proposed public highway right-of-way improvement, the director or their

designee shall notify the permittee, either in person or by first class mail, that the permit will be terminated within 30 days of service of the notice of termination.

**11.70.130 – Appeals.**

Any person aggrieved by the director's action on a streetary encroachment permit application or revocation may appeal by submitting a written appeal to the city manager, along with any applicable appeal fee as provided in the city's master fee schedule, within fifteen (15) days of the date on which the permit was issued or on which the application was denied or on which the permit was revoked. The city manager, or his designee, shall hold a hearing on the appeal within thirty (30) days of receipt of the appeal, and shall give the applicant and the appellant at least ten (10) days' written notice of the time of the hearing. The decision by the city manager or his designee on the appeal shall be final.