



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 STANDARDS AND FEES

1. **ADOPTION OF ORDINANCE 2016 - AN ORDINANCE 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**

2. **RESOLUTION APPROVING THE STREETARY PROGRAM DESIGN AND DEVELOPMENT STANDARDS AND FEES UNDER THE STREETARIES ORDINANCE, CHAPTER 11.70 OF THE SAN RAFAEL MUNICIPAL CODE**

RECOMMENDED ACTION: Adoption of Ordinance 2016 and adopt a resolution approving the Streetary Program Design and Development Standards ("Standards") and fees under Chapter 11.70 of the San Rafael Municipal Code ("SRMC") – "Streetaries" Outdoor Eating Areas.

BACKGROUND: Outdoor dining on 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*. In 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. [In 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](#) to streamline the use of City sidewalks and on-street parking spaces for business activities of restaurants and retail businesses. Twenty-nine (29) merchants utilized the streamlined program. These temporary Outdoor Dining Program permits are valid through November 30, 2022.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

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Since early 2022 a collaborative team from Public Works, Community Development, Parking Services, Economic Development, Fire, Police, and the City Manager's and City Attorney's Offices worked to create 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. The Draft Streetary Program Guidelines and fees were presented to the City Council on [June 21, 2022](#). After the approval of the draft guidelines, city staff outreached to all of the existing Streetary owners to share the guidelines and schedule. Based on the draft Guidelines, staff drafted and proposed to the City Council a new Ordinance that would implement the standards as envisioned in the draft Guidelines.

On [September 19, 2022](#), the City Council introduced a new ordinance adding Chapter 11.70 - "Streetaries" Outdoor Eating Areas to Title 11 (Public Works) of the SRMC, and staff recommends adoption of the ordinance (Attachment 1). The Ordinance, if adopted, will govern Streetaries in the public right-of-way, including without limitation, Streetary Encroachment Permits issued by the Director of Public Works, types of fees associated with the program, location requirements for streetaries, design and development standards, and procedures for enforcement, and appeal.

This proposed Resolution establishes fees for the program under Section 11.70.040 of the SRMC and the design and development standards for the program under Section 11.70.070 of the SRMC, which require separate resolution of the City Council as follows:

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.

11.70.070 - 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.

ANALYSIS: The goal of the program 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.

Proposed Fee Amounts

Three fees are required under the SRMC Section 11.70.040: 1) application fee, 2) annual encroachment lease fee, and 3) one-time refundable deposit.

Based on input from existing Streetary owners, several expressed hardships for the amount of fees due as early as December 1, 2022. There have been requests that the city provide waivers, discounts, or payment plans to assist with the fees.

Table 1 presents staff recommendations for the fees and timeline for when they would go into effect. The fee amounts may be changed from time-to-time by subsequent resolutions of the City Council.

Fee	Amount	Timeline
Application fee	\$2,000 (one time)	Fee waived until December 31, 2023
Annual Encroachment Lease fee	\$3,600 per parking space	Fee waived until June 1, 2023. Between June 1, 2023 and May 30, 2024: Fee discount of 50% applies. Between June 1, 2024 and May 30, 2025: Fee discount of 25% applies. Beginning June 1, 2025: 100% of fee applies (no discounts or waivers)
Deposit	\$2,000 (one time)	Fee due prior to the start of construction for new streetaries or before application is accepted for existing streetaries.
Other: Building permit fee	Dependent on value of improvements – in City Master Fee Schedule	Fee due before receiving building permit.

Proposed Design and Development Standards

The SRMC Section 11.70.070 requires the City Council to adopt design and development standards regulating the form, design, safety and maintenance of streetaries. The Director of Public Works may, from time to time, make minor modifications to the standards.

Attachment 2 presents the Guidelines and Design and Development Standards (“Standards”) for the Streetary Program. This document incorporates provisions of the ordinance and sets forth specific form, design, safety, and maintenance requirements. The document provides specific location and setback criteria for streetaries from the ordinance, including required setback distances from the adjacent travel lane and parking spaces. In addition, it provides design criteria (i.e. materials, dimensions, accessibility, safety) for key elements of the streetaries. Minimum traffic safety protection measures (e.g., wheel stops, vertical delineators) are also included in the Standards. Operational standards, insurance requirements, and the streetary encroachment permit application process are also outlined in the document.

With the new ordinance in effect, the Director of Public Works 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 Standards.

Under the Ordinance Sections 11.70.080(C)-(D), the Director of Public Works is permitted to grant exceptions or minor modifications to the standards set forth in the Ordinance if the Director determines that the streetary 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. Accordingly, the Director of Public Works will work with the existing streetaries on a case-by-case basis to consider minor modifications to the standards, as appropriate.

Based on initial assessments of the existing streetaries, the majority of the existing 25 streetaries would need significant to moderate modifications to meet the requirements of the ordinance and Standards. Existing streetary issues include location non-conformance, neglect, accessibility non-compliance, lack of cleaning, and traffic safety concerns. In order for the streetary permittees to bring their streetaries into compliance, it will take time. City staff will work with each interested

restaurant owner through the permitting process. In order to allow for flexibility with the new program starting December 1st, staff will allow streetaries deemed by public works staff to be substantially compliant with the guidelines by December 1, 2022 to remain in operation as they become in full compliance by March 15, 2023. The city anticipates 8 to 10 of the existing streetaries being in substantial compliance by the December 1 deadline.

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.

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 in the [September 19, 2022 Staff Report](#).

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.

OUTREACH: City staff across several departments have engaged the community and key stakeholders throughout this year. These efforts are summarized below:

- **February 2022 to present:** Monthly updates with Economic Development (ED) subcommittee (includes Chamber of Commerce & Downtown Business Improvement District leadership)
- **April 2022:** ED subcommittee task force was created to review draft guidelines including a streetary owner
- **May 2022:** Staff met with a few streetary owners to review guidelines
- **June 21, 2022:** City Council Informational Report and approved draft guidelines
- **July-Aug 2022:** Mailed letter and sent emails with draft guidelines and revised program.
- **Aug-Sept 2022:** Email, phone calls, and visited with interested streetary owners.
- **Sept 2022:** Emailed and dropped off one-page fact sheet to highlight dates, fees, and guidelines
- **Sept 19, 2022:** Public hearing on proposed Ordinance.

FISCAL IMPACT: As businesses continue to try to recover from the pandemic, staff have received several requests from existing Streetary owners to have a staggered approach to implementing fees for the streetaries.

The application fee of \$2,000, which is proposed to be waived for the first year, is calculated at cost recovery levels for the staff time to review the application, site, and determine compliance. While this fee is waived, staff time which is paid through the General Fund will be affected. Staff will be working on this program instead of potential other work assignments that could be cost recoverable. Assuming 10 streetaries participate in the program starting December 1, 2022, this assumes a total cost to the General Fund of \$20,000 in staff time.

The deposit fee will be held by the City and, if needed, pay for streetary removal and reinstatement of the public right of way to its original condition. Any remaining portion of the deposit will be refunded upon streetary removal or change of operator.

The annual encroachment lease fee of \$3,600 per parking space was calculated on the basis of average annual revenue from parking meters downtown in 2019, which was prior to the anomalies in parking behavior during the COVID pandemic. The parking services fund has already been working at a loss in meter fees since the temporary program was implemented, so staff is proposing a transition over the next 2.5 years until full parking meter fees are recovered. This fee does not include any cost recovery for staff time to administer the permit, inspect the streetaries, and review and manage compliance. Assuming 10 streetaries each with two parking stalls participate in the program starting December 1, 2022, there would be a revenue loss to the Parking Fund of \$36,000 for the first 6 months, another \$36,000 for the following 12 months, and \$18,000 for the subsequent 12 months. Over the 2.5-year transition period for these 10 streetaries it would be a total estimated parking revenue loss of \$90,000.

Staff recommend transferring funds from the General Fund to the Parking Fund #501 using COVID relief funds to support operations of the Parking Division while the fee waiver is in effect. The exact amount of the transfer will depend on the annual number of streetaries and parking spaces in use.

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. This fee includes the cost of maintenance staff time to remove and dispose of the streetary. After recent discussions with streetary operators, we anticipate 12 streetaries to choose this option of early removal. A total estimated cost of \$18,000 would be absorbed by the Department of Public Works operating budget.

OPTIONS:

1. Adopt Ordinance 2016 and adopt the resolution approving the Streetary Program Standards and fees.
2. Adopt the resolution as amended approving the Streetary Program Standards and fees.
3. Do not adopt the resolution and provide alternative direction to staff.

RECOMMENDED ACTION:

1. Adopt Ordinance 2016: An Ordinance 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
2. Adopt a resolution approving the Streetary Program Design and Development Standards (“Standards”) and fees under Chapter 11.70 of the San Rafael Municipal Code (“SRMC”) – “Streetaries” Outdoor Eating Areas.

ATTACHMENTS:

1. Ordinance 2016 and Summary Ordinance
2. Proposed Resolution for Streetary Program Standards and fees
3. Streetary Program Design and Development Standards

ORDINANCE NO. 2016

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 ~~strikethrough~~, 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 ~~striketrough~~, 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 in 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 ~~strikethrough~~, 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
Commercial Uses							
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 or rights-of-way , 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
Commercial Uses					
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- or rights-of-way , 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
Commercial		
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- or rights-of-way , 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.

¹⁷ 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 3rd day of October 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 for proposed streetaries. 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.
 - D. Deviations from adopted standards for existing streetaries. For existing streetaries operating as of the effective date of this ordinance, where the director determines that the streetary 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.

SUMMARY OF ORDINANCE NO. 2016

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

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 2016, which will amend the San Rafael Municipal Code to establish regulations for “Streetaries:” outdoor dining in on-street parking spaces.

Ordinance No. 2016 is scheduled for adoption by the San Rafael City Council at its regular meeting of October 3, 2022. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF AMENDMENT TO MUNICIPAL CODE

To help local businesses maintain economic stability during the COVID-19 emergency, on June 1, 2020, the City Council authorized the expansion of an existing pilot program and the streamlined approval of permits for temporary use of City sidewalks and on-street parking spaces (“Streetaries”) for business activities of restaurants and retail businesses. Temporary Outdoor Dining Program permits approved under the COVID-19 emergency streamlined process are valid through the end of November 2022. To allow the continuation of the Outdoor Dining Program with established parameters and processes for application, design criteria, operation and maintenance standards, the San Rafael City Council is adopting a new chapter (“Streetaries” Outdoor Eating Areas) to Title 11 (Public Works) of the San Rafael Municipal Code as well as making conforming text amendments to both the Zoning Ordinance and the Downtown Precise Plan to delete references to on-street dining and reference the new Chapter 11.70.

Copies of the Ordinance are also available for public review by contacting the City Clerk’s office by email to city.clerk@cityofsanrafael.org. You may also contact April Miller, Public Works Director, at 415-485-3355 or april.miller@cityofsanrafael.org for information.

/s/ Lindsay Lara
LINDSAY LARA
San Rafael City Clerk
Dated: 09/23/2022

RESOLUTION NO.

RESOLUTION APPROVING THE STREETARY PROGRAM DESIGN AND DEVELOPMENT STANDARDS AND FEES UNDER THE STREETARIES ORDINANCE, CHAPTER 11.70 OF THE SAN RAFAEL MUNICIPAL CODE.

WHEREAS, on September 19, 2022, the City Council introduced a new ordinance adding Chapter 11.70 “Streetaries” Outdoor Eating Areas to Title 11 (Public Works) of the San Rafael Municipal Code (SRMC); and

WHEREAS, on October 3, 2022, the City Council adopted the new “Streetaries” Ordinance; and

WHEREAS, under the newly-enacted Section 11.70.070 of the SRMC – 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.”; and

WHEREAS, under the newly-enacted Section 11.70.040 of the SRMC – 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.”; and

WHEREAS, the City Council wishes to establish safe and aesthetic design standards and a fee schedule with consideration of the need to revive the challenged dining industry; and

WHEREAS, the City Council recognizes the economic challenges facing local businesses, particularly restaurants, and wishes to support the streetaries as they transition into the new program established by the Streetaries ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL

RESOLVES as follows:

1. The Streetary Program Design and Development Standards attached to the Staff Report accompanying this Resolution are hereby adopted as the design and development standards regulating the form, design, safety and maintenance of streetaries, in accordance with Section 11.70.070 of the SRMC.
2. The following fees for the Streetary Program are hereby established, in accordance with Section 11.70.040 of the SRMC:

Fee	Amount	Timeline
Application fee	\$2,000 (one time)	Fee waived until December 31, 2023
Annual Encroachment Lease fee	\$3,600 per parking space	Fee waived until June 1, 2023. Between June 1, 2023 and May 30, 2024: Fee discount of 50% applies. Between June 1, 2024 and May 30, 2025: Fee discount of 25% applies. Beginning June 1, 2025: 100% of fee applies (no discounts or waivers)
Deposit	\$2,000 (one time)	Fee due prior to the start of construction for new streetaries or before application is accepted for existing streetaries.

3. Staff are directed to add the Streetary Program fees to the City of San Rafael Master Fee Schedule.
4. Funds will be transferred from the General Fund to the Parking Fund #501 using American Rescue Plan Act (ARPA) funds to compensate for lost revenue from the fee waivers through FY 2024-25. Transfers will be calculated annually based on the number of parking spaces utilized by streetaries.

I, **Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 3rd of October 2022 by the following vote, to wit:

AYES: COUNCILMEMBERS:
 NOES: COUNCILMEMBERS:
 ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**CITY OF SAN RAFAEL
STREETARY PROGRAM
GUIDELINES AND DESIGN AND DEVELOPMENT STANDARDS
("STANDARDS")**

THESE STANDARDS MUST BE READ IN CONJUNCTION WITH SAN RAFAEL MUNICIPAL CODE (SRMC), CHAPTER 11.70 - "STREETARIES" OUTDOOR EATING AREAS.

BUSINESSES SEEKING TO ESTABLISH OUTDOOR DINING STRUCTURES IN PARKING SPACES WITHIN THE PUBLIC RIGHT-OF-WAY MUST COMPLY WITH THESE STANDARDS.

I. "STREETARIES" OUTDOOR EATING AREAS ORDINANCE

On October 3, 2022, the City of San Rafael City Council adopted Ordinance No. _____, adding a new chapter 11.70 to the San Rafael Municipal Code ("SRMC"), titled "Streetaries" Outdoor Eating Areas, regulating outdoor eating areas in parking spaces within the public right-of-way. All streetaries operating, or applying to operate, in parking spaces within the public right-of-way must obtain a Streetary Encroachment Permit, and comply with the ordinance and design and development standards set forth in these "Standards".

As defined in the ordinance, "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 Chapter 11.70 or these Standards, and are subject to the applicable standards under Section 14.16.277 of Title 14 of the SRMC.

I. LOCATION AND SETBACK CRITERIA

All streetaries must comply with requirements as outlined Chapter 11.70 of the San Rafael Municipal Code.

A. Streetary Location Criteria

Peak Hour Restrictions/Speed Limits Greater than 25 mph

SRMC 11.70.050(C): Streetaries shall not be permitted along streets with (1) peak hour parking restrictions or (2) speeds limits greater than 25 miles per hour.

Maximum Parking Stalls

SRMC 11.70.060(A): Maximum parking stalls. A maximum of two parallel parking spaces shall be used for each streetary.

Parking Sufficiency

SRMC 11.70.060(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.

Adjacency to Storefront

SRMC 11.70.050(B): Streetaries are only permitted in the parking spaces within the right-of-way directly adjacent to the food service establishment street frontage.

SRMC 11.70.060(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.

Adjacency to Storefront - Shared Streetaries

A streetary shared by two businesses shall not exceed the frontage for the combined businesses.

Adjacency to Storefront Exception - Existing Streetaries

Existing streetaries operating as of the effective date of the Streetary Ordinance will be permitted to continue to operate at their existing location, *provided* that all of the following conditions are met: i) the Streetary in its current condition is in substantial compliance with the Ordinance and Standards; ii) the Streetary does not require a new Building Permit; iii) the Streetary does not require and is not proposing significant modifications; iv) some portion of the Streetary is directly in front of the permittee's food service establishment business; v) the Streetary does not use more than two parking spaces (or the maximum allowable for shared streetaries); and vi) pursuant to SRMC 11.70.080(D), the Director of Public Works has determined that the Streetary 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. This exception only applies to granting exceptions to the "adjacency to storefront" requirements under *SRMC 11.70.050(B) and SRMC 11.70.060(C)* and no other standards.

B. Streetary Setback Criteria

Required Streetary Buffers – Travel Lane Setbacks

SRMC 11.70.060(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.

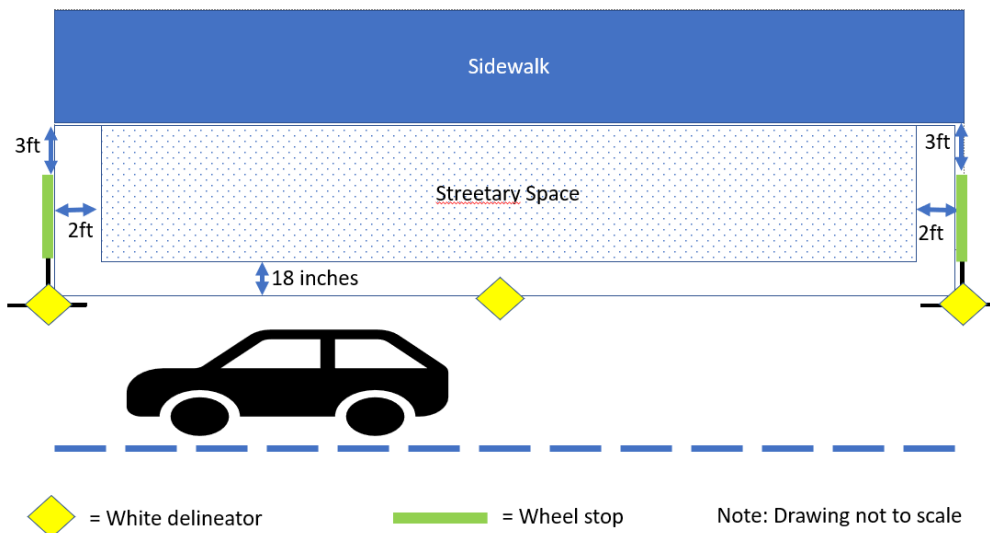
See [Figure 1](#).

Required Streetary Buffers – Side Setbacks

SRMC 11.70.060(E): Side setback. Streetaries shall have a two-foot minimum side setback to each wheel stop located at each end of the parking space.

See [Figure 1](#).

[Figure 1](#): Required Streetary Buffers and Traffic Safety Requirements.



Corner Locations

Streetaries located adjacent to intersection crosswalks shall provide a minimum 30-foot setback from the nearest crosswalk. Storefronts located at corner locations may only have a streetary on one street.

Fronting Driveways

Streetaries may not obstruct driveways, ADA ramps, or entrances to City-owned parking facilities.

C. Other Location Criteria

Utilities

SRMC 11.70.050(D): Streetaries shall not be permitted in parking spaces that would obstruct utility access panels, manhole covers, storm drains, street valves, or any other type of utility assets.

SRMC 11.70.060(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.

ADA-Designated Spaces

SRMC 11.70.050(D): Streetaries shall not be permitted in parking spaces that are ADA designated.

Colored Curb Zones with Restrictions

SRMC 11.70.050(D): Streetaries shall not be permitted in parking spaces that 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.

Bicycle Facilities

SRMC 11.70.050(D): Streetaries shall not be permitted in parking spaces that would obstruct any bicycle facility.

Streetaries cannot obstruct a bicycle lane or path.

Fire and Public Safety Infrastructure

SRMC 11.70.050(D): Streetaries shall not be permitted in parking spaces that would block or obstruct any fire hydrant, fire department sprinkler or standpipe hose, or other public safety infrastructure.

Fire Hydrants

Fire Hydrants shall not be blocked. A 15-foot clearance on either side of the hydrant along the curb shall be maintained. Additionally, three feet of clearance around the hydrant shall be provided.

Fire Department Connections (FDCs)

Fire Department Sprinkler and Standpipe hose connections shall remain fully accessible and not blocked or concealed from plain view. All fire department exterior equipment such as post indicator valves, check valves, and OS&Y valves shall be free from obstruction.

II. STREETARY DESIGN ELEMENTS

Streetaries generally consist of the following key elements:

- A. PLATFORM** that allows the streetary to serve as an extension of the sidewalks
- B. RAILINGS OR SIDE ENCLOSURES** that demarcate the exterior of the streetary from the street and surrounding parking spaces

C. TRAFFIC SAFETY PROTECTIONS to reduce the potential for auto-related damage

D. OVERHEAD STRUCTURES (optional)

E. FURNISHINGS AND FIXTURES

In order to maintain a cohesive aesthetic throughout the City to enhance beautification and economic vitality, the City is limiting the materials used for any streetary elements to either wood (which can be natural wood or composite material) or metal. The City has identified certain companies that build modular streetaries that are easy to clean and can be stored and reinstalled with ease. Businesses may design their own or purchase such modular streetaries.

A. PLATFORM DESIGN CRITERIA

Materials

Platforms must be constructed from wood or metal that can withstand wear and tear of elements. Pouring concrete for streetary platforms is not allowed. Streetaries may use concrete pavers on a platform structure instead. Surface materials must be textured or treated with a non-skid coating to ensure a safe walking surface. Loose particles, such as sand or loose stone, are not permitted.

Maintenance Access

Streetaries must be designed to provide access under the platform to allow for maintenance (i.e. repairs or clearing debris). If the platform base is not a solid mass, access can be provided through access panels, removable pavers, or other means.

Platform Threshold

The platform threshold must be flush and even with the sidewalk and must not leave a gap greater than ½ inch, nor a vertical separation greater than ¼ inch.

Drainage

Platforms must allow for curbside drainage flow. At a minimum, the existing gutter line must be clear of obstructions along the entire length of the proposed platform and provide a minimum 12-inch wide clear space if the street does not have a concrete gutter. Openings at either end of the streetary may be covered with screens to prevent debris buildup beneath the platform and in the gutter. It is the responsibility of the streetary permittee to clean the cover or screen to prevent any backup of storm water. All streetaries must provide access through the streetary platform or threshold to the gutter adjacent to the curb. The City reserves the right to adjust these requirements depending on the specific location of each streetary in order to maintain proper drainage

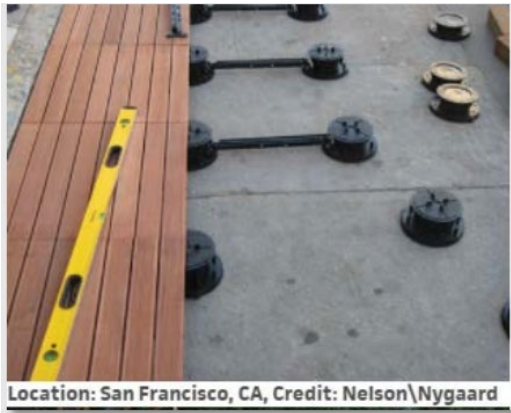
Affixing Not Allowed

At no time may structures be bolted or affixed in any way to the roadway or any structure (including but not limited to buildings, fire hydrants, street trees, streetlights, parking meters, or traffic poles). An exception to this is that wheel stops for traffic protection must be affixed to the roadway as described in the Traffic Protection section of these Standards.

Sub-structure

Designs for the sub-structure of a streetery vary and depend on the slope of the street and overall design for the structure. The sub-structure must accommodate the crown of the road and provide a level surface for the streetery. “Bison pedestals” (pictured below) spaced under the surface and of different heights are a common application. Another method is to provide steel sub-structure and angled beams.

Figure 2: Bison pedestals for streetery sub-structure



ADA Accessibility

SRMC 11.70.100(F): ADA Compliance. Streetery 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 streeteries, a minimum of one level of ADA access shall be required.

All accessibility elements of the proposed platform shall be designed, constructed and/or conform to the applicable provisions, rules, regulations and guidelines of the California Building Code and Americans with Disabilities Act.

Accessible Platform Surface

The portion of the streetery platform connected by the accessible path of travel to the wheelchair turning space and wheelchair resting space must be level. The accessible platform surface maximum cross slope (perpendicular to the sidewalk or curb) and running slope (parallel to the curb) cannot exceed two percent (2%).

Dimensions

Accessible entry shall be a minimum of 48 inches wide. Accessible path of travel must connect the sidewalk to the accessible entry, platform surface, wheelchair turning space and wheelchair resting space. Wheelchair turning space shall be 60 inches in diameter and located entirely within the platform or with a twelve-inch maximum overlap on the curb and sidewalk. Wheelchair landing shall be a 36 by 48-inch clear floor area that is permitted to overlap with the Wheelchair Turning Space by 24 inches maximum in any orientation.

B. RAILINGS AND SIDE ENCLOSURES DESIGN CRITERIA

Streetary railings and side enclosures must be constructed from wood or metal that can withstand wear and tear of elements. The streetary railing/side enclosure marks the boundary between the streetary and the street or sidewalk. It should serve as a safe edge while also being visually appealing, permeable, and inviting. The following standards and guidelines should inform the design.

- **Stability:** Stable and sturdy enough not to fall over or be pushed over.
- **Edge buffers from the street:** This can take the form of planters, railing, cabling, or some other appropriate enclosure.
- **Openings in rails:** Must prevent passage of 4-inch sphere.
- **Height of railings / side enclosures:** Should not exceed 36 inches from the streetary platform floor to the top of the railing.
- **Traffic safety and visibility:** The enclosure shall not block the view of conflicting movements of traffic, including pedestrian traffic, nor block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices. All railings/enclosures must have retro-reflective reflectors or retro-reflective tape on the corners of the streetary facing the travel lane such that they are visible by vehicle traffic at night.
- Water-filled orange barricades and metal rail side enclosures are not permitted. Any water-filled orange barricades and metal rails that served as traffic protection during the Temporary Outdoor Dining Program prior to adoption of the “Streetary” ordinance must be promptly removed.

C. TRAFFIC SAFETY PROTECTIONS

Wheel Stops

See [Figure 1](#).

SRMC 11.70.060(E): Side setback. Streetaries shall have a two-foot minimum side setback to each wheel stop located at each end of the parking space.

Streetaries in parallel parking spaces must be buffered using a wheel stop at two-feet from the streetary and three-feet from the face of curb. These wheel stops help protect against moving traffic and parking cars. This buffer may also serve as a space for adjacent property owners to accommodate curbside trash collection. Applicants are required to repair any damages to the roadway caused by the installation of the streetary or wheel stops if later removed. Any repairs shall be performed under a separate encroachment permit and in accordance with applicable City standards for roadway construction. Applicants are responsible for the cost of purchasing and installing wheel stops, which will be added as an additional cost at the time of application approval. Payment and installation of wheel stops must occur prior to any construction of the

streetary. For approved applicants, the Department of Public Works will source and install wheel stops.

Vertical Traffic Delineators, Posts or Bollards

See [Figure 1](#).

Streetaries shall have vertical elements that make them visible to traffic. White traffic delineators which are flexible posts with retroreflective tape will be the standard requirement. White delineators shall be placed at each corner on the streetary closest to the travel lane with another white delineator at the midpoint and in line with those at the corner. Applicants are responsible for the cost of purchasing and installing these white traffic delineators, which will be added as an additional cost at the time of application approval. For approved applicants, the Department of Public Works will source and install white traffic delineators.

Travel Lane Clearance

See [Figure 1](#).

SRMC 11.70.060(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.

Congested Arterials and Traffic Safety

The Public Works Director (or designee) may deny any application for a streetary which may cause conflicts or decrease the ability to manage traffic flow for vehicles, busses, bicycles or pedestrians. The determination of the Public Works Director may also be based on parking management and or the occasional use of the parking lane to manage traffic flow.

D. OVERHEAD STRUCTURES (optional)

Overhead structures on streetaries are defined as any wall or structure over 36" in height, including roofs, overhead trellises, tent shade structures, and wind barriers.

Streetaries who wish to have an overhead structure must obtain a building permit. This permit application shall include detailed plans for the overhead structure that have been designed and engineered by a licensed design professional. These detailed plans must ensure the overhead structure can resist wind and seismic loads. Existing Streetaries who have an overhead structure without a building permit are required to submit an application on or before November 30, 2022 in order to continue operation

Although the City will consider applications for overhead structures, the City encourages Streetaries to use high quality outdoor umbrellas for sun and weather protection, instead of overhead structures. The use of umbrellas for sun protection and shade is anticipated to bring an open-air aesthetic and thereby increased vibrancy to areas where streetaries are located.

E. FURNISHINGS AND FIXTURES

Wind Protection

All furnishings and fixtures must be designed to be weighted down so they do not become airborne in a wind event. Items may need to be stored inside the business during periods of high winds. Weights used must not create tripping hazards for pedestrians.

Heaters – Additional Building Permit Application May Be Required

Portable space heaters are permitted if they are an outdoor approved type, are used and located in accordance with the manufacturer's specifications and are located at least two feet from the edge of any overhead structure, umbrella canvas, any foliage, or any other flammable object or material. Heaters are not allowed under overhead structures or umbrellas but can be placed near them if the required two feet clearance is maintained. Natural gas piped heating is not permitted. Fixed heat lamps are discouraged but may be considered on a case-by-case basis upon submission of relevant building permit applications for overhead structures and electrical connections. Portable heaters do not require a building permit application.

Umbrellas

Umbrellas shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. No portion of an umbrella canopy shall be less than 80 inches above the streetary platform.

Electrical connections – Additional Building Permit Application Required

If electrical connections are desired, the streetary must submit a separate Building Permit Application at the same time that they submit their Streetary Encroachment Permit Application. An approved Building Permit is required for any existing or proposed electrical connections. All wiring and electrical cords must be exterior rated, GFCI protected, and UL listed. Cords must not create tripping hazards on the sidewalk. If the cords cross overhead, they must provide a minimum clearance of 10 feet above the sidewalk and the platform of the streetary. The use of adapters is prohibited. Streetaries are not permitted to tap into existing City electrical connections such as twinkle light outlets or streetlight poles.

Generators are not permitted in association with streetaries.

Lighting – Additional Building Permit Application Required

Streetaries proposing lighting provided through electrical connections must submit a separate Building Permit Application at the same time that they submit their Streetary Encroachment Permit Application. An approved Building Permit is required for any existing or proposed lighting provided through electrical connections. Solar powered lighting is strongly encouraged. Battery-powered lighting is also an acceptable alternative. Lighting shall not be directed towards the roadway to unintentionally cause glare for vehicles. Light strings must be hung to allow for a minimum clearance of 10 feet above the sidewalk and the platform of the streetary.

Signage

No signage is allowed on streetary structures, fixtures, or furnishings.

III. OPERATIONAL STANDARDS

Security

Streetaries are under the control of the permit holder. The permit holder is responsible for securing the streetary and any fixtures and furnishings contained within it during hours when the associated business is not in operation so that objects cannot be removed or used as projectiles. Securing the streetary is defined as storing inside the locked business or using cables and padlocks or any other means to prevent vandalism, theft, or damage to property.

No Outdoor Food Preparation and No Open Flames

SRMC 11.70.100(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.

Alcohol Service

SRMC 11.70.100(C): Alcohol service. Alcohol service shall be permitted subject to the acquisition of all required local and State permits and licenses.

Only food service establishments licensed by the State of California will be permitted to allow on-premises consumption of alcoholic beverages. Alcohol service is only allowed under full-service conditions and alcoholic beverages consumed in streetaries are not allowed to be provided in to-go containers. Establishments that serve alcoholic beverages in the streetary area shall meet all requirements of the Alcoholic Beverage Control Board and any other federal, state, or local laws and regulations governing the sale and consumption of alcoholic beverages.

No Live Entertainment or Amplified Music Without Permit

SRMC 11.70.100(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.

Noise and Disruptive Behavior

SRMC 11.70.100(D): Noise and disruptive behavior. Permittees shall be responsible for ensuring their patrons minimize noise and disruptive behavior while using their streetary space.

Site Maintenance

SRMC 11.70.100(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.

ADA Compliance

SRMC 11.70.100(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.

See Section II(A) Streetary Design Elements, Platform Design Criteria for more details. Compliance and related liability issues will be the sole responsibility of the Permittee and Streetary operator.

Hours of Operation

SRMC 11.70.100(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:

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.

Inspections

SRMC 11.70.120(A): 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.

Insufficient Usage

SRMC 11.70.100(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.

IV. FEES

SRMC 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.

The fees for the exclusive use of the Streetary are proposed to ensure that the public right-of-way will be enhanced in ways that will facilitate its successful use by private businesses. The current fee schedule is available on the City's Finance Department website. All fees may be reviewed and adjusted from time to time by the City Council through resolution.

Application Fee

All applicants, whether approved or denied, will be charged an application fee for costs that cover city staff time to process and review each application. Application fees will not be refunded.

Annual Encroachment Lease Fee

Prior to permit issuance and each year thereafter, the permittee shall pay an annual encroachment lease fee, calculated based on the number of parking spaces used under the permit. The annual fee will be prorated on a monthly basis for any partial year. Annual fees not paid by the date due will be subject to removal. Annual fees will not be refunded.

Deposit

A Streetary Permittee is required to pay a refundable one-time deposit prior to issuance of a Streetary Encroachment Permit. The City may use all or any portion of the deposit to ensure proper removal of the Streetary and any resulting damage to City property caused by its removal. The balance of the deposit will be refunded upon removal of the Streetary or a change in operator of the Streetary, provided that the Streetary is in full compliance with these Standards.

Other Costs – Wheel Stops and White Traffic Delineators

Pursuant to Section II(C), applicants are responsible for the cost of purchasing and installing wheel stop and white traffic delineators, which will be added as an additional cost at the time of application approval. Payment and installation of wheel stops and white traffic delineators must occur prior to any construction of the Streetary. For approved applicants, the Department of Public Works will source and install wheel stops and white traffic delineators.

Summary of Fees and Due Dates

1. REQUIRED FOR ALL APPLICATIONS: Streetary Permit Application Fee
2. OPTIONAL: Building Permit Application Fee for Optional Overhead Structure, Electrical Connections or Lighting, or Fixed Heat Lamps
3. UPON APPROVAL OF AND PRIOR TO ISSUANCE OR RENEWAL OF STREETARY ENCROACHMENT PERMIT: Annual Encroachment Lease Fee for Each Parking Space
4. UPON APPROVAL OF AND PRIOR TO ISSUANCE OF STREETARY ENCROACHMENT PERMIT: Deposit
5. UPON APPROVAL OF AND PRIOR TO ISSUANCE OF STREETARY ENCROACHMENT PERMIT: Upfront payment for installation of wheel stops and white traffic delineators as required by these Standards

V. INDEMNIFICATION AND INSURANCE

SRMC 11.70.110: 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.

Permittees must obtain insurance and submit to the City certificates of insurance, including but not limited to:

1. General Commercial Liability Insurance of no less than \$1 million per occurrence and \$2 million aggregate, with the City as an additional insured on a primary and noncontributory basis
2. Workers Compensation Insurance of no less than \$1 million

Insurance requirements related to the Streetary Program may be adjusted by the City as needed at the City's sole discretion. Insurance requirements will be further detailed in the Streetary Encroachment Permit.

VI. ANNUAL STREETARY ENCROACHMENT PERMIT REQUIREMENTS AND APPLICATION PROCESS

Permit Required

SRMC 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.

Application Process

As streetaries are located in the public right of way, the Department of Public Works will be the lead department receiving application materials and issuing streetary permits. Public Works will coordinate with other relevant departments and communicate feedback and decisions to the applicant.

The City is committed to reviewing filed applications as expeditiously as possible and will endeavor to provide a response after an initial round of review within thirty business days. Further rounds of review may require additional time.

The Streetary Encroachment Permit Application will have two forms, one required and one optional:

1. Streetary Encroachment Permit Form (required for all applicants)

2. Building Permit Application Form (Optional: this is required if streetary will have a structure above 6 feet in height and/or electrical or lighting)

All streetaries operating, or applying to operate, in parking spaces within the public right-of-way must obtain a Streetary Encroachment Permit. The Streetary Encroachment Permit Application must be submitted and approved prior to the construction of any new streetary or the modification of any existing Streetary. In addition to the two application forms, the following submittals are required with an application to construct a new streetary:

- a. Plan sets are required for both custom design streetaries and modular streetaries. For custom designed streetaries without an overhead structure, it is recommended that plans are prepared by a design professional, such as an architect or engineer. Applicants requesting an overhead structure are required to submit plans that have been designed and engineered by a licensed design professional. The submitted plans should show the proposed layout of the streetary including:
 - i. The streetary location (business frontage, site address, parking space number, etc.)
 - ii. Dimensions of parking stalls, streetary structure including platform, railings, overhead structure (if applicable), stormwater access, and traffic travel lanes in immediate area and in the proposed streetary.
 - iii. Traffic protection measures and dimensions of the setbacks from adjacent parking spaces and adjacent traffic lane.
 - iv. Location of any adjacent public utilities in the street including curb drains, manhole covers, water shut-off valves, sidewalk utility boxes, streetlight poles, parking meters, gutter drains, fire hydrants, parking meters, etc.
 - v. Plans must demonstrate ADA accessibility and show dimensions of required clearances
- b. Materials palette – Use color photo samples to demonstrate
 - i. Materials and plants to be used on platform
 - ii. Railing materials
 - iii. Platform materials
 - iv. Overhead structure materials (if applicable)
- c. A valid City of San Rafael Business Tax Certificate, sometimes referred to as a business license.
- d. Evidence of current insurance coverage including a Certificate of Liability Insurance and Endorsements

VII. MAINTENANCE

SRMC 11.70.100(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.

Utility Maintenance and Public Safety Emergencies

Because streetaries may sit atop buried utilities, there may be instances where your streetary will need to be temporarily removed to access a utility beneath it. In the event of necessary utility maintenance or the unlikely event of a utility failure such as a gas leak or water main break that threatens public safety, the City or utility owner may remove streetaries with little or no notice. As noted in SRMC Section 11.70.060(F), Permittees are solely responsible for the cost of removing, storing, repairing, and re-installing their streetary in order for such maintenance or emergencies to be addressed without delay or hindrance. The City may use the funds from the Permittee's Deposit to remove a streetary in this case, if the Permittee fails to cooperate with removal.

Temporary Public Works Projects, Public Maintenance, and Emergency Repairs

The City and other agencies conduct temporary renovation projects, public maintenance and emergency repairs from time to time, which may impact any given streetary. In this case, the City will make best efforts to provide sufficient notice but may need to remove streetaries with little or no notice. Permittees are solely responsible for the cost of removing, storing, and re-installing their streetary in order for such projects to proceed without delay or hindrance. The City may use the funds from the Permittee's Deposit to remove a streetary in this case, if the Permittee fails to cooperate with removal. For ease of removal and reinstatement at such times, the City recommends that Permittees consider modular streetary designs that are sturdy yet easily movable.

VIII. ENFORCEMENT, TERMINATION OF PERMIT AND STREETARY REMOVAL

Enforcement by City

SRMC 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.

Termination by Permittee

The Permittee may decide at any point in time that they no longer wish to operate a streetary. In this case, the Permittee is responsible for notifying the City in writing to streetary@cityofsanrafael.org on the earliest of the following:

- at least 30 days prior to the renewal and annual fee payment deadline
- at least 30 days prior to vacating the connected commercial property, or
- within 7 days of going out of business

Within 30 days of providing written notice to the City or upon vacating the connected commercial property, whichever occurs first, the Permittee is responsible for removing the streetary and cleaning and restoring the parking space to its previous condition to the satisfaction of the City and at the streetary owner's own expense. If the Permittee does not comply with the City's requirements for removal, cleaning and restoration, the City retains the right to use the Deposit for such removal, cleaning, and restoration costs, and the balance of the deposit, if any, will be refunded.

Non-Transferrable

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. A streetary permit is non-transferable.

Takeover by Landlord

If a permittee terminates their streetary encroachment permit and leaves their streetary in place or otherwise abandons the streetary, the landlord or property owner of the permittee's adjacent business location may elect to take over the existing Streetary Encroachment Permit for a maximum period of 6 months or the period of time remaining on the annual Permit, whichever is less, provided that the Streetary is in full compliance with these Standards. Thereafter, the landlord or property owner taking over the Streetary must submit for and obtain a new Streetary Encroachment Permit, and pay all related fees (application and annual) and refundable deposit.

SRMC 11.70.080(D): Deviations from adopted standards for existing streetaries. For existing streetaries operating as of the effective date of this ordinance, where the director determines that the streetary 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.

FOR MORE INFORMATION

For questions or additional information regarding these Standards, the Streetary Permit Application, or related optional Building Permit Applications, please contact Department of Public Works at streetary@cityofsanrafael.org.

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