



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: October 3, 2022

Disposition: Final Adoption Ordinance 2016 x Resolution 15136

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

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