

UPTOWN DISTRICT OUTDOOR DINING IN THE PUBLIC RIGHT-OF-WAY RULES AND REGULATIONS



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(Executive Order 2017-02)

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I. Purpose

The purpose of these rules is to regulate the private use of a portion of the public-right-of-way in the Uptown District for outdoor dining. In doing so, two important factors must be taken into account:

- A. The safety and flow of pedestrian traffic (including accommodations for people with disabilities).
- B. The visual appropriateness within the Uptown District.

Nothing in these Rules and Regulations shall relieve the Applicant from the responsibility to obtain any additional permits that might be required by federal, state, or local laws, together with exercising precautions at all times for the protection of all property and persons, including employees.

II. Terms and Definitions

- A. **City:** City of Westerville
- B. **Permit:** Uptown District Permit for Outdoor Dining in the Public Right-of-Way.
- C. **Applicant:** Owner of property beside which outdoor dining is requested; or owner of business beside which outdoor dining is requested, with property owner's consent.
- D. **Amenity Zone:** 46"-wide brick zone in the public right of way that abuts the back of the curb.
- E. **Clear Zone:** 5'-wide concrete sidewalk in the public right of way that abuts the Amenity Zone.
- F. **Frontage Zone:** The area partially or fully in the public right of way between the Clear Zone and building façade.
- G. **Area of Conflict:** The area of overlap created when the Frontage Zone is smaller than what is needed to accommodate outdoor dining, and outdoor dining fixtures infringe on the Clear Zone.
- H. **Outdoor Dining Area:** Well-defined dining area including a portion of the public right-of-way directly adjacent to a business serving food and drink.

III. Uptown District Permit for Outdoor Dining in the Public Right-of-Way Required

Any company, corporation, person, or individual in the Uptown District wishing to occupy a portion of the public right-of-way for outdoor dining, including the placement of appurtenances in conjunction with said dining, must first apply for and obtain an Uptown District Permit for Outdoor Dining in the Public Right-of-Way from the City Manager or designee. The term of the Permit shall be for a period of five (5) years.



IV. Application Procedure

An Application for a Permit shall be submitted to the City of Westerville Engineering Division. Incomplete Applications will not be processed until all documents have been received. Complete Applications will be reviewed by the appropriate Departments and Divisions within the City, which may include but are not limited to the Planning & Development Department, Public Service Department, Police Division, Fire Division, Electric Division and the City Manager's Office.

No sooner than 90 days prior to the expiration of a current Permit, a permit holder, to renew the Permit, may submit a new Application and repeat all of the original Application procedures below.

V. Fee

A nonrefundable Application Fee of three hundred dollars (\$300) shall be submitted with the Application, prior to issuance of the Permit.

An annual inspection fee of fifty dollars (\$50) shall be paid on the anniversary of Permit issuance date.

VI. Criteria for Granting an Uptown District Permit for Outdoor Dining in the Public Right-of-Way

The City Manager or designee may grant an Uptown District Permit for Outdoor Dining in the Public Right-of-Way upon the City Manager's or designee's determination that ALL of the following criteria are satisfied:

- A. The public health, safety and welfare will be benefitted by the granting or renewal of the Permit;
- B. The granting of the Permit will comply with all the rules and regulations set forth herein;
- C. The Applicant is not delinquent on any taxes or other obligations to the City;
- D. The Applicant has received a Certificate of Appropriateness from the Uptown Review Board.
- E. The Permit is to be used exclusively for outdoor dining purposes.

VII. Special Obligations for Applicants

- A. The Applicant shall restrict use of the portion of the right-of-way utilized for outdoor dining to the patrons, customers and guests of the Applicant's establishment;
- B. The Applicant shall not erect or permit any obstructions of a permanent nature, as determined by the City Manager or designee, to be located within the outdoor dining area;
- C. The Applicant shall not erect or permit obstructions to be located on the public right-of-way outside of the approved outdoor dining area;
- D. The Applicant shall restrain and prevent its employees, patrons, customers, business invitees, and guests from blocking, obstructing or hindering the flow of pedestrian traffic upon the portion of the public right-of-way adjacent to the outdoor dining area;
- E. The Applicant shall restrain and prevent its employees, patrons, customers, business invitees, and guests from smoking within the outdoor dining area;
- F. The Applicant shall allow seated dining only with no standing within the outdoor dining area;
- G. The Applicant shall not use bar stool seating, bar stools, counters, or ledges adjacent to the Clear Zone;
- H. The Applicant shall be responsible for ensuring appropriate patron conduct;
- I. The Applicant shall keep the premises and any adjacent portions of the public right-of-way outside of the outdoor dining area clean and free of debris, snow and ice;
- J. The Applicant shall acknowledge acceptance of the portion of the public right-of-way to be used for outdoor dining in "as is" condition with absolutely no warranties, implied or expressed, by the City of Westerville as to the condition or suitability of the premises for the intended use;
- K. The Applicant shall be responsible for the costs of repair to any damage to public property caused by the installation of the outdoor dining barricades and/or appurtenances;
- L. The Applicant shall apply and receive approval for all building, zoning and other permits required as a result of the proposed use of public right-of-way before any occupation of the public right-of-way may occur;
- M. The Applicant shall not assign any permit without the written consent of the City Manager or designee.
- N. The Applicant shall not permit or provide music in the Outdoor Dining Area.
- O. The Applicant shall not permit or provide additional lighting in the Outdoor Dining Area.

VIII. Indemnification and Insurance

The Applicant shall provide the following insurance:

- A. General Liability Insurance. Applicant shall maintain throughout the term of the Permit, general liability insurance insuring the Applicant in the minimum of:

- (1) \$1,000,000 per occurrence;
- (2) \$2,000,000 annual aggregate;
- (3) \$1,000,000 excess general liability per occurrence and annual aggregate.

Such general liability insurance must be written on a comprehensive coverage form, including the following: premises/operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

- B. Worker's Compensation and Employer's Liability Insurance. The Applicant shall maintain throughout the term of the Permit Worker's Compensation and employer's liability, valid in the State of Ohio, in the minimum amount of:

- (1) Statutory limit for Worker's Compensation;
- (2) \$1,000,000 for employer's liability per occurrence; and
- (3) \$1,000,000 excess employer liability.

- C. Liquor Liability Insurance. The Applicant shall maintain throughout the term of the Permit Liquor liability insurance, valid in the State of Ohio, in the minimum amount of:

- (1) \$1,000,000 for employer's liability per occurrence; and
- (2) \$1,000,000 excess liquor liability.

- D. Endorsements. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not to renew."

Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Applicant shall obtain and furnish to the City replacement insurance policies meeting these requirements.

The Applicant shall agree to indemnify, protect, defend, and hold harmless the City, and all officers, employees, elected officials, volunteers and agents of the City from and against any and all claims, demands, costs, damages, losses, liabilities, expenses of any nature (including reasonable attorneys', accountants', and experts' fees and disbursements), judgments, fines and other amounts (collectively, "Damages") arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative, or investigative (collectively, "Claims") relating to or arising out of:

- A. The installation, replacement, inspection, repair, or operation of Applicant's business, outdoor amenities or property located within the Right-of-Way or the conduct or management of Applicant's business as it relates to such amenities, property, or use of the City Right-of-Way, except to the extent such Damages are caused by or contributed to by the City or its agents; and
- B. Any breach by Applicant of any material representation, obligation, or covenant under this Application or Permit; and
- C. Any Claim by any third party relating to the provision of service by Applicant relative to Applicant's use of the Right-of-Way or otherwise, except to the extent such Damages are caused by or contributed to by the City or its agents; and
- D. Any Claim of any third party resulting from the action, inaction, negligence, or willful misconduct of Applicant.

IX. Revocation - Termination

The City Manager shall have the right to immediately revoke, suspend, or terminate any Permit when, in the City Manager's sole determination, any of the following occur: (a) Applicant breaches any of the rules and regulations; (b) Applicant is in default on taxes or other obligations to the City; (c) Applicant ceases to utilize the Permit for outdoor dining; or (d) circumstances change such that operation of the Permit is no longer in the best interest of the community's public health, safety and welfare. In the event the Permit is terminated as provided in (d) above, the City shall return to the Applicant a pro rata portion of the Application Fee. This Permit will terminate automatically, without notice, at the expiration of its term.

X. Removal

The City shall have the right to require removal of any railings or other barricades, seating, tables, umbrellas, flower boxes, and/or other appurtenances installed pursuant to these Rules and Regulations fifteen (15) days after written notice of revocation or termination of a Permit has been sent to the Applicant.

Additionally, the City retains the right to require immediate removal of any facilities located within the public right-of-way in the event any public agency or private utility company or corporation must make emergency repairs to any utility located in, over, across, under or through the outdoor dining area. Upon completion of any emergency repairs, those facilities removed to allow such repairs may be reinstalled by the Applicant. Failure to remove facilities upon receipt of the notification to remove such facilities may result in the City removing the facilities with the cost of such removal being assessed to the Applicant and may result in the revocation of the Permit.

In the event of a required removal (excluding seasonal removal) as provided in this section, the City shall return to the Applicant a pro rata portion of the Application Fee.

XI. Form of Application

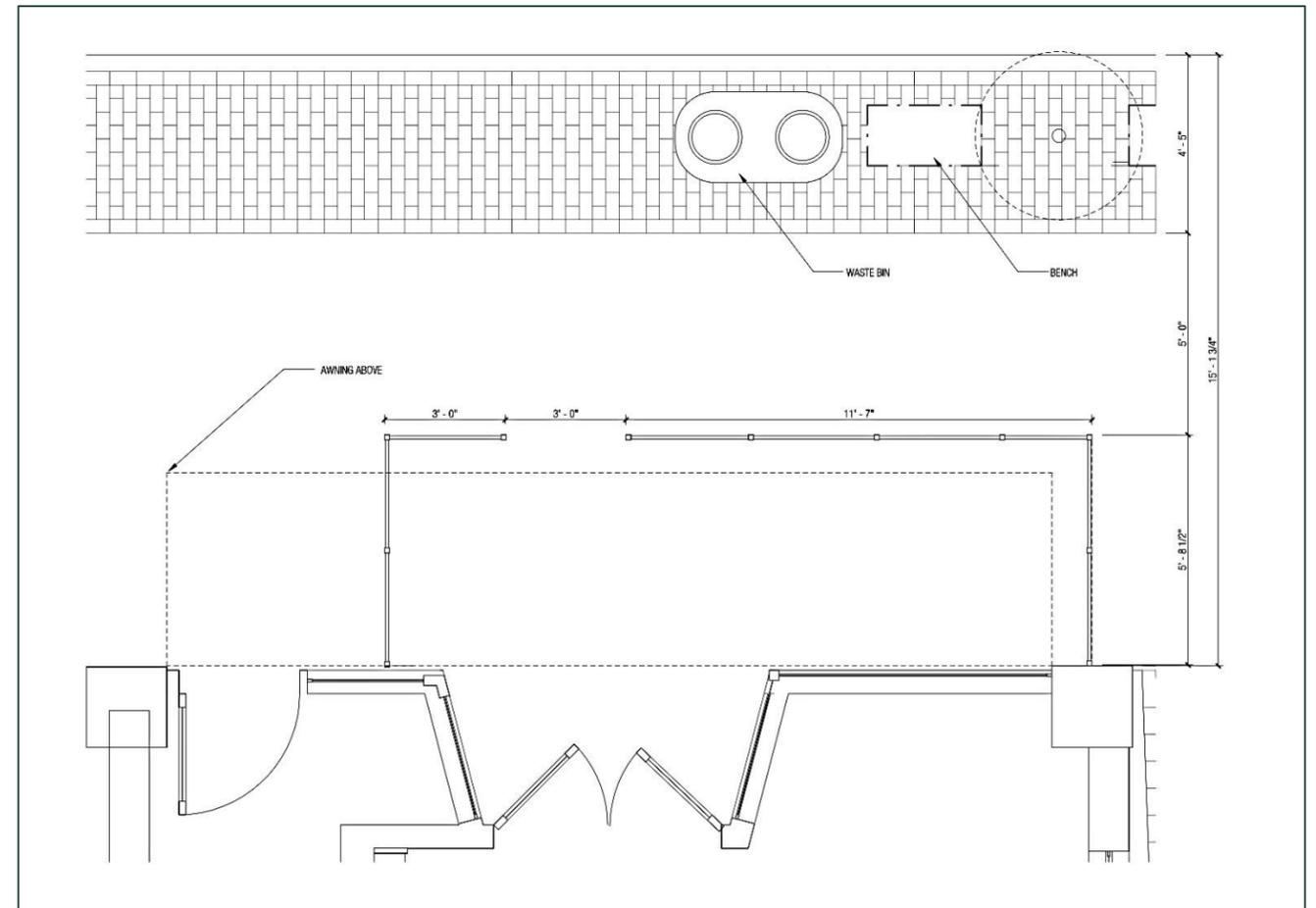
The Application must be submitted in writing and shall contain the following information:

- Name, address, phone number, email address, and signature of Applicant
- Name, address, phone number, email address, and signature of the property owner if not the same as the Applicant
- Name of business
- Site location, including the property address and County Auditor Parcel number
- Certificate of Appropriateness from the Uptown Review Board
- Written explanation of proposed use of site (food service, food and liquor service, outdoor seating only, etc.)
- Proposed hours of operation
- Plans as required by Section XII

XII. Required Plans

The Application for a Permit shall be accompanied by a detailed description of the proposed use of the right-of-way and a detailed plan of the premises including, but not limited to, the following information:

- Location of the building, along with the property boundaries
- Width of the Clear Zone
- Identification of any Areas of Conflict
- Total length of area desired for outdoor dining
- Distance to the nearest crosswalk (where applicable)
- Distance to the nearest intersection (where applicable)
- Type, size and method of installation of fencing or other barriers
- Location of all existing bus stops, traffic signs, traffic lights, light poles, fire hydrants, trees, planters, bike racks, trash receptacles, doorways, driveways, pedestrian ramps and all other decorative items in the public right-of-way
- Other details addressing the design and placement standards in Section XIII.



XIII. Design and Placement Standards

A. **BARRIERS:** Outdoor dining areas shall be defined by a boundary constructed of an acceptable barrier type per the guidelines below. Any barrier must be freestanding, without permanent attachments to the building, sidewalk or other infrastructure.

1. Acceptable Barrier Types: Barriers with materials, colors, and designs that are compatible with the architecture of the building (subject to review and approval by the Uptown Review Board) and compliant with the Americans with Disabilities Act (ADA) requirements. Examples include, but are not limited to:

- Metal or wood sectional fencing
- Planters

The base of any support post must be flat and no more than ½” above the sidewalk or floor surface.

2. Prohibited Barrier Types: Unacceptable barrier types include but are not limited to:

- Chain-link, chicken wire or cyclone fencing
- Fabric inserts
- Plastic barriers

3. Barrier Height:

- Barrier height shall be no less than 36” and no more than 42”
- Height of the lowest section of the barrier shall not exceed 27” so as to be detectable by the visually impaired

4. Access:

- Outdoor dining areas where alcohol is served must be clearly defined with a barrier at least 36” in height and in compliance with all Division of Liquor Control requirements.
- There shall be access point(s) located in such a way as to allow for proper egress to the satisfaction of the City’s Chief Building Official.
- The access point width shall meet the Building Code requirements (based on occupant load), but in no case less than 30”.

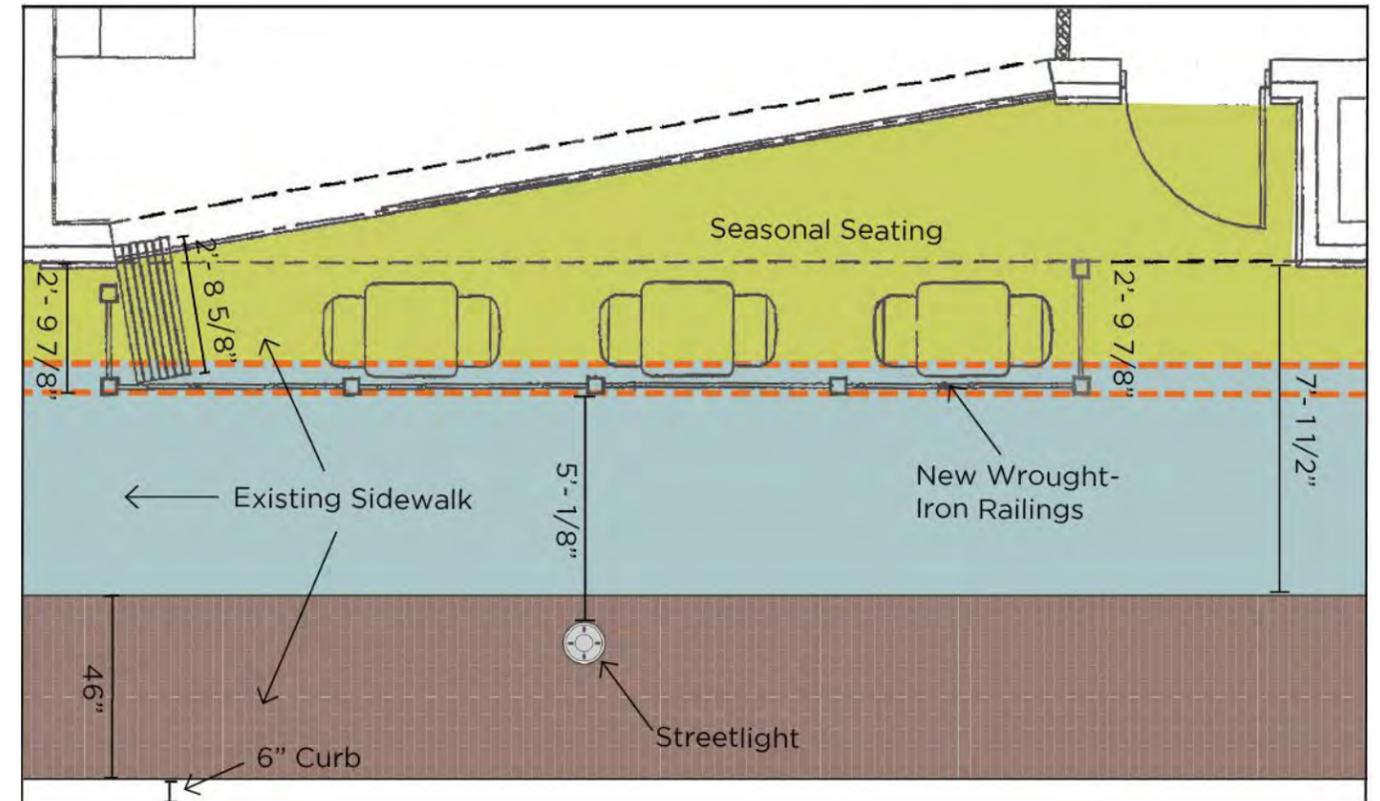


B. **PLACEMENT:** The placement of barriers and/or tables, chairs and other fixtures associated with the outdoor dining shall conform to the following standards.

1. Outdoor dining areas shall be placed directly adjacent to, and in physical contact with, the businesses with which they are associated.
2. Outdoor dining areas shall be located in a position that does not impede access to other adjacent businesses.
3. Barriers, tables, chairs and any other fixtures associated with the outdoor dining area (including post bases and fence-top planters) shall be placed completely within the Frontage Zone. A minimum of 5 feet of concrete sidewalk (Clear Zone) must be maintained for pedestrian traffic.
4. In certain "areas of conflict" where the Frontage Zone is severely limited in width (generally less than 4 feet), the City may allow the use of a portion of the Amenity Zone (as a part of the 5' Clear Zone if the following criteria are met:
 - a. No trees, light poles, planters, trash containers, fire hydrants, sandwich board signs or any other obstructions exist within that portion of the Amenity Zone.
 - b. The bricks within the Amenity Zone are level, pose no tripping hazards and meet the requirements of the Americans with Disabilities Act (ADA).
 - c. A clear continuous accessible path in compliance with ADA requirements is maintained at all times.
5. All curb ramps and adjacent landings at street intersections shall be maintained free of obstructions.
6. A clear sight distance at all street and driveway intersections shall be maintained to the satisfaction of the City Engineer.

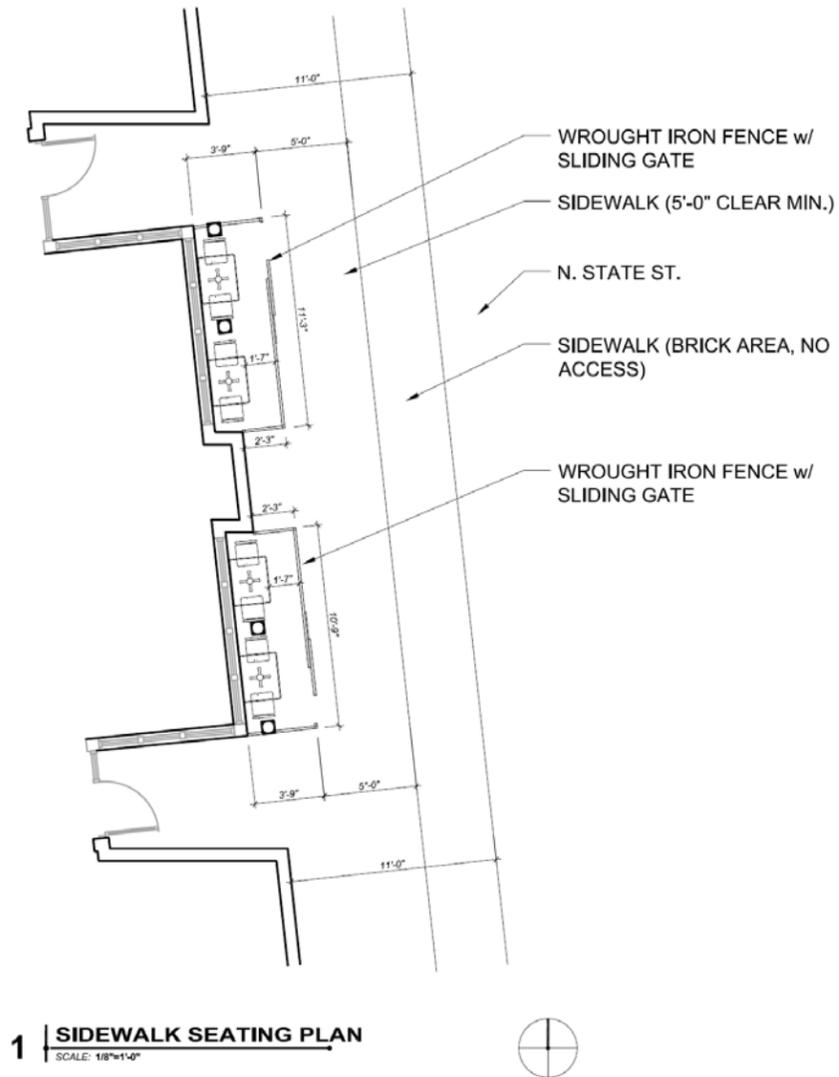
C. **FURNITURE AND FIXTURES:** Furniture and fixtures within the outdoor dining area shall be consistent with the following criteria:

1. All furniture and fixtures must be free standing and not secured to a structure or tree whether the restaurant or business is open or closed.
2. All tables, chairs and other appurtenances must be confined within the boundary of the outdoor dining area.
3. Tables and chairs shall be made of durable outdoor materials such as metal or wood with a color complementary to the building. Plastic furniture is not permitted.
4. Umbrellas must be free of signage, logos or advertisements. They must be made of canvas or canvas-like material with a solid color complementary to the building. Plastic or vinyl laminated fabrics are not permitted. No part of any umbrellas shall extend beyond the confines of the outdoor dining area.
5. Space heaters are prohibited.
6. Patio enclosures such as curtains, clear vinyl screens, etc. are prohibited.
7. No signage (temporary or permanent) shall be used within or attached to any barriers, furniture, or fixtures associated with the outdoor dining area.

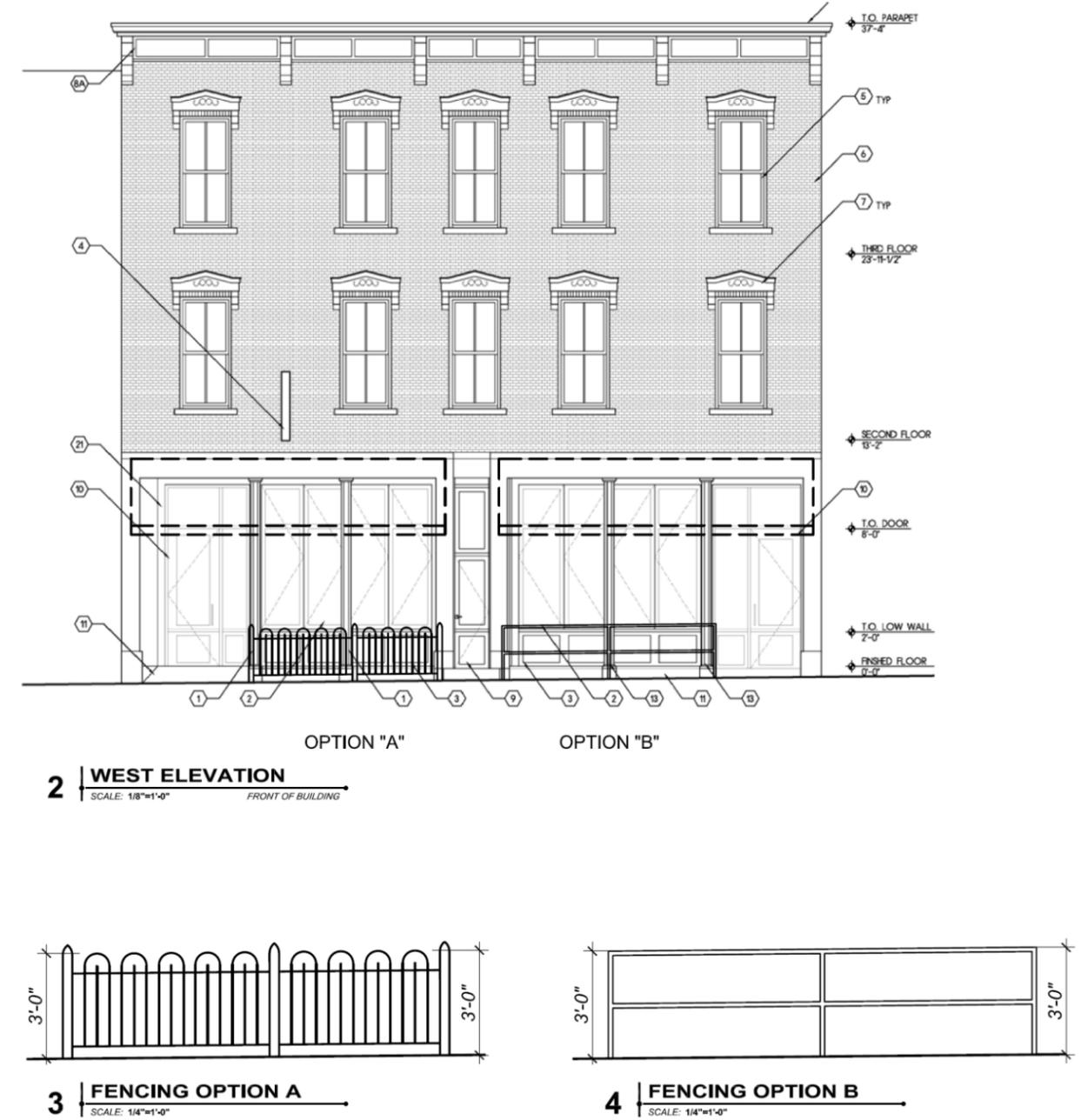


XIV. Amendments

Applicant, as a condition of receiving a Permit, agrees to comply with all amendments and revisions to these Rules and Regulations as may hereafter be promulgated by the City Manager and any applicable laws and ordinances hereafter adopted by Westerville City Council, all of which shall supersede these Rules and Regulations and be applicable to and binding upon Applicant.



Example of Application Graphics



Example of Application Graphics

APPENDIX 1

SIDEWALK ZONE ILLUSTRATIONS

1. Sidewalk Zones – Existing (Bird’s Eye View)
2. Sidewalk Zones with Outdoor Dining in the Frontage Zone (Bird’s Eye View)
3. Sidewalk Zones – Existing (Street Level View)
4. Sidewalk Zones with Outdoor Dining in the Frontage Zone (Street Level View)

SIDEWALK ZONES

EXISTING



SIDEWALK ZONES

WITH OUTDOOR DINING IN THE FRONTAGE ZONE



OUTDOOR DINING

46" AMENITY ZONE
5' CLEAR ZONE
2' - 6' FRONTAGE ZONE

AREA OF CONFLICT

ON-STREET PARKING

SIDEWALK ZONES

EXISTING



SIDEWALK ZONES

WITH OUTDOOR DINING IN THE FRONTAGE ZONE



APPENDIX 2

SIDEWALK ZONE MAPS

The maps on the following pages reflect a study of sidewalks on both sides of State Street from just south of Park Street to just north of Home Street. They highlight potential areas of conflict where the frontage zone is narrow.

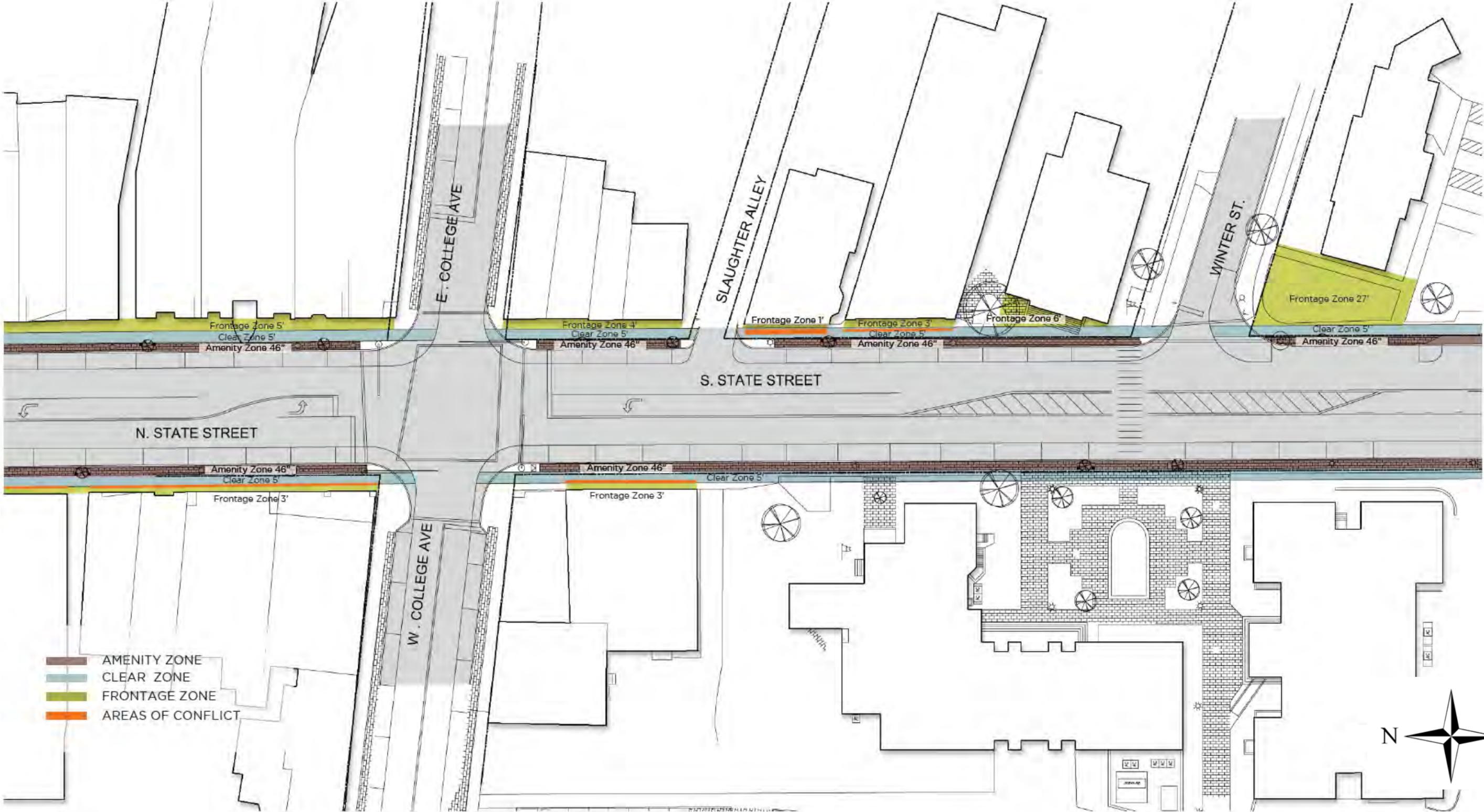
SIDEWALK ZONE MAP

MAIN STREET TO HOME STREET



SIDEWALK ZONE MAP

WINTER STREET TO COLLEGE AVENUE



SIDEWALK ZONE MAP

PARK STREET TO WINTER STREET

