

**ORDINANCE NO 371**  
**AN ORDINANCE OF THE CITY COUNCIL OF SUTTER CREEK**  
**REGARDING OUTDOOR DINING IN PUBLIC RIGHTS-OF-WAY**

Section 1

Chapter 13.28 is added to the City of Sutter Creek Municipal Code as follows:

**13.28.010 Purpose.**

This chapter establishes uniform regulations and operational standards for outdoor dining in public rights-of-way. These outdoor dining regulations are intended to ensure public safety and welfare, protect public property, and promote the attractive use of outdoor dining barriers and fixtures. The purposes of these regulations are also to:

- A. Assist property owners and tenants establishing outdoor dining areas in the public right-of-way;
- B. Preserve historic and scenic attributes of the City;
- C. Protect public safety and maintain accessibility of the sidewalk or street;
- D. Encourage outdoor dining area designs that provide a compatible design relationship, spacing, and location relative to other improvements in the public right-of-way;
- E. Encourage new business development and facilitate the expansion of existing businesses;
- F. Maintain meaningful public circulation; and
- G. Create a dynamic and lively atmosphere by encouraging attractive and functional designs for outdoor dining.

**13.28.020 Definitions.**

As used in this Chapter, the following terms shall be defined as follows:

- A. “Barrier” means a physical structure, whether permanent or temporary, installed to separate the outdoor area of a business establishment where alcoholic beverages may be consumed from areas where alcoholic beverages may not be consumed.
- B. “Business establishment” means any business for which a business license has been issued in accordance with Chapter 6.04 of this Code and where food and/or beverages are served for purchase by customers or patrons. If the business serves alcoholic beverages, it is not a business establishment within this definition unless it serves both food and alcoholic beverages for purchase by customers or patrons.

C. “Outdoor dining” means the use of any right of way for the service of food and/or beverages to customers seated at tables adjacent to a business establishment. For purposes of this Chapter, service of food or beverages occurs adjacent to a business establishment if the service area is located within the projection of the frontage the building or portion of the building lawfully occupies.

D. “Outdoor encroachment license” means a license issued in accordance with this Chapter.

E. “Right of way” means any public sidewalk, court, plaza, alley, or street for which the city has ownership in fee, an easement, or a possessory interest.

**13.28.030 Outdoor encroachment license required.**

No owner or operator of a business establishment shall occupy any portion of any right of way for outdoor dining without first obtaining an outdoor encroachment license in accordance with this Chapter.

**13.28.040 Authority to issue outdoor encroachment licenses.**

The City Manager is hereby authorized to issue outdoor encroachment licenses to owners or operators of business establishments. The City Manager shall have the authority to deny any outdoor encroachment license application if its issuance is determined to be detrimental to the public health, safety, or public welfare. The decision of the City Manager may be appealed to the City Council in accordance with Chapter 2.53 of this Code.

**13.28.050 Application for outdoor encroachment license.**

A. Every owner or operator of a business establishment that desires to provide outdoor dining in a right-of-way shall apply for an outdoor encroachment license on an application form provided by the City Manager.

B. Each application shall be accompanied by a space-use plan showing the location, number, and arrangement of all proposed tables, chairs, barriers, fixtures, planters, umbrellas, heaters, lighting, and signage. The plan shall also show the location of the entrance to the establishment, and the location of any existing sidewalk obstructions in and adjacent to the proposed area to be occupied by the tables and chairs. Trees and/or tree wells, traffic signs, planters, lamp posts, balcony posts, fire hydrants, parking meters, benches, barriers delimiting the dining area, and all similar obstacles shall constitute obstructions. The space-use plan shall be drawn neatly and accurately to scale, and shall be dimensioned so as to demonstrate how the sidewalk minimum clear path will be achieved, or the application will not be accepted for processing. Once approved, any deviations from the originally submitted space-use plan must also be submitted to the City for consideration prior to implementation of any changes.

C. Each application shall be submitted in accordance with the following requirements:

1. The application fee amount shall be as set forth from time to time by resolution of the City Council. This fee includes actual costs for review and processing of the application, as well as pre-inspection and post-inspection of the outdoor dining area.
2. The application must be signed by the business owner or operator and property owner.
3. Prior to approval of the application, the applicant must submit proof of insurance consistent with Section 13.28.090.
4. The applicant must submit a copy of the applicant's current City of Sutter Creek business license and/or permit, California Department of Alcoholic Beverage Control permit, if applicable, and any and all Amador County Health Department permits.
5. Establishments that serve alcoholic beverages in the outdoor dining area shall provide a physical barrier that meets the requirements of this Chapter and of the Alcoholic Beverage Control Board.
6. A removal deposit shall be submitted at the time of application where a fixed barrier is proposed or required. If, at the time of cessation of outdoor dining use and/or revocation of outdoor encroachment license, the barrier is removed by the business owner or other responsible party, and such removal is confirmed by a City inspection, any removal deposit will be refunded, except that the City's inspection costs shall be deducted from the amount refunded. The deposit will also be refunded if the outdoor encroachment license is denied. Existing licensees shall not be required to post a removal deposit unless a new or revised license is required.

**13.28.060 Issuance of outdoor encroachment license.**

No license shall be issued until the applicant has complied with the City of Sutter Creek Municipal Code and other applicable City standards, as such standards may be amended from time to time.

**13.28.070 Indemnification for use of public property.**

The licensee shall indemnify, defend and hold harmless the City, its officials, officers, agents and employees from any and all claims, causes of action, losses, injuries or damages arising directly or indirectly from the negligent acts, errors or omissions of the license holder, its officers, agents, employees, customers, patrons, invitees, guests, or anyone rendering services on its behalf. This indemnity shall include all reasonable costs and attorney fees incurred in defending any action covered by this section.

**13.28.080 Conditions and restrictions pertaining to outdoor encroachment licenses.**

**A. Location, Dimensions, and Design.**

1. Sidewalk Minimum Clear Path. Every outdoor dining area shall at all times maintain a minimum of five (5) consecutive feet of sidewalk width constituting a clear and continuous path to ensure adequate space for pedestrian traffic on the adjacent sidewalk. The minimum width stated above must be free of all obstacles and obstructions for a clear path of travel. For the purpose of minimum clear path, traffic signs, trees, street furniture, balcony posts, trash receptacles, landscape features (including planter boxes and pots) and all similar obstacles shall constitute obstructions.

2. Ramps and Driveways. Outdoor dining areas must not impede the use of ramps or driveways for ingress or egress of vehicles or bicycles.

3. Building Access. No element of the outdoor dining area may interfere with access to any building, including all paths of travel or exits.

4. Egress From Business Establishment. A clear path of travel from the doors of the business establishment to the sidewalk and street must be provided. The width of the clear path of travel shall be no smaller than the width of the business establishment door(s) and no less than three (3) feet.

5. The owner or operator of the business establishment is solely responsible for ensuring that the design of the outdoor dining area meets all the requirements of the Americans with Disabilities Act, and nothing in this Chapter, and no outdoor encroachment license shall be deemed to be authorization for any improvement, structure, or design that would not meet the minimum accessibility requirements of that Act and its implementing regulations and guidelines.

**B. Fixtures and Barriers.**

1. Barriers are optional unless alcoholic beverages are served in the outdoor dining area.

2. Barrier Height. Barriers shall maintain a minimum height of forty-two (42) inches and a maximum height of forty-eight (48) inches.

3. Barrier Materials. Barriers must be constructed of decorative metal (aluminum, steel or iron), must be black, and must be vertically or horizontally spaced with open slatted design. Barriers, however fixed in place, shall not be permanently attached to the sidewalk.

4. Architectural Standards. Any improvements licensed to exist on any right-of-way shall comply with design standards the City has adopted as of the time of

application and receive design clearance from the City's Design Review Committee.

5. Fixtures (such as chairs, planters, and tables) may remain in the outdoor dining area during non-business hours only if secured so as to prevent removal from the premises and in a manner that ensures public safety. However, fixtures shall not be secured through any means that requires drilling or bolting into any portion of any City right-of-way.

6. Upon discontinuation of use of the outdoor dining area or the adjacent associated business, any and all items used to secure the tables and chairs (bolts, screws, etc.) shall be removed.

7. Barriers shall not be attached to the adjacent building unless authorized by the building owner and approved by the City Manager in writing.

8. Licensed fixtures must be completely contained within the approved outdoor dining area and shall be limited to tables, chairs, planters, umbrellas, and heaters.

C. Tables and Chairs.

1. Tables and chairs shall be of commercial restaurant grade.

2. Materials for tables and chairs shall be metal or wood, and their color shall be either brown or black.

D. Planters.

1. Planters may be used in the outdoor dining area for décor but may not be used as a barrier. Planters shall not exceed a height of thirty-two (32) inches above the sidewalk. Plants shall not exceed a height of seventy-two (72) inches (six feet) above the sidewalk and shall not create a line-of-sight obstruction.

2. Planters shall contain plant materials in healthy condition. Planters may contain lush trailing plants, annuals, and perennials, that accentuate the ambiance of the outdoor dining space. Cacti are not permitted, nor are plastic or silk plants.

3. Planters shall have a self-contained watering reservoir system that prevents any leakage onto the sidewalk.

4. Planters may be attached to barriers.

5. Debris or litter caused by landscape plants, in the outdoor dining area, shall be cleaned up regularly by the licensee or property owner.

E. All signage in the outdoor dining area shall be permitted separately pursuant to Chapter 15.16 of this Code.

F. Umbrellas and Heaters.

1. False or temporary roofs, coverings, and canopies are not permitted.
2. Umbrella colors shall be coordinated with the City's seasonal schemes or be solid black, and shall be maintained in good condition and proper working order.
3. Umbrellas must not extend into the path of traffic or impede the line of sight for motorists, bicyclists, or pedestrians.
4. Heaters must be a part of the approved license.

G. Lighting.

1. Adequate lighting for outdoor areas must be provided by the outdoor encroachment license holder to ensure the safety of customers and pedestrians. Lighting shall be maintained in good working order
2. Lighting shall be "soft" in appearance and adhere to the City's design standards.

H. Maintenance and Operation Standards

1. The outdoor dining area must remain free of litter, food scraps, soiled utensils, and dishes at all times. The licensee shall maintain the tables and chairs in the outdoor dining area in a clean condition at all times. No debris shall be swept, washed, blown, or otherwise allowed to escape into the sidewalk, gutter or street.
2. It is the responsibility of the licensee to keep the sidewalk pedestrian zone clear and unimpeded for pedestrian movement. Movable items, such as barriers, chairs, or tables shall be positioned in accordance with the approved space-use plan at all times outdoor dining occurs.
3. Outdoor dining areas must conform to and comply with all relevant regulations in this Code and all applicable building, fire, and life safety codes, including State laws and regulations.

I. Permission to encroach upon a portion of a public sidewalk with tables and chairs granted through issuance of an outdoor encroachment license pursuant to this Chapter shall not constitute a deed or grant of an easement by the City.

J. This ordinance shall not be interpreted to authorize the continuance of, or to legalize, any encroachment onto City sidewalks, rights-of-way, or property existing prior to or on the effective date of this Chapter. As any such encroachments have never been authorized by any portion of this Code or other law, no vested or “grandfathered” right to continue such encroachments shall be deemed to have accrued in any person, business, or entity.

**13.28.090 Insurance.**

A. Each outdoor dining licensee shall provide evidence of insurance coverage as approved by the City Manager. The licensee shall obtain and maintain in force comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount per claim and aggregate, of at least two million dollars (\$2,000,000), or any greater amount established by the City Manager, covering the property and the licensed area on which the outdoor dining will be located.

B. The City of Sutter Creek, its elected and appointed officials, officers, agents and employees shall be named as additional insureds on this policy. An endorsement must be issued as part of the policy reflecting compliance with this requirement.

C. A certificate of insurance shall contain provisions prohibiting cancellations, modifications, or lapse without thirty (30) days prior written notice to City. Such insurance shall apply as primary insurance and shall stipulate that any insurance maintained by the City shall be in excess of the license holder’s insurance and shall not contribute with it.

D. All new and existing licenses must comply with these insurance requirements.

**13.28.100 No representation of suitability.**

In issuing a license under this Chapter, the City makes no representation as to the suitability of any location for outdoor dining purposes.

**13.28.110 Outdoor encroachment license annual renewal.**

An annual, non-refundable renewal fee shall be assessed for the costs of reviewing compliance, maintenance, and insurance. The renewal fee shall be in an amount as set forth from time to time by resolution of the City Council.

**13.28.120 Revocation of outdoor encroachment license.**

The City may revoke any outdoor encroachment license for non-compliance with any license term, provision of this Chapter, or determination of an unsafe condition. Notice of revocation shall be served by the City Manager on the license holder by personal delivery or by certified mail, return receipt requested. Any person who receives a notice of revocation may appeal the revocation by filing a notice of appeal within 10 days of service of the notice. The appeal shall be governed by Chapter 2.53 of this Code.

Section 2

The City Council determines that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) because the adoption of this ordinance is not a project, as defined by CEQA, but is instead an administrative action per California Code of Regulations, Title 14, section 15378(b)(2). Even if the ordinance is subject to CEQA, it is nonetheless exempt from that Act pursuant to California Code of Regulations, Title 14, Section 15060(c)(2) and (c)(2) as the activities regulated herein will not result in any direct or reasonably foreseeable indirect physical change in the environment. In addition, the ordinance is exempt under the “common sense” exemption to CEQA, California Code of Regulations, Title 14, Section 15061(b)(3), as it can be seen with certainty that the regulation of outdoor dining on sidewalks, rights-of-way would inherently promote public safety in the use of public places for business activities.

Section 3

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4

This ordinance shall be published and posted in the manner required by law by the City Clerk.

Introduced at a meeting of the City Council of Sutter Creek on May 2, 2022 and enacted by the City Council of the City of Sutter Creek at a regular meeting held on May 16, 2022.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Sutter Creek City Council, held on this 16th day of May 2022, by the following vote, to wit:

AYES: Peters, Rianda and Swift

NAYS: Gunselman and Sierk

ABSENT:

ABSTAIN:

*James E. Swift*

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Jim Swift, Mayor

ATTEST:

*Karen Darrow*

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Karen Darrow, City Clerk