

Del Mar Sidewalk Cafes

by Dwight Worden

I was surprised to see the new bulky, and to me unattractive, sidewalk structures on the south side of 15th street. So, I looked into the situation, and was concerned at what I found. Sure, beat me up—I didn't attend the City Council meeting on the new sidewalk café ordinance. Perhaps naively I thought the DRB and the City Council would see that things were done in the usual and thorough "Del Mar Way" involving lots of community discussion and input. And even if I had been at the council hearing on the new sidewalk café ordinance I would have read that "planter boxes" and "railings" were contemplated by the new ordinance as the demarcation measures to be allowed on the public sidewalk¹ and would have had little inkling of the massive concrete and brick walls to be constructed.

Don't get me wrong—I favor downtown revitalization and accept that sidewalk cafes are an important component of that effort, provided they are properly designed and regulated. I know the City Council's motives were good in adopting the new ordinance and in issuing the permits. But, in my judgment the fact remains: they short circuited the normal review process and as a result mistakes and missed opportunities are now "concrete" realities. Here are the questions that should have been, and still should be, asked. I would love to hear that they were, but my radar tells me the council, in its zeal to accommodate downtown revitalization, took a short-cut that time and reflection will reveal to be a mistake:

1. **NO DRB REVIEW.** Why was DRB review eliminated? Section 23.30.090 of the new sidewalk café ordinance expressly exempts these projects from DRB review. The bulky brick and concrete structures that now dominate the public sidewalk on the south side of 15th street are, to my eye, poorly designed, unattractive, and not conducive to public use and access. Others may disagree, and the DRB is where these issues should have been hashed out. DRB review is normally required for just about any exterior modifications to commercial buildings, but DRB review for these new structures was eliminated by the City Council. DRB review would, I suspect, have resulted in vigorous discussion and important design modifications for the better, and DRB hearings would have provided a forum for informed discussion that would have helped the community accept the final product.
2. **DISCRETIONARY VERSUS NON DISCRETIONARY PERMITS:** Why does the new ordinance appear to make the issuance of permits for these sidewalk structures "non discretionary" if certain standards are met? Typically, permits for construction of this magnitude would be discretionary. Before you wonder

¹See, the New Sidewalk Café Ordinance Section 23.30.070 Subsection C: "*The authorized perimeter of the Sidewalk Café area shall be demarcated by planter boxes, railings or other measures deemed acceptable to the Director to visually define and secure the Sidewalk Café area.*" "*The demarcation measures shall be designed to ensure opportunities for use of the Sidewalk Café area by the general public...*"

why this matters, remember that environmental review under CEQA only applies to “discretionary” projects, while “non discretionary” ones are exempt. Was environmental review undertaken for the projects on 15th?

3. **WHY NO ENCROACHMENT PERMIT?** Why was the normal requirement for an encroachment permit eliminated in favor of the new permit requirements? When a private party seeks to use the public right-of-way an encroachment permit is required by the City Code, Chapter 23.28. This Chapter has detailed, tried and tested, requirements for private use of public rights-of-way. Importantly, Chapter 23.28 makes it clear that encroachment permits are subject to revocation and removal at any time² at the permittee’s expense. In contrast, the new sidewalk café ordinance, while repeating some of the language from Chapter 23.28, adds new language significantly restricting the ability of the City to order revocation and removal. Why? See, the new ordinance Section 23.30.170 “Revocation of Permit”.
4. **PUBLIC USE:** In theory and per the language of the new ordinance, these new sidewalk café structures are open to the public whether or not the users are customers of the adjoining restaurant. But, their bulky and walled-off design creates a physical and a psychological barrier creating the impression these areas are for customers only. If the design itself doesn’t do the trick, a bit of “stink eye” from a waiter or hostess aimed at those not buying will keep the public out, sign or no sign. Yes, the new ordinance requires there to be a sign about public use, but history in Del Mar tells us a mere sign rarely works (e.g., the Poseidon Deck, the Plaza, etc.). Stop by the new structure in front of Del Mar Pizza and tell me: does it look to you like the non-customer public is welcome?
5. **PUBLIC BENEFIT:** The Union Tribune reported that the City is charging only \$2 *per year* per square foot for these new sidewalk encroachments, a pittance in terms of the value of this publicly owned real estate³. Sure, it’s nice to have a sidewalk café in which to eat when that is your mood, and if these areas actually were available for the non-paying public that would be a benefit too, as are the increased sales taxes the City is likely to get. But, the \$2 “rent” and the sales tax increases are minimal in comparison to the value of these public assets being turned to private use. And, remember, the Council has waived parking requirements for these sidewalk cafes as well, a huge benefit to the private owners. I don’t see a significant public benefit side to these new facilities that compares to the private benefit to be derived from use of public property. Why wasn’t a better deal struck?

²Subsection K states: *By accepting an issued Encroachment Permit, the Permittee explicitly agrees that, upon notice from the City, the Encroachments authorized in the Permit shall be removed. All costs for removal of Encroachments shall be borne by the applicant or, where applicable, by the successor in interest.*

³I am told that rents in Del Mar often exceed \$3 and \$4 per foot *per month*.

6. **HOW TO MAKE THESE SIDEWALK AREAS TRULY AVAILABLE FOR PUBLIC USE?** In developing and approving the recent Garden Del Mar Specific Plan much time was spent by the Ad Hoc Committee discussing and addressing how to make the public areas, including those adjacent to café and restaurant use, actually open and inviting to the public, and much public testimony and discussion was had on the issue. Detailed provisions in this regard can be found in the Specific Plan, including prohibitions against not only *physical barriers* to public use and access, but to *psychological barriers* as well (the server or hostess vibe, etc.), along with a simple complaint process to the City allowing the City to enforce to ensure these areas remain actually open to the public on an ongoing basis. Unfortunately, none of this made it into the new Sidewalk Café ordinance. Why not?

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