

RESORT OPEN AIR CAFÉ

FRANCHISE REGULATIONS

June 21, 2017



CITY OF VIRGINIA BEACH

RESORT OPEN AIR CAFÉ FRANCHISE REGULATIONS

SECTION 1. GENERAL PURPOSE

Rev. 06/21/17

1. 1 The Resort Open Air Café regulations are for the RT and OR Oceanfront Resort Districts located in the resort area specifically identified as adjacent to the Boardwalk, Connector Parks, Atlantic Avenue, Atlantic Avenue side streets, and in selected Gateway locations west of Pacific Avenue. The Café Franchise Program is designed to allow and encourage outdoor cafes on the public right-of-way fronting pedestrian-oriented ways where they are appropriate, and will promote an ambiance conducive to public health, safety, general welfare, and serve as a public amenity. The goals of the program are as follows:
 - 1.1.a To promote cafes as visual amenities which improve the appearance and pedestrian ambience of the Boardwalk, Connector Parks, and pedestrian-oriented street frontages.
 - 1.1.b To preserve and enhance the character of the resort area and to promote the most desirable use of public property.
 - 1.1.c To ensure that adequate clearance is maintained for pedestrians and bicyclists adjacent to cafes.
 - 1.1.d To establish administrative and enforcement procedures for Open Air Cafes that are effective, efficient, and enforceable.
 - 1.1.e To ensure the construction of attractive, lightweight, removable structures.

SECTION 2. DEFINITIONS

- 2.1 Resort Open Air Café: an outdoor dining facility directly adjoining an existing restaurant in the RT Resort Tourist Districts or OR Oceanfront Resort District, franchised to operate on public property. To be considered for this program, the existing restaurant is required to provide waiter/waitress service, from a full service menu served on non-disposable dishware. A franchise for these cafés will only be granted to those restaurants located on private property with 80% or more of interior or exterior space dedicated to table and chairs for sit down service by a waiter or waitress. No portion of an Open Air Café shall be used for any purpose other than dining or related circulation. Cafes must have direct access to the existing restaurant. All cafes and the required adjacent/operating restaurant shall meet all ADA requirements (including rest room facilities within restaurant). Café Categories, each with requirements specific to their locations, are described below:

Category A - Boardwalk Café. A resort open air café located on public property facing the boardwalk in the OR zoning district.

Category B - Connector Park Café. A resort open air café located on public property in a Connector Park between Atlantic Avenue and the boardwalk The Café shall not extend East of the building's property line.

Category C - Atlantic Avenue Sidewalk Café. A resort open air café located on the public sidewalk along Atlantic Avenue in the OR Oceanfront Resort District not including those located between 15th and 24th Streets (See Category E).

Category D - Atlantic Avenue Side Street Café. A resort open air café in the OR Oceanfront Resort District located on the public sidewalk on numbered side streets between Atlantic and Pacific Avenues.

Category E - Atlantic Avenue Sidewalk Café—15th to 24th Streets. A resort open air café located on the public sidewalk along Atlantic Avenue in the OR Oceanfront Resort District between 15th and 24th Streets on Atlantic Avenue.

Category F – West of Pacific Avenue Cafe A resort open air café located on public property from Pacific Avenue, westward, in the RT Resort Tourist District and OR Oceanfront Resort District, fronting on city designated streets.

- 2.2 Obstruction: Public infrastructure improvements such as traffic signal poles, sign poles, light poles, planting areas, tree grates, trees, trash receptacles, benches, bike racks, parking meters, etc., that may impede the flow of pedestrian traffic.

SECTION 3. FACILITIES NOT CONSIDERED FOR THE CAFÉ PROGRAM

- 3.1 **Fast Food Establishments.** An establishment, franchised or otherwise, that offers quick food service of items already prepared and held for service; or prepared, fried, griddled quickly or heated in a device such as a microwave oven; and/or orders are not taken at the customer's table; and food is generally served from a counter in disposable wrapping or containers, will not be considered for outdoor cafes.

SECTION 4. OPERATIONAL REQUIREMENTS- ALL CAFES

- 4.1 In order to be considered for approval under the Resort Open Air Café Program, the Applicant must agree to meet the following Operational requirements:
- 4.1.a Cafes must provide full waiter/waitress table service, from a full service menu served on non-disposable dishware, as defined in par. 2.1.

- 4.1.b All patrons of cafes shall be seated while in the café area.
- 4.1.c Patrons may consume alcoholic beverages in these cafes that have been prepared within the host restaurant, in compliance with state ABC regulations. Café employees shall not prepare or pour alcoholic beverages within any café.
- 4.1.d Solicitation of any type, as described in Section 26-3 of the City code, from any café will result in immediate termination of franchise agreement.

SECTION 5. ENTERTAINMENT/AMPLIFIED MUSIC

- 5.1 Live or recorded entertainment is allowed under the following conditions in all outdoor cafes, unless noted otherwise in specific Café Categories herein.
 - 5.1.a Between the hours 12:00 p.m. and 11:00 p.m. only.
 - 5.1.b Solo or duo live entertainment only. Connecting cafés do not constitute more than one entertainment venue.
 - 5.1.c The café franchise agreement administrator/city officials shall have the sole discretion in determining if the music sound level emanating from the café is considered loud or disturbing. Amplification of music shall be directed within café area.
 - 5.1.d Café operators shall receive one written warning that the music does not comply with the café regulations. Upon notice of a second violation, the café will forfeit their entertainment within the café for the remainder of the season. Subsequent violations will be grounds to terminate the café franchise agreement.

SECTION 6. GENERAL CAFÉ REQUIREMENTS

Requirements apply to all outdoor cafes, unless noted otherwise in specific Café Categories herein.

- 6.1 **Size:** Improvements on public property may not cover more than the front face of the operating business building or exceed a total of 800 sq ft. In addition, the scale, proportion, and overall design of the café shall be reviewed by City staff to ensure the café is compatible with the adjacent building, the street block face, and the overall goals of the Resort Area Facade Program and the Resort Streetscape Improvements. The size of the café must maintain clearances as outlined in each section from public infrastructure improvements such as traffic signal poles, sign

poles, light poles, planting areas, tree grates, trees, trash receptacles, benches, bike racks, parking meters, etc., that may impede the flow of pedestrian traffic.

- 6.2 **Access:** Only one well-defined entrance opening is permitted to the café area; the café area must be connected to the corresponding business entrance. Orientation of that opening will be reviewed by the City staff according to pedestrian safety and the aesthetic requirements of each location. Access will meet all ADA Standard Disability Access requirements.
- 6.3 **Perimeter Fence:** A perimeter fence is required, and shall be a minimum of thirty (30) inches in height and maximum 42” height. It shall be constructed of finished painted wood, factory-finished metal, or a manufactured fiberglass railing system. All café perimeter fence systems shall be reviewed by the city prior to approval for their use. Planter systems are encouraged to complement the fencing system.
- 6.4 **Canopy:** Canopies, where permitted or required, shall be a soft top, demountable canopy constructed as specified herein. The canopy shall only cover the top of the Café, except that transparent vinyl or plastic curtains may be used on the sides as windbreaker during inclement weather only. At no point shall the height of the canopy be lower than eight (8) feet above the floor of the Café. The valence of the awning shall not exceed twelve (12) inches in height. If umbrellas are used the name of the café may appear on the valence of each umbrella.

All canopies shall be constructed of fire resistant vinyl fabric or canvas as approved by the City of Virginia Beach Planning Department/Permits and Inspection Division, and shall meet all applicable Building, Structural, and Fire Codes.

Supporting Structure shall be metal pipe or tube system not to exceed 2” in Diameter. Requests for Deviations shall be individually reviewed by the City. The structure must be dismantled easily and not permanently attached to adjacent building.

- 6.5 **Fixtures & Furnishings:** The furnishings of the interior of a resort open air café shall consist solely of moveable tables and chairs and decorative accessories. Tables and chairs shall be constructed of stainless steel, fiberglass, powder coated aluminum or other metal, painted wood, high density polyethylene (HDPE) or an approved site furnishing system. All café furnishings shall be reviewed by the city prior to approval for their use.

In no event shall such objects penetrate the exterior perimeter boundary or the canopy. Planter boxes on café railing are encouraged. All movable objects required for operation of a resort café shall be removed from the café area and stored out of view during adverse weather conditions acclaimed by the City, or when the café is not in operation for more than a five (5) day period. These objects include tables, chairs, furnishings, and decorative fixtures. Plantings in

boxes or planters shall be properly maintained year round, or shall be removed when the café is not in operation.

- 6.6 **Lighting:** Only ceiling lighting, candles, Christmas lights, and ceiling fans are permitted on the interior of the RT and OR Oceanfront Resort District Cafes
- 6.7 **Signs:** One (1) menu board is permitted within the perimeter of the resort open air cafes. The menu board shall not be larger than five (5) square feet. The name of the establishment may be painted or sewn in a single location on the valence of the canopy with a maximum of eight (8)-inch lettering.
- 6.8 **Storage:** Storage of any kind is not permitted on public property; including trash or refuse.
- 6.9 **Maintenance:** Cleanup and necessary maintenance of the area of a Resort Open Air/Boardwalk Café including landscaped areas, planter boxes and City property adjacent to café is the sole responsibility of the designated franchisee.

SECTION 7. SPECIAL CAFÉ REQUIREMENTS, BY CATEGORY

7.1 Category A - Boardwalk Cafés.

- 7.1.a **Setbacks:** Category A cafes shall have a minimum setback of ten (10) feet from the western edge of the bicycle path. Pending review of specific café site plans, additional setbacks and clear path space may be required.
- 7.1.b **Canopy:** Category A Cafes are required to have a Canopy complying with Section 6.4.
- 7.1.c **Plantings:** Planting beds shall be provided and properly maintained by the owner/applicant around the perimeter of the Boardwalk Café. The Planting bed(s) adjacent to the café shall extend a minimum of five (5) feet and a maximum of ten (10) feet into the right of way. Site specific issues that warrant a deviation from the minimum and maximum requirement will be considered. The City Landscape Services Department shall review and approve the applicant's landscape plan prior to operating the café.
- 7.1.d **Access:** Only one well-defined entrance opening connected to an existing or new walkway system which connects to the boardwalk shall be permitted. Access will meet all ADA Standard Disability Access requirements. Only one five (5) foot walkway is permitted.
- 7.1.e **Bicycle Parking Area:** Bicycle parking areas are recommended to be integrated with the café improvements. The bicycle parking area will be a minimum of approximately eight (8) feet by eleven (11) feet concrete,

brick pavers, or similar paved area with 2-point support bicycle racks, such as inverted “U” racks. This area will not be included in franchise café area allowance; however, it should be made available for general public use.

7.1.f **Floor:** Floor shall be a smooth clean permanent surface as required by the Health Department.

7.1.g **Perimeter Fence:** In addition to materials listed in Sec 6.3, glass block, pre-finished decorative masonry block or brick are also permitted materials in this café category.

7.2 **Category B - Connector Park Cafés.**

7.2.a **Setbacks:** Category B Cafes are required to have minimum setback of ten (10) feet from the Atlantic Avenue curb line. The Café is not to extend east of the building's property line. Pending review of specific café site plans, additional setbacks and clear path space may be required.

7.2.b **Floor:** Floor shall be a smooth clean permanent surface as required by the Health Department.

7.2.c **Canopy:** Canopies are permitted but not required unless hotel rooms and balconies are directly above café area . Umbrellas are permitted.

7.2.d **Perimeter Fence:** In addition to materials listed in Sec 6.3, glass block, pre-finished decorative masonry block or brick are also permitted materials in this café category.

7.2.e **Planting:** Planting beds shall be provided and properly maintained by the owner/applicant around the perimeter of the Boardwalk Café. The Planting bed(s) adjacent to the café shall extend a minimum of five (5) feet and a maximum of ten (10) feet into the right of way. Site specific issues that warrant a deviation from the minimum and maximum requirement will be considered. Additional planting may be required by City Staff for Category B Cafes (Connector Park Cafes) to tie in with existing connector park configurations. The City Landscape Services Department shall review and approve the applicant’s landscape plan.

7.2.f **Access:** One well-defined opening is required. Orientation of that opening will be reviewed by the City staff according to pedestrian safety and the aesthetic requirements of each location. Access will meet all ADA Standard Disability Access requirements.

7.2.g **Bicycle Parking Area:** Bicycle parking areas are encouraged in the Connector Parks. The bicycle parking area will be a minimum of eight (8) feet by eleven (11) feet concrete, brick pavers, or similar paved area with

2-point support bicycle racks, such as inverted “U” racks. This area will not be included in the franchise café area allowance; however, it should be made available for general public use. Category B Cafes (Connector Park Cafes) must use existing parking racks.

7.2.h **Service Bar Openings:** Service bar openings for waiter/waitress use are allowed into a Connector Park Café only. Service bar opening will be maximum of 5 feet wide. Operation of bar must meet all ABC regulations.

7.3 **Category C - Atlantic Avenue Sidewalk Café,** not including those located between 15th and 24th Streets (See Category E)

7.3.a **Setback:** Category C Cafes are required to be setback a minimum of eight (8) feet from the curb line and all obstructions in the public right-of-way.

Pending review of specific café site plans, additional setbacks and clear path space may be required. The minimum distance shall be measured from the portion of the café frontage which is nearest the obstruction.

- 7.3.b **Floor:** Only the existing paving or sidewalk is to be used for the café. Should the building be setback from the curb line, the development of new surfaces for seating may be permitted.
- 7.3.c **Canopy:** Canopies are not allowed for Category C Cafes, but awnings, as allowed through the Resort Area Facade Program are permitted. Awnings extending beyond the dimension permitted in the Resort Area Facade Program (3') may be permitted based on review by City staff and the Resort Advisory Commission (RAC). Umbrellas are permitted. If umbrellas are used, the name of the café may appear on the valence of each umbrella.
- 7.3.d **Planting:** Perimeter planter boxes are required; selection of plantings will be reviewed and approved by City staff. All such planters or plantings shall be on or within the allowable café area, and shall be properly maintained by the applicant at all times.
- 7.3.e **Size:** Category C Cafes may not cover more than the front face of the operating business building. In addition, the scale, proportion, and overall design of the café shall be reviewed by City staff to ensure the café is compatible with the adjacent building, the street block face, and the overall goals of the Resort Area Facade Program and the Resort Streetscape Improvement Program
- 7.3.f **Bicycle Parking Area:** Bicycle parking areas are not allowed. Category C Cafes must use existing bike racks.

7.4 **Category D - Atlantic Avenue Side Street Café.**

- 7.4.a **Setback:** Category D Cafes (Atlantic Avenue Side Street Cafes) are recommended to be set back eight (8) feet from the curb line, but a minimum distance of (6) feet clear sidewalk width, from the curb line and all obstructions in the public right-of-way.

Pending review of specific café site plans, additional setbacks and clear path space may be required. The minimum distance shall be measured from the portion of the café frontage which is nearest the obstruction.

- 7.4.b **Floor:** Only the existing paving or sidewalk is to be used for the café. Should the building be setback from the property line, the development of new surfaces for seating may be permitted on private property only.

- 7.4.c **Canopy:** Canopies are permitted but not required. Umbrellas are permitted

- 7.4.d **Planting:** Perimeter planter boxes are required; selection of plantings will be reviewed and approved by City staff. All such planters or plantings shall be on or within the allowable café area, and shall be properly maintained by the applicant at all times.

- 7.4.e **Size:** A Category D Café may not cover more than the front face of the operating business building. In addition, the scale, proportion, and overall design of the café shall be reviewed by City staff to ensure the café is compatible with the adjacent building, the street block face, and the overall goals of Resort Area development guidelines in affect at the time of application.

- 7.4.f **Bicycle Parking Area:** Bicycle parking areas are not allowed. Category D Cafes must use existing bike racks.

7.5 **Category E - Atlantic Avenue Sidewalk Café--15th to 24th Streets.**

- 7.5.a **Setback:** Category E Cafes are required to be setback a minimum of eight (8) feet from the curb line and all obstructions in the public right-of-way.

Pending review of specific café site plans, additional setbacks and clear path space may be required. The minimum distance shall be measured from the portion of the café frontage, which is nearest the obstruction.

- 7.5.b **Floor:** The existing paving or sidewalk is to be used for the café. Should the building be setback from the curb line, the development of new surfaces for seating may be permitted on private property only.
- 7.5.c **Awnings:** Canopies are not allowed for Category E Cafes , but awnings as allowed through the Resort Area Facade Program are permitted. Awnings extending beyond the dimension permitted in the Resort Area Facade Program (3') may be permitted based on review by City staff and the Resort Advisory Commission (RAC) Planning Design Review Subcommittee (PDRC). Umbrellas are permitted. If umbrellas are used the name of the café may appear on the valence of each umbrella.
- 7.5.d **Planting:** Perimeter planter boxes are required; selection of plantings will be reviewed and approved by City staff. All such planters or plantings shall be on or within the allowable café area, and shall be properly maintained by the applicant at all times.
- 7.5.e **Access:** Cafes shall be accessed from the interior of the restaurant and not from the Atlantic Ave. sidewalk area. Special consideration should be given to refurbishment of the restaurant façade to allow access to the café from the interior of the restaurant at another location than the main restaurant entrance. French doors or similar door systems should be used to open the existing restaurant directly on to the outdoor café so as to not conflict with the main restaurant entrance area. No serving counters are permitted from the restaurant to the café. Orientation of that opening will be reviewed by the City staff according to pedestrian safety and the aesthetic requirements of each location. Access will meet all ADA Standard Disability Access requirements.
- 7.5.f **Size:** A Category E Café may not cover more than the front face of the operating business building. In addition, the scale, proportion, and overall design of the café shall be reviewed by City staff to ensure the café is compatible with the adjacent building, the street block face, and the overall goals of the Resort Area Facade Program and the Resort Streetscape Improvement Program.
- 7.5.g **Bicycle Parking Area:** Bicycle parking areas are not allowed. Category E Cafes must use existing bike racks.
- 7.5.h **Special Franchise Requirements:** Every Category E Café (Atlantic Avenue Sidewalk Café--15th to 24th Streets) franchise agreement shall contain the following special requirements, which

shall control in the event of a conflict with any other provisions of the Resort Open Air Café Regulations:

1. Alcoholic beverages shall only be served with meals, and only in unbreakable drink ware;
2. The operator shall not permit persons other than patrons or employees of the establishment to enter the premises or to congregate therein, other than those patrons seated at tables provided by the establishment;
3. In the event a public safety official determines that the open air café should be closed earlier than the normal closing time for reasons of crowd control, unruly behavior either within the establishment or in nearby areas, or for other reasons related to preservation of public safety or public order, the operator shall close the open air café immediately or at such later time as directed by the public safety official, and the willful failure or refusal of any person to comply with such order shall be punishable as a misdemeanor, as provided by City ordinance;
4. The establishment must offer a full service menu (a copy of which shall be provided to the City Manager as part of the franchise application), and the open-air café may remain open only so long as all regular menu items served by the establishment are available to patrons;

All tables and chairs shall be removed from the premises upon the close of business each day and stored inside the establishment, and the operator shall not permit the franchised area to be used for storage of furniture or equipment or for any purpose other than as an open-air café;

6. The operator shall not allow persons awaiting entry into the establishment or open-air café to form lines on the sidewalk, but shall admit patrons only from the inside of the establishment; and
7. The operator shall strictly comply with all fire, building, zoning, alcoholic beverage control, or health regulations in the operation of the open air café and the remainder of the establishment.

- 7.5.i **Façade Review and Improvements:** Prior to the consideration of any application for a Category E (Atlantic Avenue Sidewalk Café--15th to 24th Streets) franchise, the applicant must submit a preliminary concept of the proposed café, including photographs of the existing façade of the associated restaurant building and adjacent building façades, and architectural renderings demonstrating how the café will be integrated with the associated restaurant building's façade.
- 7.5.j The façade must be structurally sound and in good repair, and the proposed café and façade must be consistent with the Resort Area Façade Program Design Guidelines.
- 7.5.k The Resort Advisory Commission Design Committee will review the proposed café and the condition of the existing building façade and either (1) approve the preliminary concept or (2) provide the applicant with recommended changes for the proposed café, the façade or both. Only after the preliminary concept is approved will an application for a Category E franchise be considered under section 6.1.
- 7.5.l The effective date of this subsection shall be January 1, 2006. No Category E franchise shall be granted or renewed for a term that extends beyond April 30, 2006, unless the franchisee has complied with the requirements of this subsection.

7.6 **Category F – West of Pacific Avenue Café.**

- 7.6.a The scale, proportion, material selection, and overall design of each of these Cafes shall be reviewed by City staff to ensure the café is compatible with the adjacent building, the street block face, and the overall goals of Resort Area development guidelines in effect at the time of application.
- 7.6.b **Setback:** Category F Cafes are required to be setback a minimum of eight (8) feet from the curb line and all obstructions in the public right-of-way. ADA minimum compliance of a 5' clear path may be considered based on actual site conditions.

Pending review of specific café site plans, additional setbacks and clear path space may be required. The minimum distance shall be measured from the portion of the café frontage which is nearest the curb or obstruction.
- 7.6.c **Floor:** The existing paving or sidewalk, if existing, shall be used for the café floor. New floor shall be a smooth clean permanent

surface as required by the Health Department. Material shall be appropriate for each given location, and shall be reviewed and approved on a site-specific basis.

- 7.6.d **Awnings:** Requests for canopies will be reviewed on a case by case basis, depending on location.
- 7.6.e **Planting:** Perimeter planter boxes are required; selection of planter boxes and plantings will be reviewed and approved by City staff. All such planters or plantings shall be on or within the allowable café area, and shall be properly maintained by the applicant at all times.
- 7.6.f **Size:** A Category F Café may not cover more than the frontage of the property of the operating business building.
- 7.6.g Given the close proximity of Category F cafes to residential neighborhoods, cafes shall remain open no later than midnight. Live or recorded entertainment shall not be permitted after 10:00 pm.

SECTION 8. ADMINISTRATION AND ENFORCEMENT

- 8.1 **Franchise Requirements** In order to create a Resort Open Air Café on public property, the granting of a franchise agreement is required. Franchise Agreements shall be granted only after project data has been properly submitted by the Applicant, reviewed by City Staff and the Resort Advisory Commission, and approved by the City Council of Virginia Beach.

The regulations herein are intended to establish the necessary criteria with which the Resort Open Air Cafes shall first comply in order to be eligible for consideration for such a franchise agreement.

A Non-refundable fee of one-hundred dollars (\$100.00) shall be paid to the City for the processing of an application for a franchise. The City Manager or his designated representative shall not accept any application unless such fee be paid at the time application is filed.

City Council may deny or grant a franchise subject to such terms and conditions as City Council may, at its discretion deem proper. Notwithstanding any other provision of law, City Council shall deny any franchise request it determines, at its discretion, to be detrimental to the public health, safety, and welfare or interest.

Upon approval of the Franchise Agreement, the Applicant shall satisfy Insurance requirements and Franchise Fees, as listed below, prior to beginning construction of the Café.

8.2 Submittal and Review Procedures

Construction activity is prohibited on Resort Open Air Cafés between May 1 and October 1. Review and approval procedures require a minimum of 3 months; longer if changes to original plans are required. It is strongly suggested the Applicant begin the Café Franchise review process in November to allow sufficient time for approval procedures and construction completion before the May 1st deadline.

8.2.a **Preliminary Review** (Approximate review time – 1 week)

8.2.b Prior to submitting a Franchise Application, the Applicant shall review the RESORT OPEN AIR CAFÉ FRANCHISE REGULATIONS, herein, and submit Preliminary project information to the designated Resort Management Office representative (757-385-4800) to determine the feasibility of the project.

The following are required for the preliminary review:

1. A Survey (if available) of the existing property.
2. A rough drawing showing the existing building outline, property lines, and proposed café location.
3. Photographs of the proposed café site, existing building façade(s), and adjacent property on each side.

Data may be submitted in person, or by mail or email.

If the project is deemed feasible, the Applicant will be instructed to complete a Café Franchise Application.

8.2.c **Café Franchise Application** (Approximate review time – 4 to 8 weeks, plus time for revisions and resubmittal, if required)

Applicant shall submit completed Café Franchise Application, along with the \$100.00 Application Fee, to the designated Resort Management representative. Applications for café franchises will not be accepted after March 1, preceding the summer season of anticipated operation. No application shall be processed for the year in question that fails to meet the application deadline.

The following are required to be submitted, in triplicate (3 copies) along with the application, for review:

- 8.2.d **Physical Survey:** Sealed by land surveyor, no older than 90 days. Survey shall show all existing property lines, easements, buildings and other structures, to the curb line and/or edge of boardwalk/connector park, and including public sidewalk showing all obstructions such as light poles, trash receptacles, etc., for the length of the property across its street (or boardwalk/connector park) frontage.
- 8.2.e **Photographs** of the proposed café site, existing building façade(s), and adjacent property on each side.
- 8.2.f **Proposed Site Development Plan**, including Landscape Plan, where landscape is required. The site plan shall be prepared using a minimum scale of 1" = 10'-0" and shall show by name and dimension, proposed and existing walkway systems, and proposed Open Air Café, setbacks, minimum clear path on sidewalk between face of café and obstructions, access into café, and from café into attached restaurant, perimeter fence, and table/chair layout.
- 8.2.g **Front & Side Exterior Elevations:** Elevations shall be prepared using a minimum scale of 1/4" = 1'-0" and shall show proposed café' and façade of existing structure directly adjoining the proposed café.

A minimum of two elevations are required: one front elevation and one side elevation, dimensioned to show height of vertical elements. All materials shall be identified on drawings.
- 8.2.h **Finish Schedule:** Shall include all finish materials proposed for the Open Air Café construction including flooring, railing system, canopy and canopy supports, and proposed plant materials.
- 8.2.i **Proposed Fixtures and Furnishings:** Images of all proposed furnishings, including tables, chairs, umbrellas, planters, etc.
- 8.2.j A letter of support from the property owner (if the Applicant is not the property owner) for the café addition.
- 8.2.k Upon receipt of the complete Application package, the Resort Management Office will forward a copy to the Planning & Design Review subcommittee (PDRC) of the Resort Advisory Commission (RAC) for review and comment at the next scheduled meeting. The Resort Management Office representative will assist

the Applicant in establishing a review date and time. The Applicant (or representative designated by the Applicant) is encouraged to attend the review session and to bring other supporting drawings, images, etc., if desired.

8.2.1 Upon successful completion of the review, the PDRC will recommend approval and/or provide written review comments indicating required revisions. The recommendations will be forwarded to the next scheduled meeting of the Resort Advisory Commission for a vote to support the Application. If supported, The RAC will convey this recommendation to the City Council. The Resort Management Office Representative will request that the City Attorney's Office draft an agenda request and ordinance for City Council's approval or denial of the Cafe Franchise Agreement.

8.3 **Permits and Inspections Review** (Approximate approval time – 2 to 4 weeks)

8.3.a If the Café project is supported by the RAC, the Applicant is encouraged to submit drawings to the Virginia Beach Department of Permits and Inspections to determine review and permitting procedure.

8.3.b Applicant will be required to submit drawings and payment of required review fees. Permits and Inspections will review the plans to determine compliance with applicable Building Codes, and will notify applicant the level of review required. Once approved, the building permit will be held pending approval or denial of the café Franchise agreement by City Council. If approved by City Council, applicant may obtain required building permit and any required right of way permit.

8.3.c Approval of the Health Department and (when applicable) the State of Virginia Alcoholic Beverage Control Board is required for operation

Note: Cafes connected to a hotel/motel may be required to install a fire suppression sprinkler system if side curtains are installed. Confirm requirements with Permits and Inspections.

8.4 **Insurance and Fees**

8.4.a Applicant will provide liability insurance coverage not less than one million dollars (\$1,000,000) for personal injury and property damage as required.

8.4.b The franchise fee is to be determined on a gross square foot basis/per year, payable to the City of Virginia Beach no later than May of the year in effect. The fees are as follows:

- Category A: Boardwalk Café
- Category B: Connector Park Café
- Category C: Atlantic Avenue Sidewalk Café
- Category D: Atlantic Avenue Side Street Café
- Category E: Atlantic Avenue Sidewalk Café–15th to 24th Streets
- Category F: West of Pacific Avenue Café

	2018	2019	2020	2021	2022	
Category A	10.30	10.61	10.93	11.26	11.60	3% **
Category B	8.83	9.09	9.36	9.64	9.93	3% **
Category C	7.35	7.57	7.80	8.03	8.27	3% **
Category D	5.90	6.08	6.26	6.45	6.64	3% **
Category E	7.35	7.57	7.80	8.03	8.27	3% **
Category F	5.90	6.08	6.26	6.45	6.64	3% **

** 3% increase each year thereafter

8.4.c Prior to commencement of operations the Grantee must execute a bond or letter of credit in favor of the City of Virginia Beach in the amount of ten thousand dollars (\$10,000) as determined by the Public Works Department and the Resort Management Office.

8.5 Enforcement

8.5.a The franchise period shall be for one (1) year for the first year of operation. Based upon compliance with these regulations and the Council’s desire to continue to allow Open Air Cafes, an extension of the franchise may be authorized by the City Council for up to an additional five (5) year period.

8.5.b During the period in which the franchise is in effect, the Office of the City Manager or his designated representative is to enforce the provisions of the franchise agreement, and is authorized to suspend the agreement if there is a violation of the agreement.

- 8.5.c In the event the City determines that the Grantee has failed to properly comply with any of the terms or conditions of this Agreement, Grantee shall be given a minimum of twenty-four (24) hours and a maximum of ten (10) calendar days to remedy its non-conformance. The amount of time that Grantee shall be permitted to gain compliance shall be determined in the sole discretion of the City, by its authorized officer, agent, or employee. However, such time shall be reasonable and shall be based upon the level of severity of the noncompliance. If Grantee fails to effect compliance within the time allowed, the City shall have the right to suspend Grantee's operation, in whole or in part, until such time as Grantee shall remedy its non-compliance.
- 8.5.d No portion of the open air/boardwalk cafes shall open or project beyond the designated perimeters of the café area.
- 8.6 **Revocation of Franchise:** The franchise agreement shall provide that a Cafe franchise may be revoked by the City Manager whenever the City Manager determines that one of the following conditions has occurred
1. The owner or operator of the establishment has been found guilty of a criminal offense arising from the operation of the establishment;
 2. The owner or operator of the establishment has been assessed a civil penalty for violation of any fire, building, zoning, alcoholic beverage control, or health regulation arising from the operation of the establishment;
 3. The presence of the open-air café is causing or contributing to a deterioration of the quality of the pedestrian experience or general environment in the area;
 4. The open-air café is in violation of any material term of its franchise agreement or the Resort Open Air Café Regulations; or
 5. The operator has failed to comply with an order of a public safety official of the City directing that the open-air cafe be closed, as provided by Section 5.5.N (3) of the Resort Open Air Café Regulations.
- 8.6.a The franchise agreement shall also provide that the City Manager may suspend the owner or operator's privilege to operate the open air café under the franchise pending a final disposition of any criminal charge, alcoholic beverage control violation, or civil infraction arising from the operation of the establishment.
- 8.7 **Effect of Revocation of Franchise:** The franchise agreement shall provide that, upon revocation or suspension of a franchise by the City Manager, the owner or operator shall immediately cease operation of the

open air café and shall remove all tables, chairs and other items located on City property within twenty-four (24) hours of the revocation or suspension. As provided by City ordinance, the failure of the owner or operator to comply with the order of the City Manager revoking or suspending a franchise shall be punishable as a misdemeanor. The franchise agreement shall authorize the City Manager to remove or contract for the removal of any tables, chairs, barriers and other items encroaching upon City property and charge the costs thereof to the owner or operator, which costs may be collected as real estate taxes are collected.

SECTION 9. DEMOLITION

- 9.1 If applicant is required to demolish or remove café or any portion thereof, the applicant must submit approval plans to the Department of Planning for review.