

CITY OF PHILADELPHIA PENNSYLVANIA

OFFICE OF THE CONTROLLER

CODE COMPLIANCE AND SAFETY
OF PHILADELPHIA'S
SIDEWALK CAFES

October 2017

City Controller
Alan Butkovitz



Promoting honest, efficient & fully accountable government



**STREETS DEPARTMENT
AND
DEPARTMENT OF LICENSES
AND INSPECTIONS**
*Code Compliance and Safety of Philadelphia's
Sidewalk Cafés*
SUMMARY

Why the Controller's Office Conducted the Review

Pursuant to Section 6-400(d) of the Home Rule Charter, the City Controller's Office reviewed a number of the city's outdoor cafes to determine if they were properly licensed, complied with the city code and impeded pedestrian traffic.

What the Controller's Office Found

Our investigator teams visited 363 establishments that had active and expired café licenses during a field survey conducted in late August 2017. The teams visited 283 locations with valid café licenses and 80 establishments without a license.

- 49 of the unlicensed locations were found operating outdoor cafes, representing approximately \$12,495 in lost license fees and fines to the city.
- We found 218 apparent offenses based on seven code violations in 113 eateries that we surveyed. The Controller's Office found the most frequent code violation to be covered ventilation grates (51), followed by café in pedestrian travel (46) and then sidewalk space not maintained (45).
- In addition, we found a lack of escalating fines for each location in violation of sidewalk café codes. Repetitive citations remain at the same \$75 fine level despite the authority under the Philadelphia Code to fine up to \$300.

What the Controller's Office Recommends

The Controller's Office has compiled a number of recommendations to address these findings. The Right-of-Way Unit, the chief enforcer of Sidewalk Café Licenses, should follow code guidelines that authorize it to increase fines after the first offense. Such fine increases would potentially deter locations from becoming habitual offenders of the code. The Controller's Office also recommends that the city website and license application be updated to reflect the license fee increase to \$180 made in 2010. Additional recommendations can be found in the body of the report.

BACKGROUND

The Philadelphia Code Subsection 9-208 governs sidewalk cafes, and outlines a shared responsibility between the Streets Department (Streets) and Licenses and Inspections (L&I) to regulate them. In addition, the proprietors of such establishments pay license fees to the city for a Sidewalk Café License. In order to obtain a license, a petitioner submits an application, supporting documentation and a \$180 application fee to L&I or Streets. The submission must include a proposed plan for the café prepared by a licensed design professional or the applicant. If the application is prepared by a licensed design professional, it is subject to an expedited review process. If the application submitted is not professionally prepared, then it is subject to a 90-day review as well as a site inspection. When that process is concluded and the application is approved, L&I will then issue the permit and the application fee is applied to the \$180 license fee. Thereafter, the Right-of-Way Unit has the responsibility of enforcing the code requirements and L&I has additional enforcement authority if there are repeated violations.

Outdoor cafés must integrate into the sidewalks in a way that does not compromise pedestrian safety. This is accomplished by maintaining adequate clearances that allow people to walk by safely. In addition, the tables and chairs are required to be situated at a safe distance from hazards such as the street traffic lanes and ventilation grates.

The rules governing sidewalk cafés set in Philadelphia Code Subsection 9-208 (Code) are excerpted below:

- On streets with a confirmed sidewalk width of thirteen (13) feet or less, at least five (5) feet of clear sidewalk space shall be maintained at all times to provide pedestrian access. On streets with a confirmed sidewalk width of more than thirteen (13) feet, at least one-half the confirmed sidewalk width shall be maintained at all times to provide pedestrian access.
- For the purpose of determining clear sidewalk space, trees, steps, street light poles, sign poles, fire hydrants, parking meters, or other objects located on the sidewalk surface shall be considered as obstructions.
- Ventilation grates cannot be covered and cannot be included as clear sidewalk space.
- Sidewalk cafés located at street intersections shall provide corner clearance by providing a ten (10) foot clear space from the point of tangency of the curb line.
- No part of the sidewalk café shall be within fifteen (15) feet of a transit stop.
- Seating may be placed at the curb line only after 7:00 p.m. and if the lane is for parking and/or loading (not a traffic lane). Tables and chairs must be parallel to the curb.
- Only movable tables and/or chairs shall be permitted and must be placed at least one and one-half feet (1' 6") from the curb line.

SCOPE AND METHODOLOGY

The City Controller's Office obtained a list of active and expired café licenses issued by L&I. The Controller's Office then sent teams into the field to conduct surveys of the cafes to determine compliance with city code requirements. The on-site surveys consisted of visual inspections and measurements to ascertain that tables and chairs were placed appropriately on the sidewalk and determine compliance with the Code. Observations were noted and, when available, photographed.

The Controller's Office also obtained code violation and café license fee income history for FY 2011 through FY 2017 for comparison with our field findings.

In addition to performing on-site inspections, the Controller's staff researched city documents, reports, and additional records pertaining to the cafes including subsection 9-208 of *The Philadelphia Code* that outlined all sidewalk café requirements.

THE CONTROLLER'S FINDINGS

Apparent Violations Noted

The Controller's Office visited 283 establishments with active sidewalk café licenses and 80 establishments with expired café licenses. We observed a total of 218 apparent violations of seven city codes by 113 establishments. Of the offenses found by the Controller's Office, 169 were for apparent code violations in the café while 49 were for cafes operating without a valid license. Each citation has a \$75 fine, but a location found with no valid license will also have to pay \$180 for a license in addition to the citation fine. The unlicensed cafes represented \$12,495 in lost fines and fees while the remaining citations represented \$12,675 in lost fines. The total loss in revenue for the city is \$25,170.

Below is a breakdown of apparent violations we observed concerning café operations pursuant to the Code:

Restaurants visited	
Active licenses	283
Expired licenses	80
Violations	
Covered ventilation grates	51
Unlicensed cafes	49
Café in pedestrian's travel	46
Sidewalk space not maintained to specifications	45
Café less than 18" from the curb	14
Café less than 15 ft. from transit	13
Total violations	218

It also should be noted that the Controller's Office observed no violations in two categories: furniture must be easily movable and clear egress from the exit to the street.

The number one offense was covered ventilation grates (51), followed by unlicensed cafes (49) and cafes blocking pedestrian travel (46).

Violation Examples



Smokin' Betty's has two apparent violations in the photo above: unlicensed café and furniture covering ventilation grates. The city has cited this location three previous times for an unlicensed café including once in May 2017.



The sidewalk café at Marmont Steakhouse and Bar in Old City is pictured above and shows café seating not permitted until 7 p.m. This location has been cited eight times since 2013 for operating an unlicensed sidewalk café, not placing chairs in a parallel position, not maintaining a clear curb and placement of chairs in a non-parallel position.



Franklin Fountain in Old City has its café set up along the curb at 2:44 p.m., in violation of the Code, which states that curbside cafes is allowed starting at 7 p.m. This locale has been cited six times from 2013 to 2017 for operating an unlicensed sidewalk café, not adhering to the café's plan, not placing chairs parallel to the curb and for its placement of its café adjacent to a travel lane.



The sidewalk café at Bayou Bar & Grill has an apparent violation of covered ventilation grates. In addition, the location was photographed at 4:56 p.m. with its café set up adjacent to the curb before it is allowed. The Code states that tables may be set up parallel to the curb, but not before 7 p.m. ¹ This location has been cited twice, most recently in June 2017, for its placement of its café adjacent to a travel lane. The code stipulates that curbside cafes must be adjacent to a traffic lane that is regulated for use only for parking and/or loading.

¹ There are other additional restrictions associated with adjacent seating to a parking and/or loading lane that can be found in paragraph 6(l) of Section §9-208 Sidewalk Cafes in the Code.



Tables and chairs are set up less than 18 inches away from the curb at Lolita in Center City photographed above. Dining set ups that are situated near the curb are also not authorized before 7 p.m. This photo was taken at 12:42 p.m. The chairs and tables, in addition, have been placed perpendicular to the curb, which is not allowed under the Code. They must be placed parallel to the curb, according to the Code. Lolita was cited twice, the last time in May 2017, for curbside violations.

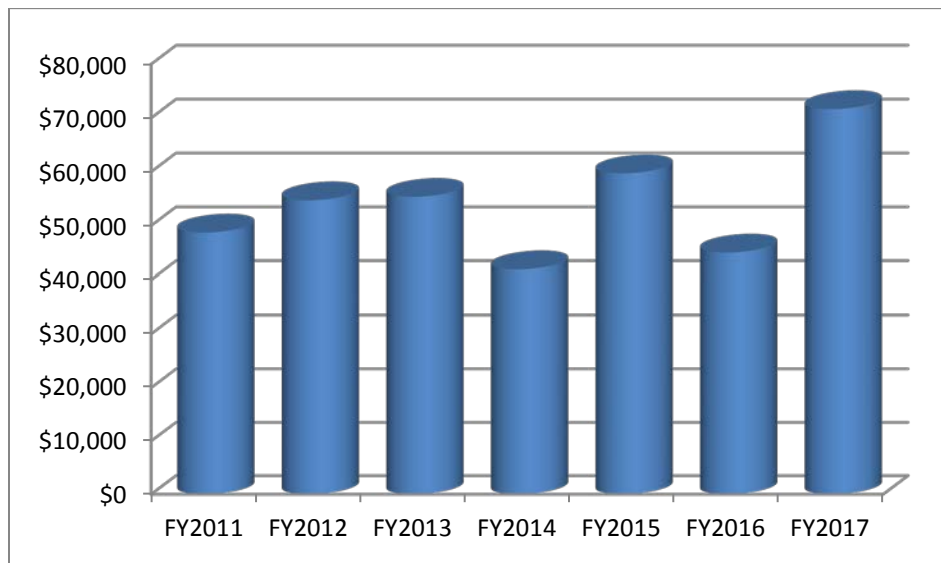


In the above photo, Fado Irish Pub in Center City violates the Code prohibiting tables situated less than 15 feet away from transit. The SEPTA Route 12 bus stop is 13 feet away from one of the location's tables. This location was cited five times from 2011 to 2016 for an unlicensed sidewalk café and side space not maintained to code measurements.

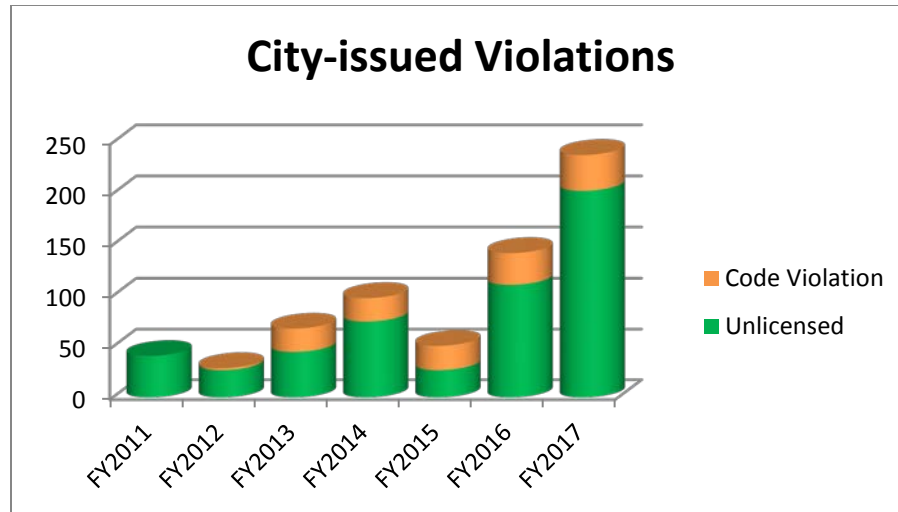
City License Revenue and Violations

Sidewalk café licenses are issued by L&I on an annual basis and must be renewed by June 30 each year. The city charges a \$180 fee for each sidewalk café license issued, although the Streets website incorrectly quotes the fee as \$160 on the site and on the license application. License fee revenue has increased 47 percent since FY2011 when a total of \$48,711 was collected. Six years later in FY2017, the city collected \$71,640 in license fees.

CAFÉ LICENSE REVENUE



The Streets Department's Right of Way Unit is the enforcer of sidewalk café codes and each citation issued costs \$75. The number of code violations issued by the city jumped 480 percent from FY2011 – when 41 unlicensed cafés were cited – to FY2017 when the city issued 238 violations. About 85 percent (203) of FY2017's violations were for unlicensed cafes and the rest were for lack of adherence to sidewalk space measurements, covered ventilation grates, café adjacent to pedestrian travel, no movable furniture, and café not following its approved plan with the city.



The citation data shows that 79 percent of the 431 citations issued from FY2015 to FY2017 were for unlicensed cafes. The number one Code offense among the remaining 90 violations was café adjacent to a travel lane (29 percent), followed by chairs not parallel to the curb (21 percent) and café not per plan (19 percent).

For each citation issued by the city there is a standard fine of \$75. However, under the Code, the city is authorized to fine up to \$300 per day. In addition, the Code allows a charge up to \$300 for repeat offenses but, according to Streets, the penalty does not increase with repeat offenders.

The Sidewalk Café Code states:

(e) *Penalties.* The penalty for violation of this Section or any condition of a license or of a regulation issued pursuant to this Section shall be a fine not exceeding three hundred (300) dollars per day.

(f) *Repeat Offenders.* Any person who commits, on more than one occasion, a violation of this Section or any condition of a license or of a regulation issued pursuant to this Section, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of not more than three hundred (300) dollars, or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a Repeat Violation regardless whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

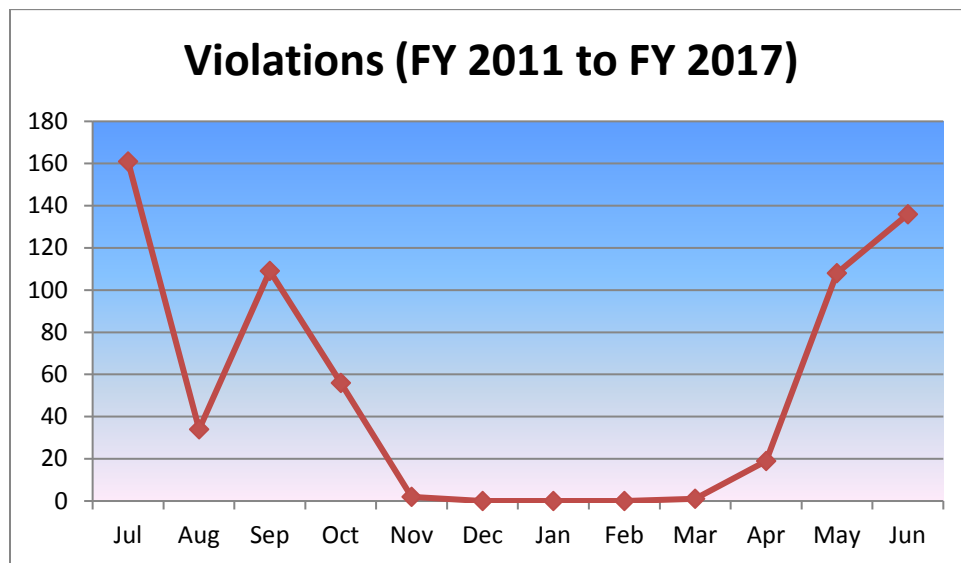
The Right-of-Way Unit issued 667 citations to 334 locations from FY2011 to FY2017. Fifty-six percent, or 188, of the locations received just one citation. The remaining 146 locations received multiple citations over time, including 29 locations that received five or more citations.

Our analysis of citations issued from July 2010 to June 2017 failed to uncover any citations issued for “Repeat Violation”.

Enforcement Trends

From citation data the Controller's Office reviewed, we ascertained that sidewalk café code violations during FY2011 through FY2017 were issued primarily during certain months of the year. July and June, respectively, were the top months for code citations with 161 and 136. The annual June 30 renewal date and the warm weather are likely factors in these increased numbers. However, in August, the citation numbers dropped to 34 and then jumps back up to 109 citations in September.

Conversely, when the weather turns cold, the number of code citations decreases to zero, one or two from November to March, as expected.



CONTROLLER’S RECOMMENDATIONS

The Controller’s Office previously reviewed Sidewalk café procedures in 2012 and based on that review, we found that violations trends continue to be the same and that cafes are not complying with the Code. The Right-of-Way Unit, however, has taken more aggressive actions, which subsequently resulted in an increase in unlicensed café violations and license revenue. Our review finds the unit is holding establishments accountable as it was charged to do.

As part of the review, the Controller’s Office recommends:

- The Right-of-Way Unit should follow Code guidelines stating that offenders be cited for repeated violations. This should be reflected by increasing fines for each violation after the first offense. This would potentially deter eateries from becoming habitual offenders of the Code.
- Ensure greater enforcement throughout the entire sidewalk café season and continually follow up on unlicensed establishments.
- The city should update the Sidewalk Café License web page and online application to correct the outdated fee listed.
- City Council should consider adopting stricter penalties for businesses that habitually violate the Code yet continue to operate their sidewalk café in an unsafe manner.
- The City of Sarasota, for example, adopted enforcement measures into its city code for the “Right-of-way usage permits for sidewalk cafes”. The code allows for the city to suspend a sidewalk café permit in the interest of the public health, safety and welfare. The city provides the location with a timeline where it can cease sidewalk café operations and remove any such furniture and other objects from the permit area. If the location does not remove these items, the city is authorized to remove all objects without obligation to replace or repair if any damage occurs. Any furniture or other objects removed may be held by the city until any fines or fees due hereunder have been paid in full.