

Subdivision II. - Downtown Zoning District

Sec. 34-671. - Purpose.

The purpose of the Downtown district is create the desired quality and character for the center of pedestrian-oriented commercial activities within the town. New commercial buildings are expected to accommodate pedestrians by providing storefronts near sidewalks and by offering shade and shelter along major streets. Old San Carlos Boulevard will serve as the town's "Main Street" and will be anchored by pedestrian plazas at each end.

Sec. 34-672. - District map and applicability.

- (a) The area indicated on Figure 34-7 is the outer perimeter of the Downtown district. Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the Downtown district, even if the property is shown on Figure 34-7.
- (b) Streets have been categorized into primary streets, secondary streets, and pedestrian plazas to guide the regulations for properties fronting each type of street.

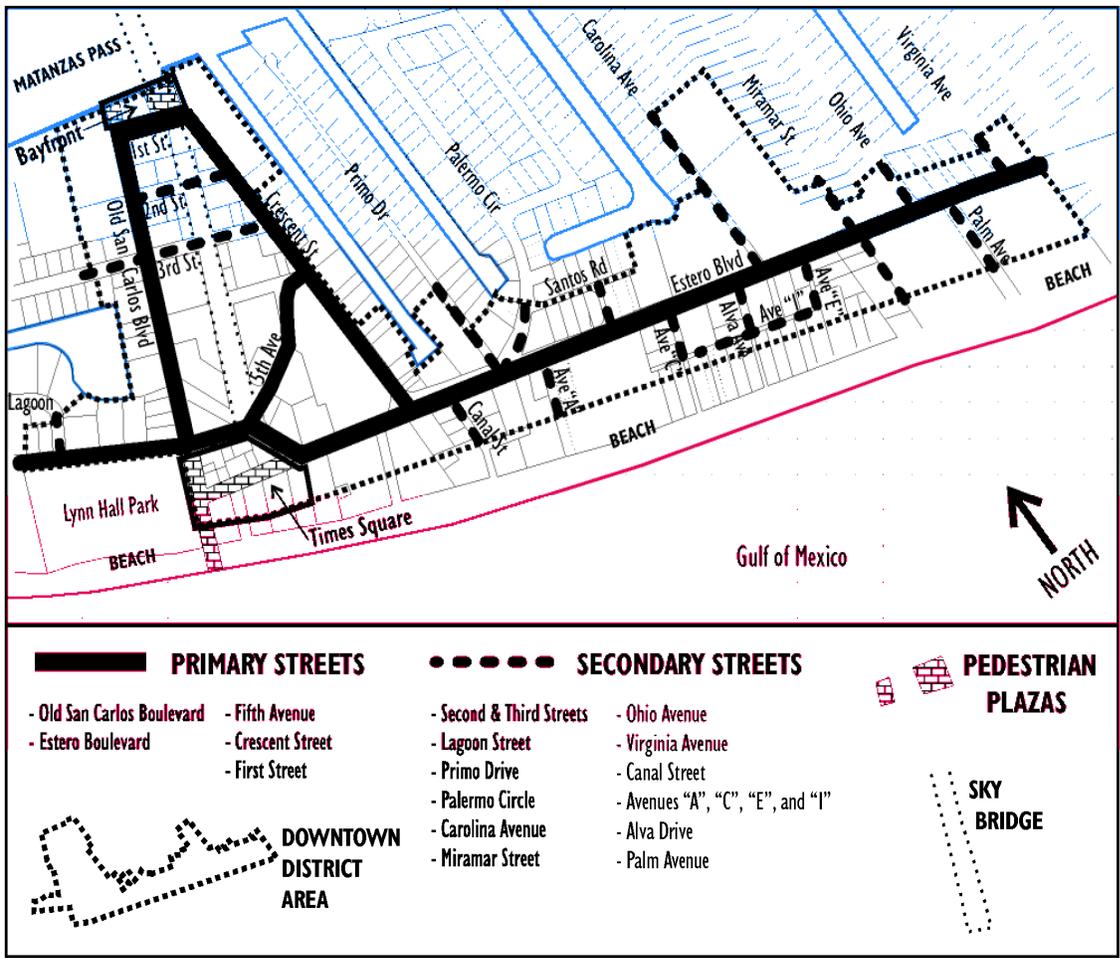


Figure 34-7

Sec. 34-673. - Allowable uses.

In the Downtown district, allowable uses are defined in Table 34-2, § 34-676(f), and § 34-678 of this LDC.

Sec. 34-674. - Building placement.

(a) *Build-to lines established.* Build-to lines (see § 34-662 of this chapter) vary according to the streets and street types designated on Figure 34-7.

- (1) Build-to lines for all streets are five feet to ten feet from front property lines, except:
  - a. Build-to lines are 0 feet for Old San Carlos Boulevard, all properties facing the Times Square and Bayfront pedestrian plazas, and Estero Boulevard west of the Sky Bridge.
  - b. Built-to lines are 0 to five feet for all of First, Second, Third, and Fifth, and the south side of Estero Boulevard from the Sky Bridge to Miramar Street.
- (2) The adjustments to build-to lines to maintain visibility that are required by § 34-662(b)(4) of this chapter do not apply:
  - a. To building fronts facing the Times Square or Bayfront pedestrian plazas; or
  - b. To building fronts along Old San Carlos Boulevard, where wide sidewalks and on-street parking lanes will allow the necessary visibility.
- (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991—34-1010 of this chapter) and are required along Old San Carlos Boulevard.
- (4) Enclosed habitable space may also be allowed over a public right-of-way if located over an arcade or colonnade that shades a public sidewalk (see § 34-995(e)(6) of this chapter), provided that specific permission is granted by the Town of Fort Myers Beach.

(b) *Setback lines established.* Setback lines (see § 34-662 of this chapter) are established as follows:

- (1) *For principal buildings:*
  - a. Minimum rear setbacks are 25 feet from rear property lines, except as follows:
    1. In Times Square, as defined on Figure 34-6, the minimum rear setback is ten feet.
    2. In areas where parking garages could be built, as defined on Figure 34-8, buildings shall be placed so as not to preclude future parking garages from being built on the interiors of these blocks. Along Old San Carlos Boulevard blocks with potential parking garages, this requirement means that principal buildings shall not extend further to the rear of lots than 50 feet back from the right-of-way for Old San Carlos Boulevard.
  - b. Minimum side setbacks are five feet from side property lines, except they may be 0 feet for properties fronting on Old San Carlos, Estero Boulevard, and in Times Square.
  - c. Minimum setbacks from waterbodies are set forth in § 34-638(d)(3) of this chapter.
  - d. Minimum setbacks along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as "Center Street" in Plat Book 9, Page 9 shall be the same as if those properties abutted any other private property.
- (2) For accessory structures, minimum setbacks are set forth in §§ 34-1171—34-1176.

Sec. 34-675. - Building size.

- (a) *Building frontage.* Building frontage limits (see § 34-663 of this chapter) vary according to the street types designated on Figure 34-7:
- (1) For pedestrian plazas and primary streets except for Crescent Street and for Fifth Avenue east of the Sky Bridge, building frontages shall be at least 70 percent of the lot frontage.
  - (2) For all other streets, building frontages shall be at least 35 percent of the lot frontage.
  - (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
  - (4) *Exception for properties between Estero Boulevard and the Gulf:* The required building frontage percentage may be reduced to 35 percent for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.
- (b) *Building height.* Building heights (see § 34-631 of this chapter) shall be limited to:
- (1) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than two stories:
    - a. Times Square and Bayfront pedestrian plazas (see Figure 34-7);
    - b. North side of First Street;
    - c. South side of Estero Boulevard between Old San Carlos Boulevard and the main pedestrian crossing;
    - d. Carolina Avenue.
  - (2) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than two stories, except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation):
    - a. Lagoon Street;
    - b. Crescent Street;
    - c. First, Second, Third, and Fifth (east of the Sky Bridge only);
    - d. North side of Estero Boulevard west of Old San Carlos Boulevard and east of Crescent Street;
    - e. Primo Drive;
    - f. Palermo Circle;
    - g. Miramar Street, north of Estero;
    - h. Ohio Avenue;
    - i. Virginia Avenue.
  - (3) For properties that front on the following streets, a maximum of 40 feet above base flood elevation and no taller than three stories:
    - a. Old San Carlos Boulevard between Fifth and First Streets;
    - b. South side of First and both sides of Second and Third (west of the Sky Bridge only);
    - c. South side of Estero Boulevard east of the main pedestrian crossing;
    - d. Canal Street;
    - e. Avenues A, C, E, and I;
    - f. Alva Drive;
    - g. Miramar Street, south of Estero;
    - h. Palm Avenue.

- (c) *Floor area ratio (FAR)*. Floor area ratios (see § 34-633 of this chapter) shall not exceed:
  - (1) 1.8 for properties fronting on Old San Carlos between Fifth and First Streets and fronting on the Times Square pedestrian plaza (see Figure 34-7).
  - (2) 1.4 for properties fronting on Estero Boulevard and fronting on the Bayfront pedestrian plazas.
  - (3) 1.0 for all other properties in the Downtown district.
- (d) *Hotel rooms*.
  - (1) Along both sides of Old San Carlos Boulevard (properties between Fifth and First Streets that lie within 200 feet east and west of the centerline of Old San Carlos only), a property owner may substitute hotel rooms for allowable office space on upper floors without the limitations otherwise provided by the hotel-room equivalency factor found in § 34-1802 of this chapter. However, these hotel rooms must have at least 250 square feet per rentable unit.
  - (2) In all other properties in the Downtown district, the number of hotel rooms are limited by the hotel-room equivalency factor found in § 34-1802 of this chapter.

Sec. 34-676. - Circulation and parking.

- (a) *Off-street parking reductions*. The Downtown district is planned as a "park-once" district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. For these reasons, substantial reductions are allowed to the normal off-street parking requirements found in § 34-2020 of this chapter. The follow percentages shall be multiplied by the number of off-street parking spaces normally required by § 34-2020 of this chapter to determine the adjusted off-street parking requirements along various streets in the Downtown district:
  - (1) Old San Carlos Boulevard, multiply by 50 percent.
  - (2) Bayfront pedestrian plazas (see Figure 34-7), multiply by 50 percent. No parking spaces may be provided in the Bayfront pedestrian plaza, but the required spaces must be located within 750 feet in single-purpose, shared, or joint-use parking lots (see division 26 of this chapter).
  - (3) Times Square pedestrian plazas (see Figure 34-7), multiply by 0 percent.
  - (4) All other streets in the Downtown district, and all land on Crescent Street regardless of zoning district, multiply by 67 percent.
- (b) *Parking lot locations*. Off-street parking lots shall be placed in rear yards (see Figure 34-5).
  - (1) Off-street parking lots are not permitted in front yards or side yards, except they may be placed in the side yards of buildings on properties that front the beach side of Estero Boulevard if the unbuilt area thus created allows open views to the Gulf of Mexico.
  - (2) Off-street parking may be provided under commercial or mixed-use buildings along Old San Carlos Boulevard, provided that all under-building parking spaces are separated from sidewalks by usable commercial space at least 20 feet deep that meets all commercial building design guidelines in §§ 34-991—34-1010 of this chapter. Off-street parking may be provided under commercial or mixed-use buildings at other locations in accordance with § 34-992(c) of this chapter.
- (c) *Parking lot interconnections*. Rear-yard parking lots on properties fronting along Old San Carlos Boulevard shall be interconnected to eliminate or minimize driveways to Old San Carlos Boulevard.
  - (1) To ensure the effective use of these connections, the first to develop shall be required to make an irrevocable offer of cross-access to the adjacent parcel (prior to issuance of a development order), and must design and build the parking lot to accommodate cross-access.
  - (2) When adjacent owners seek development orders, they will also be required to reciprocate with a similar cross-access agreements and then must complete the physical connection.

- (3) Individual property owners shall control all rights to the use of their own parking spaces, but may choose to allow wider use of these spaces for a fee of their choosing or through reciprocal arrangements with other parties.
- (d) *Driveway connections.*
  - (1) *Properties fronting on Estero Boulevard.* Existing driveways and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property.
  - (2) *Properties fronting on other primary streets.*
    - a. For properties fronting primary streets other than Estero Boulevard, driveways should be connected to secondary streets whenever possible.
    - b. When a driveway onto a primary street is unavoidable, the driveway shall be shared with an adjoining property if that property also has access only to that primary street. Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections.
  - (3) *Properties fronting only on secondary streets.* Driveways may be connected to secondary streets, existing easements, or alleys.
  - (4) *Properties adjoining pedestrian plazas.* Driveways and other vehicular access shall not be provided from pedestrian plazas.
- (e) *Parking garages.* The town has identified three potential locations for mid-block parking garages through its Old San Carlos Boulevard/Crescent Street Master Plan.
  - (1) Each potential location is indicated in black on Figure 34-8. Construction of these parking garages is not required by this code, but the regulations for the Downtown district are designed to place new buildings on these sites so that they will not block a parking garage from being built there in the future.

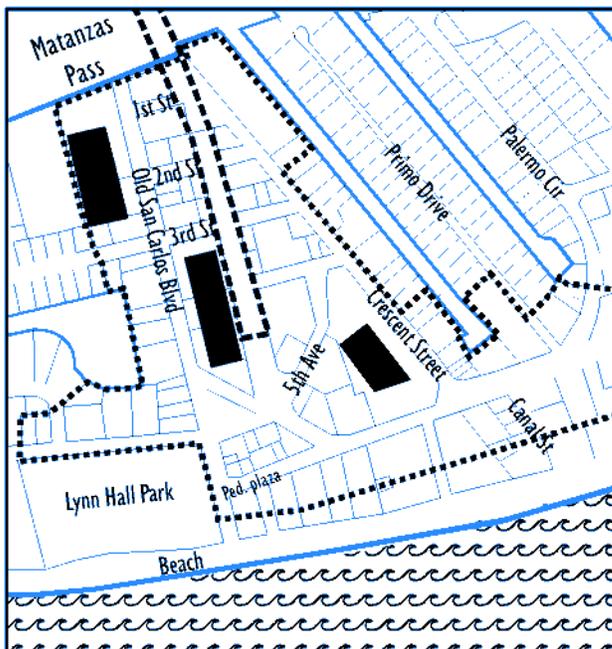


Figure 34-8

- (2) All levels of parking garages must be separated from primary streets and pedestrian plazas by a liner building that provides usable building space at least 20 feet deep (see Figure 34-9).

- a. Liner buildings must be two stories or more in height and must be at least as tall as the parking garage.
- b. Liner buildings may be detached from or attached to the parking garage.
- c. Parking garages and their liner buildings are required to meet the commercial design standards (see §§ 34-991—34-1010 of this chapter).

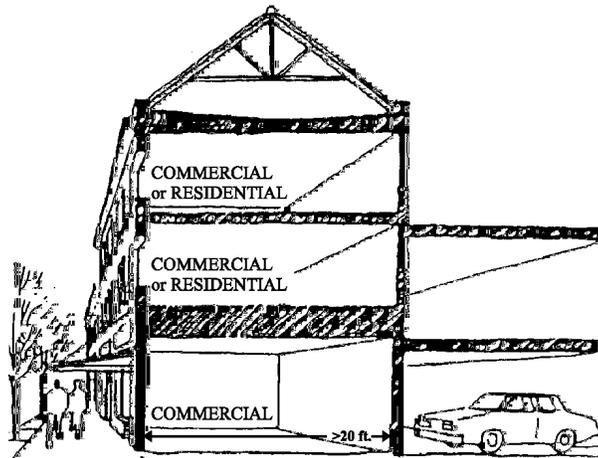


Figure 34-9

- (3) Access to a parking garage may be provided as follows:
  - a. Access to a secondary street or road easement is preferred.
  - b. Access to a primary street is not permitted except in unusual circumstances where no other access is feasible and when approved as a variance or deviation to this code.
  - c. Access may not be provided across a pedestrian plaza.
- (4) Parking garages can be approved only by rezoning to the Commercial Planned Development zoning district.
- (f) *Drive-through lanes.* Drive-through lanes are generally not allowed in the Downtown district because traffic generated by drive-through lanes harms a pedestrian environment. The only exception to this rule is that Type 1 drive-throughs (see definition in § 34-2 of this LDC) may be approved by special exception on the north side of Estero Boulevard east of Palermo Circle. In this situation, the number of drive-through lanes is limited to two lanes, and they shall not be accessed directly, for either entrance or exit, from a separate driveway on Estero Boulevard; they may be accessed from any of the secondary streets or from a shared driveway on Estero Boulevard.

Sec. 34-677. - Additional requirements.

- (a) *Commercial design standards.* The commercial design standards (§§ 34-991—34-1010 of this chapter) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405 of this LDC.
- (b) *Open space and buffers.* There are no minimum open space and buffer requirements in the Downtown district comparable to the standards found in ch. 10 of this LDC, except in three instances:
  - (1) Portions of properties that lie east of Palermo Circle and more than 300 feet beyond the north edge of the Estero Boulevard right-of-way shall retain 50 percent of that portion as open space. This open space may be a stabilized sodded area useable for overflow parking.
  - (2) Residential buffers are required between commercial or mixed-use buildings and single-family residential lots for properties on the north side of Estero Boulevard east of Palermo Circle.

These buffers shall be constructed in accordance with the buffer requirements of ch. 10 of this code.

- (3) Buffers are required between any off-street parking lot and a public street in accordance with the buffer requirements of ch. 10 of this code.
- (c) *Core area overlay district.* An optional core area overlay district was adopted by the town by Ordinance No. 96-20. That district was replaced with the Downtown zoning district by Ordinance No. 03-03. Landowners who chose to be governed by the core area overlay district agreed in writing to be bound by its provisions for ten years. Compliance with this code, including all requirements of the Downtown zoning district, is deemed by the town as satisfying those agreements. However, all provisions of those agreements relating to off-site parking remain in full effect.

Sec. 34-678. - Outdoor display and sales of merchandise and food.

- (a) *Generally.* Merchandise, food, and beverages may be displayed or sold outdoors in the Downtown zoning district only in accordance with this section.
- (b) *Purpose.* The purpose of these regulations is to enhance the pedestrian environment of the town's business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town's sense of place and property values.
  - (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
  - (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the Downtown district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002 of this chapter).
  - (3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
  - (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq of this chapter.
- (c) *Allowable locations for outdoor activities.* Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the Downtown zoning district.

**Table 34-4—Outdoor Activities in the Downtown Zoning District**

Location	PRIVATE PROPERTY (between store & street)		PUBLIC PROPERTY (Times Square pedestrian plaza)
	On porch	On patio	see (f)
MERCHANDISE, as further limited by other provisions of § 34-678			
Vending carts - see (d)(1)	no	YES	no

Clothing racks - see (d)(2)	YES	no	no
Specialized displays - see (d)(3)	YES	YES	no
Mannequins - see (d)(4)	YES	YES	no
Tables/shelves - see (d)(5)	YES	no	no
Freestanding displays - see (d)(6)	YES	YES	no
DINING:			
Vending carts - see (d)(1)	no	YES	no
Dining tables - see (d)(7)	YES	YES	YES

(d) *Types of outdoor displays.*

- (1) *Vending carts* are limited to two wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off-island storage area. Figure 34-9 shows two suggested vending cart designs.



Figure 34-9

- (2) *Clothing racks* are limited to one support rod up to six feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-10 shows a typical clothing rack.



Figure 34-10

- (3) *Specialized display racks* are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a two-foot by eight-foot area or a four-foot by four-foot area. Figure 34-11 shows a specialized display rack.



Figure 34-11

- (4) *Freestanding mannequins* are used to display clothing or swimwear. Figure 34-12 shows a typical freestanding mannequin.



Figure 34-12

- (5) *Tables or freestanding shelves* are limited to a two-foot by eight-foot area or a four-foot by four-foot area, and may not be more than three feet in height. Figure 34-13 shows a typical freestanding table with merchandise.



Figure 34-13

- (6) *Freestanding product displays* can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a four-foot by eight-foot area or with a maximum of seven individual products. Figure 34-14 shows typical freestanding product displays.



Figure 34-14

- (7) *Dining tables* are used to serve food and beverages to the public. Figure 34-15 shows typical dining tables on the Times Square pedestrian plaza.



Figure 34-15

- (e) *Private property—Number, location, and types of outdoor displays and dining tables.* Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch or a patio, as defined in this subsection. No business may have more than two outdoor displays of merchandise, as defined in subsection (d) above. For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.
- (1) *Porches and patios.* Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:
- a. *Porch* is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning, roof or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.
  - b. *Patio* is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this code.
- (2) *Permitted merchandise and types of outdoor display.* The following types of merchandise may be displayed outdoors using the display type described in subsection (d):
- a. Art (prints, sculpture, etc.): 1, 3, 5, 6.
  - b. Bathing suits and swimwear: 1, 2, 4.
  - c. Beach accessories (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
  - d. Beach towels: 1, 2, 3, 5.
  - e. Beach toys, rafts, and floats: 1, 3, 5.
  - f. Clothing: 1, 2, 4, 5.
  - g. Clothing accessories (jewelry, purses, etc.): 1, 3, 4, 5.
  - h. Kites and windsocks: 1, 6.
  - i. Lawn and garden accessories: 1, 6.
  - j. Small retail items (souvenirs, suntan lotion, flowers, books, etc.): 1, 5.
  - k. Merchandise not specifically listed: 1, or on permitted display type for the most similar item.
  - l. Personal services including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.
- (3) *Additional rules for outdoor displays of merchandise.*
- a. A retail store wishing to display merchandise outdoors in the Downtown zoning district must obtain a permit for this use (see subsection (e)(5) below) in addition to meeting all other requirements of this code.
  - b. Merchandise that is displayed outdoors must be available for sale inside the store.
  - c. All outdoor displays must be brought indoors during any hours that the business is not open, except as provided for vending carts in subsection (d)(1) above.

- d. Outdoor displays may contain no business or product identification signage whatever; each display may have one four-inch by six-inch sign to display prices.
  - e. All outdoor displays must be non-motorized and movable by hand and may be no taller than ten feet.
  - f. Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d) above).
- (4) *Outdoor dining.* A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5) below) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.
- (5) *Permit required.* A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.
- a. Permits may be issued for up to one year and shall expire each year on September 30.
  - b. Permit applications may be filed at any time using forms available from Town Hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
  - c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.
  - d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in subsection (b) above. Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.
  - e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 of this LDC for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2 of this LDC).
- (f) *Public property.* No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:
- (1) *General location.* These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6) and other locations if explicitly approved by the town council.
  - (2) *Who may operate.* Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
  - (3) *Specific location.* Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.
  - (4) *Outdoor dining.* No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.

- (5) *Permit required.* Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:
- a. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
  - b. Restrictions on the extent to which food not available in the abutting business may be sold;
  - c. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
  - d. Insurance requirements;
  - e. Payment of fees established by the town for vending rights;
  - f. Limitations on leasing of vending rights, if any; and
  - g. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.

Permitting procedures and enforcement shall be the same as provided in subsection (e)(5) above.

Secs. 34-679—34-680. - Reserved.