SDOT	Director's Rule 1 - 2009

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CITY OF SEATTLE Seattle Department of Transportation (SDOT)	1 of 11	N/A
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Subject:	Code and Section Reference:
Sidewalk Cafés	SMC Chapter 15.16
	Type of Rule: Code Interpretation
	Ordinance Authority: SMC 3.02.030, 3.12.020 and 15.16.040
	Approved Date Grace Crunican, SDOT Director 2 April 2009
Index: Street and Sidewalk Use, Sidewalk Cafés	

I. Rule and Background

This Rule interprets the provisions of Seattle Municipal Code (SMC) 15.16 and provides the procedures and terms and conditions for issuance of sidewalk café permits.

Seattle's street rights-of-way are an important and complex public resource. The Seattle Department of Transportation (SDOT) manages Seattle's transportation system. SDOT is also responsible for administering the permit processes for public rights-of-way, including the sidewalk café permit process. Sidewalk cafés activate the street-level pedestrian environment, enhance neighborhood safety and public perception of safety, and advance Seattle's character and quality of life. Seattle Municipal Code Chapter 15.16 provides the application procedures and the standards required for issuance of sidewalk café permits.

II. Definitions

"Areaway" means a space below the level of the sidewalk, covered or uncovered, affording room, access or light to a building. An "areaway" is sometimes called a "light well." **(SMC 15.02.042 C)**

"Food-service establishment" means:

1. A place, location, operation, site, or facility where food is manufactured, prepared, processed, packaged, dispensed, distributed, sold, served, or offered to the consumer regardless of whether or not compensation for food occurs, including but not limited to:
    a. Restaurants, snack bars, cafeterias, taverns, bars,
    b. Retail food stores, supermarkets, retail meat markets, retail fish markets, retail bakeries, delicatessens,
    c. Food services in schools and private higher education learning facilities,
    d. Institutional operations licensed by Department of Health, such as hospitals, prisons, state-licensed higher education learning facilities, and child care facilities,
    e. Central preparation sites, including caterers,
    f. Satellite servicing locations,
    g. Temporary food-service establishments and mobile food units,
    h. Bed and breakfast operations,
    i. Remote feeding sites, and
    j. Vending machines dispensing potentially hazardous foods;

2. Except for the following:
    a. Private homes where food is prepared or served for consumption by household members and/or their non-paying guests,
    b. Establishments offering only commercially prepared and packaged non-potentially hazardous foods sold or given packaged for off-premises consumption or consumption without further preparation,
    c. Commercial food-processing establishments, licensed and regulated by the USDA, FDA, or WSDA, and
    d. Farmers exempt from licensure under RCW 36.71.090. **(SMC 10.10.040 O)**

"Public Place" means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved. **(SMC 15.04.026 D)**

"Sidewalk cafe" means a portion of the public right-of-way in which tables and chairs are placed for the use of patrons consuming food and/or beverages, including alcoholic beverages, served by a food-service establishment (as defined in SMC 10.10.040) located on adjacent property. **(SMC 15.02.046 H)**

III. Permit Review and Approval

A. Application to SDOT

Applicants for a sidewalk café permit must fill-out and sign the Street Use Non-Construction Permit Application. **By signing the permit application, the applicant agrees to defend, indemnify and hold harmless the City of Seattle, pursuant to SMC 15.16.070.**

To submit a complete permit application, the applicant must provide the following information to SDOT:

- Three copies of a legible site plan including the following information (see section IV. Sidewalk Café Standards):
  - North arrow.
  - Name of adjoining street(s) or alley(s).
  - Width of adjacent sidewalk(s).
  - Location of existing improvement (e.g., utility poles, fire hydrants, parking meters or pay stations, bike racks, bus shelters, sign posts, tree pits), showing the distance of each from the nearest edge of the sidewalk café.
  - Location of property lines and dimensions of the sidewalk or public place proposed for café use.
  - Sidewalk width remaining for public path of travel.
  - Location and dimensions of any proposed improvements in the sidewalk or public place associated with the sidewalk café. **Note**: Improvements such as seating platforms, awnings, canopies, utility installations, and bollards require a separate permit and review.
  - Location of building exits and entrances.
  - Fencing detail, including materials, dimensions, and installation method.
  - Location of existing and proposed landscaping.
  - Location and description of adjacent parks, adjacent streets that are closed to traffic, or adjacent public places available for a clear path of pedestrian travel.

- SDOT Sidewalk Café Letter of Authorization form signed by the property or business owner, verifying that the sidewalk café will be operated by a food-service establishment that is permitted under Title 10 or by the Seattle-King County Department of Health. This Letter of Authorization form can also be used to authorize an agent to apply for and obtain the sidewalk café permit on the owner's behalf.

- Certificate of $1,000,000 Liability Insurance with the City of Seattle named as an additional insured. (For more information, see CAM 2102, *Certificate of Liability Insurance*.)

- If the location of the proposed sidewalk café is located in a Historic or Landmark District, the applicant must obtain a Certificate of Approval from the appropriate district and submit a copy to SDOT.

- $450 Field Review Fee Deposit. The Street Use Fee Schedule, pursuant to SMC 15.04.074B, establishes permit review fees at the rate of $150/hour. If review time is less than 3 hours, the remaining balance will be released after the permit is issued. If the review time is more than 3 hours, an invoice will be sent for the additional review fees. Field review fee deposits cannot be applied to the permit fee at time of issuance.

B. Notice of Application

When a complete application is submitted, SDOT will provide a notice form to the applicant. The notice form will include the application date, proposed sidewalk café dimensions, and comment period dates, as well as provide information on how to comment on the pending application and

how to request a review or reconsideration of an issued Street Use Permit. The applicant must post this notice of the sidewalk café permit application in a prominent place at the proposed location that is clearly visible from the adjacent sidewalk or public place. The notice must be posted for at least 14 days before permit decision and issuance. SDOT will also publish an application notice on DPD's Land Use Information Bulletin (LUIB), which is published twice weekly on-line and is mailed to more than 200 community organizations citywide. The comment period dates on the notice form will be consistent with the online comment period date schedule on the LUIB. A Street Use Inspector will verify that the notice is posted during the public comment time period. Failure to post the notice will delay the issuance of the sidewalk café permit.

C. Review by SDOT

SDOT will review that the application is complete and meets the minimum requirements as established in SMC 15.16. The review will include, but is not limited to the following:

- Determining that the food service establishment is setback at least 50' from a residential zoned parcel.
- Confirm that the SDOT Sidewalk Café Letter of Authorization is signed by the property or business owner and verifies that the sidewalk café will be operated by a permitted food-service establishment thereon.
- Confirm that the applicant is the property or business owner or authorized agent as established on the SDOT Sidewalk Café Letter of Authorization form.
- Confirm that clearance, exiting, and setback requirements are met on the site plan.
- Confirm that fencing detail conforms to installation and ADA requirements.
- Verify insurance documentation meets the requirements as stated in CAM 2102.
- Verify public notice is posted on-site during the public comment period.
- Review whether any additional Street Use permits are required (ie. Seating platforms, sidewalk repair, etc.)
- Determine if sidewalk café application needs to be routed to the Department of Planning and Development (DPD) for review.
- Confirm that site conditions conform to site plan.

D. Review by Department of Planning and Development (DPD)

DPD review is not required for all sidewalk café permits, but may be required in certain circumstances, including the following:

1. If the total area of the sidewalk café is 75 square feet or more and the only legal exit path is through the food-service establishment. If DPD determines that interior alterations are needed to comply with building code standards and limits to the number of occupants, then a building permit for the alterations may be required;
2. If an average of 4' or more of the sidewalk café is on private property, as measured perpendicular from the street-facing property line, then DPD permits are required; or
3. For any seating platform 18 inches or more above the sidewalk or public place grade, a DPD permit is required.

If DPD review or additional DPD permits are required, SDOT will not issue a sidewalk café permit until all DPD permit requirements are met.

IV. Sidewalk Café Standards

The following standards apply to all sidewalk cafés in the public place. SDOT has the discretion to require more strict standards or require conditions to the permit, given specific site characteristics. The standards described in A and B below are depicted in Figure 1.

A. Compliance With ADA

The sidewalk café must be accessible and detectable per the Americans with Disabilities Act (ADA) guidelines.

Any sidewalk café less than 75 square feet must have an entrance/exit directly to the public place. If a sidewalk café has an area of 75 square feet or more and does not have an entrance/exit directly to the public place, the applicant will be required to obtain an additional DPD permit.

- SDOT is responsible for reviewing:
    - ADA access in the public place around the sidewalk café;
    - ADA access from the public place into the sidewalk café, if it is less than 75 square feet in area or opposite a required building exit; and
    - Fencing is detectable by cane.
    - Furniture is movable and not permanently affixed.

- DPD is responsible for reviewing:
    - ADA access to sidewalk café from the building, when the only access path is through the building.

B. Clear Path of Pedestrian Travel.

1. A minimum of 6 feet of clear path of travel is required on all sidewalks located within the Downtown Urban Center, as depicted in Figure 2. A minimum of 5 feet of clear path of travel is required on all other sidewalks. The clear path of travel is measured from the outside edge of the sidewalk café fencing or fence post base to the nearest obstruction (i.e., tree pit, parking meter, bike rack, planting strip, etc.). If no obstruction exists, the clear path of travel is measured to the back of the curb. Sidewalk cafés may not encroach into tree pits. A-frame, portable signs or any other encroachment is not allowed in the pedestrian clear path of travel.

   The Director may require more than the minimum clear path of travel when needed to facilitate the public's use of the right-of-way. Examples of where the Director may require more than the minimum include, but are not limited to, areas with high peak-period pedestrian volumes, areas where more specific planning and analysis suggests a wider clear path of travel is necessary, areas where approved street design plans call for additional width, or areas with transit loading zones, public plazas, art installations, and access points where large volumes of pedestrians circulate.

2. The pedestrian path of travel should be straight and not involve sharp or jagged turns that would impair pedestrian circulation.

3. A sidewalk café width should not exceed the available pedestrian clear path of travel width. The Director may, in his or her sole discretion, allow the area of the sidewalk café to extend beyond the available pedestrian clear path of travel width when adjacent to one of the following:

- Park, or
- Street closed to vehicular traffic, or
- Other public place.

4. If the sidewalk café causes a change in pedestrian travel, appropriate repairs to the right-of-way in the immediate vicinity may be required to accommodate the change or to assure compliance with the ADA. An additional Street Use Construction permit must be obtained to perform any required repair work. **(SMC 15.16.040(B)(10))**

5. Electrical cords or strings of lights may not be strung over or be placed on the pedestrian path of travel.

C. Setbacks.

Setbacks are required from the following elements. These elements must be clearly identified on the required site plan in the permit application. **See Figure 1**

1. 5 feet from alleys and from bus, handicapped parking, and commercial loading zones.
2. 5 feet from parking meters or pay stations, traffic signs, SDOT and utility poles, fire hydrants, bike racks, and other street fixtures.
3. 3 feet from the front of the curb whenever sidewalk café is located adjacent to curb. See section IV (J) for requirements for approving a sidewalk cafe to be located adjacent to the curb.
4. 5 feet from curb ramps, or the beginning of the corner curb radius where curb ramps do not exist.

D. Building Exits.

A clear path of travel must be maintained from any building exit, equal in width to the exit door. This path of travel must be free of obstructions, including gates of any type, and connect the building exit to the sidewalk.

E. Exiting Requirements.

Sidewalk cafés will not require a change to the occupancy permit for the associated business, provided the following standards are met:

1. The total area of the sidewalk café is less than 75 square feet; or the total area of the sidewalk café is 75 square feet or more and a legal exit path can be provided directly to the public place.
2. If the total area of a sidewalk café is 75 square feet or more and the only legal exit path is through the establishment, a DPD review is required. If DPD determines that interior alterations are needed to provide sufficient exiting, then a building permit application for the alterations permit will be required.
3. Any sidewalk café less than 75 square feet must have egress directly to the public place. The egress must be free of obstructions, including gates of any type.

F. Fencing.

Fencing is required to delineate the sidewalk café from the pedestrian path of travel. The following design standards apply to fencing:

1. Fencing must be between 30 and 42 inches in height. Fencing must be 42 inches in height, if required by the State Liquor Control Board.
2. Fencing must be detectable by cane to warn visually impaired persons of potential hazards in the path of travel. Fencing must include one or more of the following detectable elements:
    a. A toe rail with its top edge at 6 inches minimum in height and its bottom edge no higher than 1-1/2 inches above the adjacent surface;
    b. Fencing, landscaping, or other elements detectable by cane spaced no more than 27 inches vertically and no more than 24 inches horizontally; or
    c. Elements sufficiently detectable by cane to warn visually impaired persons of potential hazards in the path of travel.
3. Fence posts may be attached to the sidewalk with bolts or utilize free-standing bases. When bolted fencing is removed, the bolts must be removed from the sidewalk, the holes must be filled, and the sidewalk must be restored to original or better condition.
4. Fencing must be generally transparent. Solid sheet fencing surfaces are not permitted.
5. Fencing should be constructed with a railing, rope or other horizontal element; posts with pointed tops are not permitted.
6. Fencing must be constructed of high-quality finish materials (such as steel, glass or finish woods). Plastic and/or raw or pressure-treated lumber is not allowed.
7. Fencing shall not contain electrical or other utility elements.
8. Landscaped planters may be used in-lieu of fencing. Ropes or chains with free-standing bases may also be used, provided the above standards are met.
9. All seating and tables must be movable to accommodate wheelchair access.

G. Seating Platforms.

Seating platforms and other structures are discouraged from the public place and a separate Street Use permit must be applied for any time additional items beyond the sidewalk café fencing, including seating platforms, are proposed to be installed in the public place. Additional permitting and review will be required by SDOT for all proposed seating platforms and additionally from DPD if the seating platform surface is 18 inches or more in height above existing grade at any point. Only sites that require leveling due to site topography will be considered by SDOT for approval for an additional Street Use seating platform permit. When allowed, seating platforms should not be higher than what is required to level the site. Seating platforms must be temporary in nature and removable, with no lasting damage to the sidewalk or public place. The following design standards apply:

1. Seating platforms may generally not be 18 inches or more in height above existing grade at any point. Additional height may be allowed, depending on site topography characteristics, and will require additional DPD review and/or permit. Refer to Section III.D for when other DPD review would be required.

2. Seating platforms must be wheelchair accessible, as required by the Americans with Disabilities Act (ADA) guidelines, and must provide a fixed railing and other safety measures in accordance with Seattle Building Code (SBC) Section 1607.7 and ANSI 117.1.

- SDOT is responsible for reviewing:
    - ADA access in public place around seating platform;
    - ADA access from the public place onto the seating platform, if less than 75 square feet in area or opposite required building exit; and
    - Seating platform is detectable by cane.

- DPD is responsible for reviewing:

- ADA access to seating platform from building when the only access path is through the building; and
- SBC standards are met for seating platforms 18 inches or more above existing grade at any point.

3. All seating and tables on the seating platform must be movable to accommodate wheelchair access.

4. All visible portions of the seating platform and its railing and footings should be constructed with high-quality finish materials (such as steel, glass or finish woods).

5. Street use permit applications for seating platforms are required to have the following:
   a. A plan stamped by a registered design professional (engineer or architect). The stamp must be accompanied by a statement confirming that the seating platform conforms to Seattle Building Code (SBC), Chapter 11, Accessibility, and other applicable regulations including, but not limited to, SBC Section 1607.7 and International Code Council A117.1.
   b. If the proposed seating platform is over an areaway, the applicant must submit an additional structural analysis by a professional engineer of the load capacity of the sidewalk and areaway.
   c. An indemnity agreement will be prepared by SDOT for approved seating platform permit applications. The indemnity agreement must be signed and notarized by the property owner and recorded with King County Records.

6. For seating platforms less than 18 inches in height for which a DPD permit was not required, applicant must submit a letter stamped by a registered design professional to SDOT. The stamp must be accompanied by a statement confirming that the seating platform was installed per the Seattle Building Code (SBC), Chapter 11, Accessibility, and other applicable regulations including, but not limited to, SBC Section 1607.7 and International Code Council A117.1. Letter must be submitted to SDOT within one week of installation of seating platform.

H. Landscaping.

Where seating platforms are used, potted plants, planter boxes or other landscaping is required at either end to delineate it from the rest of the sidewalk or public place. These planters must be contained within the footprint of the approved sidewalk café dimensions. Landscaping may be no higher than 42 inches and may not encroach on the clear path of travel required in subsection I of this Rule.

I. Heating Elements and Overhead Weather Protection.

Heating elements and free-standing umbrellas are allowed within the footprint of the permitted café, but may not encroach on the clear path of travel required in subsection IV.B of this Rule, except that when opened, an umbrella may encroach on the clear path of travel if the opened portion is more than 8 feet above sidewalk grade and if no part of the umbrella is within 25 feet of a stop sign. Heating elements must be of a type permitted by the Seattle Fire Marshall and must be temporary in nature and easily removable.

J. Sidewalk Café Adjacent to Curb.

Sidewalk café seating is allowed adjacent to the curb only if:

1. On-street parking is present,

2. The clear path of travel requirements described in Section IV.A. are met, and
3. The setback requirements described in Section IV.B and C are met.

K. Amplified Sound.

Installation and use of speakers and other amplified sound equipment is not allowed.

L. Liquor Control.

Sidewalk cafés must be in compliance with all Washington State Liquor Control Board (WSLCB) laws, subject to WSLCB enforcement

M. Hours of Operation.

Sidewalk cafés may operate during the food-service establishment's general business hours. Hours and days of use may be limited by the Director of Transportation when the sidewalk or public place is needed for pedestrian travel or other needs.

N. Prohibited Uses.

The sidewalk café may not be used for any use other than food and beverage service associated with the adjoining business. Outdoor storage or other uses are strictly prohibited.

V. SDOT Sidewalk Café Permit Decisions and Requests for Review or Reconsideration

SDOT will post notification of sidewalk café permit decisions online to the DPD's LUIB. The notice will be posted for 10 days.

A request for review or reconsideration of a sidewalk café permit decision may be made to the SDOT Director by filing a written request during the 10 day notification of approval period (SMC 15.04.112). The request must identify the decision for which review or reconsideration is requested, grounds for objecting to the decision based on City standards, and the specific remedy being proposed. The Director will designate a review officer who will make a recommendation to the Director. The Director may, at his or her discretion, stay implementation of a decision pending review or reconsideration. The Director's decision on review or reconsideration is final.

VI. SDOT Inspections and Permit Renewal

SDOT will conduct an initial inspection of the sidewalk café and verify the following:

- Compliance with Street Use permit conditions; and
- Installed per approved sidewalk café plan.

The Street Use sidewalk café permit is non-transferrable. Renewal of existing sidewalk café permits will not have to conform to guidelines established by this rule. However, a new Street Use sidewalk café permit is required when a business changes ownership. Existing sidewalk café permits will come into compliance with this Director's Rule when a new Street Use permit is applied for.

SDOT will conduct an annual inspection at the time of permit renewal and verify the following:

- Permit conditions are still met;
- Original business is still in operation; and
- Current site conditions do not require permit modifications.

Figure 1: Required Clear Path of Travel and Setback from Obstructions for Sidewalk Cafes

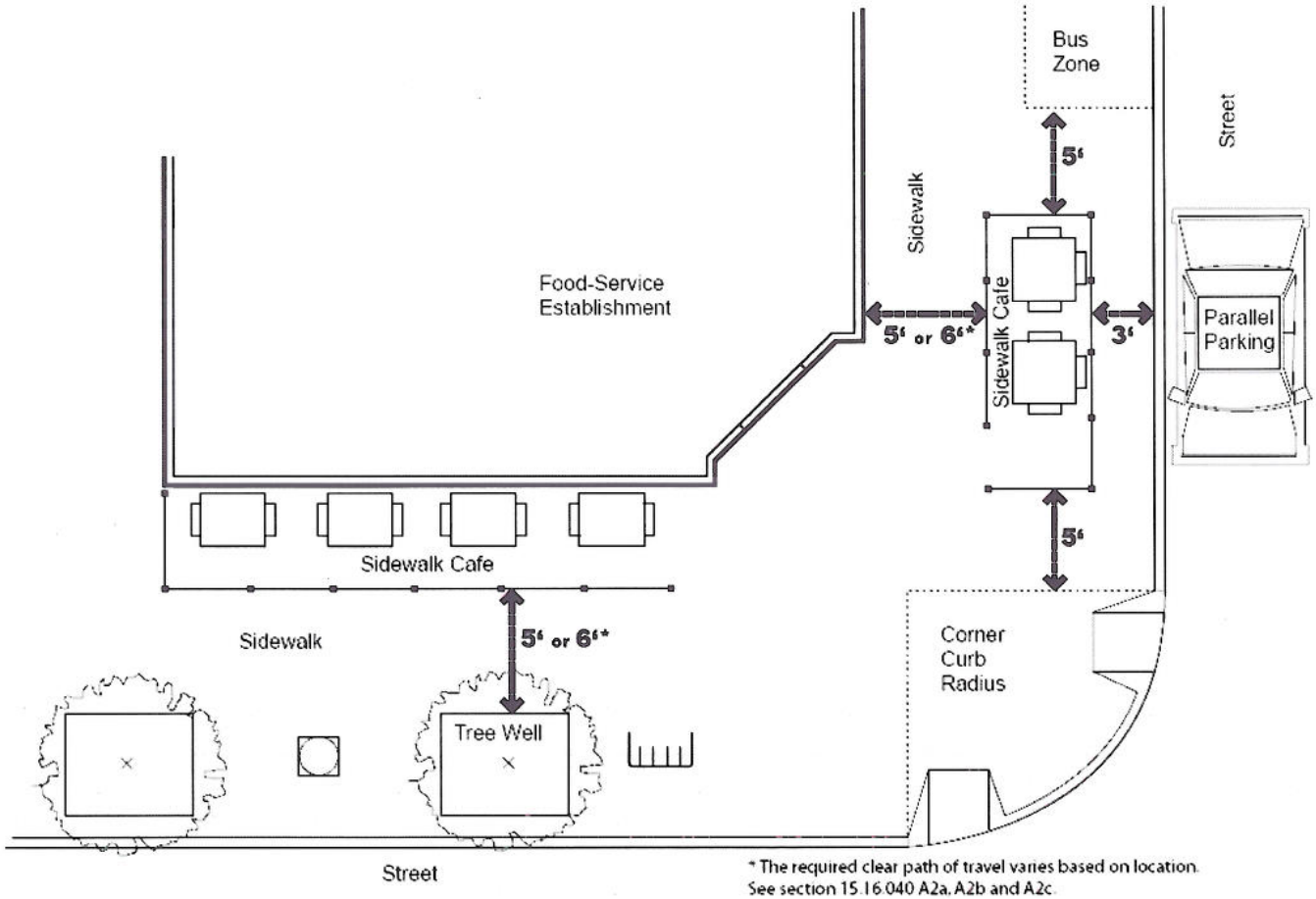
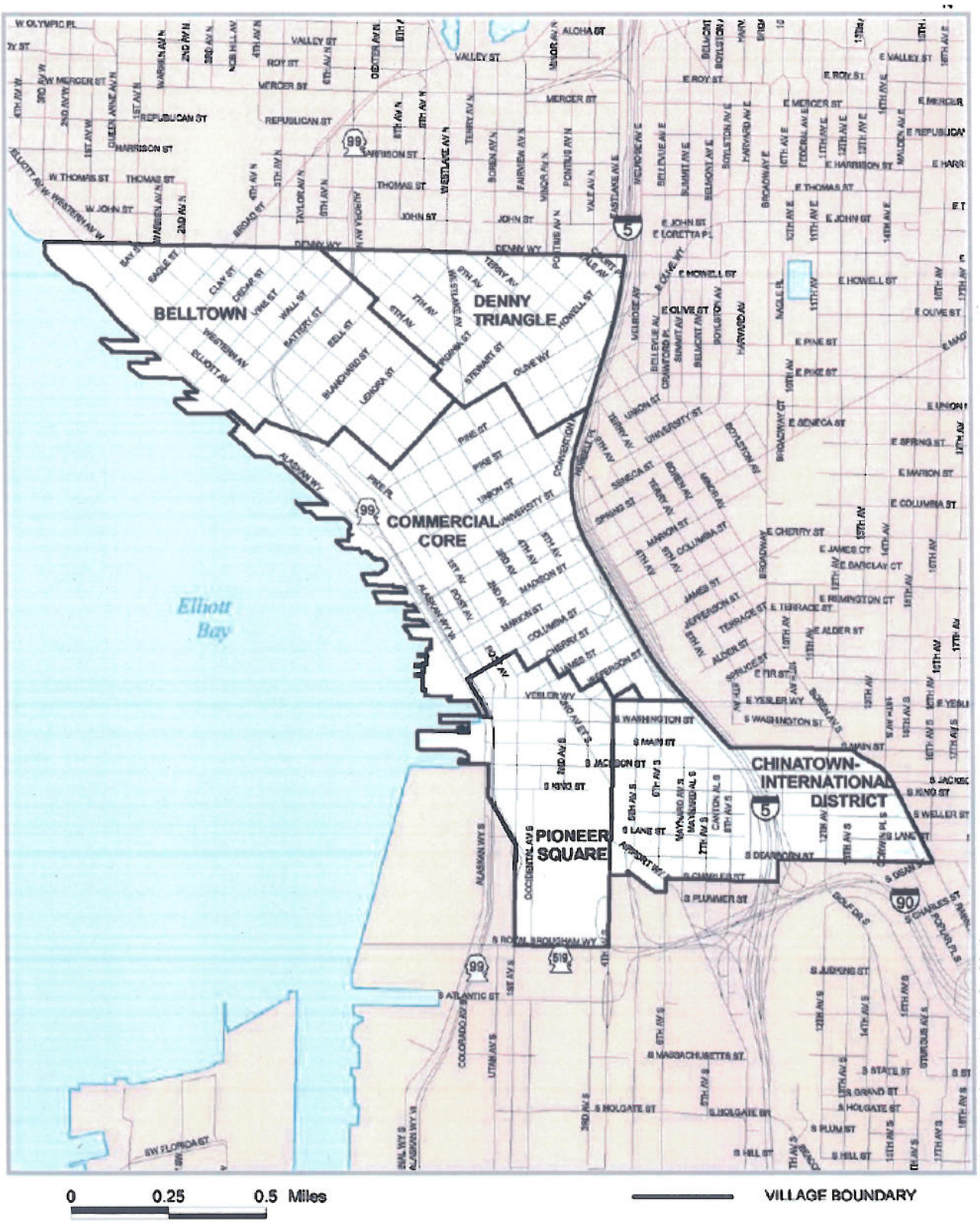
Figure 2: Downtown Urban Center