

## ARTICLE X. - SIDEWALK CAFÉS ON PUBLIC SIDEWALKS

### Sec. 30-411. - Purpose.

The sidewalk café regulations as established in this article are designed to allow sidewalk cafés on public property in locations where they are determined to be appropriate by the city manager or city commission and to promote and protect the public health, safety; general welfare and amenity. These general goals include, among others, the following specific purposes:

- (1) To provide a clear lane for pedestrians on the sidewalk adjacent to sidewalk cafés and to insure access to adjacent commercial and retail uses;
- (2) To promote sidewalk cafés as useful and properly planned visual amenities which better relate to the streetscape;
- (3) To promote the most desirable use of land and buildings and thereby protect the city's tax revenues.

### Sec. 30-412. - Definitions.

*Major sidewalk café license* means a license issued by the city clerk based upon approval of the city commission, which conforms to the procedures and regulations of this article for sidewalk café operations serving alcoholic and non-alcoholic beverages.

*Minor sidewalk café license* means a license issued by the city clerk based upon approval by the city manager, which conforms to the procedures and regulations of this article for sidewalk café operations serving non-alcoholic beverages only.

*Sidewalk café* means an outdoor dining area, located on a public sidewalk or designated parking area, which is public through dedication, easement or public right-of-way, that provides waiter/waitress service or counter service and contains readily removable tables, chairs, railings or planters or a temporary platform. It is otherwise unenclosed by fixed walls and open to the air, except that it may have railings, awnings, or umbrellas, or other non-permanent covers. Sidewalk cafés may be located on a public sidewalk and may encroach upon adjacent parking areas only with city approval.

### Sec. 30-413. - Minor sidewalk café licensing procedures.

- (a) The city clerk is authorized to issue a seasonal license to operate a minor sidewalk café on public property provided that the standards set forth in section 30-415 of this article have been complied with by the applicant.
- (b) The seasonal license shall permit the operation of a sidewalk café from ~~April 1<sup>st</sup>~~ **March 10<sup>th</sup>** up to and including November 30<sup>th</sup> of any calendar year. A license may also be issued for less than a full season or for a stipulated number of operating days.
- (c) The fees for the license under this division shall be those fees on file with the city clerk which have been approved and filed by the city manager and which the city commission has been notified of for at least 30 days in compliance with section 2-1 of this Code.
- (d) No license shall be issued by the city clerk unless the fees required by this section are paid.
- (e) Application process.
  - (1) No outdoor service of food and/or beverages in the form of a sidewalk café shall be established on public property, except in conformance with a site drawing approved by the city manager.
  - (2) A license application available from the city clerk shall be submitted to the clerk's office. The application shall state the following:
    - a. Name of the individual/business;

- b. Individual/business address;
- c. Address of sidewalk occupancy;
- d. Property owner if other than applicant;
- e. Written authorization from the owner of the property to submit the application where the applicant is not the owner of the affected property;
- f. Name of planner, engineer, architect or agent;
- g. Dates of occupancy;
- h. Hours of occupancy;
- i. Seating capacity of existing establishment;
- j. Area of occupancy (square feet) (dimensions);
- k. Use of musical instruments or sound reproduction system;
- l. If application is a new application or renewal;
- m. A site drawing prepared to the specifications of this section.

(3) A site drawing and the accompanying application shall show the following:

- a. The applicant's entire property and adjacent properties on a location map with streets for a distance of at least 25 feet.
- b. A detailed plan showing the design, relevant details and location of all temporary structures including awnings, planters, landscaping, railings, tables, chairs and other equipment, as well as lighting and electrical outlet locations.
- c. All exterior lighting shall be shown on the site drawing.
- d. Indicate on the application whether live entertainment or loudspeakers will be used or installed. Such use shall be governed by the city noise ordinance regulating and prohibiting unnecessary and annoying noise and is subject to the zoning requirements for outdoor entertainment.

(4) The city clerk or designee shall distribute copies of the application to the chief of police, fire chief, code enforcement director, city planner, and city engineer for review and comments in relation to compliance with this and all other city ordinances. Also, property owners adjacent to the subject property shall be notified of the applicant's intent to establish a sidewalk café.

- (f) Insurance requirement. Each licensee of a minor sidewalk café shall file with the city clerk evidence of compliance with the insurance requirements as are set forth in section 30-58.
- (g) The applicant shall submit to the city clerk a signed agreement to defend, indemnify, save, and hold harmless the city and all of its officers, agents, or employees from any liability for damages resulting from any and all occupancy and operations under a license granted pursuant to this article.
- (h) The city manager may approve, approve with conditions, refer the application back to the applicant for modification, or deny the application. If approved, the city manager shall authorize the city clerk to issue the minor sidewalk café license.
- (i) If the city manager denies the application for a minor sidewalk café license, the city manager shall state the reason for this determination in a letter to the applicant. The applicant may then appeal the decision in accordance with section 30-422.

Sec. 30-414. - Major sidewalk café licensing procedures.

- (a) Licensing is subject to all of the requirements of section 30-413(a) through (e).
- (b) Insurance requirement. Each licensee of a major sidewalk café shall file with the city clerk evidence of compliance with the insurance requirements as are set forth in section 30-58.

- (c) The applicant shall submit to the city clerk a signed agreement to defend, indemnify, save, and hold harmless the city and all of its officers, agents, or employees from any liability for damages resulting from any and all occupancy and operations under a license granted pursuant to this article.
- (d) Major sidewalk café licenses are subject to the approval of the city commission. The city manager, after review by city staff, shall place the application for a major sidewalk café on the agenda for review by the city commission. The city commission shall then approve, approve with conditions, refer the application back to the applicant for modification, or deny the application.

Sec. 30-415. - Minor sidewalk café standards.

- (a) Clear lane. A minimum 60 inch clear pedestrian path must be maintained at all times to allow adequate pedestrian movement.
- (b) Cafés shall only be permitted where it is determined that the use will not create a hazard, a sight distance obstruction for motor vehicle operators and provides a clear lane for pedestrian traffic.
- (c) Sidewalk cafés may only be located adjacent to the establishment with which they are associated. This requirement may, however, be waived by the city manager or designee to allow extension of the sidewalk café to adjacent city-owned property if the same is deemed appropriate.
- (d) Furnishings of a sidewalk café shall consist solely of readily removable awnings, covers, railings, tables, chairs, planters containing plants and accessories. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property. No objects which are part of a sidewalk café, except lighting fixtures, railing, awning, or other nonpermanent covers, may be attached, even in a temporary manner, to any building, or structure on which the sidewalk café abuts. When the associated establishment and the sidewalk café are not open for daily use, all furnishings and fixtures shall be removed from public property or stored in an approved manner which shall not cause a public hazard. The city manager or designee shall determine when a hazardous condition exists in the public sidewalk. This determination shall be final and unappealable.
- (e) No structure or enclosure to accommodate the storage of accumulated garbage may be erected or placed adjacent to or separate from the sidewalk café on public property.
- (f) A sidewalk café shall not interfere with any public service facility; such as a telephone, mailbox or bench, located on a sidewalk.
- (g) Operation of a sidewalk café shall not adversely impact adjacent or nearby residential, religious, educational or commercial properties, and shall be in accordance with all applicable codes and regulations.
- (h) All electrical wiring and fixtures associated with or part of the sidewalk café shall be installed and remain in conformance with the appropriate codes of the city.
- (i) Tables, chairs, umbrellas and any other objects provided with the sidewalk café shall be of quality design, materials, and workmanship both to ensure the safety and convenience of users and to enhance the visual and aesthetic quality of the urban environment.

Sec. 30-416. - Major sidewalk café standards.

Major sidewalk cafés shall meet all the requirements set forth in section 30-415 in addition to the following standards.

- (1) Outdoor dining areas serving alcoholic beverages shall be continuously supervised by employees of the establishment.
- (2) Barriers. All barriers used for outdoor cafés serving liquor shall also conform to Michigan Liquor Control Commission (M.L.C.C.) policies and requirements. A sign, one foot square, reading "No Food or Beverages Allowed Beyond Railing" shall be posted at a conspicuous location within the perimeter of outdoor cafés serving alcoholic beverages.

Sec. 30-417. - Sidewalk cafés that encroach upon adjacent parking areas.

In the event that a sidewalk café is to be located within designated street parking areas, the following shall apply:

- (1) Sidewalk cafés within designated street parking areas shall meet all applicable regulations of this article including, but not limited to, insurance requirements, site design standards, and hours of operation.
- (2) Decks within designated street parking areas must be adjacent to the sidewalk that is adjacent to the business that is to be served and may not extend in front of any other business.
- (3) Sidewalk cafés within designated street parking areas shall not extend more than ten feet from the curb line where angled parking exists or more than four feet from the curb line where parallel parking exists.
- (4) Sidewalk cafés within designated street parking areas shall be protected from vehicular traffic. All barriers shall be approved by the city engineering department.
- (5) Sidewalk cafés within designated street parking areas shall be established upon a removable platform assembled upon the sidewalk and the allowable road parking area. The platform shall meet requirements of this article and all other applicable rules and regulations.
- (6) Sidewalk cafés within designated street parking areas shall be installed no sooner than **May 15<sup>th</sup> March 10<sup>th</sup>** of each year and shall be removed no later than November 30<sup>th</sup> of each year.
- (7) The city commission may adopt rules and regulations regarding the construction, use and removal of sidewalk cafés within designated street parking areas. Sidewalk cafés within designated street parking areas shall be operated in strict accordance with the rules and regulations as they may be adopted or amended. A sidewalk café within a designated street parking area which is operated in violation of the rules and regulations adopted by the city commission shall be removed upon 48 hours written notice.

Sec. 30-418. - Operating restrictions.

- (a) All sidewalk cafés shall cease sales or service by 11:30 p.m. each night and all areas shall be vacated by 12:00 a.m.
- (b) All alcoholic beverages to be served at sidewalk cafés shall be prepared within the existing restaurant, and alcoholic drinks shall only be served to patrons seated at tables or counters. The drinking of alcoholic beverages by a member of the public while a patron at a sidewalk café, within the confines of the sidewalk café area, shall not be construed as a violation of any ordinance controlling open containers in a public area. The operator of the sidewalk café shall take whatever steps are necessary to procure the appropriate license from the M.L.C.C., if he intends to serve alcoholic beverages in the sidewalk café area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in the state.
- (c) The license evidencing licensing of the sidewalk café in accord with this article shall be prominently displayed.
- (d) The restaurant shall not serve food or beverages to a patron at a sidewalk café area unless that patron is seated at a table or counter.
- (e) Sidewalk cafés and the public property on which they are located shall be kept neat and clean at all times and free from any substance that may cause damage to the sidewalk or cause pedestrian injury. Sidewalk café areas must remain clear of litter, food scraps, and soiled dishes at all times.

Sec. 30-419. - Term of licenses and renewal procedures for minor sidewalk café.

- (a) *Term.* A minor sidewalk café license shall be valid for two seasons.
- (b) *Renewal.* A renewal based upon the previous license may be approved without full staff review, if the application meets the following conditions:
  - (1) Ownership of the business has not changed.

- (2) There has been no change to the site drawing.
- (3) There are no outstanding, major code violations.
- (4) The application is reviewed by the planning department to verify compliance.
- (5) The licensee shall submit proof of current liability insurance as specified in section 30-413(g) and (h).
- (6) The renewal is subject to all conditions placed on the original license.
- (7) Failure by the licensee to submit all required documentation as set forth in this chapter shall be the basis for denying a renewal license.

Sec. 30-420. - Term of licenses and renewal procedures for major sidewalk café.

- (a) *Term.* A major sidewalk café license shall be valid for two seasons.
- (b) *Renewal.* A renewal based upon the previous license may be approved without full staff review, if the application meets the following conditions:
  - (1) Ownership of the business has not changed.
  - (2) There has been no change to the site drawing.
  - (3) There are no outstanding, major code violations.
  - (4) The licensee shall submit proof of current liability insurance as specified in section 30-414(b) and (c).
  - (5) That the renewal is subject to all conditions placed on the original license.
  - (6) Failure by the licensee to submit all required documentation as set forth in this chapter shall be the basis for denying a renewal license.

Sec. 30-421 - License assignment or transfer prohibited.

No licensee shall assign or transfer a sidewalk café license.

Sec. 30-422. - Appeal upon denial, or revocation of a license or permit.

- (a) Any license granted under the provisions of this article may be revoked by the city manager or designee for cause, upon the recommendation of any of the city departments that participated in the license review process or on his or her own initiative.
- (b) Upon revocation of a license, all furnishings and fixtures shall be removed from public property within 24 hours.
- (c) Any person aggrieved by the denial of an application for license or by the revocation of a license as provided by this chapter, shall have a right to an appeal. An appeal may be taken only within 14 days after notice of such denial or revocation is mailed to the person's address as listed on the application. The application for appeal shall be in writing and shall contain a complete statement of the grounds for the appeal. It must be filed with the city clerk, together with an appeal fee. The fee for an appeal under this section shall be those fees on file with the city clerk which have been approved and filed by the city manager and which the city commission has been notified of for at least 30 days, in compliance with section 2-1 of this Code.
- (d) Within ten days of the receipt by the city clerk of such an appeal, the clerk shall schedule a hearing. Unless waived by the appellant, the clerk shall mail by first class mail a written notice to the appellant of the time and location of the appeal hearing at least five days prior to that hearing. The appeal hearing shall be an informal hearing held before a hearing panel consisting of:
  - (1) The city manager or his or her designee;

- (2) A department head designated by the city manager other than the department head of the effected department; and
- (3) The city clerk or his or her designee.

The decision of the hearing panel shall be reached by majority vote and mailed to the appellant within seven days of the conclusion of the hearing. The decision of the hearing panel shall include:

- (1) The appeal application and type and nature of the appeal;
  - (2) The applicant's position;
  - (3) The original reason for denial or revocation of the license or permit;
  - (4) The facts as the hearing panel determined them to be;
  - (5) The decision of the hearing panel;
  - (6) The hearing panel's rationale or basis for the decision; and
  - (7) The date on which the decision was placed in a United States mail receptacle by the city clerk.
- (e) The decision on the appeal referred to above shall be final and binding, unless the appellant, within 14 days of the mailing of said decision, files a request in writing addressed to the city clerk, requesting the city commission to re-hear the appeal. No appeal shall be made to the city commission, unless;
- (1) The original request for an appeal was timely filed; or
  - (2) The original appeal was waived by the appellant and the city; or
  - (3) The hearing panel failed to make a decision due solely to the fault of the city.
- (f) The appeal to the city commission shall be a two-step process limited to the issues raised in the original appeal:
- (1) Within 14 days of receipt of an appeal of the original decision, the city clerk shall set up a prehearing conference before a committee of city commissioners designated by the president of the commission. At the prehearing conference the following matters shall be discussed:
    - a. The rules of the hearing;
    - b. The date of the hearing;
    - c. The issues which may be raised from the original appeal;
    - d. The likelihood of settlement; and
    - e. Any other pertinent matters.
  - (2) A hearing before the city commission.
- (g) The denial or revocation shall be effective during such appeal or until the commission shall reverse the administrative decision. The commission may confirm the denial or revocation, or may reinstate or order the issuance of the license. The action of the commission shall be final.

#### Sec. 30-423. - Violations.

Any person who operates a sidewalk café with-out a license or who shall violate any of the provisions of this article shall be guilty of a municipal civil infraction, punishable by a fine as set forth herein:

Operating a major sidewalk café without a license, class F.

Operating a minor sidewalk café without a license, class D.

All others not specified, class B.

Sec. 30-424. - Severability.

If any clause, sentence, paragraph or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof; but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

Secs. 30-425—30-430. - Reserved.