

## TRAVERSE CITY CODE OF ORDINANCES

### ORDINANCE AMENDMENT NO. 1160

Effective date: July 1, 2021

TITLE:       SIDEWALK CAFÉ PERMITS AND SIDEWALK CAFÉ WITH ALCOHOL PERMITS

THE CITY OF TRAVERSE CITY ORDAINS:

#### **1020.08 - Sidewalk cafe permits.**

(a)    *Permit conditions.* The City Clerk may issue to an adjacent food service establishment a revocable sidewalk cafe permit to occupy a portion of adjacent City right-of-way to place tables and chairs, planters adjacent to the tables and chairs in conjunction with selling and consuming food and beverages under the following terms and conditions:

(1)    *Prohibitions.* The occupancy must not:

- a.   Interfere with the use of the right-of-way for pedestrian or vehicular travel.
- b.   Unreasonably interfere with the view, access to, or use of property adjacent to said street, unless prior written approval of the adjacent property is provided.
- c.   Reduce the pedestrian travel area of any sidewalk to less than five feet in width; a clear linear pedestrian path at least five feet in width must be maintained at all times; The pedestrian travel path shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way no part of the sidewalk café or its related barrier may be located within 24 inches from the inside edge of the adjacent curb or within 30 inches from the street-side edge of the adjacent sidewalk without a curb.
- d.   Cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way. The linear barrier and its anchoring system shall be approved by the City Engineer in writing prior to installation. Anchoring systems secured to adjacent buildings and approved by the building owner, do not require approval by the City Engineer.
- e.   Cause a violation of any state or local laws.
- f.   Be used for off-premises advertising. All signs must conform to the sign ordinance.
- g.   Conceal or detract from the appearance of landscaping features in or adjacent to the street.
- h.   Be in or adjacent to property zoned exclusively for residential purposes.
- i.   Be attached to or reduce the effectiveness of or access to any utility pole, sign or other traffic control device.
- j.   Cause increased risk of theft or vandalism.
- k.   Violate regulations adopted by the City Manager pursuant to this Code.

- l. Serve alcohol unless the business holds a sidewalk café with alcohol permit issued by the City Clerk.
  - m. Leave any furniture or equipment associated with the sidewalk café on public property when the café is not in operation, with the exception of enclosures.
  - n. May not operate beyond 11:00 p.m.
  - o. Enclosures may be left on public property, even when the café is not in operation, only from November 1 to April 1.
- (2) *Notice.* Notice to the adjacent property owners or occupants on both sides of the applicant's property shall be required before issuing a permit to occupy any right-of-way area between the edge of the vehicle use area of the right-of-way and the right-of-way property line. Said notice should include an enumeration of the conditions or rights provided under section 1020.08(1) of this Code.
  - (3) *Fee.* Prior to the issuance of a permit, a fee in an amount established by resolution of the City Commission shall be paid to the City Clerk. This fee shall be tripled if any such occupancy occurred prior to the issuance of a permit.
  - (4) *Insurance.* The permittee shall show proof of and maintain comprehensive general liability insurance and have the City as an additional named insured. The amount of such insurance shall be determined by the City Clerk.
  - (5) *Waste.* Any holder of a sidewalk café permit shall be responsible for the proper disposal of all waste associated with their sidewalk café occupancy, ~~and~~ shall ensure that the waste is removed on a daily basis and shall ensure that the waste is not placed in a public waste disposal system.
  - (6) *Food service establishment.* Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000, as amended, M.C.L.A. § 289.1101.
  - (7) *Regulations.* The City Manager may adopt an executive order controlling the occupancy pursuant to a sidewalk cafe permit.
  - (8) *Site plan and barrier requirement.* A site plan shall be submitted with the application showing where a linear barrier will be placed to maintain an unobstructed foot path five feet wide for pedestrians at all times, to ensure compliance with the Americans with Disabilities Act. A barrier shall delineate the sidewalk café and generally be 36 inches in height and be approved by the City Planning Director. The style of the barrier shall also be approved by the Planning Director. Barriers shall be placed on the sidewalk upon approval by the City Engineer; the barrier shall be such that it remains upright if bumped or exposed to inclement weather. Alternatively, barriers can be anchored to the adjacent building with the building owner's approval. The barrier shall be placed such that it is sufficient to ensure compliance with the approved site plan. The barrier shall be removed when the business closes each day. If the city's ADA Coordinator determines that existing conditions are such that a barrier is not required to maintain an unobstructed foot access path at least five feet wide for pedestrians, the requirement for the barrier may be waived by the city's ADA Coordinator.
  - (9) *Compliance with approved site plan.* The café shall, at all times, comply with the approved site plan.

- (b) *Duration.* Permits for a sidewalk café shall be for a period of April 1 to November Permits for a sidewalk café with an enclosure shall be for a period of November 1 to April 1 for the year in which granted. The period in which enclosures may be installed may be extended by the City Clerk.
- (c) *Display.* A permit shall only be valid if displayed in a manner visible to the public.
- (d) *Permit revocation.* Any permit may be revoked by the City Clerk upon a finding that the occupancy does not meet the standards of this Code, any other provisions of this Code, or other applicable law or regulation, or that the right-of-way is needed for other street or utility purposes. The City Clerk may revoke a permit for a particular period of time, for non-compliance with this ordinance or any applicable rules and regulations and also if, in the City Clerk's judgment, the occupancy creates a hazardous or undesirable condition. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be refunded.
- (e) *Appeal.* Persons who are refused a permit or have had their permit revoked may request in writing a hearing on that determination before the City Manager. Requests for a hearing must be made within five days of the questioned decision.
- (f) *Non-renewal of permit.* If a permit holder has two or more violations in a permit year, the City Clerk shall not renew the permit the following permit year.
- (g) *Appearance tickets.* The Police Chief and the appointed officers of the Police Department, or such other officials as are designated by the City Manager, are hereby authorized to issue and serve appearance tickets with respect to a violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as amended (MCLA 764.9c(2); MSA 28.868(3)(2). Appearance tickets shall be in such form as determined by the City Attorney and shall be in conformity with all statutory requirements.
- (h) *Violations.* A person who violates this section is responsible for a civil infraction.

(Ord. 368, Passed 8-16-93; Ord. 539, Passed 7-16-01; Ord. 570, Passed 7-1-02; Ord. 658, Passed 12-6-04; Ord. 700, Passed 4-3-06; Ord. 1009, Passed 8-4-14; Ord. 1013, Passed 2-17-15; [Ord. 1124](#), Passed 7-6-20; [Ord. No. 1147](#), Passed 8-27-20)

**1020.09 - Sidewalk café with alcohol permit.**

- (a) *Permit conditions.* The City Clerk may issue to an adjacent food service establishment a revocable sidewalk cafe with alcohol permit to occupy a portion of adjacent City right-of-way to place tables and chairs, planters adjacent to the tables and chairs in conjunction with selling and consuming food and alcoholic beverages under the following terms and conditions
- (1) May not operate beyond 11:00 p.m.
  - (2) Service of alcohol at the sidewalk café does not violate any state, federal or local laws, promulgated rules, or policies or executive orders of the city.
  - (3) A barrier shall surround the sidewalk café; it shall be approved by the City Planning Director, generally be 36 inches in height, and shall be removed when the establishment closes each day. The style of the barrier shall also be approved by the City Planning Director.
  - (4) A site plan shall be submitted with the application showing where a barrier will be placed to maintain an unobstructed foot path five feet wide for pedestrians at all times, to ensure compliance with the Americans with Disabilities Act. Barriers shall be placed on the sidewalk upon approval by the City Engineer; the barrier shall be such that it remains upright if bumped or exposed to inclement weather. Alternatively, barriers can be anchored to the adjacent building with the building owner's approval. The barrier shall be placed such that it is sufficient to ensure compliance with the approved site plan and the Code Enforcement Officer. The barrier shall be removed when the business closes each day. If the city's ADA Coordinator determines that existing conditions are such that a barrier is not required to maintain an unobstructed foot access path at least five feet wide for pedestrians, the requirement for the barrier may be waived by the city's ADA Coordinator. ~~This subsection shall be effective April 1, 2015.~~
  - (5) The business must post a sign in a prominent location that is one square foot that indicates, "No alcohol beyond the barrier of this Sidewalk Café." Specifically, the sign shall be posted within the perimeter of the sidewalk cafe.
  - (6) *Prohibitions.* The occupancy must not:
    - a. Interfere with the use of the right-of-way for pedestrian or vehicular travel.
    - b. Unreasonably interfere with the view, access to, or use of property adjacent to said street, unless written approval of the adjacent property is provided.
    - c. Reduce the pedestrian travel area of any sidewalk to less than five feet in width; a clear linear pedestrian path at least five feet in width must be maintained at all times. The pedestrian travel path shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way. No part of the sidewalk café or its related barrier may be located within 24 inches from the inside edge of the adjacent curb or within 30 inches from the street-side edge of the adjacent sidewalk without a curb.

- d. Cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way. The barrier shall be approved by the City Engineer in writing prior to installation. Anchoring systems secured to adjacent buildings and approved by the building owner, do not require approval by the City Engineer.
  - e. Cause a violation of any state or local laws.
  - f. Be used for off-premises advertising. All signs must conform to the sign ordinance.
  - g. Conceal or detract from the appearance of landscaping features in or adjacent to the street.
  - h. Be in or adjacent to property zoned exclusively for residential purposes.
  - i. Be attached to or reduce the effectiveness of or access to any utility pole, sign or other traffic control device.
  - j. Cause increased risk of theft or vandalism.
  - k. Leave any furniture or equipment associated with the sidewalk café on public property when the café is not in operation, with the exception of enclosures.
  - l. Violate regulations adopted by the City Manager pursuant to this Code.
- (7) *Notice.* Notice to the adjacent property owners or occupants on both sides of the applicant's property shall be required before issuing a permit to occupy any right-of-way area between the edge of the vehicle use area of the right-of-way and the right-of-way property line. Said notice should include an enumeration of the conditions or rights provided under section 1020.09(1) of this Code.
  - (8) *Fee.* Prior to the issuance of a permit, a fee in an amount established by resolution of the City Commission shall be paid to the City Clerk. This fee shall be tripled if any such occupancy occurred prior to the issuance of a permit.
  - (9) *Insurance.* The Permittee shall show proof of and maintain comprehensive general liability insurance and liquor liability insurance and have the City as an additional named insured. The amount of such insurance shall be determined by the City Clerk.
  - (10) *Waste.* Any holder of a sidewalk café with alcohol permit shall be responsible for the proper disposal of all waste with their sidewalk café occupancy and shall ensure that the waste is removed on a daily basis and shall ensure that the waste is not placed in a public waste disposal system.
  - (11) *Compliance with approved site plan.* The café shall, at all times, comply with the approved site plan.

- (12) *Food service establishment.* Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000, as amended. M.C.L.A. § 289.1101.
- (13) *Regulations.* The City Manager may adopt an executive order controlling the occupancy pursuant to a sidewalk café with alcohol permit.
- (14) *Agreement for cafes not directly adjacent to building required.* For sidewalk cafes where the café area is on sidewalk that is adjacent to the building but configured so that the pedestrian walkway is between the building and the café area, the owner of the sidewalk café shall enter into a sidewalk café license agreement with the city further specifying the terms and conditions of the permit. The City Clerk is authorized to execute such agreements on behalf of the city.
- (15) *Duration.* Permits for a sidewalk café with alcohol permit shall be for a period of April 1 to November 1. Permits for a sidewalk café with alcohol permit with an enclosure shall be for a period of November 1 to April 1 for the year in which granted.
- (16) *Display.* A permit shall only be valid if displayed in a manner visible to the public.
- (17) *Permit revocation.* Any permit may be revoked by the City Clerk upon a finding that the occupancy does not meet the standards of this Code, any other provisions of this Code, or other applicable law or regulation, or that the right-of-way is needed for other street or utility purposes. The City Clerk may revoke a permit for a particular period of time, for non-compliance with this ordinance or any applicable rules and regulations and also if, in the City Clerk's judgment, the occupancy creates a hazardous or undesirable condition. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be refunded.
- (18) *Appeal.* Persons who are refused a permit or have had their permit revoked may request in writing a hearing on that determination before the City Manager. Requests for a hearing must be made within five days of the questioned decision.
- (19) *Non-renewal of permit.* If a permit holder has two or more violations in a permit year, the City Clerk shall not renew the permit the following permit year.
- (20) *Appearance tickets.* The Police Chief and the appointed officers of the Police Department, or such other officials as are designated by the City Manager, are hereby authorized to issue and serve appearance tickets with respect to a violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as amended (MCLA 764.9c(2); MSA 28.868(3)(2). Appearance tickets shall be in such form as determined by the City Attorney and shall be in conformity with all statutory requirements.
- (21) *Violations.* A person who violates this section is responsible for a misdemeanor.

The effective date of this Ordinance is the 21<sup>st</sup> day of June, 2021.

I hereby certify the above ordinance amendment was introduced on June 7, 2021, at a regular meeting of the City Commission and was enacted on June 21, 2021 at a regular meeting of the City Commission by a vote of Yes: 6 No: 0. This meeting was conducted remotely, as allowed by law.

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Jim Carruthers, Mayor

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Benjamin Marentette, City Clerk

I hereby certify that a notice of adoption of the above ordinance was published in the Traverse City Record Eagle, a daily newspaper published in Traverse City, Michigan, on June 16, 2021.

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Benjamin Marentette, City Clerk