



City Commission Ad Hoc Committee
Sidewalk Café Ordinance Review

3:00 p.m.

Thursday, March 13, 2014

**Located in: The Second Floor Commission Chambers
Governmental Center
Traverse City, MI 49684**

Posted: Friday, February 28, 2014 at 10:00 AM

If you are planning to attend the meeting and you have a disability requiring any special assistance at the meeting, please notify the City Clerk, immediately.

The City of Traverse City does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. Makayla M. Vitous, Assistant City Manager, 400 Boardman Avenue, Traverse City, Michigan, 49684, 922-4440, TDD 922-4412, has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the Department of Justice Regulations. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided thereunder, are available from the ADA Coordinator.

City Commission:
c/o Benjamin C. Marentette, CMC, City Clerk
(231) 922-4480
Email: tcclerk@traversecitymi.gov
Web: www.traversecitymi.gov
400 Boardman Avenue
Traverse City, MI 49684

AGENDA

1. Consideration of approving the minutes of November 22, 2013.
2. Review and discuss draft Outdoor Café Ordinance.
3. Public Comment
4. Adjournment

**City Commission Ad Hoc Committee
Sidewalk Café Ordinance Review
Minutes
Meeting of November 22, 2013**

A meeting of the City Commission Ad Hoc Committee: Sidewalk Café Ordinance Review was called to order on Friday, November 22, 2013 at 2:00 p.m. in the Second Floor Committee Room, 400 Boardman Avenue, Traverse City, Michigan.

The following Commissioners were present, constituting a quorum: Commissioner Budros, Commission Carruthers, and Commissioner Easterday.

The following Commissioners were absent: None.

Staff in attendance: Jered Ottenwess, Loyd Morris, Makayla Vitous, Lauren Tribble-Laucht, Benjamin Marentette, Dave Green, Dave Weston, and Jered Ottenwess.

1. The first item being: "Consideration of approving the minutes of August 30, 2013."

It was moved by Budros, seconded by Easterday, to approve the minutes of August 30, 2013.

CARRIED unanimously.

2. Next item being: "Discussion regarding recommendation of a hard edge barrier to ensure the 4' barrier is maintained for sidewalk cafes."

By consensus, a hard edge barrier of 4' as proposed, which includes recommendations for trash disposal, would be sufficient.

3. The next item being: "Discussion regarding the Parking and Access Commission recommendation for allowing platform cafes."

By consensus, the committee generally supports the concept draft a draft ordinance developed by Rob Bacigalupi and Benjamin Marentette.

4. Next item being "Discussion regarding changes to the Sidewalk Café Ordinance."

By consensus, all changes proposed would be recommended for approval.

5. Next item being, "Public Comment."

None.

The meeting was declared adjourned at 2:45 p.m.

Commissioner Easterday,
Recording Secretary

Prepared by: Katelyn Stroven, Administrative Specialist

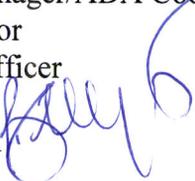
Memorandum

The City of Traverse City



TO: City Commission Ad Hoc Committee on Sidewalk Cafes:
Mayor Pro Tem Jim Carruthers, Chairman
Commissioner Barbara Budros
Commissioner Jeanine Easterday

COPY: Jered Ottenwess, City Manager
Lauren Tribble-Laucht, City Attorney
Karrie Zeits, Acting City Attorney
Rob Bacigalupi, DDA Executive Director
Michael Warren, Chief of Police
Makayla Vitous, Assistant City Manager/ADA Coordinator
Russ Soyring, City Planning Director
Loyd Morris, Code Enforcement Officer

FROM: Benjamin C. Marentette, City Clerk 

DATE: Friday, February 28, 2014

SUBJECT: SIDEWALK CAFÉ AD HOC MEETING

At the last meeting of the Sidewalk Café Ad Hoc Committee, the committee requested that staff develop a draft ordinance allowing for platform cafes in on-street parking spaces. Attached is a draft ordinance – we used ordinances in Bay City and Birmingham as springboards – and staff in the DDA, Planning, DPS, Fire, and Engineering Departments have reviewed the draft ordinance.

Summary of key points of draft ordinance:

- We propose changing the name of these permits from Sidewalk Café Permits to Outdoor Café Permits (because the cafes would not exclusively be located on the sidewalk)
- Platform Cafes are allowed in spaces designated by resolution of the Commission
- Planning Director approval is required for the platform and barrier (Planning Director would review for aesthetics)
- Platforms could be placed between May 1 and October 1 (this timeframe, which is two months less than cafes on sidewalks, is requested by DPS to accommodate spring and fall cleanup activities)
- The applicant for the Platform Café would be required to provide written support from the occupants of buildings adjacent to the restaurant; or in the alternative, the building owner could provide support on behalf of the entire building – we propose requiring this

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on a yearly basis as an annual basis, to ensure all adjacent businesses are okay with use of parking spaces in front of their business for this use. This could also be helpful in cases where there is turnover – to ensure any new businesses that moved in within the previous year are okay with the use as well

- For cafes with alcohol and all platform cafes, the Café Owner would enter into an agreement with the city further specifying terms and conditions of occupancy, which would include: requirement that the licensee sweep the area of the street the street sweeper cannot get to; ensure drainage is provided underneath the platform; require the platform not be installed if it would interfere with street (re)construction; require removal for utility maintenance purposes; removal of platform required in case of emergencies (city can remove with no responsibility for damage to platform); City Manager can terminate agreement at any time
- Police Chief Mike Warren is reviewing the platform café concept and may have comments

Questions:

- Does the committee concur with the proposal? What should be different?
- The draft ordinance could conceivably allow a restaurant to have a café both on the sidewalk and a platform café; does the committee concur?
- DDA Director Rob Bacigalupi and Planning Director Russ Soyring recommend that the platforms be allowed in all on-street parking spaces within the DDA District, with the expectation that these and other locations could be evaluated in the future. Does the committee concur?
- DDA Director Rob Bacigalupi recommends platform cafes be charged \$10/day/space; for a café that operated for six months, this would be approximately \$1,800/year/space. This is the same fee charged for meter bagging. Does the committee concur?
- What are the next steps? I.E., seek input from others, such as the DTCA?
- Anything else?

TRAVERSE CITY CODE OF ORDINANCES

ORDINANCE AMENDMENT NO. _____

Effective date: _____

TITLE: OUTDOOR CAFE REGULATION CLARIFICATIONS AND OUTDOOR CAFES IN DESIGNATED ON-STREET PARKING AREAS

THE CITY OF TRAVERSE CITY ORDAINS:

That Sections 1020.07, ~~Sidewalk~~ **Outdoor Café Permit**; and 1020.08, **Outdoor Sidewalk Café with Alcohol Permit**, and 1020.09, *Outdoor Cafes in Designated On-Street Parking Areas*, of the Traverse City Code of Ordinances, be enacted/amended to read in its entirety as follows:

1020.07 SIDEWALK OUTDOOR CAFE PERMITS.

(a) Permit Conditions. The City Clerk may issue to a ~~an adjacent~~ food service establishment a revocable ~~sidewalk~~ **outdoor** cafe permit to occupy a portion of adjacent City right-of-way to place tables and chairs, planters and windscreens ~~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.
- C. Reduce the pedestrian travel area of any sidewalk to less than **four (4) feet in width; a clear linear path at least four feet in width must be maintained at all times.** The pedestrian travel area shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way.
- D. Cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way. Any anchoring system to secure an item to the sidewalk shall be approved by the City **Engineer Manager** in writing prior to installation.
- E. Cause a violation of any federal, state or local laws.
- F. Be principally 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 an **Sidewalk Outdoor Café** with Alcohol Permit issued by the City Clerk.
 - M. May not operate beyond 11 p.m.
- (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 1020.07(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 an Outdoor Café Permit shall be responsible for the proper disposal of all waste associated with their Outdoor Café occupancy and shall insure that the waste is removed on a daily basis, including any waste deposited in the City's public waste or recycling containers .
 - (6) **Food Service Establishment.** Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000, as amended. MCLA 289.1101.
 - (7) **Regulations.** The City Manager may adopt an executive order controlling the occupancy pursuant to a **Sidewalk an Outdoor Café** Permit.
 - (8) **Site Plan and Barrier Required.** A site plan shall be submitted with the application showing where a barrier will be placed to maintain an unobstructed foot access path at least four feet wide for pedestrians at all times. A barrier shall delineate the outdoor café and generally be 36" in height and be approved by the City Planning Director. The placement of any required barriers shall be marked on the sidewalk by the Code Enforcement Officer or sleeves may be affixed to the sidewalk upon approval by the City Engineer. The barrier shall be removed when the business closes each day. If the Code Enforcement Officer determines that a barrier is not required to maintain an unobstructed foot access path at least four feet wide for pedestrians, the requirement for the barrier may be waived by the city's ADA Coordinator.
- (b) **Duration.** Permits shall be for the period of April 1 to November 1 for the year in which granted.
 - (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. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be refunded and the right-of-way shall be restored at the expense of the Permittee.

- (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. The decision of the Manager may be appealed to the City Commission. Requests for a hearing or an appeal must be made within five (5) days of the questioned decision.
- (f) 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.
- (g) Violations. A person who violates this section is responsible for a civil infraction. (Ord. 368. Passed 8-16-93. Ord. 539. Passed 7-26-01. Ord. 570. Passed 7-1-02. Ord. 658. Passed 12-6-04 Ord. 700. Passed 4-3-06)

1020.08 **SIDEWALK OUTDOOR CAFÉ WITH ALCOHOL PERMIT.**

- (a) Permit Conditions. The City Clerk may issue to ~~an adjacent~~ a food service establishment a revocable **Sidewalk Outdoor Café with Alcohol Permit** to occupy a portion of adjacent City right-of-way to place tables and chairs, planters and windscreens ~~adjacent to the tables and chairs~~ in conjunction with selling and consuming food and alcoholic beverages, provided the following terms and conditions are met:

- (1) May not operate beyond 11 p.m.
- (2) Service of alcohol at the **Sidewalk Outdoor Café** does not violate any state, federal or local laws, promulgated rules, or policies or executive orders of the City Manager.
- (3) ~~A barrier shall surround the sidewalk café; it shall be approved by the City Planning Director, generally be 36" in height, and shall be removed when the establishment closes each day.~~ A site plan shall be submitted with the application showing where a barrier will be placed to maintain an unobstructed foot access path at least four feet wide for pedestrians at all times. A barrier shall surround the outdoor café and generally be 36" in height and be approved by the City Planning Director. The placement of any required barriers shall be marked on the sidewalk by the Code Enforcement Officer or sleeves may be affixed to the sidewalk upon approval by the City Engineer. The barrier shall be removed when the establishment closes each day.
- (4) The business must post a sign in a prominent location that is **one (1) square foot** that indicates, "No beverages beyond the barrier of this **Sidewalk Outdoor Café.**" Specifically, the sign shall be posted within the perimeter of the **Sidewalk Outdoor Café.**
- (5) ~~Alcohol may not be served beyond 11 p.m.~~
- (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.
 - C. Reduce the pedestrian travel area of any sidewalk to less than four **(4) feet in width a clear linear path at least four feet in width must**

be maintained at all times. The pedestrian travel area shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way.

- D. Cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way. Any anchoring system to secure an item to the sidewalk shall be approved by the City ~~Engineer~~ **Manager** in writing prior to installation.
 - E. Cause a violation of any state or local laws.
 - F. Be principally 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.
- (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 1020.08(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 of Traverse City as an additional named insured. The amount of such insurance shall be determined by the City Clerk.
- Waste. Any holder of an Outdoor Café with Alcohol Permit shall be responsible for the proper disposal of all waste remove all waste associated with their Outdoor Café occupancy and shall insure that the waste is removed on a daily basis, including any waste deposited in the City's public waste or recycling containers .
- (10) Food Service Establishment. Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000, as amended. MCLA 289.1101.
- (11) Regulations. The City Manager may adopt an executive order controlling the occupancy pursuant to an Outdoor Café with Alcohol Permit.
- (13) Agreement For Cafes not Directly Adjacent to Building Required. For Outdoor 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 Outdoor Café shall enter into an Outdoor 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.

- (b) Duration. Permits shall be for the period of April 1 to November 1 for the year in which granted.
- (c) Display. A permit shall only be valid if displayed in a manner visible to the public.
- (d) Permit Revocation. Any permit or License Agreement 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. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be refunded and the right-of-way shall be restored at the expense of the Permittee..
- (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. The decision of the Manager may be appealed to the City Commission. Requests for a hearing or an appeal must be made within five (5) days of the questioned decision.
- (f) 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.
- (g) Violations. A person who violates this section is responsible for a misdemeanor.
(Ord. 700. Passed 4-3-06)

1020.09 OUTDOOR CAFES IN DESIGNATED ON-STREET PARKING AREAS

- (a) Permit Conditions. The City Clerk may issue to a food service establishment an Outdoor Café Permit authorizing the placement of the outdoor café in designated on-street parking areas authorized by resolution of the City Commission, pursuant to Section 1020.07 or 1020.08 of these Code of Ordinances. For Outdoor Café Permits where alcohol is not served, the provisions of Section 1020.07 of these Code of Ordinances shall apply in all respects; provided, however, if there is a conflict between this section and Section 1020.07, the provisions of this section shall survive. For Outdoor Café Permits where alcohol is served, the provisions of Section 1020.08 of these Code of Ordinances shall apply in all respects; provided, however, if there is a conflict between this section and Section 1020.08, the provisions of this section shall survive. Such permits shall be subject to the following terms and conditions:

(1) General conditions.

- A. The Café shall be located within designated street parking areas where the majority of the parking space is in front of the food service establishment.
- B. The Café shall be established upon a removable platform approved by the City Planning Director placed in the designated on-street parking area; the platform shall be placed in such a manner to not create trip hazards.
- C. The Café shall be protected from vehicular traffic and surrounded

Comment [BM1]: Prepare resolution – to allow platform cafes in all on-street parking spaces within DDA District, per Rob B & Russ

by a barrier generally 36" in height and be approved by the City Planning Director, which will remain in place at all times and include markings or other devices or decorations to make the barrier clearly visible at all times

- D. The platform shall not be placed in the designated on-street parking spaces sooner than May 1 each year and removed no later than October 1 each year.

The Café shall conform to the site plan which shall be incorporated as part of the permit. Such site plan shall show the following: The design, relevant details and location of all temporary structures, including the dimensions of the removable platform, planters, landscaping, railings, tables, chairs, lighting

- E. If the use of a musical instrument and/or sound reproduction system is planned, such use shall be governed by these Code of Ordinances and there shall be no amplification of live music.
- F. The City Manager may adopt rules and regulations regarding the construction, use and removal of outdoor cafes within designated street parking areas. Outdoor Cafes within designated street parking areas shall be operated in accordance with the rules and regulations as they may be adopted or amended. An Outdoor Café within a designated on-street parking area which is operated in violation of the rules and regulations shall be removed upon 24 hours' written notice.
- G. The owner of the Outdoor Café shall provide the City Clerk with proof of approval from all business occupants within buildings adjacent to the Outdoor Café. Alternatively, the owner of the Outdoor Café may provide the City Clerk with approval from the owner of the building, which approval shall be the equivalent to the approval of all occupants in that building.
- H. The owner of the Outdoor Café shall enter into an Outdoor Café License Agreement with the City further specifying the terms and conditions of the permit which allows a Café to be placed within designated street parking areas. The City Clerk is authorized to execute such agreements on behalf of the City.
- I. The Outdoor Café shall not be open to the general public, but shall only be open to patrons of the Licensee.
- J. Other conditions established by the City Clerk in the permit.

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

- A. Violate any provisions of Section 1020.07 or 1020.08 of these Code of Ordinances; provided, however, that if there is a conflict between this section and Section 1020.07 or 1020.08 of these Code of Ordinances, the provisions of this section shall survive.
- B. Extend more than seven feet from the curb line.

The effective date of this Ordinance is the ____ day of _____, 2014.

I hereby certify the above ordinance amendment was introduced on _____, at a regular meeting of the City Commission and was enacted on _____, at a regular meeting of the City Commission by a vote of Yes: _____ No: _____ at the Commission Chambers, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan.

Michael Estes, Mayor

Benjamin C. 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 _____.

Benjamin C. Marentette, City Clerk