



City Commission Ad Hoc Committee
Sidewalk Café Ordinance Review

1:15 PM

Thursday, May 8, 2014

**Located in: The Second Floor Committee Room
Governmental Center**

Traverse City, MI 49684

Posted: Friday, May 2, 2014 at 3:00 PM

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.

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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 March 13, 2014 meeting.
2. Review and discuss recommendations made by the Downtown Development Authority and Downtown Traverse City Association.
3. Discussion regarding recommendations to the City Commission regarding Outdoor Cafes.
4. Discussion regarding the minimum clear pathway for outdoor cafes. (Mayor Pro Tem Carruthers)
5. Public Comment
6. Adjournment

City Commission Ad Hoc Committee
Sidewalk Café Ordinance Review
Minutes
Meeting of March 13, 2014

A meeting of the City Commission Ad Hoc Committee: Sidewalk Café Ordinance Review was called to order on Thursday, March 13, 2014 at 3:00 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 and Benjamin Marentette.

1. The first item being: “Consideration of approving the minutes of November 22, 2013.”

It was moved by Budros, seconded by Easterday, to approve the minutes of November 22, 2013.

CARRIED unanimously.

2. Next item being: “Review and discuss draft Outdoor Café ordinance.”

General discussion regarding the draft ordinance took place. By consensus the word principally would be removed from part 1020.08(6)F. Further, the committee requested input from the Downtown Development Authority and the Downtown Traverse City Association regarding the idea.

3. Next item being, “Public Comment.”

Downtown Development Authority Representative, Colleen Paveglio gave general comments.

The meeting was declared adjourned at 3:45 p.m.

Commissioner Easterday,
Recording Secretary

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
Penny Hill, Assistant City Manager/ADA Coordinator
Lauren Tribble-Laucht, City Attorney
Rob Bacigalupi, DDA Executive Director
Colleen Paveglio, DDA Deputy Director /Marketing
Russ Soyring, City Planning Director

FROM: Benjamin C. Marentette, City Clerk *[Signature]*

DATE: THURSDAY, MAY 1, 2014

SUBJECT: MAY 8 SIDEWALK CAFÉ AD HOC MEETING

At the March 13 meeting, the Ad Hoc Committee indicated it would like input from the boards of the Downtown Development Authority (DDA) and Downtown Traverse City Association regarding the draft ordinance that would allow platform cafes in on-street parking areas.

While input regarding the entire ordinance was requested, the committee asked that the boards provide a response to the following two specific questions:

- As long as a minimum 4' wide clear pathway would be maintained on the sidewalk, should a food service establishment be allowed to have a café area on the sidewalk and on-street parking area?
- For cafes on the sidewalk, should there be a requirement that the tables and chairs, as well as barrier, be removed when the business closes each day?

DDA Board recommendations:

Attached is a memo from DDA Deputy Director Colleen Paveglio, indicating three motions adopted by the DDA Board at its April 25 meeting. Essentially the DDA Board recommends the following:

1. That a restaurant be allowed to have both a sidewalk café and a platform café if they maintain a minimum 6' clear pathway on the sidewalk.

2. For cafes on the sidewalk, that the tables, chairs and barrier be removed (placed inside) when the business closes each day.
3. That neighbor approval not be required for platform cafes.

Additional input from DDA/DTCA meetings:

- That the ordinance should be evaluated after a trial period
- Instead of a trial period, limit the total number of spaces available in the first year
- Prohibit platform cafes in handicap parking spaces; if a handicap parking space is directly in front of the food service establishment, have appropriate staff evaluate if it would be acceptable to relocate the handicap parking space to accommodate the platform café
- If a business faces two streets, allow only on the business' "address street"
- Eliminate the requirement that only patrons of the café may sit in the platform café

Fees:

Application fee: The estimated cost of staff time involved in reviewing/administering the average platform café permit is \$354.97; therefore, I recommend that the application fee be established at \$360.00.

Permit fee: DDA Executive Director recommends the fee be \$10/day/space (which is equal to the 'meter bagging fee'); for purposes of example, if a platform café were in place for the entire five months allowed, the permit fee would be approximately \$1,500. Permit fees would be credited to the Auto Parking System Fund, to cover the lost revenue to that fund.

Aesthetic standards:

The proposed ordinance requires Planning Director approval of the platform's aesthetics; attached are draft "aesthetic standards" prepared by Rob Bacigalupi and Russ Soyring – these would be standards the Planning Director would use, though he may have additional requirements.

Questions – to help facilitate discussion:

1. With which recommendations from the DDA, if any, does the committee concur?
2. With respect to the draft requirement for sidewalk cafes that they, by default, be required to have a hard-edge barrier surrounding the café area to ensure the 4' clear zone is maintained, when would the committee like this to be effective?

To give ample notice and time for compliance, I recommend this requirement go into effect next year, with our office working closely with the Code Enforcement Officer to ensure the minimum clear pathway is maintained. Regardless, our office will

communicate to all sidewalk café operators the upcoming requirements, to give them notice.

3. From the list of additional input from DDA/DTCA meetings above, are there items the committee would like to entertain?
4. Mayor Pro Tem Carruthers would like the committee to discuss requiring at least 5 or 6' minimum clear pathway for (certain/all) sidewalk cafes. Respectfully, while we have not done a formal assessment, Makayla Vitous, prior ADA Coordinator, indicated that requiring a minimum of 5' clear pathway would likely eliminate most sidewalk cafes.
5. At the last meeting, the committee indicated it would like to allow platform cafes not just within the DDA District, but other areas of the city where it seems practical. City Planning Director Russ Soyring recommends they generally be allowed where the posted speed limit is 25 miles per hour or less. Does the committee concur?
6. The city's smoke free areas ordinance prohibits smoking within 15' of entrances, ventilation systems and windows, which would encompass sidewalk cafes. The City Attorney believes a platform café would be considered part of a food service establishment, in which case the state's smoking ban would likely apply.

However, to be certain, would the committee like to require that platform cafes not allow smoking and that a no smoking sign be posted?

7. Does the committee concur with the recommended application fee and recommended permit fee?
8. Other?

As always, please contact me if I may be of assistance.

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Memorandum

To: Benjamin Marentette, City Clerk
From: Colleen Paveglio, DDA
Subject: Sidewalk Café Draft Ordinance
Date: April 25, 2014

As you may recall, the City Commission Ad Hoc Committee for the Sidewalk Café Draft Ordinance had most recently sought feedback from the Downtown Development Authority and the Downtown Traverse City Association. Communication with merchants and restaurants as well as multiple meetings were organized to discuss the issue at length including a DDA Study Session on April 10. As a result, the following action items were made at the DDA Regular Meeting on April 25, 2014.

Motion by Burkholder, seconded by DiGiacomo that the DDA Board of Directors recommend to the City Commission Ad Hoc Committee Regarding Sidewalk Cafés that as long as a minimum 6' clear pathway be maintained on the sidewalk, a food service establishment should be allowed to have a café area on the sidewalk and on-street parking area. Motion carried unanimously.

Motion by Biederman, seconded by Burkholder that the DDA Board of Directors recommend to the City Commission Ad Hoc Committee Regarding Sidewalk Cafés that for cafes on the sidewalk, tables, chairs and the barrier should be removed when the business closes each day. Motion carried unanimously.

Motion by Biederman, seconded by Burkholder that the DDA Board of Directors recommend to the City Commission Ad Hoc Committee Regarding Sidewalk Cafés that neighbor approval not be required in on-street parking areas. Motion carried unanimously.

I want to thank the Ad Hoc Committee for seeking feedback and also extend a thank you to Benjamin Marentette for taking the time to attend the meetings. Please feel free to contact me if you have any questions regarding this subject.

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 windcreens ~~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. This subsection which requires a barrier shall be effective _____.
- (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

Comment [BM1]: When would the committee like this to be effective?

5/1/14 Draft

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 on-street parking areas on streets where the posted speed is 25 miles per hour or less, 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

Comment [BM2]: Confirm with the ad hoc committee; does this seem reasonable?

- 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 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.
 - E. 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
 - F. 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.
 - G. 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 within 24 hours of written notice.
 - H. 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.
 - I. 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.
 - J. The Outdoor Café shall not be open to the general public, but shall only be open to patrons of the Licensee.
 - K. Smoking shall be prohibited; and a sign shall be posted within the platform indicating smoking is prohibited.
 - L. 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

Comment [BM3]: This is an addition – does the committee concur?

5/1/14 Draft

- 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