

ORDINANCE

An Ordinance to amend Section 11.260 of the Manitowoc Municipal Code regulating Sidewalk Cafes.

The Mayor and Common Council of the City of Manitowoc do ordain as follows:

Section 1. Section 11.260 is amended to read as follows:

“11.260 Sidewalk Cafes.

(1) Definition.

Renewal permit shall mean a permit that is applied for, by ~~April 15th~~ January 31st of any given year, by a currently valid sidewalk cafe permit holder. All other permits shall be designated as initial application permits.

Sidewalk shall have the meaning given in Wis. Stat. § [340.01](#)(58).

Sidewalk cafe shall mean any group of tables, chairs, benches, barriers or partitions, trash containers and suitable decorative devices maintained upon any part of the sidewalk ~~public right-of-way~~ for use by an establishment, with a valid restaurant permit, for the sale to the public of prepared foods, refreshments and beverages of all kinds.

Zoning districts shall be defined by Chapter [15](#) MMC.

(2) Location. Sidewalk cafes shall be permitted on public sidewalks in any “B,” “C” and “I” zoning districts where allowed by the City’s zoning ordinances. ~~“R” zoning districts shall require a waiver as stated under subsection (15)(h) of this section.~~ The sidewalk cafe shall be located only on that portion of the public sidewalk which is directly adjacent to the building, or portion of the building, where the permittee’s business is located.

(3) Permit Required.

(a) It shall be unlawful for any person to sell or offer to sell any food and/or drink at a sidewalk cafe, unless such person shall have first applied for and obtained a sidewalk cafe permit.

(b) Special events using the right-of-way for a limited time period, which period does not exceed a maximum of seven days, are exempted from the requirement of obtaining a sidewalk cafe permit. These events include, but are not limited to, ~~Riverwalk, Volkswalk and Crazy Daze~~ any downtown special event sponsored by the City of Manitowoc or approved by the City’s Special Events Committee.

(c) Establishments holding a sidewalk privilege agreement with the City for their sidewalk cafe at the time in which the ordinance codified in this section becomes effective are grandfathered in, and shall not require a sidewalk cafe permit unless their sidewalk privilege agreement has been terminated.

(d) A sidewalk privilege agreement shall not be valid for the operation of a sidewalk cafe, except as stated under subsection (3)(c) of this section.

(e) The Board of Public Works shall not have jurisdiction in matters of sidewalk cafes.

(4) Procedure.

(a) An applicant for a permit under this section shall obtain an application form provided by the City Clerk, and shall supply ~~contain~~ such information as the Clerk ~~shall~~ requires. The

completed form shall be returned to the City Clerk, along with the appropriate fee and proof of insurance. The application shall be signed by the applicant and by the applicant's landlord if the applicant is a tenant at the premises where the sidewalk cafe will be located. The initial application shall be accompanied by a drawing to scale of the site to be used as the sidewalk cafe, showing the location of all trees, poles, furniture, equipment, fixed and portable barriers and other items that will be located in the sidewalk cafe. The initial application shall also be accompanied by photographs, pictures from a sales catalog or detailed renderings of the furniture and equipment being considered for use, with dimensions and color included.

Whenever furniture or equipment is updated or changed, the permittee shall provide the City Clerk photographs, pictures, or detailed renderings of same prior to installation. All renewal applications in which changes are being made to the area used, the furniture, furnishings, equipment and barriers shall also comply with the requirements of an initial application.

(b) If the applicant intends to sell or serve alcoholic beverages to patrons of the sidewalk cafe, the applicant shall obtain the appropriate alcohol beverage license describing and including the outdoor area where alcoholic beverages will be sold, served or consumed.

(c) The City Clerk shall send a copy of all complete sidewalk cafe applications and renewal permits to the City Planner, and Chief of Police or the Chief of Police's designee for a recommendation as to whether the applicant is a proper recipient of a permit. The City Planner's and Chief of Police's or designee's recommendation shall be sent to the Finance Public Utilities and Licensing Committee for consideration. Applications approved by the Finance Committee shall be sent to the Common Council for final approval. The City Clerk shall notify the applicant of Council's final determination. ~~along with the City Planner's recommendation, as stated under subsection (4)(e) of this section.~~

~~(d) Upon receipt of a completed initial application for a sidewalk cafe permit or an application for a renewal permit involving a change in the type or location of the sidewalk cafe furniture, furnishings, equipment, barriers or area, the City Clerk shall forward a copy of the application, together with all information required under subsection (4)(a) of this section, to the City Planner or the City Planner's designee for review.~~

~~(d)(c) The City Planner or designee shall review the design, type of furniture, furnishings, equipment and barriers proposed by the applicant to determine whether any of it detracts from the aesthetics of the area surrounding the proposed sidewalk cafe; if the proposed cafe is in compliance complies with Chapter 15 MMC and the requirements contained herein; and if the area proposed is suitable for the sidewalk cafe. The City Planner or designee shall then make a recommendation to the Finance Public Utilities and Licensing Committee as to the issuance of the permit, based on the criteria set forth above. The City Clerk shall notify the applicant of the date and time of the Finance Committee meeting where the Public Utilities and Licensing Committee shall review the application, permittee's required documentation and any recommendations from the City Planner and Chief of Police will be reviewed. The Finance Public Utilities and Licensing Committee shall make a determination as to their recommendation to the Common Council whether to grant or deny this permit. to the Common Council. The applicant shall be notified, in writing, within 10 calendar days of said meeting of the Finance Committee's their decision. If the recommendation is to grant the permit, the applicant must produce submit to the City Clerk proof evidence of insurance which meets the requirements set forth in subsection (9) adequate liability, property and worker's compensation insurance in full force and effect before operating the sidewalk cafe. If the Finance Public Utilities and Licensing Committee recommends denial, the applicant shall receive written notice stating:~~

~~1. The reason for denying the permit;~~

~~2. What action, if any, on behalf of the applicant may undertake is necessary in order to obtain approval;~~

~~3. The date by at which the applicant may appear before the Common Council regarding the permit application.~~

~~(f) Initial application permits have no right to appeal a denial.~~

(5) Limitation on Number of Permits Issued. No more than one permit may be issued for every 1,000 persons residing in the City based upon the ~~The population of the City of Manitowoc shall determine the number of permits issued. One permit may be issued for every 1,000 persons residing in the City. The population of the City shall be defined by the~~ latest estimate of the Wisconsin Department of Administration.

(6) Permit Period. The permit year shall commence on the first day of July ~~January~~ each year, or thereafter when applied for, and shall expire on the ~~thirtieth~~ thirty-first day of June ~~December~~ following its issuance.

(7) Permit Fee. The annual café permit ~~fee for a cafe permit shall be~~ of \$75.00, which shall be paid to the City Clerk at the time of application submission and by January 31st of each renewal year thereafter. ~~the applicant submits the completed application.~~ The permit fee shall not be prorated and is nonrefundable except that permit fees paid with initial applications that are denied shall be refunded. ~~amount is a flat annual fee and shall not be prorated for partial years. Permit fees only on initial application permits shall be refunded to the applicant if the permit is denied. All other permits or applications are not entitled to a refund, including, but not limited to, permits subject to revocation, suspension or nonrenewal.~~

(8) Revocation, Suspension, Nonrenewal. All revocations, suspensions or nonrenewals of Sidewalk Café Permits shall be in accordance with City procedure as approved by the Finance Committee.

~~(a) In addition to any other penalty provided under this section, any sidewalk cafe permit issued hereunder may be suspended, not renewed for a specific period of time or revoked, after notice and hearing as provided herein, for violation of any provisions of this section, or of any other City ordinance or law which is substantially related to the permit activity.~~

~~(b) Any such hearing shall be held before the Public Utilities and Licensing Finance Committee. The permittee shall be notified in writing of the hearing date and time and of the charges alleged, not less than three calendar days nor more than 10 calendar days prior to the hearing. At the hearing, the Chief of Police, or the Chief's designee, shall present evidence of the alleged violation(s). The permittee shall have the opportunity to question witnesses, may call witnesses on their own behalf, present evidence, and may be represented by counsel. At the conclusion of the hearing, the Public Utilities and Licensing Finance Committee will make findings and a recommendation to the Common Council. The City Clerk shall send written notice of the recommendation to the permittee notifying the permittee of the date and time the Common Council shall consider the status of the permit.~~

~~(c) The Common Council shall consider the findings and recommendations of the Public Utilities and Licensing Finance Committee within 30 days after receiving the Committee's recommendation. If the City or the permittee wish to present additional evidence, they may do so to the Common Council, or the Common Council may, upon its own motion, consider additional evidence as necessary to fairly decide the issue.~~

~~(d) After due consideration of the Public Utilities and Licensing Finance Committee's recommendation and any additional evidence presented, the Common Council may decide to grant the sidewalk café permit, to suspend the sidewalk cafe permit for a period of time not to exceed six months, to not renew the sidewalk cafe permit for a specified period of time or to revoke the permit. The City Clerk shall notify the permittee shall be notified in writing within 10 calendar days of the findings and determination of the Common Council by the City Clerk.~~

~~(e) The decision of the Common Council's decision shall be a final decision. Any person aggrieved by the final decision may, within thirty days of the final decision date, seek appeal by judicial review pursuant to The final decision may be appealed. Appeals are by judicial review under Wis. Stat. Ch. 68. Any person aggrieved by the Common Council's decision may seek judicial review thereof within 30 calendar days of the date of the final decision.~~

(9) Insurance. No person shall obtain a sidewalk cafe permit unless the applicant procures **and maintains** the following policies of insurance from an insurance company licensed to do business in the State of Wisconsin in the amounts and coverages set forth below covering the sidewalk cafe area:

(a) Commercial General Liability. The applicant shall procure **and maintain** a commercial general liability policy with the following minimum standard limits:

Bodily injury/property damage, per occurrence	\$1,000,000
General aggregate limit	\$1,000,000
Products/completed operations	\$1,000,000
Personal and advertising injury limit	\$1,000,000
Medical expense limit – any one person	\$5,000

(b) Worker's Compensation. The permittee shall provide a worker's compensation policy with the limits prescribed by Wisconsin State Statutes.

(c) Liquor Liability. If alcohol is served, the permittee shall provide a liquor liability policy with limits of at least \$500,000.

(d) ~~(e)~~ Certificate of Insurance. At time of application submission and renewal fee submission, the ~~The~~ permittee shall provide the City with a certificate of insurance illustrating coverage as required by this section, naming the City of Manitowoc as additional insured and certificate holder, and providing a thirty day written notice of cancellation to the City ~~which certificate shall be approved by the City Attorney prior to operating the sidewalk cafe. The certificate shall name the City as a certificate holder and shall provide that the policies of insurance shall not be canceled or altered without 30 days' prior written notice to the City.~~

(10) Signage. No signs shall be allowed in the sidewalk cafe area except the following:

(a) Table umbrellas approved by the City Planner or designee.

(b) Any signs for which the permittee has obtained a sign permit as required by Chapter 15 MMC.

~~(c) The sign which the permittee is required to post by subsection (15)(e) of this section, which sign shall be displayed in compliance with Chapter 15 MMC. (e)~~ The permittee shall post a sign clearly visible for its patrons which lists the rules contained in this section and, if appropriate, those contained in subsection (17) of this section governing the conduct of patrons of the sidewalk cafe. This sign shall comply with Chapter 15 MMC.

(d) A hand ~~hand~~-held menus, and ~~provided to patrons by the permittee or an employee shall not be considered a sign. Likewise,~~ tabletop documents such as wine lists or information pertaining to the business shall not be considered signs for purposes of this section ~~as long as the documents are not more than nine inches by 12 inches.~~

(11) Furnishings. All furniture, furnishings, and equipment shall be of safe, sturdy construction and shall be maintained in good repair. ~~The permittee shall use safe, sturdy furniture, furnishings and~~

~~equipment in the sidewalk cafe which enhances the aesthetics of the surrounding area, and shall maintain the same in good repair.~~ All umbrellas shall be anchored in such a way that a sudden burst of wind will not lift them out of their holders or blow them over. No public property, including, but not limited to, light poles, utility poles, flower planters, trees or other amenities, may be used as a point of attachment for anything, including, but not limited to, ropes, posters or signs.

(12) Hours. No sidewalk cafe shall be open for business between the hours of 12:00 midnight and 8:00 a.m.

(13) Lighting. The permittee shall keep the sidewalk cafe area sufficiently illuminated so as to prevent injury to persons using the same. Any lighting of the outdoor area shall be shielded so as not to shine directly onto adjoining property or create a glare which is distracting to adjoining property or vehicles traveling in the public right-of-way.

(14) Music/Noise. There shall be no amplified music or sound unless the permittee can demonstrate to the satisfaction of the ~~Public Utilities and Licensing~~ Finance Committee that it shall not cause a disturbance. There shall be strict compliance with the loud noise ordinance, MMC 14.140. Any violation shall be the responsibility of the permittee whether or not the permittee is present upon the premises at the time of the violation.

(15) General Restrictions.

(a) The permittee shall remove ~~from the sidewalk within a reasonable amount of time~~ all furniture, furnishings, equipment, portable barriers and all visible evidence of the sidewalk cafe, any time that the sidewalk cafe is closed, service is prohibited or service is not being offered to the public at the sidewalk cafe.

(b) The permittee shall provide at least three feet of unobstructed sidewalk for pedestrian right-of-way through or around the sidewalk cafe, and shall not place anything within two feet of the curb or street.

(c) The permittee shall comply with all applicable requirements of the Americans with Disabilities Act, 42 USC 12101 to 12213 and all applicable federal, state and local laws.

~~(d) The permittee shall comply with all applicable Federal, State and local laws.~~

~~(d)~~(e) No permittee furniture, furnishings, equipment, or portable barriers shall be placed so as to obstruct access to a fire hydrant or obstruct one's view of the hydrant from the street, or which would obstruct the clear view of any street or traffic regulatory signs or pathway, including, but not limited to, the pathway from alleyways, driveways or any vehicle traffic path.

~~(e)~~(f) Sidewalk cafes shall not be permitted at any of the following locations:

1. No sidewalk cafe shall be permitted within Within five feet of the sides of bus shelters or bus stops, nor arranged in any manner which interferes with the use of the bus stops or with ingress or egress from any bus shelter.

2. Within five feet of a curb-out or a marked crosswalk.

3. On any portion of a public sidewalk beyond the width of the permittee's property line.

4. Within five feet of any truck, freight, or passenger loading zone, or adjacent to any handicapped parking space or loading zone.

5. Within 100 feet of any residential dwelling if the sidewalk café is located in an "R" zoning district unless an exception was made by Common Council at time of permit application based upon a petition filed with Common Council indicating at least 50% of the property owners within 100 feet of the proposed café location do not object.

6. Outside of the approved café boundaries as established in the permit application and approved by Common Council.

~~(g) No person may be served in the sidewalk cafe area unless seated, and no table shall be preset with utensils, glasses, dishes, condiments or any other amenities until a patron is seated at a table.~~

~~(h) Sidewalk cafes shall not be less than 100 feet from any residential dwelling in an "R" zoning district, unless the dwelling is the permittee's dwelling. A waiver of this section can be obtained by the Common Council, if the applicant files, with their application, a petition signed by more than 50 percent of the property owners residing within 100 feet of the boundaries of the cafe area, indicating they do not object to the sidewalk cafe. The 100-foot measurement shall be a radial measurement extending 100 feet from any point on the perimeter of the cafe, including street right-of-way.~~

~~(i) No portion of the sidewalk cafe shall be permitted within five feet of a curb out or a marked crosswalk.~~

~~(j) No portion of the sidewalk cafe may be placed on any portion of a public sidewalk beyond the width of the property line of the permittee's property.~~

~~(k) No portion of a sidewalk cafe shall be permitted within five feet of any truck, freight, or passenger loading zone, or adjacent to any handicapped parking space or loading zone.~~

~~(l) No person holding a sidewalk cafe permit may use any public property, including, but not limited to, light poles, utility poles, flower planters, trees or other amenities, as a point of attachment for anything, including, but not limited to, ropes, posters or signs.~~

~~(m) All sidewalk cafes shall remain within the approved boundaries of the sidewalk cafe site as set forth on the approved application.~~

~~(n) No permittee may construct a barrier, or anything which would obstruct the clear view of any street or traffic regulatory signs or pathway, including, but not limited to, the pathway from alleyways, driveways or any vehicle traffic path.~~

~~(o) The permittee shall post a sign clearly visible for its patrons which lists the rules contained in this section and, if appropriate, those contained in subsection (17) of this section governing the conduct of patrons of the sidewalk cafe.~~

(16) Maintenance. The permittee shall pick up all trash from the sidewalk cafe on a regular basis throughout the day, and shall keep the cafe area in a clean, orderly, litter-free and hazard-free condition. The permittee shall provide covered trash containers for the customers. The permittee shall not place any solid waste in the City solid waste containers.

(17) Service of Alcoholic Beverages. The City of Manitowoc allows permittees to serve alcoholic beverages in outdoor cafes; provided, that the permittee complies with all the requirements for obtaining an alcoholic beverage license, and the sidewalk cafe is listed on the alcohol beverage license application as being an extension of the licensed premises. Alcohol may be served at sidewalk cafes if:

(a) The permittee has a valid and appropriate retail alcohol beverage license issued by the City of Manitowoc;

(b) The retail alcohol beverage license includes the sidewalk cafe in the description of the licensed premises;

(c) The retail alcohol beverage license permits the sale of the type of alcohol beverages being served in the sidewalk cafe;

(d) Alcohol beverages are sold and served only to patrons ~~seated~~ at tables within the sidewalk cafe area by the licensee or licensee's employees ~~or owner of the establishment~~;

~~(e) Alcohol beverages are served by the licensee or the licensee's employees~~ in compliance with the alcohol beverage laws of the State of Wisconsin and the City of Manitowoc;

~~(e)~~ ~~(f)~~ The permittee shall be responsible for policing the sidewalk cafe area to prevent underage persons from entering or remaining in the sidewalk cafe, except when underage persons are allowed to be present on the licensed premises pursuant to Wis. Stat. Ch. 125;

~~(f)~~ ~~(g)~~ The permittee shall not allow patrons of the sidewalk cafe to bring alcohol beverages into the sidewalk cafe area from another location, nor to carry open containers of alcohol beverages about in the sidewalk cafe area, nor to carry open containers of alcohol beverages served in the sidewalk cafe outside the sidewalk cafe area;

~~(h) The facility from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk cafe area without first obtaining permission from the Public Utilities and Licensing Committee and the Common Council;~~

~~(i) Sidewalk cafes where alcohol beverages are sold shall have fencing or barriers on at least three sides. The barriers shall, which define the area where the alcohol beverages may be served and consumed. The barriers and which shall be approved by the City Planner or designee as part of the application process;~~

~~(g)~~ ~~(j)~~ All containers used for or containing alcoholic beverages shall be removed from the sidewalk cafe area at times of closing or during times when consumption of alcoholic beverages are prohibited. No containers of a Alcoholic beverages shall not be present in the sidewalk cafe area between 12:00 midnight and 8:00 a.m.

(18) Permittee's Responsibility. Permittee shall be responsible for the acts of all employees, patrons and agents of the business. A violation of any provision of this section, any City ordinance or Wis. Stat. Ch. 125, by a patron, agent or employee of the permittee, shall constitute a violation by the permittee.

(19) Penalty. Any person who violates subsection (3) of this section shall be subject to a forfeiture of not less than \$500.00, nor more than \$1,000. Any person who violates any other subsection of this section shall be subject to a forfeiture of not less than \$50.00 nor more than \$500.00. Each day of a violation is a separate offense.”

Section 2. This ordinance shall take effect May 1, 2019.

INTRODUCED _____ ADOPTED _____ APPROVED _____

Justin M. Nickels, Mayor

Fiscal Impact: \$0
Funding Source: n/a
Finance Director Approval: /sc
Approved as to form:

This ordinance was drafted by Elizabeth Majerus, Assistant City Attorney

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