

City of Waukesha, Wisconsin

Ordinance No. 2020 - 12

**An Ordinance Amending Section 8.116 of the Waukesha Municipal Code,
Regarding Sidewalk Cafés**

The Common Council of the City of Waukesha do ordain that:

Section 1. Section 8.116 of the Waukesha Municipal Code is amended to read in its entirety as follows:

8.116 Outdoor Dining on Public Property (Sidewalk Café)

- (1) Purpose. To further encourage the revitalization of the downtown and other areas of the city, including the development of social and economic activity, the city council finds and determines:
 - (a) That there exists the need for outdoor eating and drinking facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food and drink consumption.
 - (b) That sidewalk cafés will permit enhanced use of the available public rights-of-way, will complement restaurants operating from fixed premises, and will promote economic activity in the area.
 - (c) That the existence of sidewalk cafés encourages additional pedestrian traffic but may impede the free and safe flow of pedestrians such that a need exists for regulations and standards to ensure safety.
 - (d) That the establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect and promote public health, safety and welfare.
- (2) "Sidewalk Café" shall mean an expansion of an establishment serving beverages, alcohol beverages, or food to create an outdoor facility on part of the public property that immediately adjoins the licensed premises for the purpose of consuming food or beverages by the patrons of the establishment.
- (3) Permit Required.
 - (a) An establishment serving beverages, alcohol beverages, or food may apply to the City Clerk's Office for a permit to allow it to operate a Sidewalk Café. The City Clerk or

his/her designee may approve, approve with conditions or restrictions, or deny a permit where necessary to maintain the public health, safety or welfare, to prevent a nuisance from developing or continuing, or due to violation of this section, the city code of ordinances, or applicable state or federal law.

- (b) Before a permit may be issued, the application and site plan shall be reviewed by the Community Development Department and reviewed and recommended by the Ordinance and License Committee and approved by Common Council.
 - (c) Each permit shall be effective for one year from March 1st to February 28/29.
 - (d) Once issued, permit must be conspicuously displayed in public view.
 - (e) The permit issued hereunder is not transferable by Owner to any other establishment or any subsequent owner of the premises.
- (4) Permit Application. Application for a permit to operate a Sidewalk Café or temporarily to expand a Sidewalk Café onto a street pursuant to subsection (6)(g), shall be submitted to the City Clerk's Office and shall include at least the following information:
- (a) Completed city application form.
 - (b) Copy of a current certificate of commercial liability insurance in the amount of at least \$1,000,000 per occurrence and naming the City of Waukesha as additional insured and documented that the coverage extends to the area used for the Sidewalk Café.
 - (c) The permittee shall execute an indemnification agreement approved by the City Attorney prior to operation of the Sidewalk Café.
 - (d) A layout which accurately depicts the dimensions of the existing sidewalk area or other public property and adjacent private property, the proposed location of the Sidewalk Café or the temporary expansion of the Sidewalk Café, the size and number of tables, chairs, steps, planters, location of doorways, trees, sign posts, hydrants, sidewalk benches, trash receptacles, heaters, traffic signal poles, light poles and any other obstructions, either existing or proposed.
 - (e) Photographs, drawings or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, barriers, or other objects related to the Sidewalk Café.
 - (f) A non-refundable application fee.
- (5) Permit Fees. A non-refundable payment of \$100.00 must be made with initial application (\$50.00 for renewal or temporary expansion pursuant to subsection (6)(g)) for a Sidewalk Café permit with an additional non-refundable payment of \$100.00 for applicants requesting to sell alcohol.

(6) Sidewalk Café Standards.

- (a) No portion of any Sidewalk Café may extend beyond the boundaries of the property that is licensed in this chapter, unless expressly approved in writing by the adjacent property owner or owners.
- (b) The Licensee shall maintain a four foot wide unencumbered, open and accessible portion of the sidewalk for pedestrian traffic safety at all times.
- (c) Sidewalk Cafés operated by establishments holding a Wisconsin restaurant license and deriving more than 30% of gross revenues from the sale of food may operate and serve food and beverages until 11:00 PM Sunday through Thursday and until midnight Friday and Saturday; provided, however, they may serve alcohol beverages only while food is being served by the establishment. All patrons must vacate the Sidewalk Café by those times.
- (d) Sidewalk Cafés operated by establishments not holding a Wisconsin restaurant license and not deriving more than 30% of gross revenues from the sale of food may operate until 9:00 PM Sunday through Thursday and until midnight Friday and Saturday. All patrons must vacate the Sidewalk Café by those times.
- (e) Licensee shall provide for the removal of garbage and is responsible for the cleanliness of the Sidewalk Café area.
- (f) The use of a portion of the public property as a Sidewalk Café shall be subject to the rights of the City at all times. All public improvements, including but not limited to, trees, light poles, traffic signals, manholes or any public initiated maintenance procedures shall take precedence over said use at all times. The City Administrator, Chief of Police, Community Development Director, Public Works Director or his/her designees may temporarily order the termination of Sidewalk Cafés for the following reasons, but not limited to, special events, including but not limited to, construction, parades, sponsored runs or walks, or for any reason to maintain the health, safety, and welfare of the public.
- (g) Sidewalk Cafés for which a permit has already been issued may temporarily be expanded onto the adjacent street, provided the street is closed pursuant to a permit issued under Municipal Code §6.17, and written permission for the expansion has been obtained from the holder of the street-closure permit.
- (h) The Licensee may prohibit smoking within the Sidewalk Café, and may exclude non-patrons from the Sidewalk Café. Non-patrons may be removed by the Licensee from the Sidewalk Café only if doing so would not result in a breach of the peace, otherwise, the Licensee shall have police remove the non-patrons.
- (i) Semi-permanent markings will delineate the corners of the Sidewalk Café area, as illustrated in the approved site plan required for permit.
- (j) Molded plastic tables and chairs will not be permitted.


- (k) Applicant shall secure tables and chairs nightly, within one hour after closure of the Sidewalk Café.
- (7) Alcohol Licensing and Serving of Alcohol Beverages.
- (a) Alcohol may be served at a Sidewalk Café under the following conditions:
 - (i) The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
 - (ii) No alcoholic beverages may be served at any time if the restaurant has not received Council approval for the temporary extension of the premises under its liquor license that includes the area of the public property where the Sidewalk Café is located. Further, the liquor license shall be automatically conditioned at the time of the temporary extension of premises to allow for the consumption of alcoholic beverages within the Sidewalk Café area only. Approval of the enlargement of premise area (Sidewalk Café) shall not grant any licensee or licensed premise any vested rights and such approval may be suspended or revoked or non-renewed without cause being shown.
 - (iii) The entire outdoor area utilized for service and consumption of food and beverage shall be visible from the restaurant establishment.
 - (iv) Alcoholic beverages must be sold and served by the licensee or licensee's employees who have operator's licenses or are under the immediate supervision of an employee holding an operator's license in compliance with Wis. Stat. §125.32(2) and §125.68(2); and purchased and consumed by patrons seated at tables in the Sidewalk Café.
 - (v) The permittee shall be responsible for complying with the approved Sidewalk Café plan.
 - (vi) The permittee shall not allow patrons of the Sidewalk Café to bring alcohol beverages into the Sidewalk Café, nor to carry open containers of alcohol beverages about in the Sidewalk Café area, nor to carry open containers of alcohol beverages served in the Sidewalk Café outside the Sidewalk Café area.
 - (vii) The permittee shall display signage indicating alcohol may only be consumed by patrons seated at tables in the Sidewalk Café.
 - (viii) The bar from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the Sidewalk Café area.
- (8) Liability and insurance. By obtaining a Sidewalk Café permit, the permittee agrees to indemnify, defend, save and hold harmless the City, its officers and employees, from any and all claims, liability, lawsuits, damages, and causes of action, which may arise out of the permit or the permittee's activity at the Sidewalk Café. Permittee shall provide commercial liability insurance in the amount of at least \$1,000,000 per occurrence and name the City of

Waukesha as additional insured and show how the coverage extends to the area used for the Sidewalk Café.

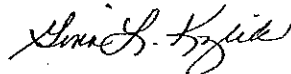
- (a) The permittee shall execute an indemnification agreement approved by the City Attorney prior to operation of the Sidewalk Café.
 - (b) The permittee shall provide the City with an original certificate of insurance as evidence that the requirements set forth in this section are met prior to commencing or renewing operations. If insurance coverage changes while this agreement is in effect, Owner shall notify the City of Waukesha and provide proof of insurance.
- (9) Revocation or Suspension.
- (a) The approval of a Sidewalk Café permit is conditional at all times. The City Administrator, Chief of Police, Community Development Director, Public Works Director or his/her designees may temporarily order the termination of Sidewalk Cafés at any time.
 - (b) A Sidewalk Café permit may be formally revoked or suspended by the Ordinance and License Committee at any time without cause. Issuance of this permit under this ordinance is a privilege, not a right, to use the public right of way.
- (10) Appeal. A revocation, suspension, or denial of a permit may be appealed by the permittee to the Common Council or designated Committee of the Council, which shall hold a hearing and either grant, grant with conditions, or deny the permit. The permit holder or applicant shall be notified and shall have the right to be heard prior to a decision.
- (11) Penalty. The penalty for violation of this section shall be a forfeiture of not less than \$50.00 or more than \$200.00 per day for each violation, together with the costs of prosecution. Any enforcement action taken under this ordinance shall be deemed a violation under 12.10 Chronic Nuisance Premises of the Municipal Code.

Section 2. This Ordinance shall be effective the day after its publication.

Passed the 21st day of July, 2020.


Shawn N. Reilly (Jul 22, 2020 12:33 CDT)

Shawn N. Reilly, Mayor



Attest: Gina L. Kozlik, City Clerk

