

**AN ORDINANCE AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF PEORIA
PERTAINING TO THE COMMERCIAL USE OF SIDEWALKS**

WHEREAS, the City of Peoria, Illinois is a home rule municipality pursuant to Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, the City Council of the City of Peoria, Illinois desires to streamline the process for obtaining a sidewalk café permit; and,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Peoria, Illinois as follows:

Section 1. Chapter 26 of the Code of the City of Peoria is hereby amended by adding the following underlined words and deleting the following stricken words:

Sec. 26-286. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Application shall mean that form generally described in subsection 26-288 which must be completed prior to the issuance of a permit hereunder.

Director shall mean the Director of Public Works.

Newsstand means any structure erected on the public right-of-way for the sale of newspapers, magazines or other periodicals. The term shall not include self-service or coin-operated dispensers occupying an area of less than eight square feet of the right-of-way.

Owner shall include any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole of the land contiguous to the right-of-way on which a sidewalk café is to be operated under the authority of this section.

Permit shall mean the written authorization from the City granted pursuant to the provisions of this section.

Person shall mean an individual, a group of individuals, an association, a club, a society, a firm, a partnership or a corporation.

Sidewalk restaurant means any restaurant facility where foods, frozen desserts, or beverages are sold for immediate consumption both within a building and upon any adjacent public sidewalk, right-of-way and/or plaza immediately abutting such building by the same establishment, but excluding any use licensed pursuant to article XII of chapter 18 of this Code.

Vestibule means any structure erected on the public right-of-way to serve as a passage, hall, or room to the entrance of a building.

Sec. 26-288. - Same—Application.

An application for a permit required by this division shall be made in writing to the public works department, which shall set forth the following:

- (1) The name of the individual, partnership, corporation or association applying for the license.
- (2) The residence and phone number of the applicant or partners or, if a corporation or association, the residence and phone numbers of the principal officers.
- (3) The location for which the license is requested.
- (4) Scale drawings, on 8.5" x 11" sheet, of the proposed use with sufficient details and clarity to show dimensions, elevations, materials and mode of construction. For a proposed sidewalk café a site plan must be submitted, complying with applicable regulations, and demonstrating that the sidewalk café shall not unreasonably interfere with: (1) adequate pedestrian flow, (2) access to building entrances; (3) pedestrian and traffic safety; and (4) the aesthetic quality of the surrounding area.
- (5) Proof that the applicant holds a valid retail food establishment license issued to the establishment that will provide food for the sidewalk café, or that the applicant is the owner or manager of an indoor retail market. The owner or manager of the indoor retail market is not required to obtain a retail food establishment license.
- (6) A proof of insurance as required by this article.

Sec. 26-289. - Same—Fees.

~~(a) If approved by the City Manager, the permit holder shall pay no a nonrefundable fee of \$1,000.00 per calendar year; provided, however, that in the event the permit is issued during for the calendar year of its issuance, as per Section 26-298(a) the fee for such permit shall be prorated for any full calendar month which has expired during the calendar year. Seasonal users, utilizing the sidewalk between May through October shall pay a nonrefundable fee of \$600.00 per season or the prorated fee above, whichever is less. Notwithstanding the above language, a sidewalk restaurant on a public plaza will pay an annual fee of \$3.00 per square foot or such other reasonable fee as the city council may determine.~~

~~(b) The holder of a sidewalk restaurant permit which has been approved by the City Manager shall not be required to pay an annual fee, except as provided in paragraph (b) above for sidewalk restaurants on public plazas.~~

~~(c) Any fee required by this section for a newsstand, vestibule or sidewalk restaurant located within the enterprise zone created by the city shall be waived.~~

Sec. 26-291. - Same—Review and Processing.

(a) Upon receipt of an application for a permit, the director of public works shall cause a copy of the application to be sent to various departments of the city, which shall report back to the director within 15 days whether the application meets the requirements for issuance of a permit as required by this division, and as to what conditions should be imposed upon the applicants if the permit is granted.

(b) If after receiving the reports required in section 26-291 (a), and the if the Director finds that the applicant meets the requirements of this article and the regulations promulgated hereunder, the Director shall recommend to the City Manager whether or not to grant the permit, and on what conditions the permit should be granted. Such approval shall not be unreasonably withheld. Upon approval of the application, the Director shall issue the sidewalk café permit to the applicant.

(c) If the Director finds that the applicant fails to meet the requirements of this article or the regulations promulgated hereunder, the Director shall deny the application. The Director shall notify the unsuccessful applicant in writing of the denial and the reasons therefore within ten business days after the denial.

Sec. 26-292. - Same—Hearings on issuance.

After receiving the reports required in section 26-291, the director of public works shall recommend to the City Manager whether or not to grant the permit, and on what conditions the permit should be granted. Any person aggrieved by any action of the Department, in the denial or revocation of a Sidewalk Café Permit, shall have the right to appeal to the Traffic Commission. The appeal shall be taken by filing with the Department within 30 days of the notice of the action, a written statement setting forth the grounds for appeal. The Department shall place the appeal on the agenda of the next regularly scheduled meeting of the Peoria Traffic Commission, which shall conduct a hearing and affirm, modify or reverse the action of the appeal. All such hearings shall be open to the public.

Sec. 26-293. - Same—Issuance.

- (a) The City Manager may approve a permit under this division if ~~it~~he finds that:
- (1) The use is to be located on a paved, city-owned sidewalk in the City of Peoria ~~a B-1 zoning district.~~
 - (2) The location requested for a newsstand is not on the same block face as an existing similar use.
 - (3) The location requested is not adjacent to or within a designated bus stop. Sight distance at intersections is maintained.
 - (4) The use shall be constructed and installed in conformity with chapter 5 of this Code.
 - (5) The use, where located, shall not reduce the paved pedestrianway to less than six-four feet.

- (6) The use as proposed meets the planning goals of the city and is aesthetically compatible with existing goals and uses.
- (7) Neither the applicant, its shareholders, officers or directors have had a permit revoked for cause by the city.

(b) Prior to granting a permit, the City Manager may modify any existing requirements or may impose any additional conditions or limitations on the granting of the permit as may in its judgment be necessary for the protection of the public interest and to secure compliance with the requirements of this division. The City Manager may require such evidence and guarantees as it deems necessary, as proof that the conditions stipulated in connection therewith are being and will be fulfilled.

(c) No permit for a newsstand shall be issued or renewed unless the applicant shall first present to the director of planning and growth management proof that the applicant has arranged for at least one off-street parking space for every two employees or persons working at the stand within 500 feet of the proposed location, and has paid the fee as required by section 26-289(b).

Sec. 26-296. - Renewal.

Once granted, a permit issued under this division may be renewed by the city manager or his designate upon written application of the permit holder setting forth the information required in section 26-288(1), (2), and (3), ~~payment of the yearly or seasonal fee as set forth in subsection 26-289(b)~~ and filing of bond and proof of insurance as required by subsections 26-290, if the city manager or his designate shall find that the permit holders have complied with all provisions of this division, plus any modifications or conditions imposed upon the permit holder pursuant to subsection 26-293(b) for the original application. Any person as set forth in subsection 26-293(c) who could have filed a written protest to an original application may likewise file a written protest against the renewal of a permit, thereby requiring such renewal to be reviewed and approved by a favorable vote of two-thirds of all councilmembers for permit renewal.

Sec. 26-297. - Regulations.

(a) No advertising signs shall be permitted on the exterior of any newsstand or vestibule except one sign identifying the establishment.

(b) All publications of a newsstand shall be displayed in compliance with state law relating to material harmful to minors.

(c) No permit holder or any officer, associate, member, representative, agent or employee of such permit holder shall engage in any activity or conduct, or permit any other person to engage in any activity or conduct in or about the licensed premises which is prohibited by any ordinance of the city or law of the state or the United States.

(d) No newsstand shall sell any items other than newspapers, magazines and other periodicals.

(e) No permit holder shall be granted an adult use license pursuant to articles III and IV of chapter 18 for the location granted by the city council.

(f) No permit holder shall solicit or conduct business with persons in motor vehicles.

(g) Should any permit holder not operate a permitted use other than seasonal uses for a period of 30 consecutive days, the use shall be considered abandoned and the permit automatically revoked. The permit holder shall have 15 days thereafter to dismantle any structure on the sidewalk and return the sidewalk to its condition prior to the construction of the structure. Should the permit holder fail to comply with this regulation, the city shall cause the structure to be removed and disposed of and the sidewalk repaired with the cost thereof to be taken from the bond of the permit holder.

(h) Permit holders shall be responsible for the cleanliness of the right-of-way within 50 feet of the approved location.

(i) A sidewalk café permit shall only authorize food and alcoholic beverage service at the sidewalk café. Regardless of what other activity may take place inside the establishment pursuant to license or permit, such activity shall not be allowed at the sidewalk café by virtue of the sidewalk café permit.

(j) If alcoholic beverages are served at the sidewalk café, the operator must be validly licensed under this code for such sales. Alcoholic beverages supplied by the customer or by any person other than the permittee will not be allowed at sidewalk cafés.

(k) All holders of a sidewalk café permit, shall be subject to and comply with all applicable requirements and standards for retail food establishments contained in the code, as amended, and the rules and regulations promulgated there under, and all laws, rules and regulations pertaining to the sale of alcoholic beverages.

Section 26-298. ~~Violation and penalty~~ Operational conditions.

~~Any person who shall violate any of the provisions of this division shall upon conviction thereof be fined not less than \$100.00 nor more than as provided in Section 1-5 of this Code.~~

(a) The annual permit for a sidewalk café shall be valid from March 1st to and including December 1st of the year of its issuance.

(b) Sidewalk cafés permitted under this article shall not operate earlier than 6:00 a.m. nor later than 12:00 midnight.

(c) The operator of a sidewalk café shall install and maintain a physical boundary separating the permitted outdoor seating from the remainder of the public way. The entrance is the only part of the perimeter that may be open to the public way. The operator shall leave four feet of public way unobstructed for pedestrian passage; the Director may alter this requirement by regulation in a situation where adherence to the requirement would make operation of a sidewalk café impossible and reduction of the unobstructed portion of the public way would not compromise pedestrian safety. The construction, configuration and other characteristics of the boundary, including landscaping, shall be set forth by regulation.

(d) The permittee shall maintain adequate lighting in and around the public clearance way to ensure that all obstructions may be easily seen. Such lighting shall be of such type and location and shall have such shading as will prevent the source of the light from being seen from any contiguous, adjacent residential property. It shall not cause illumination beyond the boundaries of the property on which it is located so as to be obtrusive to adjacent property owners and shall not cause illumination beyond the boundaries of the property in excess of five-tenths footcandle. The illumination of the street from the sidewalk shall be no brighter than the illumination provided by ornamental street lights nor shall it have an adverse impact on the flow of vehicular traffic. In addition, its design and color shall not be such that it could be mistaken for a traffic signal.

(e) The sidewalk shall be kept free of standing water, maintained in good repair and kept free from material defects that may present a hazard to life or property.

(f) The boundary shall have no less than 50% of its top covered with planter boxes. The planter boxes shall be no less than 6 inches deep and no less than 8 inches wide and be securely fastened to the boundary.

Section 26-299. Promulgation of regulations; force and effect.

(a) The Director is authorized to promulgate regulations to carry out the purposes of this article, including without limitation regulations governing: The location, arrangement and design of sidewalk cafés to ensure the flow of pedestrian traffic, the safety of pedestrians and auto traffic, the access to buildings and transportation facilities, the prevention of an excessive number of cafés, and the best service to the public;

(b) The size, design and other specifications for tables and serving equipment to be used by operators, and the design of enclosures or partial enclosures;

(c) The types of food and beverages that may be served at sidewalk cafés;

(d) The time periods during which application can be made for a sidewalk café permit;

(e) Landscaping and other aesthetic components of the sidewalk café; and

(f) Any other matter pertaining to this article.

Section 26-300. Compliance with plan and other components of application.

Each sidewalk café shall comply in all respects with the specifications set out in the plan submitted to the Director, and with the other components of the application.

(a) In the event that the application, including the plan, becomes inaccurate or incomplete in any respect as a result of circumstances or events outside the control of the permittee, the permittee shall notify the Director within three business days of such circumstances or events.

(b) Before taking any action that would result in the application, including the plan, becoming inaccurate or incomplete in any respect, the permittee shall seek the prior approval of the Director.

(c) Upon being notified of an actual or contemplated change pursuant to either subsection (b) or (c) of this section, the Director shall review the change to determine if such change is insubstantial or substantial, using the same criteria as relevant to the Director's consideration of an initial application. If such change is insubstantial and if the application, as so changed, meets the criteria for an initial application, the Director shall approve the change. If such change is insubstantial and if the application, as so changed, does not meet the criteria for an initial application, the Director shall disapprove the change. If such change is substantial, a new permit application shall be required.

Sec. 26-301. - Violation and penalty.

(a) Any person who shall violate any of the provisions of this division shall upon conviction thereof be fined not less than \$100.00 nor more than as provided in Section 1-5 of this Code.

(b) Any sidewalk café in operation without a valid sidewalk café permit is subject to removal from the public way by the Director or his designee. The provisions of Section 26-299 of the code shall apply to the removal of any portion of a sidewalk café, from the public way, whether for unpermitted operation or for obstruction of public way; provided, however, that the amount of the fine for a violation shall be as set forth in this section.

Section 26-302. Enforcement.

(a) The Director or his designee is authorized to take such action as necessary to enforce the provisions of this article, including conducting on-site inspections of sidewalk cafés associated retail food establishments to determine compliance with the permitting and other requirements of this article and regulations promulgated hereunder.

(b) Upon request by the Director or his designee, the operator of a sidewalk café shall provide for the documents required by this article to operate a sidewalk café, including the sidewalk café permit, the plan for the sidewalk café, and proof of insurance for inspection.

(c) Any sidewalk café for which a permit is required by this article, and which has failed to obtain such permit, may be closed by the Director or his designee until such permit is procured. Upon being notified of closure, all sidewalk café activity must cease, and all obstructions in the public way, including boundaries, tables and chairs, must be removed.

Section 26-303. Severability.

The invalidity of any section or part of any section of this article, or any regulation promulgated hereunder, shall not affect the validity of any other section or part thereof or regulation.

Section 2. This Ordinance shall be in full force and effect immediately after its passage.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this
_____ day of _____, 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:

Corporation Counsel