

ORDINANCE 17,668

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

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 and/or commercial parklet permit; and,

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

Section 1. Division 4 of Article VII of 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.

Commercial Parklet shall mean an extension of the sidewalk that converts a curbside parking space into a restaurant facility where foods, frozen desserts, or beverages are sold for immediate consumption both within a building and upon the seasonally constructed structure, but excluding any use licensed pursuant to articles XII and XVII of chapter 18 of this Code.

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, vestibule or commercial parklet is to be operated under the authority of this section.

Permit shall mean the written authorization granted by ~~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 Café ~~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 articles XII and XVII 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. 26-287. - Permit—Required.

It shall be unlawful for any person to erect, place, maintain or operate on any public right-of-way any ~~newsstand~~, vestibule, sidewalk ~~restaurant~~ café, commercial parklet or other use without having first obtained an annual permit from the city specifying the exact location of such use. An applicant may apply for both a sidewalk café and a commercial parklet at the same establishment provided all siting requirements can be met.

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 or commercial parklet, a site plan must be submitted, complying with applicable regulations, and demonstrating that the sidewalk café or commercial parklet 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 adjacent establishment that will provide food for the sidewalk café or commercial parklet, 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.

If approved by the city manager, the permit holder shall pay no fee for the calendar year of its issuance, as per Section 26-298(a), unless the commercial use occupies a parking space, in which case the annual fee shall be \$350 if the space is unmetered, or \$1,450 per metered space utilized.

Sec. 26-290. - Same—Bonding and insurance.

(a) The applicant shall file with the city, along with the application, a bond issued by an insurance company authorized to do business in this state in the penal sum of \$1,000.00 for a sidewalk café or \$10,000.00 for a commercial parklet with the city named as obligee, conditioned for the faithful performance of the provisions of this division.

(b) The applicant shall file with the city, along with the application, proof of general liability insurance in the amount of \$300,000.00 per person, \$500,000.00 per occurrence and \$15,000.00 in property damage for a sidewalk café, naming the city as coinsured. For a commercial parklet general liability insurance in the amount of \$600,000.00 per person, \$1,000,00.00 per occurrence and \$30,000.00 in property damage naming the city as coinsured shall be required.

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 business 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 is in good standing with the City and 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~~ commercial right-of-way use permit to the applicant with any necessary conditions. Such approval shall not be unreasonably withheld.

(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.

Any person aggrieved by any action of the department, in the denial or revocation of a sidewalk café or commercial parklet permit, shall have the right to appeal to the ~~Traffic~~ Transportation 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~~ Transportation 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.

- that:
- (a) The city manager may approve a permit under this division if he finds
 - (1) The use is to be located on a paved, city-owned sidewalk right-of-way in the City of Peoria.
 - (2) ~~The location requested for a newsstand is not on the same block face as an existing similar use.~~ For commercial parklets the proposed use is:
 - i. Associated with a non-residentially zoned property in the Heart of Peoria area;
 - ii. In a striped/delineated parking space on a street with a speed limit of 30 mph or less;
 - iii. At least 15 feet from fire hydrants, 50 feet from intersections, 10 feet from alleys, and at least 5 feet from driveways/curb cuts.
 - (3) The location requested is not adjacent to or within a designated bus stop. ~~Sight distance at intersections is maintained.~~
 - (4) Sight distance at intersections is maintained.
 - ~~(4)~~ (5) The use shall be constructed and installed in conformity with chapter 5 of this Code.
 - ~~(5)~~ (6) The use, where located, shall not reduce the paved pedestrianway to less than four feet, with five feet being preferred.
 - ~~(6)~~ (7) The use as proposed meets the planning goals of the city and is aesthetically compatible with existing goals and uses.
 - ~~(7)~~ (8) 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) The public works director shall mail notices, per department procedures, of the subject property and all property which adjoins or would adjoin the subject property except for the presence of a street or alley adjacent to the subject property for which a preliminary approval of an application has been granted. The notice shall state that the preliminary approval granted shall become final if no interested party files a written objection to the proposed commercial right-of-way use within ten (10) days of the date of the notice. All written objections must state the basis for the objection.
In the event the owner or occupant of any property located within 250' of the subject property files a written objection to the proposed commercial right-of-way use with the public works director within the allowed time, the deviation request shall not receive final approval. Applicants for commercial right-of-way uses that have not received final approval or that have been denied shall be heard by the Transportation Commission as a variance.

~~(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. 26-294. - Same—Suspension and revocation.

(a) Any permit issued under this division may be suspended for a period not to exceed 30 days or revoked by the city manager if the city manager shall find after an administrative hearing that:

(1) The permit holder has violated any of the provisions of this article, the laws of the state, or the ordinances of the city while engaged in the business of operating the ~~newsstand~~ sidewalk café or commercial parklet; or

(2) The permit holder has knowingly furnished false or misleading information or withheld relevant information on any application for a permit required by section 26-288 or 26-296 or any investigation into any such application.

(b) The permit holder shall be responsible for the acts of his agents, servants and employees in the operation of any ~~stand~~ sidewalk café or commercial parklet. Prior to holding a hearing concerning the question of whether a permit issued pursuant to this division shall be revoked or suspended, the city manager shall give at least ten days' written notice to the permit holder setting forth the alleged violations specifically. The permit holder may present evidence at such hearing and cross-examine witnesses.

Sec. 26-295. - Same—Transfer.

No permit issued pursuant to this division shall be transferred, sold, or assigned to any other person without the prior written permission of the city manager. No transference, sale, or assignment shall be approved unless the proposed owner meets the requirements of sections 26-290 and 26-293(a)(7). A nonrefundable fee of \$100.00 must accompany the request for transfer for commercial parklets.

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 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~~ the Transportation Commission for permit renewal.

Sec. 26-297. - Regulations.

(a) No advertising signs shall be permitted on the exterior of any ~~newsstand or vestibule, sidewalk café, or commercial parklet~~ except one sign identifying the establishment from each direction. Signs shall be limited in size to eight (8) square feet.

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

(b) 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.

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

~~(d) 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.~~

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

(d) 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 right-of-way and return the sidewalk right-of-way 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 right-of-way repaired with the cost thereof to be taken from the bond of the permit holder.

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

(i) A sidewalk café or commercial parklet permit shall only authorize food and alcoholic beverage service at the sidewalk café or commercial parklet. 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 or commercial parklet by virtue of the sidewalk café or commercial parklet permit.

(j) If alcoholic beverages are served at the sidewalk café or commercial parklet, 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 sidewalk cafés or commercial parklets.

(k) All holders of a sidewalk café or commercial parklet 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. Operational conditions.

(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. The annual permit for a commercial

parklet is April 1st to November 15th of the year of its issuance. Permits are revocable by the public works director due to unforeseen weather or other right-of-way conditions.

(b) Sidewalk cafés and commercial parklets permitted under this article may operate during normal business hours but shall not operate earlier than 6:00 a.m. nor later than 12:00 midnight.

(c) The operator of a sidewalk café or commercial parklet that serves alcohol 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.

(d) The operator of a sidewalk café shall leave a minimum of four feet of public way unobstructed for pedestrian passage, with five feet preferred; 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 while still meeting ADA compliance. The construction, configuration and other characteristics of the boundary sidewalk café, including landscaping, shall be set forth by regulation and consistent with the surrounding neighborhood aesthetic. The inclusion of landscaping materials is encouraged.

(e) A commercial parklet shall be solid-sided on the three street-edges, made of structurally-sound materials, flush with the sidewalk and at least 1 foot in from the traffic-facing edge of a lined space. The maximum structure width is 6 feet, maximum height is 42 inches, and space shall be left for wheel stops 4 feet behind and 3 feet in front the structure, which may occupy one or two contiguous parking spaces. The majority of the structure must be located in spaces in front of the business with which it is associated.

(f) 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 properties 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.

(g) The sidewalk, gutter and roadway 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. Commercial parklets may not block or impair drainage to storm sewer inlets.

(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. In addition, for every 100 square feet beyond a standard 300 square feet sidewalk café, the applicant shall provide one 24" shrub or equivalent. If a sidewalk café does not serve alcohol planters with 24" shrubs or equivalent may be used to delineate the corners of the sidewalk café. Plant height

including the planter shall not exceed 42 inches. Live plant material shall be maintained throughout the duration of the sidewalk café/commercial parklet implementation.

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:

(a) The location, arrangement and design of sidewalk cafés and commercial parklets 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 sidewalk cafés and commercial parklets;

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

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

(f) Any other matter pertaining to this article.

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

Each sidewalk café or commercial parklet 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 or commercial parklet 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 or commercial parklet, 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 or commercial parklets 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 or commercial parklet shall provide for the documents required by this article to operate sidewalk café or commercial parklet, including the ~~sidewalk café~~ applicable permit, ~~the plan for the sidewalk café~~, and proof of insurance for inspection.

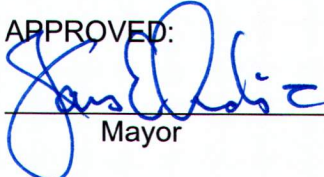
(c) Any sidewalk café or commercial parklet for which a permit is required by this article, and which has failed to obtains such permit, may be closed by the director or his designee until such permit is procured. Upon being notified of closure, all sidewalk café or commercial parklet activity must cease, 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 26th day of March, 2019.

APPROVED:


Mayor

ATTEST:


City Clerk

EXAMINED AND APPROVED:

Donald B. Teit

Corporation Counsel