

An ordinance to amend the Code of Ordinances, City of Durand, Michigan by adding a new section , SIDEWALK CAFES AND OUTDOOR SEATING, which shall be designated as Chapter 15 of the Code.

Chapter 15: SIDEWALK CAFES AND OUTDOOR SEATING

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Sec. 15-01. Purpose.

The sidewalk cafe and outdoor seating regulations, as established in this article, are designed to allow sidewalk cafes or outdoor seating on public property in locations where they are determined to be appropriate by the City Manager or designee, and to promote and protect the public health, safety, and general welfare of the community. These general goals include, among others, the following specific purposes:

- (1) To attract residents and non-residents to downtown Durand;
- (2) To provide an additional way for restaurants or food establishments to expand their operations;
- (3) To promote sidewalk cafes and outdoor seating as useful and properly planned visual amenities;
- (4)

To provide adequate space for pedestrians on the sidewalk adjacent to sidewalk cafes or outdoor seating and to insure access to adjacent commercial and retail uses;

(5)

To promote the most desirable use of land and buildings and thereby protect the city's tax revenues;

(6)

To provide for penalties for violations of this article.

Sec.15-02. - Definitions.

Outdoor seating means an outdoor area operated by an existing restaurant or other food establishment which sells food or beverages for immediate consumption, located on a public sidewalk, or other public property, which is public through dedication or easement or public right-of-way that provides seating outside of an establishment for patrons and other persons, and contains readily removable tables, chairs, railings, or planters. This area does not provide waiter or waitress service or offer alcoholic beverages. It is unenclosed by fixed walls and open to the air.

Sidewalk cafe means an outdoor dining area operated by an existing restaurant or other food establishment which sells food, beverages, or alcoholic beverages for immediate consumption, located on a public sidewalk, or other public property, which is public through dedication or easement or public right-of-way that provides waiter, waitress service or counter service and contains readily removable tables, chairs, railings, or planters. It is otherwise unenclosed by fixed walls and open to the air, except that it may have table umbrellas or other non-permanent cover.

Sidewalk cafe or outdoor seating permit means a permit issued by the Zoning Administrator based upon approval by the City Manager, which conforms to the procedures and regulations of this article, for sidewalk cafe or outdoor seating operations.

Sec.15-03. - Permit procedures.

(a)

The Zoning Administrator is authorized to issue a permit to operate a sidewalk cafe or provide outdoor seating on public property provided that the applicant has complied with the standards set forth in this article, after approval by City Manager.

(b)

Sidewalk cafe or outdoor seating permit applications for establishments operating on public sidewalks or public property shall be reviewed by city staff and approved by the City Manager. The City Manager reserves the right to forward a permit application to the city council for its review and consideration. Establishments serving alcohol require approval by the Michigan Liquor Control Commission (M.L.C.C.). No permit shall be issued until such license or permit, as required by the M.L.C.C., has been approved and the local approval resolution has been approved by the city council.

(c)

(1)

All permits shall be issued on a calendar year basis and shall expire on December 31st. Unless another time frame is specified in the permit, or by the requirements of this article, the permit shall allow the operation of a sidewalk cafe or outdoor seating from April 15th up to and including October 31st of the calendar year for which the permit is issued. All permits shall be reapplied for annually.

(2)

To allow establishments to take advantage of good weather, operation of a sidewalk cafe or outdoor seating is permitted on a day-by-day basis, subject to the following restrictions:

a.

The establishment has been issued a permit for the current calendar year.

b.

A certificate of insurance, meeting the insurance requirements in this section, has been filed with the Zoning Administrator.

c.

The operation of the sidewalk cafe or outdoor seating shall not interfere with the set up or the operation of any special event.

d.

All tables, chairs, table umbrellas, railings, posts, planters, and other equipment associated with the operation of a sidewalk cafe or outdoor seating shall be removed and stored inside of the establishment each night.

e.

During periods of snow accumulation, the placement of tables, chairs, table umbrellas, railings, posts, planters, and other equipment associated with the operation of a sidewalk cafe or outdoor seating shall be removed all activities shall cease.

(d)

Any person or establishment granted a permit by the City Manager to operate a sidewalk cafe or provide outdoor seating on public sidewalks or public property shall pay to the City Treasurer a fee in the amount as established by resolution of the City Council. The Zoning Administrator shall not issue a permit unless the fees required by this section are paid.

(e)

Each permit application for a sidewalk cafe or outdoor seating shall be accompanied by a policy or certificate of insurance, in an amount acceptable to the city, including workers compensation, naming the city as an additional insured. Establishments serving alcohol shall also provide a liquor liability policy or certificate of insurance naming the city as an additional insured. A company authorized to do business in the state shall issue such insurance. Required insurance amounts shall be set from time to time by resolution of the city council. The policy or certificate shall contain a clause requiring the insuring company to give ten days written notice to the City Manager prior to canceling the policy.

The insurance certificate required by this article shall be in effect for any period during which the sidewalk cafe or outdoor seating is in operation. Failure to provide a current insurance certificate shall be cause for denial, suspension, or revocation of the sidewalk cafe or outdoor seating permit. No establishment shall operate a sidewalk cafe or provide outdoor seating without filing proof of proper insurance. Denied, suspended, or revoked permits may be re-instated upon submittal of proof of proper insurance.

(f)

Site development and application approval.

(1)

No outdoor service of food and/or beverages in the form of a sidewalk cafe or outdoor seating shall be established on public property, except in conformance with a site development plan reviewed by city staff and approved by the City Manager as required by this article.

(2)

A permit application available from the Zoning Administrator for site development plan approval shall be submitted to the Zoning Administrator. The application shall include, but shall not be limited to the following:

a.

Name of the applicant and business.

b.

Address of the business.

c.

- d. Address of the applicant.
 - e. Telephone number of the applicant and business.
 - f. Name of the property owner if other than applicant.
 - g. Address of the property owner if other than applicant.
 - h. Telephone number of the property owner if other than applicant.
 - i. Name of planner, engineer, architect or agent, if applicable.
 - j. Proposed dates of occupancy.
 - k. Proposed hours of occupancy.
 - l. Proposed number of tables, chairs, railings, posts, table umbrellas or other items.
 - m. Proposed color, design, materials, and workmanship of tables, chairs, railings, posts, table umbrellas or other items.
 - n. Proposed area of occupancy including square feet and dimensions.
 - o. Whether alcohol will be served.
 - p. Copy of certificate of insurance.
 - q. Whether permit application is a new application or renewal; if renewal, applicant shall describe any changes from the previous application.
- Written authorization from the owner of the property shall be required where the applicant is not the owner of the affected property.

(3)

The site development plan and the accompanying application shall show the following:

- a.

The applicant's entire property and adjacent properties on a location map with streets for a distance of at least 25 feet at a scale showing detail sufficient for proper review. The site plan shall be submitted on a sheet no smaller than 8½ inches × 11 inches and no larger than 11 inches × 17 inches. Site plans smaller or larger than the sizes prescribed by this article shall not be accepted.

b.

A detailed plan showing the design with required curb extensions and deck construction, relevant details and location of all temporary structures such as, but not limited to, planters, landscaping, railings, tables, chairs, table umbrellas, electrical outlets or appliances, hydrants, all ingress and egress, existing lighting and other equipment shall accompany the site development plan and permit application. Public use areas must accommodate the special design needs of the disabled, elderly, and parents with strollers.

(4)

The City Manager or designee shall distribute copies of the site development plan and permit application to the Zoning Administrator, Chief of Police, Fire Chief, Downtown Development Chairman, and Director of Public Works for review and comments in relation to compliance with this article and all other city ordinances.

(g)

Conditions specific to the operation of a business may be incorporated into the permit as required by city staff or the City Manager. (Example: Hours of operation, number of servers assigned to outside service area).

(h)

Appeals shall be made to the City Council.

(i)

Based upon review comments from city staff, the City Manager may approve, approve with conditions, refer the application back to the applicant for modification, deny the application, or refer the application to the Downtown Development Authority. If approved, the City Manager shall authorize the Zoning Administrator to issue a sidewalk cafe or outdoor seating permit.

(j)

If the City Manager or designee denies the application for a sidewalk cafe or outdoor seating permit, the reason for this determination will be stated in a letter to the applicant. The applicant may appeal the decision in accordance with Section 15.07 of this article.

(k)

In addition to any fees required by this article, establishments applying for any license or permit issued by the M.L.C.C. shall be required to pay a non-refundable liquor licensing permit fee to the city in an amount as established by resolution of the city council.

Sec.15-04. - Standards.

(a)

There shall be a minimum of 42 inches, exclusive of the area occupied by the sidewalk cafe or outdoor seating, designed to allow adequate pedestrian movement. Cafes or outdoor seating shall only be permitted where it is determined that the use will not create a hazard, a sight distance obstruction for motor vehicle operators, nor unduly impede pedestrian traffic. The City Manager or designee shall determine when a hazardous condition exists in the public right-of-way.

(b)

Sidewalk cafes or outdoor seating may only be located adjacent to the establishment with which they are associated. Sidewalk cafes or outdoor seating areas must remain clear of litter, food scraps, and soiled dishes at all times.

(c)

Employees of the establishment shall continuously supervise outdoor dining areas serving alcoholic beverages.

(d)

Setting up a barrier such as planters or a railing to physically separate patrons from pedestrian and vehicular traffic shall delineate the perimeter of a sidewalk cafe serving alcoholic beverages. All barriers used for sidewalk cafes serving liquor shall also conform to M.L.C.C. regulations.

(e)

Furnishings for a sidewalk cafe or outdoor seating shall consist solely of readily removable railings, posts, tables, chairs, planters, and table umbrellas. Furnishings may only be attached or secured in a manner approved by the City Manager or designee. Such anchoring devices, when removed, shall not create a hazard for pedestrian traffic. Objects, which are part of the sidewalk cafe or outdoor seating, may be attached or secured to any building or structure on which the sidewalk cafe or outdoor seating abuts in a manner approved by the City Manager or designee.

(f)

No structure or enclosure to accommodate the storage of accumulated garbage, i.e. shed, may be erected or placed adjacent to or near the sidewalk cafe or outdoor seating located on public property. Each establishment shall be responsible for

providing appropriate containers for disposing of garbage or waste and employees shall not use city trash containers for disposing of garbage or waste.

(g)

A sidewalk cafe or outdoor seating shall not interfere with any public service facility, such as a telephone, mailbox, fire hydrant, designated pedestrian crossing or bench located on a sidewalk or public property.

(h)

Operation of a sidewalk cafe or outdoor seating shall not adversely impact adjacent or nearby residential, religious, educational, or commercial properties and shall be in accordance with all applicable codes and regulations.

(i)

Tables, chairs, table umbrellas, railings, planters, and any other objects provided with the sidewalk cafe or outdoor seating shall be of quality design, materials, and workmanship both to ensure the safety and convenience of users and to enhance the visual and aesthetic quality of the area. Such equipment shall be routinely cleaned, painted, or replaced and may be inspected by the City Manager or designee.

Sec.15-05. - Operating restrictions.

(a)

All sidewalk cafes serving alcoholic beverages shall be allowed to operate during the hours of 10:00 a.m. until 1:00 a.m., Monday through Saturday (Saturday defined as 1:00 a.m. Sunday morning), and Sunday during the hours of 12:00 p.m. (noon) until 9:00 p.m. Monday through Saturday sales and service shall cease by 12:30 a.m. and all areas shall be vacated by 1:00 a.m. Sunday sales and service shall cease by 8:30 p.m. and all areas shall be vacated by 9:00 p.m.

(b)

All alcoholic beverages to be served at a sidewalk cafe shall be prepared within the existing restaurant, and alcoholic beverages shall only be served to patrons seated at tables. The consumption of alcoholic beverages at a sidewalk cafe within the confines of the sidewalk cafe area shall not be construed as a violation of any ordinance controlling open containers in a public area. The operator of the sidewalk cafe shall take all necessary action to procure the appropriate license or permit from the M.L.C.C. to serve alcoholic beverages in the sidewalk cafe and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in the state.

(c)

All food to be served at a sidewalk cafe or outdoor seating shall be prepared within the existing establishment unless approved by the city council as part of a special event application request.

- (d) The restaurant shall not serve food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.
- (e) The sidewalk cafe or outdoor seating permit issued in accordance with this article shall be prominently displayed within the existing establishment along with other required permits and licenses.
- (f) During the off-season, chairs, railings, posts, planters, table umbrellas, and other items shall be removed and shall not be stored outside. It shall be the responsibility of the establishment to secure adequate storage of these items.
- (g) The maintenance of a sidewalk cafe or outdoor seating area shall be the responsibility of the establishment including but not limited to, surface treatment and cleaning, litter control, sweeping, and snow and ice removal. The sidewalk and public property shall be kept neat and clean at all times and free from any substance that may cause damage to the sidewalk or public property or cause pedestrian injury.
- (h) An increase in lighting is prohibited, unless otherwise required through the review process.

Sec.15-06. - Denial, revocation and suspension—Causes enumerated.

The issuance of permits applied for under this article or any other ordinance of the city may be denied by the City Manager, and permits issued may be revoked or suspended by the City Manager at any time, for any of the following causes:

- (1) Fraud, misrepresentation or any false statement made in the permit application.
- (2) Fraud, misrepresentation or any false statement made in the operation of the sidewalk cafe or outdoor seating.
- (3) Any violation of this article or any other ordinance of the city.
- (4) Any violation received during the previous permit period.
- (5)

Conducting a business in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to the health, moral, safety or welfare of the public.

(6)

Failure or inability of an applicant to meet and satisfy the requirements and provisions of this article and every other ordinance of the city.

Sec.15-07. - Same—Hearing; demand; review; council powers.

Any person whose permit is revoked or suspended, or any person whose application for a permit is denied, shall have the right to a hearing before the City Council, provided a written request therefore is filed with the Zoning Administrator within ten days following the delivery or mailing of the notice of revocation or suspension, or within ten days following the denial of the permit application. No person shall operate any sidewalk cafe or outdoor seating during any time when the permit therefore has been suspended, revoked, or canceled.

Permits will be issued as prescribed in Section 1329 (2) (c) of the City of Durand Zoning Ordinance.

Sec.15-08. - Revocation or suspension; notice required; service.

Written notice of suspension or revocation, stating the causes therefore, shall be delivered to the permittee personally or mailed to the address as shown in the permit application. Upon revocation of a license, all furnishings and fixtures shall be removed from public property within 24 hours.

Sec.15-09. - Renewal considered as original application.

Unless otherwise provided in this article, an application for renewal of a sidewalk cafe or outdoor seating permit shall be considered in the same manner as an original application.

Sec.15-10. - Transferal.

No permit issued under the provisions of this article or any other ordinance of the city shall be transferable.

Sec.15-11. - Violations.

(a)

Any person who operates a sidewalk cafe or outdoor seating on public sidewalks or public property, without a permit, or who shall violate any of the provisions of this article shall be responsible for a municipal civil infraction, punishable by a civil fine of not more than \$500.00 and the costs of prosecution.

(b)

The city council may establish the amount of a civil fine for a municipal civil infraction that may be paid at the city violations bureau for violations of this article, except that all violations alleging operating without a permit and other violations in excess of three in any calendar year may be handled by the district court.

(c)

The city may suspend or revoke any permit issued, or deny the issuance of a permit as provided in 15.06 regardless of whether the operator has been cited, paid a civil fine, or been found responsible for a violation of this article pursuant to this section.

Sec.15-12. - Severability.

If any clause, sentence, paragraph or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

May 21, 2012