

CITY OF SHEBOYGAN
ORDINANCE 42-23-24

BY ALDERPERSONS RUST AND FELDE.

MARCH 4, 2024.

AN ORDINANCE reestablishing the formerly repealed sidewalk cafe regulations and making various changes and updates to said regulations as recommended by the City Clerk and staff from the Department of Public Works.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

SECTION 1: AMENDMENT "ARTICLE 14-III (Reserved)" of the Sheboygan Municipal Code is hereby *amended* as follows:

AMENDMENT

ARTICLE 14-III (~~Reserved~~)SIDEWALK CAFES

SECTION 2: ADOPTION "Sec 14-87 Definitions" of the Sheboygan Municipal Code is hereby *added* as follows:

ADOPTION

Sec 14-87 Definitions(*Added*)

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

Sidewalk café means any group of tables, benches, barriers or partitions, trash containers, and suitable decorative devices maintained upon any part of the public right of way for use by an establishment in the sale to the public of food, refreshments, and beverages of all kinds.

SECTION 3: ADOPTION "Sec 14-88 Permit Required" of the Sheboygan Municipal Code is hereby *added* as follows:

ADOPTION

Sec 14-88 Permit Required(*Added*)

- (a) Except as otherwise specifically provided in this Code, it shall be unlawful for any person to sell or serve, or offer to sell or serve any food, refreshment, or beverage upon any public street, sidewalk, parking lot, or public way within the City, except in areas holding a sidewalk café permit pursuant to this article.
- (b) It is unlawful for any person to sell or serve, or offer to sell or serve any alcoholic beverage upon any public street, sidewalk, parking lot, or public way within the City unless the street, sidewalk, public lot, or public way is part of a licensed premises pursuant to section 4-72, 4-104, or 4-105.

SECTION 4: ADOPTION “Sec 14-89 Sidewalk Cafe Permit” of the Sheboygan Municipal Code is hereby *added* as follows:

ADOPTION

Sec 14-89 Sidewalk Cafe Permit(*Added*)

- (a) Annual license. The fee for an annual sidewalk café permit shall be \$350 for an initial license and \$200 for each renewal. Any license not renewed within 30 days of expiration shall be considered an initial license.
- (b) License fee. The license fee shall be paid to the city finance director/treasurer. Annual licenses shall be issued on the 15th day of April each year or thereafter when applied for and shall expire on the 14th day of April of the year following its issuance.
- (c) Application. Each application for a sidewalk café permit shall be filed with the city clerk's office. The application for new and returning sidewalk cafés shall include the following:
 - (1) A layout, drawn to scale, which accurately depicts the dimensions and measurements of the existing area, including all adjacent streets, avenues, and adjacent private property; the proposed location of the sidewalk café; the size and number of tables, chairs, steps, planters, and umbrellas; and the location of all furniture, equipment, doorways, trees, gratings, parking meters, benches, trash receptacles, light poles, and any other amenities or obstructions, either existing or proposed, within the sidewalk café. This layout shall be submitted on eight and one-half-inch by 11-inch paper, suitable for reproduction. Any such layout shall be approved by the City Engineer or his or her designee.
 - (2) 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.
 - (3) An indication of whether the applicant intends to sell or serve alcoholic beverages; those indicating such an intention shall submit proof that they have the required alcohol beverage license and that the site of the sidewalk café is part of the licensed premises;
 - (4) Proof of insurance as required pursuant to section 14-90(e);

(5) An agreement that the applicant and the applicant's heirs and assigns shall:

a. Become primarily responsible and liable for all and any damage to persons or property caused by and arising from the grant and exercise of the privilege to encroach upon city right-of-way;

b. Remove the encroachment allowed by the permit within ten days after notice to remove given by the state or the city;

c. In the event of the failure to remove the encroachment, the applicant and the applicant's heirs and assigns shall pay the cost of removal by the state or the city;

d. Waive all claims for damages resulting from removal of the encroachment whether the removal is done by the applicant, the applicant's heirs or assigns, the state or the city

e. Make such construction and/or alterations and maintenance of the same subject to the approval of the city building inspector and director of public works;

f. Waive the right to contest in any manner the validity of the encroachment agreement.

(d) The city clerk shall grant or deny all applications for sidewalk café permits. However, no such permit shall be granted until the city attorney, the chief of police, the director of public works, and the city planner (or their designees) has reviewed the application and made a recommendation to the city clerk.

(e) If the city planner, in the planner's sole discretion, determines that plan commission approval is required or appropriate, the city planner may withhold recommendation until such time as the plan commission has considered and approved the activity, structures, or modifications related to the permit application.

SECTION 5: ADOPTION "Sec 14-90 Regulations" of the Sheboygan Municipal Code is hereby *added* as follows:

ADOPTION

Sec 14-90 Regulations(*Added*)

(a) Each sidewalk café shall remain within the approved boundaries of the sidewalk café site as set forth on the approved application.

(b) No person shall consume, nor shall any holder of any sidewalk café permit consumption of alcohol beverages in a sidewalk café unless the person consuming the alcohol is seated at a table in the sidewalk café site.

(c) No container of alcohol beverages shall be present in a sidewalk café between 10:00 p.m. and 10:00 a.m.

(d) Each holder of a sidewalk café permit shall have in force adequate liability insurance and shall agree to indemnify, defend, and hold the city, its employees and agents harmless against all claims, liability, lawsuits, loss, damage, causes of action, or expense incurred by the city as the result of any injury to or death of any person or damage to property caused by or resulting from the activities for which the permit is granted. As evidence of liability insurance, the applicant shall annually prior to issuance of a permit furnish a certificate of insurance, on a form acceptable to the city, evidencing the existence of commercial general liability insurance (including contractual liability insurance) naming the city and its employees and agents as additional insureds, with minimum limits of \$1,000,000.00 in the aggregate. The certificate of insurance shall provide 30 days written notice to the city upon cancellation, non-renewal, or material change in the policy.

(e) Each sidewalk café serving alcoholic beverages shall be responsible for policing the area of the sidewalk café to be sure that customers are of the legal drinking age, that all laws related to the presence of underage persons on premises are being strictly followed, and that alcohol beverages are not removed from the premises.

(f) All sidewalk cafés shall be closed and all tables, chairs, and all other materials and equipment removed immediately upon request of a police officer or a representative of the department of public works for such a length of time as said officer or representative shall designate.

(g) No sidewalk café that is part of a licensed premises shall remain open during closing hours as set forth in sections 4-74 and 4-113. No patron shall remain or be permitted to remain within the sidewalk café area during closing hours, regardless of whether the sidewalk café has permanent facilities.

(h) No sidewalk café or the barriers or furniture within the café shall be arranged in such a way as to interfere with the free use of the sidewalk by pedestrians, and in no case shall placement of café barriers and furniture reduce the travelable width of the sidewalk to less than five feet pursuant to the Americans with Disabilities Act.

(i) In the event of failure to exercise the privilege granted by a sidewalk café permit within six months of granting, regardless of the date of issuance, the permit shall become null and void.

(j) Sidewalk café permit holders may exclude persons who are not customers from using the tables, chairs, and other materials and equipment that are part of the sidewalk café. However, no person shall in any way impede, prevent, or exclude any person from any legal use of the public sidewalk, including by in any way permitting the reduction of the accessible width of the walkway to less than five feet.

SECTION 6: **ADOPTION** "Sec 14-91 Revocation; Penalties" of the Sheboygan Municipal Code is hereby *added* as follows:

ADOPTION

Sec 14-91 Revocation; Penalties(*Added*)

(a) The approval of a sidewalk café permit is conditional at all times. A sidewalk café permit may be suspended or revoked by the city clerk as a result of any violation of the provisions of this article or any violation of the provisions of any city ordinances or state or federal statute relating to activity occurring within the sidewalk café. Suspension or revocation shall be effective upon written notice to the holder of the

permit which shall either be personally served upon the permittee or the permittee's agent or mailed to the permittee's address as contained in the most recent sidewalk café permit application. Such written notice shall inform the permittee of the opportunity to be heard on the matter. Any hearing shall be before the licensing, hearings, and public safety committee of the common council.

(b) Any person, licensee, permit holder or applicant violating any provision of this article shall be subject to a forfeiture of not less than \$100.00 nor more than \$500.00 for each separate violation, and in default of payment thereof to imprisonment in the county jail until such forfeiture is paid, but not to exceed 30 days.

SECTION 7: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 8: **EFFECTIVE DATE** This Ordinance shall be in effect from and after its passage and publication according to law.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan