

Commission Letter #: 176-10  
Commission Meeting: 6/07/2010  
RE: **Sidewalk Café Report**

June 4, 2010

The Honorable Mayor  
and  
Members of City Commission

In response to recent requests for sidewalk cafes from non-traditional sidewalk café businesses, the City Commission requested that staff provide an analysis and recommendation.

As indicated in the attached MML pamphlet, municipalities, including Royal Oak, are often asked to allow use of the public right-of-way for business-related activities. In Royal Oak, these encroachments include, among other things, architectural features, refuse areas, decorative displays, sandwich board signs and sidewalk cafes. Most, if not all of these encroachments, require a license agreement approved by the City Commission.

In the past, each request has generally been reviewed and processed based upon its individual situation, location and characteristics. The process for sidewalk cafés has, however, evolved over the years into a set of criterion or policies based upon prior actions/approvals of the City Commission. At one point, the City's Liquor Control Committee reviewed sidewalk café request prior to City Commission action. There is not an ordinance or code with written provisions or regulations to follow or amend. Therefore, when an individual business, after consulting with staff, does not comply with a criteria/policy and still insists upon consideration by the City Commission, staff forwards their request. On occasion, the Commission has approved requests that are outside the normal configuration. Recent examples include Café Muse (café in front of another business) and The Rock on Third (use of public parking lot/spaces).

Sidewalk cafes are an integral part of any vibrant, revitalized downtown, enhancing the overall downtown environment, economic activity and opportunities for social interaction. This does not mean that every segment of sidewalk in downtown and/or every business should have a sidewalk café. The goal should be to create a balance of streetscape elements, furnishings, plantings, utilities and other functional items while maintaining a clear pedestrian thoroughway. Many different concepts, such as Complete Streets, Living Streets, Walkable Communities, Best Practices and Main Street, all discuss the importance of creating and maintaining balanced, well-designed public space. Sidewalks are a significant component of the public space with what can be described as a variety of competing interests for the limited space. Some of these elements include:

- Traffic Control Signs
- Directional and Informational Signs
- Sandwich Board Signs
- Street Furniture – benches, trash receptacles, flower barrels, cigarette receptacles
- Trees – flower boxes
- Utility/Telephone Poles
- Lighting
- Parking Meters
- Mail Boxes
- Recycle Boxes
- Bicycle Racks

- Electrical/Utility/Traffic-Panel/Switching Boxes
- Sidewalk Cafes
- Public Art

There are currently 41 sidewalk cafes that have been approved by the City Commission, an additional 6 awaiting City Commission action and another 14 establishments listed as potential locations that currently do not have sidewalk cafes. See attached table. Some have outside dining areas on private property. To broaden the field of potential applicants to anyone that may provide a food & beverage could include anyone that provides coffee to a customer or client or anyone from an office use to a beauty salon. Rather than trying to decide which of these non-restaurant (food/beverage) businesses should and should not be allowed sidewalk cafes and under what set of criteria, staff simply has not yet been able to identify a significant or compelling “public” benefit that necessitates further consideration of boarding or expanding sidewalk cafés to include additional types of businesses.

Non-traditional, non-restaurant establishments currently have the opportunity to place “sandwich board” signs in the public right-of-way; while some have requested and received license agreements or easements to encroach into the public right-of-way for a variety of reasons, such as decorative displays, façade/architectural improvements/treatments, flower containers, wine barrels and window well/landscape improvements, and even pieces of art (moose). Stagecrafter’s has an electronic sign/kiosk that spans 5<sup>th</sup> Street. To date, excluding special events for “sidewalk sales”, no business has been allowed to display merchandise or products for sale in the public right-of-way. In fact, the Zoning Ordinance currently prohibits the outdoor display and sale of products in most commercial zoning districts. Rather than attempting to write additional specific criteria that may or may not be relevant to a particular businesses proposed encroachment, staff believes the most flexible approach is to continue to simply evaluate each as they occur based upon their individual merits.

Staff believes that between the proper design of window displays, façade treatments, signage (building/window/sandwich board) and possibly other decorative displays, there is sufficient and ample opportunity for non-traditional, non-restaurant establishments to attract and maintain customers than don’t necessitate intrusions into the public right-of-way via sidewalk cafes.

Staff believes that the existing criteria/policies established over the last two decades provide an adequate basis going forward. To attempt to write an ordinance or additional criteria is not a productive use of limited staff time. In addition, as has been stated previously, sidewalk cafés should be limited to the consumption of food and beverage, not the display of products or merchandise. Further, the City should not expand the opportunity for sidewalk cafes to businesses whose primary activity is not related to food and/or beverage but simply a convenience they may provide customers. It could encourage businesses to serve a food or beverage simply to be able to obtain an encroachment as an additional advertising/attraction device. The same economic arguments are often used for additional and large signs.

Keep in mind that sidewalk cafes also create negative impacts, ranging from additional refuse debris, holes/cracks in the sidewalk, to spills/stains and dirty sidewalks, all of which add to potential enforcement/compliance issues requiring staff attention. In addition, establishments without a wait/bus-boy staff may not be able to adequately monitor the café area.

Now is not the time to increase demands on staff to process, monitor and/or enforce additional sidewalk café requests and impacts.

If the City Commission concurs, staff will continue to discourage non-restaurant uses from requesting or applying for sidewalk cafes. However, if a business insists and believes a sidewalk café is an integral component of their business; staff will process their application, recommend denial and forward the request to the City Commission for its consideration.

The following resolution is recommended for approval:

**Be It Resolved that the City Commission** hereby limits sidewalk café requests/applications to establishments/businesses that are determined by the Planning Department to be restaurants and/or predominately a food/beverage service business.

Six (6) members of the DDA discussed this report during a Special Meeting on June 2, 2010. The consensus of those members present was that sidewalk cafes should be limited to restaurants and/or businesses that are determined to be predominately food/beverage operations. There was a split on how that determination was made. Three members concurred with the report and felt it was the most business friendly approach while three members felt the determination should be based upon some license issued by an agency, such as an agriculture license. Staff does not support the idea of relying on an outside agency making local determinations. It could add delays; increase costs to the applicant prior to receiving local action and is contrary to the review and approval process for all other business related activities.

Respectfully submitted,



Timothy E. Thwing  
Director of Planning

Approved,



Donald E. Johnson  
City Manager

Attachment

## Sidewalk Cafes - 2010

As Of: 1-Jun-10

Business Name	Property Address	Seats	Size (s.f.)	Approval Date	License Fee	Bond Due	Payment Date	License Agmt.?	Ins. Cert.?	Bond Paid
<b>PAID</b>										
Andiamo Osteria	129 S Main St.	14	203.45	16-Oct-06	\$ 630	\$ -	31-Mar-10	?	?	\$ 200
Astoria Pastry Shop (1)	320 S Main St.	8	91.00	15-May-00	\$ 300	\$ -	12-Apr-10	Yes	Yes	\$ 200
bd's Mongolian Grill (2)	430 S Main St.	10	297.00	18-Oct-04	\$ 630	\$ -	25-Mar-10	?	?	\$ 200
Bastoné	419 S Main St.	24	251.25	21-Jun-04	\$ 630	\$ -	31-Mar-10	?	?	\$ 200
Bean & Leaf Café (3)	106 S Main St.	8	86.00	07-Jun-04	\$ 300	\$ -	04-May-10	?	?	\$ 200
Beruit Palace	105 S Main St.	18	280.00	05-Apr-10	\$ 405	\$ -	10-Feb-10	?	?	\$ 200
Black Finn (1)	520 S Main St.	16	154.00	05-May-08	\$ 630	\$ -	31-Mar-10	?	?	\$ 200
Café de Marquis	204 W Fifth St.	9	45.00	19-Jul-99	\$ 300	\$ -	18-Mar-10	?	?	\$ 200
Café Muse (1)(3)	418 S Washington Ave.	10	84.00	04-May-09	\$ 300	\$ -	17-Mar-10	?	?	\$ 200
Cold Stone Creamery	420 S Main St.	6	119.00	18-May-09	\$ 300	\$ -	30-Mar-10	Yes	Yes	\$ 200
Comet Burger	207 S Main St.	12	136.00	21-Aug-95	\$ 300	\$ -	15-Apr-10	?	?	\$ 200
Caribou Coffee	401 S Main St.	30	232.20	15-May-95	\$ 330	\$ -	19-Apr-10	?	?	\$ 200
Gayle's Chocolates (3)	417 S Washington Ave.	14	151.50	21-May-90	\$ 300	\$ -	05-May-10	?	?	\$ 200
Goldfish Tea Co.	117 W Fourth St.	6	109.72	05-May-08	\$ 300	\$ -	19-Apr-10	?	?	\$ 200
Jimmy John's	413 S Main St.	8	63.75	20-May-02	\$ 300	\$ -	03-Mar-10	?	?	\$ 200
Katana Nu-Asian Steakhouse (1)(3)	111 S Main St.	14	192.00	15-Aug-05	\$ 630	\$ -	24-Mar-10	?	?	\$ 200
La Feast	315 S Main St.	10	72.00	04-May-09	\$ 300	\$ -	04-Mar-10	?	?	\$ 200
Lily's Seafood Grill	410 S Washington Ave.	16	153.00	05-Jun-00	\$ 600	\$ -	12-Apr-10	?	?	\$ 200
Little Bros. Burgers	201 W Fourth St.	10	106.50	14-Apr-08	\$ 300	\$ -	12-Mar-10	?	?	\$ 200
Little Tree Sushi Bar	107 S Main St.	14	245.00	17-May-99	\$ 630	\$ -	24-Mar-10	?	?	\$ 200
Leo's Coney Island	108 S Main St.	24	227.09	13-Oct-03	\$ 330	\$ -	12-Apr-10	?	?	\$ 200
Mezza	212 W Fifth St.	5	10.00	17-Aug-09	\$ 300	\$ -	19-Apr-10	Yes	Yes	\$ 200
Mr. B's Pub	215 S Main St.	36	572.00	02-Apr-84	\$ 630	\$ -	10-Mar-10	?	?	\$ 200
Monterrey Cantina	312 S Main St.	22	214.00	22-Apr-91	\$ 630	\$ -	17-Mar-10	?	?	\$ 200
Q'doba Mexican Grill	301 S Main St.	14	289.80	06-May-02	\$ 330	\$ -	31-Mar-10	?	?	\$ 200
Oak City Grill (1)(2)(3)	212 W Sixth St.	4	114.00	24-Jul-95	\$ 600	\$ -	16-Apr-10	?	?	\$ 200
Pronto	608 S Washington Ave.	40	355.81	04-May-92	\$ 630	\$ -	15-Apr-10	?	?	\$ 200
Rock on Third	110 E Third St.	12	175.00	01-Mar-10	\$ 780	\$ -	26-Feb-10	?	?	\$ 200
Second St. Sub Shop	120 W Second St.	4	49.45	14-Apr-08	\$ 300	\$ -	30-Mar-10	?	?	\$ 200
Starbuck's Coffee	300 S Main St.	14	120.00	15-Jun-98	\$ 300	\$ -	15-Mar-10	?	?	\$ 200
Thai Café	732 S Washington Ave.	12	159.50	15-May-00	\$ 300	\$ -	25-May-10	?	?	\$ 200
Tom's Oyster Bar (5)	318 S Main St.	20	248.21	11-Apr-94	\$ 630	\$ -	15-Apr-10	?	?	\$ 400
Town Tavern	116 W Fourth St.	16	148.26	12-Sep-05	\$ 600	\$ -	18-Feb-10	?	?	\$ 200
Vinoteca	417 S Main St.	8	108.75	05-Jun-06	\$ 600	\$ -	31-Mar-10	?	?	\$ 200
<b>Subtotals</b>		<b>488</b>	<b>5,864.23</b>		<b>\$ 15,375</b>					<b>\$ 7,000</b>
<b>APPROVED BY CITY COMMISSION - NOT PAID</b>										
Ahan Thai	200 W Fourth St.	10	212.57	07-Jul-08	\$ 330	\$ -	---	---	---	\$ 200
Ernie's Pizza Café (1)(4)	316 W Fourth St.	6	62.00	10-Jul-00	\$ 300	\$ 200	---	---	---	\$ -
Jimi's	714 S Washington Ave.	40	656.00	13-Jun-94	\$ 630	\$ -	---	---	---	\$ 200
Noodles & Company	470 S Main St.	10	178.68	02-Aug-04	\$ 300	\$ -	---	---	---	\$ 200
Peking House (6)	215 S Washington Ave.	39	468.00	01-Jun-09	\$ 630	\$ -	---	---	---	\$ 200
Pizza Paesano	415 S Washington Ave.	8	135.00	15-May-00	\$ 300	\$ -	---	---	---	\$ 200
Thai On Main	415 S Main St.	10	105.00	16-Aug-04	\$ 300	\$ -	---	---	---	\$ 200

Sidewalk Cafes - 2010										As Of: 1-Jun-10
Business Name	Property Address	Seats	Size (s.f.)	Approval Date	License Fee	Bond Due	Payment Date	License Agmt.?	Ins. Cert.?	Bond Paid
<b>Subtotals</b>		<b>123</b>	<b>1,817.25</b>		<b>\$ 2,790</b>					<b>\$ 1,200</b>
<b>AWAITING APPROVAL BY CITY COMMISSION</b>										
Beyond Juice (1)(4)	313 S Main St.	8	36.00	n/a	\$ 375	\$ -	17-May-10	Yes	Yes	\$ 200
Dale & Thomas Popcorn (1)(3)(4)	304 S Main St.	12	158.27	n/a	\$ 375	\$ -	16-Apr-10	---	---	\$ 200
Five 15 Media Mojo & More	515 S Washington Ave.	8	57.00	n/a	\$ 375	\$ -	08-Jan-10	---	---	\$ 200
General Store	302 S Washington Ave.	8	150.50	n/a	\$ 375	\$ -	29-Mar-10	---	---	\$ 200
Moti Mahal (1)(4)	411 S Washington Ave.	7	137.50	n/a	\$ -	\$ 200	n/a	---	---	\$ -
What Crepe (7)	317 S Washington Ave.	20	?	04-May-09	\$ 375	\$ -	17-May-10	---	---	\$ 200
<b>Subtotals</b>		<b>63</b>	<b>539.27</b>		<b>\$ 1,875</b>	<b>\$ 200</b>				<b>\$ 1,000</b>

**Sidewalk Cafes - 2010**

**As Of: 1-Jun-10**

Business Name	Property Address	Seats	Size (s.f.)	Approval Date	License Fee	Bond Due	Payment Date	License Agmt.?	Ins. Cert.?	Bond Paid
<b>Potential Applicants</b>										
Bruegger's Bagels	201 S Main St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
D'Amato's / Goodnite Gracie's	212 Sherman Dr.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Fifth Avenue	215 W Fifth St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Gusoline Alley	309 S Center St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Hermann's Bakery	317 S Main St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Memphis Smoke	100 S Main St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
O'Toole's	205 W Fifth St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Ronin Sushi	322 W Fourth St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Royal Oak Brewery	215 E Fourth St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Sangria	401 S Lafayette Ave.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Spice of Thai	515 S Lafayette Ave.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Tasi Juice Bar	204 E Fourth St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Tokyo Sushi	315 S Center St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
Woody's	208 W Fifth St.	-	-	n/a	\$ -	\$ 200	---	---	---	\$ -
<b>Subtotals</b>		<b>126</b>	<b>1,078.54</b>		<b>\$ 3,750</b>					<b>\$ 2,000</b>
<b>Bonds Due to be Refunded - Restaurant Closed or Moved</b>										
Al Raushee	411 S Washington Ave.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Atlanta Bread Co. / Fudrucker's	520 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Backstage / Footlights	212 W Sixth St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
bd's Mongolian Grill	310 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Brazil Coffee House	305 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Broadway Deli	411 S Washington Ave.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Calabrazo Ltd. / Café 317	317 S Washington Ave.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Coffee Beanery	304 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Deli-Delite / Asian Delite	418 S Washington Ave.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Goombah's Pizza	316 W Fourth St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
La Fondue	111 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Lepanto	316 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Pita Pit	313 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Rumors	112 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Small Plates	310 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Stucchi's	205 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Twist & Shout	320 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Woodruff's Supper Club	212 W Sixth St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
<b>Subtotals</b>		<b>-</b>	<b>-</b>		<b>\$ -</b>	<b>\$ -</b>				<b>\$ 3,600</b>
<b>Bonds Due to be Refunded - Café Not Approved by City Commission</b>										
Café Habana	109 E Fifth St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Smokey's Fine Cigars	309 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
Tasi Juice Bar	204 W Fourth St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ 200
<b>Subtotals</b>		<b>-</b>	<b>-</b>		<b>\$ -</b>	<b>\$ -</b>				<b>\$ 600</b>
<b>Bonds Refunded at Licensee's Request</b>										

**Sidewalk Cafes - 2010** **As Of: 1-Jun-10**

Business Name	Property Address	Seats	Size (s.f.)	Approval Date	License Fee	Bond Due	Payment Date	License Agmt.?	Ins. Cert.?	Bond Paid
Café Muse	317 S Washington Ave.	-	-	n/a	\$ -	\$ -	---	---	---	\$ (200)
Gayle's Chocolates	417 S Washington Ave.	-	-	n/a	\$ -	\$ -	---	---	---	\$ (200)
Sweetwater Café	106 S Main St.	-	-	n/a	\$ -	\$ -	---	---	---	\$ (200)
<b>Subtotals</b>		-	-		\$ -					\$ (600)
<b>TOTALS</b>		<b>800</b>	<b>9,299.29</b>		<b>\$ 23,790</b>	<b>\$ 200</b>				<b>\$ 14,800</b>

- (1) Former licensee at site has not requested bond refund to date.
- (2) Licensee moved - bond from their previous site not refunded to date.
- (3) New or current licensee paid new bond - new licensee at previously approved site or bond was refunded and café re-opened.
- (4) New bond required due to change of licensee at previously approved site.
- (5) Licensee expanded into adjacent site and paid additional bond.
- (6) Façade improvements must be completed prior to installation of sidewalk café.



## Sidewalk Cafes and other Business Use of Sidewalks

Municipalities are frequently faced with issues associated with the proprietary use of its sidewalks by third parties. A brief review of the rights and liabilities of a municipality (and of a third party) may assist in determining the scope of use granted.

### What is a sidewalk?

A sidewalk is defined by the Michigan motor vehicle code as “that portion of a street between the curb lines, or the lateral lines of roadway, and the adjacent property lines intended for the use of pedestrians.” (MCL 257.60) The municipality generally has the same control over a sidewalk as it does a street even if the sidewalk was constructed by the abutting property owner and even if the fee ownership is in the abutting property owner.

An abutting owner, including a business owner, has no more right in the sidewalk than in the street. However, a merchant may, if necessary, use the sidewalk in a reasonable manner for a temporary period of time for loading and unloading of goods if not restrained by ordinance.

### Power of municipality to regulate:

Michigan courts have held that a municipality, by constitutional authority, is vested with the power to control in a reasonable manner the use of its streets which would include, by definition, its sidewalks. The public, on the other hand, has the right to have its public ways maintained free from obstructions or unreasonable encroachments. The Michigan Supreme Court has held that a municipality’s power to regulate its sidewalks for ordinary and usual purposes should be sparingly exercised, “but when it comes to the use of streets as a definite means . . . for carrying on a private business, such right may be given or withheld.”<sup>1</sup> As a consequence, Michigan municipalities have adopted regulations regarding the issuance of permits for sidewalk cafes and other similar types of businesses on a limited basis. Without exception, such regulations do not permit obstructions to the safe passage of pedestrian traffic.

A municipality, if authorized to do so, may permit by express delegation the use of sidewalk stands and the like, subject to the public’s right of passage. A municipality may not, however, foreclose all use of newsracks or other newspaper vending devices. Courts have held that First Amendment protections of speech and press are applicable to the public distribution of newspapers through the use of vending boxes placed on public sidewalks. Municipalities may impose reasonable “time, place and manner” regulations which are narrowly drawn in order to avoid arbitrary curtailment of the freedoms of speech and press.

### Liability of municipality:

From a liability standpoint, the Michigan governmental tort liability act specifically includes sidewalks in its definition of “highway.” The statutory highway exception to governmental immunity applies to all parts of the highway, including the sidewalk.

1

People v Dmytro, 280 Mich 82 (1937).