

Commission Letter #338-10  
Commission Meeting: 12/20/10

RE: Sidewalk Café Ordinance – Second Reading

December 16, 2010

The Honorable Mayor  
and  
Members of City Commission

On June 7, 2010, in the course of reviewing applications for four different sidewalk cafes within the City's Central Business District, the City Commission approved a motion that limited sidewalk cafés to establishments that are restaurants or are predominantly food/beverage businesses, and directed our office to draft an ordinance formalizing the standards for a sidewalk café. On December 6, 2010, the Commission approved a related ordinance on first reading, with the understanding that modifications would be made before the ordinance was brought back for second reading.

Attached is a revised draft of the proposed Sidewalk Café Ordinance for approval on second reading. The proposed ordinance would establish a formal procedure for the City to authorize a "food service establishment" (as defined by the Michigan Food Law of 2000)<sup>1</sup> to operate a sidewalk café for the consumption of food and beverages within the public right-of-way adjacent to the establishment. Based upon feedback that we received from the Planning Department, the sidewalk cafes would be limited to the City's Central Business District, and more of the information that is contained in the current application would be required by the ordinance. Additionally, the ordinance now makes reference to an "agreement" for a café, as opposed to "a license agreement", to allow the City additional flexibility as to the basis for and the amount of the annual fee to be charged for the use of the right-of-way.

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<sup>1</sup> "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include any of the following:

- (i) A motel that serves continental breakfasts only.
- (ii) A bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.
- (iii) A bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.
- (iv) A child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the director to be a food service establishment.

If the Commission approves of the proposed Ordinance, the following resolution would be appropriate:

BE IT RESOLVED, that the City Commission hereby approves the Sidewalk Café Ordinance on second reading.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W. Gillam". The signature is fluid and cursive, with a long horizontal stroke at the end.

David W. Gillam  
City Attorney

cc: Donald E. Johnson, City Manager  
Melanie Halas, City Clerk  
Jason Craig, Building Official  
Timothy E. Thwing, Director of Planning  
Elden Danielson, City Engineer

**ORDINANCE NO. 2010- \_\_\_\_**

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES TO ESTABLISH A FORMAL PROCEDURE FOR THE CITY TO AUTHORIZE THE OWNER OF A FOOD SERVICE ESTABLISHMENT WITHIN THE CITY'S CENTRAL BUSINESS DISTRICT TO OPERATE A SIDEWALK CAFÉ FOR THE CONSUMPTION OF FOOD AND BEVERAGES WITHIN THE PUBLIC RIGHT-OF-WAY ADJACENT TO THE ESTABLISHMENT

**THE CITY OF ROYAL OAK ORDAINS:**

SECTION 1. SHORT TITLE. This Ordinance shall be known as and may be cited as the "Sidewalk Café Ordinance."

SECTION 2. STATEMENT OF PURPOSE. This is an Ordinance to amend the Code of Ordinances to establish a formal procedure for the City to authorize the owner of a food service establishment within the City's Central Business District to operate a sidewalk café for the consumption of food and beverages within the public-right-of-way adjacent to the establishment.

SECTION 3. AMENDMENT TO CHAPTER 650. The City of Royal Oak Code of Ordinances is amended at Chapter 650, "Streets and Sidewalks", to include a new Article VI, "Sidewalk Cafes", which shall read as follows:

**"ARTICLE VI  
Sidewalk Cafés**

**Section 650-51. Application.**

The owner of a food service establishment (as defined in the Food Law of 2000, MCL 289.1107(n), as amended) within the Central Business District may make application to the Planning Department for authorization to operate a sidewalk café for the consumption of food and beverages within the public right-of-way adjacent to that establishment.

**Section 650-52. Application Fee.**

An application for authorization to operate a sidewalk café shall be accompanied by a non-refundable application fee and a performance bond in an amount to be established by resolution of the City Commission.

**Section 650-53. Contents of Application.**

An application for authorization to operate a sidewalk café shall contain the following information:

- A. Parcel identification number;
- B. Name and address of business;
- C. Name, address, and contact information for applicant;
- D. Name, address and contact information for property owner (if not applicant);
- E. Notarized signature of applicant;

- F. A detailed Sidewalk Café Plan which must, at a minimum, include the following:
1. The plan must cover the entire area between the curb and the building, including the curb line and building wall.
  2. The plan must show all existing and proposed obstructions in this area (trees, tree grates, fire hydrants, benches, parking meters, light posts, proposed railing location and seating plan).
  3. The seating plan must identify each table and chair.
  4. A detailed elevation of the railing design must be shown. All railings must be held in place securely by base plates with four (4) anchors in each plate threaded into expansion-type anchors in the sidewalk. Railing anchors, once established, cannot be moved to new locations in the sidewalk. All handrail base plates must be anchored into the same holes every year. At hand rail anchor locations with brick pavers, the anchoring device must extend below the brick pavers and be anchored into either a concrete base or an installed concrete foundation. The City will inspect all cafes at the end of each season. Any additional holes, other than the ones designated for the railing anchors (a maximum 4 per each post), or damaged sidewalk/streetscape, must be repaired by the business per City specifications before another season begins.
  5. The building wall shall identify all doors, windows, and other openings, as well as any building feature requiring emergency access.
  6. A minimum clearance of five feet (5') shall be maintained between all obstructions and the proposed café railing.
  7. A minimum clearance of seven feet (7') shall be maintained between the sidewalk and the bottom edge of table umbrellas. The outer edge of table umbrellas must remain at least six inches (6") inside the café railing. No objects may project beyond the café railing.
  8. The entire plan shall be dimensioned and drawn to an engineer or architect's scale.
  9. The plan must be sealed by a registered engineer or architect;
- G. A certificate of Commercial General Liability Insurance for the term of the proposed license, in an amount and in a form that is acceptable to the City;
- H. An outdoor service permit from the Michigan Liquor Control Commission (if applicable); and
- I. Any other information reasonably required by the City to review and evaluate the application.

**Section 650-54. Review and Approval.**

- A. The City Commission may grant an initial application for authorization to operate a sidewalk café, subject to the execution of an agreement that includes, but is not limited to, the following conditions:

1. The café shall be installed and operated between April 15 and October 31 in the manner depicted in the Sidewalk Café Plan submitted with the Sidewalk Café application.
2. As consideration for the use of the public right-of-way, the business shall agree to pay the City an annual fee to be established by resolution of the City Commission.
3. The business shall agree to repair and/or replace any portion of the right-of-way that is damaged as a result of the placement, maintenance, or removal of the sidewalk café.
4. The business shall agree to indemnify and hold the City harmless from any and all claims arising out of the agreement to operate the sidewalk café.
5. The business shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) on an occurrence basis, with the City named as an additional insured.
6. The business shall acknowledge that there are or may be utility easements in the right-of-way, and that the City is authorized to make emergency repairs to any utilities within the right-of-way without being required to give prior notice to the business.
7. The business shall acknowledge that the City may terminate the agreement without just cause or any other explanation of any sort being required, and that upon notice of termination, the business shall at its own cost restore the right-of-way to its original condition.
8. The agreement shall not be transferable or assignable without the prior approval of the City Commission.

B. An application to renew an agreement to operate a sidewalk café in a subsequent year may be approved administratively, provided that the café is to be installed and operated by the same business in the same manner as when it was initially approved. Application for renewal shall be made to the City Clerk's Office."

**SECTION 4. SEVERABILITY.** If any Section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this ordinance, and such holding shall not affect the validity of the remaining portions of this ordinance.

**SECTION 5. SAVINGS.** All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

**SECTION 6. REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

**SECTION 7. EFFECTIVE DATE.** This ordinance shall take effect ten (10) days after the final passage thereof.