

Sec. 20-16. Sidewalk Cafes.

(a) Definition.

For purposes of this section, "Sidewalk Cafe" means any area situated on a public sidewalk or other portion of the public right of way (hereinafter referred to as a "Public Access Area") where a portion of the Public Access Area has been designated for the sale of food, refreshments, beverages and/or alcoholic beverages at three or more tables or in such other configuration providing for the serving of 10 or more people adjacent to and in association with a legally permitted business (hereinafter referred to as the "Operating Establishment"). Sidewalk Cafes shall operate pursuant to this section.

(b) Application Requirements.

1. Applications for a Sidewalk Cafe license shall be made to the Licensing Board in a format and with the number of copies established by the Licensing Board for that purpose. Applicants that serve alcoholic beverages must appear before the Licensing Board, regardless of the intent to service alcoholic beverages within the Sidewalk Café area. Applicants that do not serve alcoholic beverages only require administrative approval from the Department of Public Works, Department of Community Development, Health Department, Building Commissioner, Police Department, and Fire Department (hereinafter referred to as "Interested City Departments") and do not need to appear before the Licensing Board.
2. If the applicant serves alcoholic beverages, the application shall include a copy of the current Alcohol License for review and approval in accordance with the rules and regulations governing an application for "Alteration of Licensed Premises" and any other applicable requirements of the Alcoholic Beverages Control Commission (ABCC)., which may include requiring the applicant to submit additional application materials and/or forms.
3. Applications shall be accompanied by a copy of the current Permit to Operate a Food Establishment issued by the City of Pittsfield Board of Health.
4. If the applicant does not own the building in which the Operating Establishment is located, the application must be signed by both the building owner and the owner of the Operating Establishment.
5. An application for a Sidewalk Café proposed to be located within a City Right of Way must also complete and submit a permit application for the right to use the City Right of Way, available from the Department of Public Services.
6. The application shall be accompanied by a site plan drawn to a scale of not more than twenty (20) feet to one (1) inch showing the entire Public Access Area, including the area from the building façade to the curb line and illustrating the

area intended to be used as a Sidewalk Cafe, its dimensions, the intended layout of tables and chairs, the proposed location of barrier(s), and the Sidewalk Cafe's spatial relation to the entrance to the Operating Establishment. The site plan shall also show the dimension of the remaining Public Access Area demonstrating that this area meets the requirements of this section. The site plan shall include a rendering of the barrier(s) that will be used to separate the Sidewalk Café from the remaining Public Access Area.

7. The Licensing Board shall transmit the Application to the Interested City Departments for review and approval. Interested City Departments shall have 14 days to review the Application and provide comments to the Licensing Board, suggest additional conditions and/or changes to the proposed site plan, and/or sign off on the application.
8. Once approved the Licensing Board shall provide copies of the approved license to the Police Department, Department of Public Services, Fire Department, and Building Commissioner.
9. An application for renewal of a Sidewalk Café license shall be made to the Licensing Board. If no complaints have been made to the Licensing Board, renewal will be allowed as an administrative process requiring the sign off from each Interested City Department.

(c) Dimensional and Location Standards.

1. Pedestrian and vehicular traffic shall not be impeded or obstructed by the Sidewalk Café.
2. No part of a Sidewalk Cafe shall encroach upon any part of the Public Access Area fronting on any adjacent premises unless the application includes documentation of written approval from the owner(s) of the adjacent premises and building owner.
3. An unobstructed Public Access Area shall be maintained along the length of the Sidewalk Cafe the width of which shall not be less than the greater of five (5) feet or that required by the Massachusetts Architectural Access Board (MAAB) and the Americans with Disabilities Act (ADA) or their successors. This distance shall be measured from the outermost edge of the sidewalk café barrier to the inside edge of the curb or the closest obstacle (e.g., trash receptacle, light pole, bicycle rack, fire hydrant, newspaper box, etc.), whichever is more restrictive.
4. The layout of tables and chairs within the Sidewalk Cafe shall meet the minimum requirements of the Massachusetts Architectural Access Board (MAAB) or the Americans with Disabilities Act (ADA), whichever is greater.

5. Tables and chairs in the Sidewalk Café must be placed so that there is at least one (1) foot of setback from any adjacent building. There must also be one (1) foot of clearance between table and chairs and any exterior doorways.
6. The holder of a Sidewalk Cafe license shall provide and maintain movable barriers which shall be no higher than four (4) feet in height, approved as to size and style as part of the application approval process, to separate the Sidewalk Cafe area from the unobstructed remaining area of the Public Access Area.
7. The layout of the Sidewalk Café and barrier(s) shall be placed in such a manner so as not to impede pedestrian access to the Operating Establishment while ensuring control of access and providing visual oversight of the Sidewalk Café by the Operating Establishment.

(d) Operational Requirements

1. Sidewalk Cafes shall close no later than 11:00 p.m.
2. No Operating Establishment shall sell, serve or allow consumption of alcoholic beverages on its Sidewalk Cafe without obtaining the required approval and license from the Licensing Board and Alcoholic Beverages Control Board. Notwithstanding any contrary or different hours of operations in its alcoholic beverages license, the Operating Establishment shall not sell, serve or allow consumption of alcoholic beverages on its Sidewalk Cafe after the aforementioned closing time.
3. The following are prohibited in the Sidewalk Cafe area: cooking of food, unshielded trash or refuse storage, advertisements (exclusive of menus intended to be read on the premises of the cafe) and outdoor entertainment unless allowed as a result of a separate entertainment license.
4. Sidewalk Cafes shall comply with all applicable building, health, safety, fire, zoning and environmental standards. The seating provided in a Sidewalk Cafe shall be considered temporary and shall not be counted toward City requirements such as off-street parking.

(e) Waivers.

Except for the requirements of the MAAB, ADA, Licensing Board, and ABCC, other requirements of this article may be waived by the Licensing Board if deemed to be in the best interest of the City to do so.

(f) Insurance Requirements.

1. The holder of a Sidewalk Cafe license shall fully insure, indemnify, defend, and hold harmless the City and, in their capacity as such, the officers, agents and employees thereof, from and against any and all claims and damages in any way arising out of or through the acts or omissions of the license holder or its employees in the construction, operation, maintenance, use, placement or condition of the Sidewalk Cafe.
2. If the Sidewalk Cafe is to be located on a City Right of Way the application must include certificate(s) of insurance as set forth below which names the City as an additional insured. Such certificate(s) shall provide that it may not be canceled or terminated without 30 days' advance notice to the City to the attention of the Licensing Board.
3. The following insurance shall be provided at minimum:
 - Worker's Compensation shall be carried for all employees, contractors and subcontractors;
 - Public Liability and Property Damage Liability Insurance;
 - Property Damage liability insurance; and
 - Comprehensive General Liability Insurance in the amount specified by the Sidewalk Café application.

The Licensing Board may require additional insurance. Where alcoholic beverages will be sold, served or consumed, the amount of the insurance shall be determined by the Licensing Board and/or ABCC.

4. The holder of a Sidewalk Cafe license shall provide the Licensing Board with a copy of all required insurance prior to commencing services authorized under the license.

(g) Fee, License Duration

1. A Sidewalk Cafe license shall be in effect beginning January 1 and ending on December 31.
2. The application for a sidewalk café license or renewal shall be accompanied by an application fee of one hundred (\$100.00) dollars.
3. Prior to issuance of the license or renewal, an annual fee of two hundred (\$200) dollars shall be paid. Any persons or establishments holding a license for the sale of alcoholic beverages as of June 30, 1998, shall, for so long as they continue to hold the same license, be exempt from the annual fee established by this section. Any transfer of the license or sale of the establishment shall automatically effect the termination of this exemption.

(h) Violations; enforcement.

The provisions of this section shall be enforced by the Police Department. A person who fails to cure a violation of those sections after a written request to take corrective action shall be fined no less than fifty (\$50) dollars per day for each infraction until the violation(s) is remedied. In addition, the Licensing Board may omit, revoke or suspend a license issued under § 20-16 upon a second or subsequent infraction under this section.