

CITY OF ESCANABA POLICY AND PROCEDURES

ORIGINATOR: Escanaba City Council

ADOPTION DATE: August 18, 2011

SUBJECT: Sidewalk Use Regulations – Street Furnishings, Sidewalk Signs, Merchandise and Outdoor Dining (Food Service Only and/or Food Service with Alcohol)

REFERENCES: Chapter 3.5 Alcoholic Beverages of the Code of Ordinances, Chapter 24 Streets, Sidewalks and Other Public Places of the Code of Ordinances, and Appendix A. Zoning of the Code of Ordinances

1. SCOPE.

The City of Escanaba is committed to the preservation and enhancement of sidewalks. This policy is intended to promote the attractive commercial and historic environment by allowing private use of the public sidewalk, while ensuring a successful streetscape and protection of the general public. Several design principles aimed at enhancing the functions of the City's sidewalk underscore the approval process for a sidewalk use permit. Addressing appearance, streetscape amenity and safety, as well as comfort and enjoyment towards both pedestrians and patrons are key. The City's sidewalks are public property and have to be always respected and treated as such.

2. PURPOSE.

- a.** To establish standards for the use of portions of the public sidewalk by business owners/operators for outdoor merchandise display, outdoor dining with or without alcohol service, seating and/or signage.
- b.** To maintain accessible pedestrian access at all times, both along the sidewalk and into businesses.
- c.** Generally, application to these guidelines will be considered on their individual merits and assessed against the policy guidelines. Proposed outdoor dining locations will also be assessed in terms of safety and may require the installation of additional features such as lighting if the site is deemed to otherwise be an unsuitable location. The policy applies to all areas of the City.
- d.** Use of the space should provide a sense of safety and security for patrons at all times. Use of the space can also contribute to a sense of safety and

security for residents and pedestrians because the street is under the customers' and operators' passive surveillance.

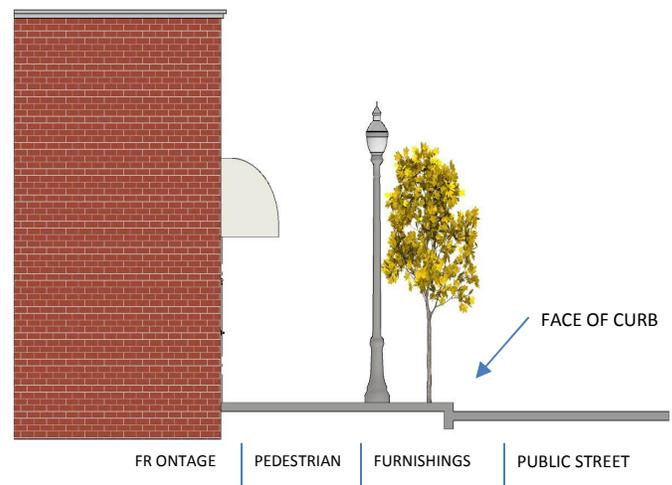
- e. As safety is of major importance for both pedestrians and patrons, use of public space is required to:
- Be located in an area that is considered safe for patrons and avoid locations that are deemed unsuitable;
 - Meet the clearances and setbacks requirement specified in this policy for each particular circumstance;
 - Ensure the use area is set back from the building line at street intersections, at distances as specified in this policy;
 - Ensure wheelchair access to pedestrian ramps is not compromised;
 - Ensure the safety of adjoining buildings is not compromised by restricting access or adding unreasonably to fire potential;
 - Ensure neighboring uses are not adversely impacted by the use of the sidewalk.
 - Not obstruct pedestrian flow.
 - Not obstruct patron flow with respect to ingress and egress of the primary building use.
- f. For public sidewalk areas to be approved for use, applicants will need to meet requirements for public access and circulation including the needs of people with disabilities. If a location is deemed unsafe for this activity, approval may not be granted even if the application complies with the policy guidelines.

3. GLOSSARY OF TERMS.

For the purpose of this document, the following terms are defined as follows:

● **Frontage Zone.** The “frontage zone” portion of the sidewalk is defined generally as the space on the public sidewalk closest to the building facades measuring approximately four (4) feet (+/-) from the right-of-way line.

● **Furnishings Zone.** The “furnishings zone” of the sidewalk is defined as the space between the “pedestrian zone” and the two (2) feet behind the face of curb where the City owned “public features” (light posts, benches, planters, etc.) are placed.



- **Pedestrian Zone.** The “pedestrian zone” is the area between the “frontage zone” and the “furnishings zone” that is available for pedestrian circulation. The width of the pedestrian zone shall be at least six (6) feet at any given point.

- **Outdoor Dining – Food Service Only.** Outdoor dining – food service only is defined as the use of the public sidewalk frontage zone for the purpose of extending the services of premises whose main function is for the provision of food and non-alcoholic beverages to the public. Such premises include restaurants, cafes, diners, delis and other food outlets. Outdoor dining – food service only should be directly associated with the business that holds the outdoor dining permit and should only operate when those premises are open for business. Outdoor dining should contribute to the vibrancy of street life.

- **Outdoor Dining – Food Service and/or Alcoholic Beverage Service.** Outdoor dining – food service and/or alcoholic beverage service is defined as the use of the public sidewalk frontage zone for the purpose of extending the services of premises whose main function is for the provision of food and alcoholic beverages to the public. Such premises include restaurants, cafes, diners, bars, delis and other food outlets. Outdoor dining – food service and/or alcoholic beverage service only should be directly associated with the business that holds the outdoor dining permit and should only operate when those premises are open for business. Outdoor dining should contribute to the vibrancy of street life.

4. USE OF THE CITY SIDEWALK FRONTAGE ZONE.

- a. **Signage, Merchandise, Planters, Benches and Vending Machines.** Business owners may use the frontage zone of the sidewalk directly adjoining their business frontage. The frontage zone of the public sidewalk may be used for the display of signage, merchandise, planters, benches and vending machines or other items relating to the legal business operation of the adjacent business, and deployed daily during business hours by business owners or operators without a permit. No items are allowed within entry or exit areas of any business or building, unless specifically approved as compliant with accessibility and safety standards. Use of the frontage zone requires maintaining private features and the furnishings zone in a neat and safe condition.

- b. **Outdoor Dining – Food Service Only.** Business owners may use the frontage zone of the sidewalk directly adjoining their business frontage for outdoor dining with food service only with approval of the Escanaba Downtown Development Authority, Delta-Menominee-Schoolcraft Health Department and Escanaba Department of Public Safety. No tables, chairs or barricades are allowed within entry or exit areas of any business or building, unless specifically approved as compliant with accessibility and safety standards. Use of the frontage zone requires maintaining private features and the furnishings zone in a neat and safe condition.

- c. **Outdoor Dining – Food Service and/or Alcoholic Beverage Service.** Business owners may use the frontage zone of the sidewalk directly adjoining their business frontage for outdoor dining with alcoholic beverage service when reviewed by the Escanaba Downtown Development Authority and Escanaba Department of Public Safety and approved by the Escanaba City Council and State of Michigan Liquor Control Commission (either seasonally or on an event basis). No tables, chairs or barricades are allowed within entry or exit areas of any business or building, unless specifically approved as compliant with accessibility and safety standards. Use of the frontage zone requires maintaining private features and the furnishings zone in a neat and safe condition. Seasonal applications must be submitted for review at least 45 days prior to the proposed installation date. Event basis applications must be submitted for review at least 21 days prior to the proposed event date.

5. USE OF PEDESTRIAN ZONE.

- a. **Pedestrian Zone.** The pedestrian zone shall remain clear without any obstructions to allow for the movement of pedestrians.

6. FURNISHING ZONE.

- a. **Furnishing Zone.** The furnishing zone of the public sidewalk may be used for the display of signage, planters, benches, merchandise or other items relating to the legal business operation of the adjacent business, and deployed daily during business hours by business owners or operators without a permit.

7. DESIGN CRITERIA.

- a. **Freestanding Signs.** Sidewalk signs can be placed on frontage or furnishing zones outside the pedestrian zone to attract pedestrians into shopping areas. Sidewalk signs will not require a permit but must:
 - (1). Be constructed using one of the following durable materials: wooden, plastic or metal signs with open bases, or shaped silhouette signs made of plywood, metal, plastic or similar wood like material that can withstand various weather conditions.
 - (2). Not be constructed of glass, breakable materials, paper, laminated paper, and PVC pipe frames.
 - (3). A-frame signs must comply with the Sign Ordinance.

- (4). The maximum size of sign permitted is four (4) feet in height and two (2) feet in width.
- (5). The maximum size shape for shaped silhouette signs is five (5) feet in height and three (3) feet in width.

8. MERCHANDISE DISPLAYS.

- a. Outdoor merchandise displays, such as clothes rack, tables and shelves, or similar commercial items shall be allowed in the frontage zone and furnishing zone but are limited to the length of the business frontage. A 6 foot wide pedestrian zone from the curb to the entry of the building shall remain clear without any obstructions to allow the movement of pedestrians from the parking areas to the building entry.
- b. Merchandise displays will not require a permit but must not be permanently affixed to the ground, and must be moved inside the business when the business is closed.
- c. Displays must be made to be secure and shall not blow or move in the wind.

9. PRIVATE PLANTERS.

- a. Planters shall not be permanently affixed to the sidewalk but may remain in the frontage and furnishing zones after business hours.
- b. Planters must be planted and maintained in a neat manner. Planters with dead plants or poorly maintained must be removed.
- c. Placement of planters must comply with applicable accessibility and safety standards.
- d. Private planters will not require a permit, but the business owner/operator will be responsible for any and all damages to the public right-of-way resulting from private planters.

10. OUTDOOR DINING IN THE PUBLIC SIDEWALK.

- a. The purpose of this policy is to regulate the type, location and appearance of outdoor dining uses where the sidewalk is to be utilized. For outdoor dining areas to be approved, applicants will need to meet requirements for public access and circulation including for people with disabilities. An outdoor dining area must be located directly outside the associated business premises and within the frontage.

- b.** For outdoor dining areas with alcoholic beverage service, the City Council will assess each proposed outdoor dining location individually as part of the permit process. If a location is deemed unsafe for this activity, approval may not be granted even if the application complies with the policy guidelines.
- c.** Outdoor dining is preferred on those sidewalks where there is adequate sidewalk space to accommodate it, while not compromising pedestrian access and other streetscape activities. Location and siting considerations include:

 - Pedestrian and vehicular traffic.
 - Access to public street furniture such as benches, bicycle parking and rubbish containers.
 - The safety, interests and concerns of particular groups already using the street;
 - Access to services, infrastructure, ramps and building entrances; and
 - Access to parking and loading zones.
- d.** Outdoor dining locations are limited to those areas not required for existing or proposed public use. Outdoor dining will not be supported where its location, size or layout may compromise public access, circulation, safety or other street activities.

11. LOCATION.

- a.** The outdoor dining permit holder is to take full responsibility for their care, appearance, maintenance, and effect on other street life. Hygiene is essential, including the courteous clearing and cleaning of tables quickly after patrons have departed, cleaning up of any litter, putting chairs back in place and preparing to welcome the next guests.
- b.** Outdoor dining shall be allowed to occur during normal business hours of the principal use in the “frontage zone” of the public right-of-way subject to the following:

 - (1).** Outdoor dining is not allowed in any parking lot, landscaped area, loading or fire zone, or pedestrian crosswalk. The use shall not encroach upon the frontage of neighboring business, except when the street is closed to vehicular traffic for outdoor public events (such as the Ribfest and Sidewalk Daze) and with written consent of the building owner/tenant of the neighboring businesses.
 - (2).** The outdoor dining use shall not obstruct pedestrian movement or access from any doorway, as determined by the Department of

Public Safety. At least six (6) feet of pedestrian clearance shall be provided around the use. The six (6) feet may include adjacent available public sidewalks.

- (3). The outdoor dining use shall not block access points to pedestrian crosswalks, and shall be located at least fifteen (15) feet from any driveway or fire hydrant. The twenty-five (25) foot clear corner sight triangle shall be kept free from of all obstructions.

12. FURNITURE.

- a. Tables/chairs should be designed to be attractive, functional and durable. Tables and chairs shall not have legs or braces which protrude, creating a hazard for passers-by, or that damage the pavement.
- b. The outdoor dining furniture shall be reasonably compatible in scale, design and color with the character of the building façade and adjacent structures.
- c. Tables and chairs that are not located within a specified area as outlined in Section 17.a.2 shall be moved inside the business when the business is closed.

13. UMBRELLAS.

- a. Umbrellas which are freestanding or used as part of the table assembly, must be open on all sides with no unprotected protrusions around the perimeter. The top portion of the umbrella (i.e. the cover) may extend into the pedestrian zone provided it is taller than seven (7) feet to prevent obstruction to the movement of pedestrians. The diameter of the umbrella shall generally be seven (7) feet.
- b. Freestanding umbrellas shall be made to be safely weighted down (not be permanently secured) to the public sidewalk, so they will not become a safety hazard to the public, or damage the pavement.

14. FURNISHING MAINTENANCE.

- a. The permittee holds the responsibility to maintain the outdoor furnishings in a safe and attractive condition. Dining tables and the area must be bussed and kept free of food wastes that would attract nuisances. Feeding of wildlife is prohibited. Businesses shall immediately remove any material from the pavement in or near the outdoor dining areas to avoid slip hazards, and vectors.

15. GENERAL AESTHETICS.

- a. A standard on aesthetics is appropriate and desirable to assure that sidewalk encroachment complement, rather than detract from the streetscape.
- b. The applicant must submit detailed plan for staff review and comment.

16. OTHER CONSIDERATIONS.

a. Smoking

- (1). Business must comply with local and state regulations regarding smoking.

b. Trash/Garbage/Rubbish

- (1). Trash/Garbage/Rubbish generated from outdoor dining service shall be deposited with the regular restaurant trash, not in the City of Escanaba streetscape City trash receptacles.
- (2). Businesses must keep outdoor dining areas clean and free of food wastes and debris, and clean the pavement daily at the end of the outdoor use.

c. Food Service.

- (1). Business must comply with local and state regulations regarding eating establishments.
- (2). Food preparation must comply with local and state regulations regarding eating establishments.
- (3). No outside food displays are allowed.
- (4). Condiments must be kept in a closed container (ketchup bottles, squeeze bottle, individual packets).

17. SERVING OF ALCOHOLIC BEVERAGES.

- a. Eating and drinking establishments must comply with Michigan Liquor Control Commission requirements for serving alcohol in outdoor dining areas. Failure to comply with all applicable State standards and City Council conditions of approval will result in the revocation of the permit. At a minimum, these requirements include:

- (1). Alcoholic Beverages may only be served in outdoor areas which are contiguous to the eating establishment within the frontage zone area(i.e. the area must not be separated from the primary establishment by a public sidewalk).
 - (2). The primary establishment operator must provide a barrier to distinguish the outdoor service (i.e. within the Frontage Zone) area from the public walkway in accordance with the Michigan Liquor Control Commission laws and policies.
 - (3). Alcoholic drinks may not be prepared (mixed) in the outdoor area.
 - (4). Physical conditions must allow visual monitoring of alcohol consumption from within the establishment, or the establishment must provide regular waiter/waitress service to the outdoor area.
- b. The Michigan Liquor Control Commission requires that the licensee obtain approval for premise expansion. The licensee must show evidence that the Michigan Liquor Control Commission has issued the permit. Issuance of a permit to an establishment intending to serve alcoholic beverages in the encroachment area are subject to the provisions of 11.b.(1) with respect to encroachment.

18. INSURANCE.

The City of Escanaba will not provide liability insurance or liquor liability insurance for any use of the various sidewalk zones. The applicant/sponsor requesting to use the space will be responsible for providing a general liability insurance policy in the minimum amount of One Million Dollars (\$1,000,000). The City of Escanaba must be named as additional insured and provided with a certificate of insurance before the permit is issued.

19. INDEMNIFICATION.

Except as to the sole negligence or willful misconduct of the City, the permittee shall defend, indemnify and hold the City, and its officers, employees, agents and volunteers harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorney's fees, which arise out of the permitted outdoor dining in the public right-of-way.

20. PERMITS.

When a permit is required, the application for said permit must be completed and submitted by the applicant to the City of Escanaba within 45 days of the proposed installation.

21. INCENTIVES FOR BETTER DESIGN AND CREATIVITY.

Excellence in design and planning which may be achieved through appropriate innovation and imaginative concepts is encouraged. To accomplish this, alternative compliance may be proposed in achieving appearance standard goals, provided that such change will produce a more logical and attractive use of the property and sidewalk, in that it will be beneficial rather than detrimental to the surround area and the community. Proposed design alternatives acceptable under this process must not represent a waiver of requirements; the alternative must meet or exceed the “spirit” of the policy.

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