

MEMORANDUM

To: Urban Services Committee

From: Ken Gibb, Community Development Director



Date: March 19, 2007

Subject: Sidewalk Café Permits

I. ISSUE

The review of Corvallis Municipal Code Chapter 8.08 relating to the requirements, administration and issuance of permits for Sidewalk Cafe's, as directed by the City Council.

II. BACKGROUND

In 1989 City Council recognized the need to establish a sidewalk café permitting process to encourage local businesses to provide outdoor dining opportunities for customers through use of the public sidewalk adjacent to their business. Chapter 8.08 of the Corvallis Municipal Code was subsequently adopted as framework for sidewalk café permits. In the late 1990's the ordinance was revised to allow serving of alcoholic beverages.

The Development Services Division is responsible for administering and issuing permits for sidewalk cafe's. Permits are issued on an annual basis and the Division issues between 20 to 25 permits per year. The annual cost for a sidewalk café permit is \$50, or \$100 if serving alcoholic beverages.

Several stakeholders have expressed to City Council, growing concern with required fencing, passageway width, permit cost, and the alcohol service time restriction standards. Most complaints are generated from fence creep which results in decreased clearance for pedestrian traffic utilizing the public sidewalk. Annually, the Development Services Division investigates approximately five to ten citizen complaints relating to sidewalk cafe's.

As stated in the Corvallis Municipal Code, the purpose of the ordinance is to permit and encourage sidewalk vending in a manner that is compatible with other uses of the public sidewalk, while promoting overall commerce in a pedestrian oriented environment.

III. DISCUSSION

The City Council has requested that the sidewalk café permitting language contained in the Corvallis Municipal Code be reviewed. Council has also requested that the permit fee be reviewed.

The following City department/divisions have been identified with interests and will be included in this review:

- Community Development, Development Services (lead)
- Finance
- Public Works, Transportation
- Police, Community Services
- Fire, Fire Prevention
- Parks and Recreation
- City Attorney's Office

City Staff recently met and propose to engage the following stakeholder groups in the review and discovery of issues:

- Downtown Corvallis Association
- Access Benton County
- Bicycle Pedestrian Advisory Committee
- OSU / alcohol counseling interests
- Permit Holders

The proposed review process and time line includes:

- Stakeholder outreach/discovery (April - June 07)
- Develop options, potential code changes & report to USC - Stakeholders invited (June 07)
- Consider Stakeholder & committee feedback (July -August 07)
- Report to USC, finalize recommendations (August 07)
- Recommendation & City Council approval (September 07)

Any proposed changes to the current municipal code or permitting process are anticipated as being effective for the 2008 sidewalk café season.

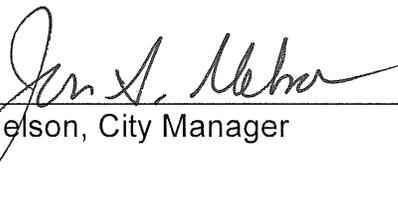
IV. RECOMMENDATION

Staff requests concurrence with the above noted stakeholders, time line and process.

Reviewed & Concur:



Scott Fewel, City Attorney



Jon Nelson, City Manager



Nancy Brewer, Finance Director



Gary Boldizar, Police Chief

RECEIVED

MAR 19 2007

CITY MANAGERS
OFFICE

Roy Smith

Attorney at Law

310 NW 5th, Suite 105

PO Box 1812, Corvallis, OR 97339

Telephone and fax: (541) 757-1533

roysmith@peak.org

March 16, 2007

Jon Nelson

Corvallis City Manager

P.O. Box 1083

Corvallis, OR 97339

Copy please to:
• Dan Carlsson
• Ken Gibb
• Jim Brewer

Re: ADA and downtown sidewalks

Dear Mr. Nelson:

I represent several people with disabilities impairing their ability to routinely negotiate sidewalks. They represent both ambulatory and vision impairments. The fences around certain sidewalk cafes present obstacles to them.

I have studied ordinances 8.08.010 through .120. I have personally encountered and viewed the obstacles described below as I walk each business day to and from the post office, and as I enjoy evenings in downtown Corvallis with my wife. I have "low vision" as a result of macular degeneration, which impairs my distance vision and my ability to see obstacles other than through my peripheral vision. One of my clients is an amputee, whose ability to walk without falling depends in part on the evenness of the surface and width of the pathway. Obviously people using wheelchairs and scooters are impacted by these narrow pathways.

The sidewalks along the fenced areas of the Peacock and Fox and Firkin are the worst problems for us. First at the Peacock, the fence is not kept six feet from the curb. At the north end of the enclosure the corner of the fence protrudes out even further into the sidewalk than the remainder of the fence, because the fence was

Jon Nelson
March 16, 2007
Page 2

not built with an opening as required by ordinance. To create that opening, the fence is pushed out from the building and further into the side walk. Additionally, while six feet may comply with the ADA, it should measure from bumpers of the vehicles parked along that area, rather than from the curb. Those bumpers appear to me to overlap the sidewalk from a foot to two feet.

The small tables and chairs at the Peacock hug the wall appropriately. The empty space comprises nearly two thirds of the enclosed area, more than appropriate. Ironically it appears that patrons and serving staff inside the enclosure have more sidewalk walking width than pedestrians.

OLCC regulations do not require a solid fence, but merely a visual barrier. Other places have a potted plant at each corner of the "enclosure", for example. The OLCC can, if problems have occurred, require a fence. Do you know if the OLCC has imposed a solid fence requirement on the Peacock?

I contend that impaired individuals should be able to pass these cafes double file, including easily passing by oncoming pedestrians. Otherwise, to an impaired person, the pathways become like one-way bridge for cars. While the well sighted and physically able are able to walk double file and/or meet and pass an oncoming person with ease, people with impairments are suddenly faced with an obstacle not present on the rest of the sidewalk.

The Fox and Firkin's fence stands protrude into the sidewalk and are a tripping hazard. Nor do they lay flat, making them worse of a hazard.

I read that a permit may be suspended and amended at the City's option. The business owner gains no property rights to the part of the sidewalk they are allowed to use. We request that the City suspend and amend the permits of the two establishments immediately. Access Benton County and a number of individuals have tried without success to obtain these results. People in City government promise a review of the side walk café ordinance this fall. That is not

Jon Nelson
March 16, 2007.
Page 3

acceptable to my clients. The fencing must be moved by May 1, 2007 or I will file suit in federal court and seek injunctive relief under the ADA.

We are proud to live in a town that promotes diversity. However, we are not so sure that extends to those residents who are impaired to the same degree as it does to other protected classes.

Please respond to me with a time line and plan of response to these requests. Email is a good way to contact me with any questions, as is phone of course. Thank you for your attention to these requests.

Sincerely,

A handwritten signature in black ink that reads "Roy Smith". The signature is written in a cursive style with a large, looping initial "R".

Roy Smith

c: clients