

Issue:

Most jurisdictions that allow alcohol consumption at sidewalk cafes do not have fencing requirements for the permit area but they have open container laws which make it illegal to possess or consume alcohol on sidewalks. The question then arises about how the police in these jurisdictions determine if a violation of their open container law has occurred in the areas surrounding their sidewalk cafes because there is no clear demarcation between the allowed areas and the forbidden areas. Besides Corvallis, the only jurisdiction that has both an open container law and fencing requirements for sidewalk cafes that serve alcohol is Kirkland, Washington.

To answer this question an email was sent to the police departments in jurisdictions with open container laws but no fencing requirements. The question email and the responses from the police departments follow the summary table.

City	Fence Requirement for Alcohol Service	Open Container Law	Enforcement Method
Kirkland, WA	Yes	Yes	No issue
Olympia, WA	No	Yes	
Albany, OR	N/A	N/A	N/A
Ashland, OR	No	Yes	Rule of thumb
Bend, OR	No	Yes	Discretion
Corvallis, OR	Yes	Yes	
Eugene, OR	No	Yes	Sent question
Lake Oswego, OR	No	Unclear	Unclear
Portland, OR	No	Yes	Sent question
Salem, OR	No	Yes	Sent question
Springfield, OR	No	Yes	Common sense

Question:

My name is Justin Fuller and I'm working for the City of Corvallis on comparing different sidewalk café ordinances and regulations and I've come upon a tricky question that you might be able to help with.

I've read [jurisdiction's] Municipal Code section that details sidewalk café operations and noticed that there isn't a requirement for sidewalk cafes that serve alcohol to have fencing around the permit area. My question for you is that without a clear demarcation between the permit area and surroundings how do [jurisdiction's] police officers enforce your open container law in areas around these cafes?

Thanks in advance for your time.

Cheers,
Justin Fuller, Intern
City of Corvallis

Responses:

Ashland, OR

Great question,

A rule of thumb used is if they are at the table or walking to and from it no action. If they are walking away from the location etc... action.

Not very scientific and rather informal but it works well for us and is understood by all. It is rarely a problem for us.

Good luck

Ron

Bend, OR

Justin;

Interesting question. In a word, discretion.

Basically if a cafe has tables outside in front of their store front, it is considered part of the establishment. There is a 12' guideline, i.e., tables and such have to be no more than 12' from the front wall. If a patron takes his/her glass and strolls down the street, the open container rule can be enforced.

Do people window shop at stores in close proximity? Sure, but if they return to their tables, no real problem. Circumstances can dictate what steps can be taken, i.e., unruly, obnoxious etc.

As long as customers are at a table in front of the cafe within the aforementioned guidelines the intent of the Code is met.

Hope that helps, feel free to let me know if you need further.

Steve Esselstyn, Community Liaison
Bend Police Department
541-322-2976

Springfield, OR

Justin, as far as I know the issue has not arisen probably due to the fact that only one business utilizes the ordinance that I know of. From talking with others there is rarely anyone at these tables anyway. Bottom line is we (Police) don't have a policy dealing with this and would rely on common sense. If an individual were a customer of the business then they would be sitting at or standing near a table which we could confirm with employees of the establishment. Once it is determined that they are a customer we would assume they are within the meaning of the ordinance. Sorry I don't have a bright line response, but your inquiry is the first time I have given any thought to this.

Rick Lewis

