

**Chapter 8.08**

**Sidewalk Cafes**

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**Section 8.08.010 Purpose.**

The purpose hereof is to permit and encourage sidewalk vending that is compatible with other uses of the public sidewalk. The City finds that sidewalk cafes encourage a pedestrian-oriented environment, help to create a visually attractive atmosphere and streetscape, and promote overall commerce.  
(Ord. 89-33 §2, 1989)

**Section 8.08.020 Permit required.**

Private commercial use of public sidewalks for the purpose of operating a sidewalk cafe in the City is prohibited unless a permit is obtained from the Building Official as provided herein.  
(Ord. 89-33 §3, 1989)

**Section 8.08.030 Definitions.**

- 1) Abutting property owners and occupants - Any owner or occupant of property which abuts the subject sidewalk café site excluding public right-of-way.
- 2) Accessible Route – A continuous unobstructed path of travel connecting all publicly accessible elements and spaces of a building or facility.
- 3) Adjacent sidewalk area - That portion of the public sidewalk between the curb line and the property line demarcated by extending the side building lines of the premises until they intersect the curb.
- 4) Clearances – Clearances as referenced in this section are measured horizontally from the outside edge of the sidewalk café delineation to any obstruction on the ground greater than one-half inch in height, or to an adjacent projection such as tree limbs, tree wells, banners, signs, bike racks, lamp posts, or any other fixtures. Accessible route clearances shall be no less than four (4) feet in width and no less than seven (7) feet in height for the entire length of the accessible route. Radiuses along an accessible route shall be no less than four (4) feet in width.
- 5) Operate a sidewalk café - Serving food or beverage from a restaurant to patrons seated at tables located within the adjacent sidewalk area, including, in the case of a permittee in possession of a valid license for the sale of alcohol beverages covering such sidewalk area, the service of such beverages, or providing seating for patrons in the adjacent sidewalk area.
- 6) Substantiated – Witnessed and recorded by City staff.

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7) Tree Well – A defined area adjacent to a required street tree which provides a buffer for protection of the tree. The grade level surface of the tree well may contain movable tree pavers, steel grates, wood, dirt or other materials. With respect to measuring clearances, the area and surface materials within the tree well shall not be included. Any clearance shall be measured horizontally from the outside edge of the tree well, and/or projecting tree limbs.

8) Vision clearance triangle - A vision clearance triangle is that area which abuts streets, alleys or driveway intersections whether on the subject property or the abutting property. The vision clearance triangle is determined by measuring 25 feet in both directions from the intersecting curb lines along the edge of the rights-of-way and/or the edge of driveways and alleyways.  
(Ord. 2007-24 §1, 11/19/07; Ord. 98-34 §2, 09/08/98; Ord. 93-24 §1, 10/18/93; Ord. 89-33 §4, 1989)

### **Section 8.08.040 Permit fee.**

1) Applicants for a sidewalk café shall pay a permit fee and a rental fee for the use of the public right-of-way.

2) The fee for the permit and the rental fee as described in Section 8.08.020 shall be as specified in Chapter 8.03. Fees are annual and shall be payable at time of permit issuance.  
(Ord. 2007-24 §2, 11/19/07; Ord. 89-33 §5, 1989)

### **Section 8.08.050 Permit application.**

1) Application for a permit to operate a sidewalk cafe shall be made at the Development Assistance Center on a form provided by the Building Official. Application for a permit will minimally contain:

- a) A completed application;
  - b) A scaled plan of the proposed public sidewalk area for sidewalk cafe use, with dimensions shown to include at a minimum:
    - total square foot area of café,
    - café entrance location and size,
    - ADA clearances into and throughout the café,
    - all clearances to fixtures, lights, tree wells, signs, news racks, bike racks, planters and any other obstructions,
    - size and location of tables and chairs,
    - location of outdoor café waste receptacles,
    - location and type of café delineation meeting City Standards,
    - cross section of any fence or other delineation showing the construction materials and height,
    - if applicable, details reflecting approved method of semi-permanent fence anchoring to the sidewalk or building; and
  - c) A certificate of insurance and endorsement form.
- 2) Information shall be provided as required by the Building Official to carry out the purpose hereof.  
(Ord. 2007-24 §3, 11/19/2007; Ord. 98-34 §2, 09/08/98; Ord. 89-33 §6, 1989)

### **Section 8.08.060 Notice required.**

Prior to rendering a decision, the Building Official shall mail abutting property owners and occupants notice that an application for a sidewalk cafe has been filed. The notice shall contain the diagram submitted by the applicant, state whether or not the business is licensed to serve alcoholic beverages which may be served and consumed at the sidewalk cafe, if the permit is granted, and state that all comments concerning the proposed sidewalk cafe must be received by the Development Assistance Center within ten (10) calendar days from the date of mailing the notice.  
(Ord. 98-34 §2, 09/08/98; Ord. 89-33 §7, 1989)

**Section 8.08.070 Location rules and review criteria.**

- 1) The Building Official shall review the application for its compliance with the following criteria:
    - a) The operation of a sidewalk cafe is limited to structures which are sited within 10 feet of a public sidewalk, and which are located in one of the following development districts: Central Business (CB); Central Business Fringe (CBF); Mixed Use Employment (MUE); Mixed Use Commercial (MUC), River Front (RF), Mixed Use Community Shopping (MUCS), Neighborhood Center (NC).
    - b) The operation of a sidewalk cafe shall be located such that there is at least six (6) feet from the outermost edge of the sidewalk cafe to the street curb, that also includes a minimum of four (4) feet of clear and unobstructed accessible route to a height of seven (7) feet measured vertically from grade, between the sidewalk cafe delineation and tree wells, tree limbs, bike racks, lamp posts, sign posts and any other fixtures or obstructions. Radiuses along an accessible route shall be no less than four (4) feet in width.
    - c) Additional restroom facilities may be required if the additional seating capacity created by a sidewalk cafe causes an increase in the required fixtures under Chapter 29 of the Oregon Structural Specialty Code.
    - d) The location of the sidewalk cafe operation shall be as approved by the Building Official.
    - e) Accessible routes into, throughout, and adjacent to a sidewalk café shall be maintained in accordance with Chapter 11 of the Oregon Structural Specialty Code.
    - f) The operation of a sidewalk cafe requires that trash containers be provided on site.
  - 2) The Building Official will forward all applications for review by the Police Chief or designee for any business who holds a valid liquor license, or in which alcoholic beverages are intended to be served.
    - a) The Police Chief or designee upon review of application will sign the application for concurrence with granting the license, or,
    - b) Submit a memorandum of concerns to be forwarded to City Council for consideration, signing the application in a location that acknowledges review of application.
- (Ord. 2007-24 §4, 11/19/07; Ord. 98-34 § 2, 08/17/98; Ord. 89-33 § 8, 1989)

**Section 8.08.080 Liability and insurance.**

A signed statement that the permittee shall hold harmless the City, its officers and employees, and shall indemnify the City, its officers and employees for any claims for damages to property or injury to persons which may occur in connection with an activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, and property damages insurance as will protect permittee and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than the amount of municipal tort liability under the Oregon Tort Claims Act. The permittee shall name the City of Corvallis as an additional insured by attaching an endorsement to the certificate of insurance (provided by the City). Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insured the City, its officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the expiration of the permit without 30 days written notice to the city.

(Ord. 98-34 §2, 09/08/98; Ord. 89-33 §9, 1989)

**Section 8.08.090 Forms and conditions of permit.**

The permit issued shall be in a form deemed suitable by the Building Official. In addition to naming the permittee and other information deemed appropriate, the permit shall contain the following minimum conditions.

- 1) Requirements for all sidewalk cafes:
  - a) Each permit issued shall terminate December 31st of the year in which issued.

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- b) The permit issued shall be personal to the permittee only and is not transferable in any manner. The permittee will be responsible for compliance with all conditions of approval.
  - c) The permit may be temporarily suspended by the Building Official if the public interest requires use of the right-of-way for a public event, construction, repair, or any other purpose.
  - d) The permit is specifically limited to the area approved or as modified by the Building Official, and will include a site plan as required by Section 8.08.050 indicating the area approved for the sidewalk cafe and the location of the tables and materials permitted to be in the right-of-way. Each business operating a sidewalk cafe is required to utilize an approved method in accordance with City Standards, to clearly delineate the café.
  - e) The operation of a sidewalk cafe shall be located such that there is at least six (6) feet from the outermost edge of the sidewalk cafe to the street curb, that also includes a minimum of four (4) feet of clear and unobstructed accessible route between the café delineation and tree wells, tree limbs, bike racks, lamp posts, sign posts and any other fixtures or obstructions, to a height of seven (7) feet measured vertically from grade. Radiuses along an accessible route shall be no less than four (4) feet in width.
  - f) The sidewalk and all things placed thereon shall at all times be maintained in a clean and orderly condition. Only those things authorized by the permit and shown on the site plan may be stored in the public right-of-way when the sidewalk cafe is not in operation. The operation of a sidewalk cafe requires that trash containers be provided on site.
  - g) All required building modifications or parking improvements shall be completed prior to the commencement of the operation of the sidewalk cafe.
  - h) No signs shall be attached to any furniture or any other structure related to the operation of the sidewalk cafe.
  - i) The permittee shall notify the Building Official in writing when operation of the sidewalk cafe commences.
  - j) No use of City fixtures will be allowed.
  - k) Sidewalk cafes shall not occupy or obstruct the Visual Clearance Triangle.
  - l) Council has the right to repeal or amend this Chapter and thereby terminate or modify all sidewalk cafe operations. No permittee shall obtain any property right in the continued private commercial use of the public sidewalk.
  - m) Sidewalk café hours of operation will discontinue by 11:00 pm on Sunday through Thursday and 1:00 am on Saturday and Sunday.
- 2) Businesses which intend to serve alcoholic beverages at the sidewalk cafe must additionally meet the following requirements:
- a) The business shall provide verification that they hold a valid Oregon Liquor Control Commission liquor license.
  - b) Storage of containers commonly used for dispensing alcoholic beverages to customers including but not limited to bottles, pitchers, and carafes must be kept inside the business unless an employee is stationed in the outside area at all times. No taps, kegs, coolers, or other alcoholic beverage storage devices are allowed outside on the sidewalk.
  - c) Sidewalk cafes where alcoholic beverages are served and consumed require supervision by employees of the licensed business, as required by the Oregon Liquor Control Commission liquor license.
  - d) Each business serving alcoholic beverages at the sidewalk cafe is required to utilize an approved method in accordance with City Standards, to clearly delineate the café.
  - e) All service and consumption of alcoholic beverages at sidewalk cafes will discontinue by 11:00 pm on Sunday through Thursday. All service and consumption of alcoholic beverages at sidewalk cafes will discontinue by 1:00 am on Saturday and Sunday.
  - f) All alcoholic beverage service providers must also provide food service in the licensed area.
  - g) Sidewalk cafes shall designate one access/exit point for the exterior service area and this point shall be located near a business entrance; and shall post signage at the access/exit point and enclosed area prohibiting the removal of alcoholic beverages from the licensed sidewalk cafe area.

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(Ord. 2007-24 §5, 11/19/2007; Ord. 98-36 §1, 09/08/1998; Ord. 98-34 §2, 09/08/1998; Ord. 93-24 §2, 10/18/93; Ord. 89-33 §10, 1989)  
(98-34, Amended, 09/08/1998; 98-36, Amended, 09/08/1998)

### **Section 8.08.100 Denial, revocation or suspension of permit.**

1) The Building Official may deny, revoke, or suspend the permit upon finding that any provision herein or condition of approval will be or has been violated.

2) Upon denial, revocation, or suspension the Building Official shall give notice of such action to the applicant or permittee in writing stating the action which has been taken and the reason therefor. The action shall be effective immediately, but the applicant or permittee may make written request, within 10 calendar days after the notice is issued, for a hearing by the Building Official. Upon hearing the matter, the Building Official shall render a final decision concerning the permit.

(Ord. 89-33 §11, 1989)

### **Section 8.08.110 Consumption of alcoholic beverages.**

The provisions of Section 5.03.040.010.06 notwithstanding, patrons, while seated at a sidewalk cafe licensed to sell alcoholic beverages, may possess and consume such beverages.

(Ord. 98-34 §2, 09/08/98; Ord. 93-24 §3, 10/18/93; Ord. 92-27 §2, 1992)

### **Section 8.08.120 Penalties.**

In addition to the remedies set out below, violations of the provisions of this section may be subject to other appropriate legal or equitable actions to restrain, correct, or abate the violations. These remedies are intended to be cumulative and not exclusive. The following violations are infractions punishable by a penalty in accordance with this section. Any violation of this section may be prosecuted as a Class A infraction under the procedures of ORS Chapter 153 and Corvallis Municipal Code Section 1.01.120. The City Manager or person designated by the City Manager is authorized to issue a citation or written notice of violation to any person violating the provisions herein. In addition:

1) Any sidewalk cafe operating without a valid permit for the year shall be notified by the City that it is in violation of this section, and will be allowed up to ten business days to file an application. If no application is filed within 10-days, the operator of the cafe shall be notified and a civil penalty of \$500 per day shall be levied.

2) Any sidewalk cafe operating with a valid license, but found by the City to have a substantiated instance of failing to be in compliance with any other provision of this section of the Corvallis Municipal Code shall be given up to two written notices per year, warning that it is operating out of compliance and in violation of this section. On the third investigated and substantiated instance of non-compliance, notice of the non-compliance may be delivered and penalties may be levied as follows:

a) first levy (third substantiated violation) \$500;

b) second levy (fourth substantiated violation) \$1,000;

c) third levy (fifth substantiated violation) \$1,500.

d) Penalties shall continue to accrue in \$500 increments for each additional substantiated violation.

3) In accordance with Section 8.08.100, the Building Official may deny, revoke, or suspend the permit upon finding more than three separate instances of substantiated violations that result in fines.

4) Levies of civil penalties and revocations of permits may be appealed to the municipal court judge within ten days of date written notice of the levy of penalty or revocation is deposited in the United States Mail with first class postage addressed to the café or delivered to an employee of the café or posted at the café. If no appeal is filed within ten days of the notice, the levy of penalty shall be final and failure to pay the levy shall be a separate violation of this section.

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5) Any appeal must be in writing, signed by the owner or operator of the café, and must state the grounds for the appeal. The appeal must be accompanied by a deposit in the amount of the levy and an appeal fee of \$50. The appeal must be filed with the municipal court. The appeal must be served upon the City Attorney. Failure to comply with any of these requirements within ten days of the date of notice shall result in a dismissal of the appeal, a forfeiture of the appeal fee, and entry of judgment in the amount of the levy by the municipal court in its register.

6) Rules of conduct for hearing and final order. The Municipal Judge shall develop any rules, procedures or regulations that may be necessary for the proper conduct of the appeal. The only issue to be decided by the Municipal Judge is a determination of whether or not the café was in violation of CMC 8.08.120(1) or (2) as alleged in the notice of penalty. If the Municipal Judge finds that it is more likely than not that the café was in violation as specified in the notice of penalty, the Municipal Judge shall issue an order affirming the levy of penalty and enter a judgment for the amount of the levy of penalty into the register of the Municipal Court. The order and judgment shall contain a provision for court costs to be paid by the violator in the amount of \$250. If the Judge finds that it is more likely than not that the café was in compliance and not in violation as specified in the notice of penalty, the Judge shall void the notice of penalty. The Judge's order is final and is not subject to appeal. It shall not be a defense that the café owner or operator did not receive notice of the penalty if mailed to the address of the café or delivered to an employee of the café. It shall not be a defense that the café owner or operator was not aware of the permit requirements. The Judge may not reduce or suspend any portion of the amount of the levy of penalty if the Judge finds that it is more likely than not that the café was in violation as specified in the notice of penalty.

7) Failure to pay levy of penalty. Unless the full amount of the levy of penalty is paid within ten days after notice of penalty or the order becomes final by operation of law, or after appeal, each day that the penalty is not paid shall constitute a further violation.  
(Ord. 2007-24 §6, 11/19/2007; Ord. 89-33 §12, 1989)

**Section 8.03.300.070 Special fees.**

The following fees are applicable to specific events or situations:

- 1) Concrete Finisher Prequalification - \$25.00 (licensed under Section 2.15.080).
  - 2) Appeals:
    - a) Board of Appeals [Section 9.01.090, 9.02.110 and 7.08.020] - \$50.00;
  - 3) Structure relocation permit [Section 9.01.110] - \$100.00;
  - 4) Street cut [Section 2.03.040]:
    - a) Local or residential street - \$50.00,
    - b) Arterial or collector street - \$100.00;
  - 5) Permit to occupy public right-of-way [Section 6.02.010] - \$25.00;
  - 6) Sidewalk cafe permit [Section 8.08.020]:
    - a) Annual application fee - \$100.00;
    - b) Annual rent for the use of the public right-of-way for private use - \$1 per square foot in excess of 100 square feet of publicly owned sidewalk used for the café; where the café uses 100 total square feet or less there is no rental fee.
  - 7) Parking lot construction permit [Ordinance 93-20, Section 4.1.40] - \$.04/sq. ft.; min. fee \$50.00; max. fee \$500.00;
  - 8) Curb cut permit [Section 2.15.070]:
    - a) Single-family dwelling - \$75.00,
    - b) Multi-family, commercial, or industrial - \$150.00;
  - 9) Sidewalk construction permit [Section 2.15.070]:
    - a) New sidewalk - \$25.00,
    - b) Repair/replacement - \$10.00;
  - 10) Application for street name or address change [Council Policy CP 91-9.05] - \$50.00 minimum, \$1.00 for each additional lot in excess of 18;
  - 11) License to occupy the public right-of-way - \$100.00.
- (Ord. 2007-25 §1, 11/19/2007; Ord. 2002 §10, 07/15/2002; Ord. 98-34 §1, 09/08/1998)