

ORDINANCE NO. 29, 4th SERIES

AN ORDINANCE OF THE CITY OF EAST GRAND FORKS, MINNESOTA, AMENDING CITY CODE CHAPTER 96 ENTITLED "STREET AND SIDEWALKS" BY ADDING SECTION 96.19 AND BY ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 10.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS.

THE CITY OF EAST GRAND FORKS ORDAINS:

Section 1. That Section 96.19 of the City Code is adopted and added to the city code to read as follows, to-wit:

96.19 SIDEWALK CAFÉS

(A) *Purpose.* The purpose of this section is to maintain aesthetically pleasing, accessible and vibrant sidewalks, and, through responsible encroachment practices, to balance the needs of citizens to use sidewalks with opportunities for businesses. It is further intended to assist with the enhancement of economic vitality of the city and to encourage the safe and orderly use of public property within the city. This chapter pertains specifically to the use of sidewalks by adjacent businesses for outdoor seating, merchandising, beautification, and related purposes and does not remove from the city its authority to regulate other sorts of encroachments on the public right of way.

(B) *Definitions.*

- 1 *Encroachment.* Any private or public temporary or long-term use of a sidewalk for purposes other than movement of pedestrians and other ambulatory citizens or other use by the City of East Grand Forks in conducting its business.
2. *Obstruction.*
 - a. *Public Obstruction/Improvement.* Any publicly owned utility or structure located on the sidewalk, to include fire hydrants, streetlights and their bases, signposts, trees, tree and garden plots, tree grates, bike racks, newspaper boxes and street furniture.
 - b. *Private obstruction—Amenities.* Any privately owned amenities placed on the sidewalk to enhance the convenience, charm, and character of a business, to include planters, chairs, benches, tables and/or other decorative items. Does not require a permit.
 - c. *Private obstruction—Outdoor seating.* Seating outside of an established place of business for the purpose of consuming food and/or beverages.
 - d. *Private obstruction—Outdoor merchandising.* Businesses conducting retail sales on the sidewalk immediately adjacent to their business.
3. *Pedestrian walk-through zone.* Is defined as an area for pedestrian traffic that is no less than forty-eight (48) inches wide and is not obstructed by trees, tree grates that do not meet federal accessibility guidelines, streetlight poles, traffic signals, traffic signal control cabinets, bicycle racks, new racks, benches, and bus shelters, and other public uses of the sidewalk.
4. *Permittee.* The person or entity that receives a permit to encroach under the terms of this chapter.
5. *Sidewalk.* Any public walkway or pedestrian corridor within the central business district.

(C) License/Permit Required:

1. Any establishment in the city which is licensed by the Minnesota Department of Health to sell food for consumption on designated premises may apply to the city council for a special license to conduct a portion of such licensed business in a sidewalk café on a part of the public way immediately adjoining the licensed premises which would then be referred to as a sidewalk café.

2. It shall be the duty of the licensed establishment to maintain the sidewalk café furnishings such as chairs, tables, fencing, barricades, planters, or plant tubs and their plantings always in a neat, clean, safe, and sanitary condition at its proper location and to inspect each item periodically in order that it may be properly maintained and located in accordance with the approved site plan.

3. Issuance of a license/permit shall not be construed as authorizing any permanent installation to be placed in the public right-of-way.

4. Permits shall be effective for the period between January 1 and December 31 of the year in which it is issued and is subject to annual renewal.

(D) Permit Procedure

1. An applicant shall file an application with the city on forms provided by the Administration Office.

2. Application fee shall be \$100.00.

3. All initial applications for encroachment must contain the following information:

a. Name, street address and phone number of applicants.

b. Street address of the property where the encroachment is requested.

c. Length of time requested for the encroachment.

d. Name and street address of property owner if property owner is not applicant.

4. No license/permit shall be authorized until the applicant has filed with the Administration Office evidence of insurance insuring the applicant against liability imposed by law arising out the ownership, maintenance, or operation of such sidewalk café.

5. Insurance will need to be maintained and filed yearly with the Administration Office. The insurance policy must name the City of East Grand Forks as one of the insured to the extent of at least five hundred thousand dollars (\$500,000.00) bodily injury and one hundred thousand dollars (\$100,000.00) property damage, which shall be in effect during the term of this authorization. The permit application must also include a signed hold harmless agreement that specifies that the permittee will defend, indemnify, and hold the city harmless for any loss, injuries, damage, claims or lawsuit, including attorney's fees that arise from the encroachment.

6. No license/permit issued shall be valid at any time the insurance required is not maintained and evidence of its continuance filed with the Administration Office.

7. The licensee/permit holder shall indemnify and hold harmless the city from any loss, costs, damages, and expenses arising out of the use, design, operation, or maintenance of the sidewalk café.

8. Incomplete applications will not be accepted.

(E) Requirement to Submit a Site Plan for the Sidewalk Café

1. The site plan shall be submitted with the application for the Sidewalk Café permit. The site plan, drawn to scale and dimensioned, must include the entire area between the curb and the building and show the following:

- a. A scaled diagram including the dimension of the sidewalk café area and layout for the sidewalk café furnishings (tables, chairs, plant tubs, planters, umbrellas, heating units, and fencing or barricades)
- b. Curb-line, street, and signal lighting, street signs, parking meters, hydrants.
- c. Public utilities.
- d. Trees, planter boxes, and any other landscaping.
- e. Bike racks, paper boxes, trash boxes, kiosk.
- f. Any other obstacle or structures occupying space on the sidewalk.
- g. In the case of establishments holding licenses for on-sale liquor, this diagram will be considered *an expansion of the previously designated premises for the sale of liquor*.

(F) Sidewalk Café Standards/Restrictions

1. The following restrictions shall apply, provided, however that the city staff may without adverse hearing procedures impose additional reasonable restrictions or withdraw approval upon the operation of any sidewalk café where necessary in the judgment of the city staff to protect the public health, safety, or welfare or to prevent a nuisance from developing or continuing:

- a. All sidewalk cafes must abut and be operated as part of the food service establishment operated by the applicant and shall have delineated limits separating the sidewalk café from the travelled portion of the sidewalk. Sidewalk cafes serving liquor must have a visual appealing and continuous barrier made of fencing or planters surrounding the entire sidewalk café area, which must be compact and contiguous with the enclosed portion of the licensed premises.
- b. Sidewalk Café must be in an area which is physically delineated.
- c. The location of the sidewalk café shall be selected to minimize interference with pedestrian traffic.
- d. Emergency exiting for the building shall not be obstructed.
- e. A minimum width of forty-eight (48) inches of clear, unobstructed pedestrian walk-through zone, shall be always maintained on the public sidewalk and the clear sidewalk area does not have a cross slope that exceeds 2%.
- f. No sale or service shall be permitted in any portion of the street designated for vehicular travel.
- g. Issuance of a license/permit shall not be construed as authorizing any permanent installation to be placed in the public right-of-way.

h. No food or alcoholic beverages are all allowed to be consumed or sold for any consumption on the permitted area between the hours of 1:00 a.m. and 8:00am of any day.

i. The City Council may further restrict the hours of operation of a sidewalk café based upon the proximity to residential dwellings units, and upon considerations relating to the safety, repose, and welfare of residents, businesses, and other uses near the establishment.

j. Except as provided herein, the ownership, operation, and maintenance of a sidewalk café shall be subject to all applicable laws, ordinances, and regulations.

k. No licensee shall expand a sidewalk café without first obtaining an amended sidewalk café license covering the additional space.

l. No sidewalk café permit can be transferred to new ownership. If at any time ownership of the business changes, the current license/permit becomes void and the new owner must apply for a new sidewalk café license/permit immediately.

m. The city shall retain the right to remove or cause to be removed any tables, chairs, furnishings, planters, fences, or other obstructions from the sidewalk or public right-of-way as necessary to access public utilities and facilities or if the city reasonably determines any such item or items create an unreasonable risk to public health or safety. The city shall endeavor to give reasonable advance notice to the licensee that items need to be removed or relocated.

(G) Suspension and Revocation

1. Any sidewalk café license/permit may be revoked at any time by the City Council when it appears that adequate grounds exist to include but not limited to the following:

a. Changing conditions of pedestrian or vehicular traffic necessitate the removal of the outdoor seating or merchandising encroachment.

Proposed public improvements necessitate the removal of the outdoor seating or merchandising encroachment.

b. Such other reasonable cause as determined by the city to prevent or eliminate hazard to the public health, safety, and welfare.

c. Upon the conviction of the licensee/permittee, agent, or employee for the violation of any city ordinance or state law in connections with the ownership, maintenance, or operation of such sidewalk café, the permit therefor shall automatically become suspended, which suspension shall continue until the council has acted thereon.

d. The City Council may suspend, revoke, or deny renewal of any sidewalk café license/permit upon the violation of any license condition or any provision or condition of any city ordinance, or of any state or federal law. Before the Council shall suspend or revoke any license/permit, the licensee shall be given at least 10-day notice stating the time and place of the hearing and the charges against the licensee.

e. Any such license/permit may be suspended by the City Council for such period as the Council shall determine.

(H) Permit renewal—Application required.

1. The initial application and plan are subject to review by the City Council and the initial application fee of one hundred dollars (\$100.00). Each renewal application fee shall be twenty-five dollars (\$25.00) payable to the city planning department upon submission.
2. Any business requesting renewal of an outdoor seating permit shall complete the application renewal checklist. Plans must be consistent with the original outdoor seating plan and shall be subject to administrative approval by the city staff.
3. If it is determined by the city staff that a substantial change has been made to the original plan a new application shall be required for a \$100.00
4. Denial of an applicant's renewal request by the city staff may be appealed to the city council.

(I) Duty to maintain. Permittee agrees to operate and maintain outdoor seating encroachment in a safe, secure, and sanitary manner, and in full compliance with the provisions of this ordinance and any conditions of approval set by the downtown design review board.

(J) Application fees.

1. No fee shall be charged for processing applications for encroachments that will be limited to four (4) days or less in a calendar year.
2. No refund shall be made where a permit is revoked or suspended for any reason.

(K) Enforcement procedures.

1. If the City finds that any provision of this section is being, or has been, violated or that any condition of approval of a permit issued pursuant to this section has not been met, the city clerk shall be notified. In such an event upon a finding of probable cause, issue a notice of violation to the violating permittee, applicant, or owner.

2. If the city community development director determines that the condition of the site causes danger to the health, safety, or welfare of the public, city personnel may enter upon the site to remedy the dangerous condition without notice to the responsible party or landowner, and the permittee shall be liable for all costs of removal and disposal of said encroachment and neither the city community development director, city personnel nor the city shall incur any liability for damages associated with removal of the encroachment.

(L) Authorized remedies and penalties for violations.

1. No fine shall be assessed for a violation of this section or a violation of a condition of approval that is remedied within twenty-four (24) hours after issuance of a notice of violation, provided that no notice of violation has been issued to the permittee within the prior twelve-month period. A fine of one hundred dollars (\$100.00) per day until remediation shall be assessed for any violation that continues after the twenty-four-hour remediation period, or for any violation where a notice of violation has been issued to the permittee in the prior twelve-month period. Each enumerated item of noncompliance shall be separate violation, and each day the violation continues shall be a separate violation. In addition, the city may seek one or more of the following remedies:
 - a. Removal of the encroachment at the expense of the permittee, with the permittee liable for all costs of removal and disposal of said encroachment and no liability on the part of the city for damages associated with removal of the encroachment.

b. A temporary restraining order, preliminary injunction, or permanent injunction to restrain a person from violating the provisions of this chapter or a condition of approval, requirement or commitment imposed or made thereunder.

c. An injunction directing a person to perform a condition, requirement or condition imposed or made under this ordinance or to remove a structure erected in violation of this ordinance.

d. Suspend and withhold other approvals, certificates and/or permits relevant to use of the site on which the violation has occurred.

2. The remedies provided for in these regulations shall be cumulative, and not exclusive, and shall be in addition to any other remedies provided by law.

Section 2. City Code Chapter 1 entitled "Definitions and General Provisions Applicable to Entire City Code Including Penalty for Violation" and Section 10.99 entitled "Violation a Misdemeanor" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 3. This ordinance shall take effect and be in force from and after its passage and publication and be given the Number 29, 4th Series.

Voting Aye: Olstad, DeMers, Larson, Vetter, Helms, Riopelle, and Johnson.

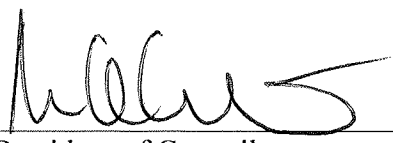
Voting Nay: None.

Absent: None.

ATTEST:

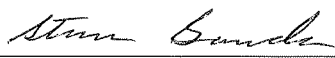


City Administrator



President of Council

I hereby approve the foregoing Ordinance this 20th day of July, 2021.



Steven Gander
Mayor