

CHAPTER 74 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
ARTICLE VI. OUTDOOR DINING

Sec. 74-171. Purpose.

The Outdoor Dining regulations, as established in this article, are designed to allow Outdoor Dining on public property in locations where they are determined to be appropriate by the city manager or designee, and to promote and protect the public health, safety, and general welfare of the community.

Sec. 74-172. Definitions.

Designee means a person selected or designated to carry out the duty or role of the city clerk or the city manager if they are unavailable.

Outdoor Dining means a Restaurant that provides their food and beverages in open air on a city Sidewalk, Street, or other city property. This definition does not pertain to Food Trucks.

Permit means a city Outdoor Dining Permit issued by the city clerk or designee, based on approval by the city manager or designee, which conforms to the procedures and regulations of this article.

Restaurant means an establishment which sells food and beverages, non-alcoholic and/or alcoholic, for immediate on-premise consumption. A Restaurant not serving alcohol provides sit-down full-service licensed by Wayne or Oakland County. A Restaurant serving alcohol provides sit-down full-service that is also licensed by the Michigan Liquor Control Commission (MLCC).

Sidewalk means a paved or covered walkway which is a dedicated public right-of-way or easement improved and intended for pedestrian use.

Site furnishing means furniture, fixtures, or other equipment located within the Outdoor Restaurant Area. This includes chairs, tables, railings, planters, lighting, umbrellas or other overhead covers, and other furnishings. All of these items must be readily removable and not fixed to a surface.

Street means a city road or street surface area or right-of-way.

Sec. 74-173. Permit procedures.

- (a) The city clerk or designee is authorized to issue a Permit to operate Outdoor Dining on public property provided that the applicant has complied with the standards set forth in this article.
- (b) An Outdoor Dining application shall be designed by the city clerk and approved by the city manager or designee that provides guidelines and requirements for an applicant to operate Outdoor Dining. The city manager may amend the application if a change is required that does not impede or contradict the enforcement of the current Ordinance.
- (c) Permit applications for establishments operating on public Sidewalks, Streets or public property shall be reviewed by city administration and approved by the city manager or designee. The city manager or designee reserves the right to forward a Permit application to the city council for its review and consideration. Outdoor Dining establishments serving alcohol require approval by the MLCC. No Permit shall be issued to a Restaurant serving alcohol until such license or permit, as required by the MLCC, has been approved and the local approval resolution has been approved by the Liquor License Review Committee (LLRC) and city council. The city clerk or designee shall be permitted to issue a Permit prior to the Restaurant receiving approval from the MLCC to allow the Restaurant to serve food and non-alcoholic drinks with the city manager or designee approval.

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- (d) Any person or establishment issued a Permit by the city clerk or designee to operate an Outdoor Dining establishment on public sidewalks or public property shall pay to the city treasurer a fee in the amount as established by resolution of the city council. The city clerk or designee shall not issue a Permit unless the fees required by this section are paid.
 - (e) Existing establishment signage shall comply with the city sign ordinance before an Outdoor Dining Permit will be granted.
 - (f) Each Permit application shall be accompanied by a policy or certificate of insurance, in an amount acceptable to the city, including workers compensation, naming the city as an additional insured. Establishments serving alcohol shall also provide a liquor liability policy or certificate of insurance naming the city as an additional insured. A company authorized to do business in the state shall issue such insurance. Required insurance amounts shall be set from time to time by resolution of the city council. The policy or certificate shall contain a clause requiring the insuring company to give ten days written notice to the city clerk or designee prior to canceling the policy.
 - (g) The insurance certificate required by this article shall be in effect for any period during which the sidewalk is in operation. Failure to provide a current insurance certificate shall be cause for denial, suspension, or revocation of the sidewalk permit. No establishment shall operate without filing proof of proper insurance. Denied, suspended, or revoked permits may be re-instated upon submittal of proof of proper insurance.
 - (h) Site development and application approval.
 - (1) No outdoor service of food and/or beverages in the form of an outdoor dining establishment shall be established on public property, except in conformance with a site development plan reviewed by city administration-and approved by the city manager or designee as required by this article.
 - (2) An application for a Permit for site development plan approval shall be submitted to the city clerk or designee. The application shall include, but shall not be limited to the following:
 - a. Name of the applicant and business.
 - b. Address of the business.
 - c. Address of the applicant.
 - d. Telephone number of the applicant and business.
 - e. Name of the property owner if other than applicant.
 - f. Address of the property owner if other than applicant.
 - g. Telephone number of the property owner if other than applicant.
 - h. Name of planner, engineer, architect or agent, if applicable.
 - i. Proposed dates of occupancy.
 - j. Proposed hours of occupancy.
 - k. Proposed number of tables, chairs, railings, posts, table umbrellas or other items.
 - l. Proposed color, design, materials, and workmanship of tables, chairs, railings, posts, table umbrellas or other items.
 - m. Proposed area of occupancy including square feet and dimensions.
 - n. Whether alcohol will be served.

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- o. Whether dance and/or entertainment will be on-premises. The applicant shall complete an additional application for a dance/entertainment license with the city if this is the case and pay any fees associated with this license as outlined under the city code.
 - p. Copy of certificate of insurance.
 - q. Whether Permit application is a new application or renewal; if renewal, the applicant shall describe any changes from the previous application.
 - r. Written authorization from the owner of the property shall be required when the applicant applying for the Permit is not the owner of the property.
- (3) The site development plan and the accompanying application shall show the following:
- a. The applicant's entire property and adjacent properties on a location map with streets for a distance of at least 25 feet at a scale showing detail sufficient for proper review. The site plan shall be submitted on a sheet no smaller than 8½ inches × 11 inches and no larger than 11 inches × 17 inches. Site plans smaller or larger than the sizes prescribed by this article shall not be accepted.
 - b. A detailed plan showing the design, relevant details, and location of all temporary Site Furnishings, shall accompany the site development plan and Permit application.
 - c. Propane heaters and propane fire pits shall only be used in the permitted area and must be monitored during hours of operation. They must be approved by the Fire Chief.
- (4) The city clerk or designee shall distribute copies of the site development plan and Permit application to city administration for review and comments in relation to compliance with this article and all other city ordinances.
- (g) Conditions specific to the operation of a business may be incorporated into the permit as required by city administration.
 - (h) City administration, using historic district standards, shall review permit applications for establishments within the historic district. Appeals shall be made to the historic district commission.
 - (i) Based upon review comments from city administration, the city manager or designee may approve, approve with conditions, refer the application back to the applicant for modification, deny the application, or refer the application to the city council. If approved, the city manager or designee shall authorize the city clerk or designee to issue a Permit.
 - (j) If the city manager or designee denies the application for a Permit, the reason for this determination will be stated in a letter to the applicant. The applicant may appeal the decision in accordance with section 74-178 of this article.
 - (k) In addition to any fees required by this article, establishments applying for any license or permit issued by the MLCC shall be required to pay a non-refundable liquor licensing permit fee to the city in an amount as established by resolution of the city council.

Sec. 74-174. Duration.

- (a) All Permits shall be issued on an annual basis and shall expire on April 30th. Unless another time frame is specified in the permit, or by the requirements of this article, the permit shall allow the operation of Outdoor Dining from May 1st to November 1st of the calendar year for which the Permit is issued with the exceptions noted below. During this time period, Outdoor Dining may take place on the public Sidewalks or on the adjacent Street when the Streets are closed to vehicular traffic or within an enclosed on-street parking location. The location on the Street will be described in the Permit issued by the city clerk or designee. All Permits shall be reapplied for annually (section 74-180).

(1) Exceptions:

To allow establishments to take advantage of good weather, operation of an Outdoor Dining area is permitted prior to May 1st and/or after November 1st on a day-by-day basis subject to restrictions:

- a. Outdoor Dining will take place on the permitted area of the Sidewalk only.
- b. No Outdoor Dining will be allowed in the Street during this time unless part of an approved Special Event Application.
- c. The establishment has been issued a Permit for the current calendar year.
- d. The operation of an Outdoor Dining area shall not interfere with the set up or operation of any special event.
- e. All Site Furnishings associated with the operation of an Outdoor Dining establishment shall be maintained and easily removed, if necessary, each night.
- f. During periods of snow accumulation, the placement of Site Furnishings associated with the operation of a Restaurant shall be placed in a manner that allows no less than 60 inches of cleared sidewalk for pedestrian use.
- g. If the establishment sells alcohol, the Outdoor Dining area must comply with all local and MLCC rules year-round.

Sec. 74-175. Standards.

- (a) There shall be a minimum of 60 inches, exclusive of the area occupied by the Outdoor Dining establishment designed to allow adequate pedestrian movement. Outdoor Dining shall only be permitted where it is determined that the use will not create a hazard, nor impede pedestrian traffic. The city manager or designee shall determine when a hazardous condition exists in the public right-of-way.
 - (b) Outdoor Dining may only be located immediately adjacent to the establishment with which the applicant is associated. If the applicant wishes to extend their outdoor seating beyond the area in front of their building, a written letter of support from the adjacent property owner(s) and business owners are recommended.
 - (c) Outdoor Dining areas must remain clear of litter, food scraps, and soiled dishes at all times.
 - (d) Employees of the establishment shall continuously supervise Outdoor Dining areas serving alcoholic beverages.
 - (e) Barriers such as a planter or railing shall be installed to delineate the perimeter of an Outdoor Dining area serving alcoholic beverages. All barriers used for Outdoor Dining serving liquor shall also conform MLCC regulations.
 - (f) Site Furnishings for Outdoor Dining shall consist solely of readily removable items- Site Furnishings are prohibited from being attached or anchored to Sidewalks and Streets.
 - (g) No structure or enclosure to accommodate the storage of accumulated garbage, i.e. shed, may be erected or placed adjacent to or near the Outdoor Dining area located on public property. Each establishment shall be responsible for providing appropriate containers for disposing of garbage or waste and employees shall not use city trash containers for disposing of garbage or waste.
 - (h) Outdoor Dining shall not interfere with any public service facility, such as a planter, mailbox, or bench located on a Sidewalk or public property.
 - (i) Operation of an Outdoor Dining establishment shall not adversely impact adjacent or nearby residential, religious, educational, or commercial properties and shall be in accordance with all applicable codes and regulations.
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- (j) Site Furnishings provided by the Restaurant offering Outdoor Dining shall be of quality design, materials, and workmanship both to ensure the safety and convenience of users and to enhance the visual and aesthetic quality of the area. Such equipment shall be routinely cleaned, painted, or replaced and may be inspected by the city manager or designee.
 - (k) Outdoor Dining cannot be used as an area for any storage.
 - (l) Outdoor Dining must comply with Americans with Disabilities Act (ADA) and the applicable sections of Chapter 11 of the most recent adopted version of the Michigan Building Code pertaining to outdoor seating and accessibility.

Sec. 74-176. Operating restrictions.

- (a) All Outdoor Dining establishments where alcoholic beverages are served shall be allowed to operate during the hours of 10:00 a.m. until 1:00 a.m., Monday through Saturday (Saturday defined as 1:00 a.m. Sunday morning), and Sunday during the hours of 10:00 a.m. until 10:00 p.m. Monday through Saturday sales and service shall cease by 12:30 a.m. and all areas shall be vacated by 1:00 a.m. Sunday sales and service shall cease by 9:30 p.m. and all areas shall be vacated by 10:00 p.m.
- (b) The consumption of alcoholic beverages at an Outdoor Dining establishment within the confines of the permitted area shall not be construed as a violation of any ordinance controlling open containers in a public area. The operator of the Restaurant shall take all necessary action to procure the appropriate license or permit from the MLCC to serve alcoholic beverages in the Restaurant and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in the state.
- (c) All food to be served at an Outdoor Dining establishment shall be prepared within the existing establishment unless approved by the city council as part of a special event application request.
- (d) The Outdoor Dining establishment shall not serve food or beverages to a patron unless that patron is seated at a table or standing at a high top.
- (e) The Permit issued in accordance with this article shall be prominently displayed within the existing establishment along with other required permits and licenses.
- (f) Site Furnishings shall be removed by November 1 and shall not be stored on site. It shall be the responsibility of the establishment to secure adequate off-site storage of these items.
- (g) The maintenance of an Outdoor Dining area shall be the responsibility of the establishment including, but not limited to, surface treatment and cleaning, litter control, sweeping, and snow and ice removal. The Sidewalk and public property shall be kept neat and clean at all times and free from any substance that may cause damage to the Sidewalk or public property or cause pedestrian injury.
- (h) Advertising on table umbrellas or railings is prohibited.
- (i) Noise ordinance must be adhered to with regards to dance and/or entertainment on-premises where applicable.

Sec. 74-177. Denial, revocation and suspension—Causes enumerated.

The issuance of permits applied for under this article or any other ordinance of the city may be denied by the city manager or designee, and permits issued may be revoked or suspended by the city manager or designee at any time, for any of the following causes:

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- (1) Fraud, misrepresentation or any false statement made in the permit application.
 - (2) Fraud, misrepresentation or any false statement made in the operation of the sidewalk cafe or outdoor seating.
 - (3) Any violation of this article or any other ordinance of the city.
 - (4) Any violation received during the previous permit period.
 - (5) Conducting a business in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to the health, morals, safety or welfare of the public.
 - (6) Failure or inability of an applicant to meet and satisfy the requirements and provisions of this article and every other ordinance of the city.

Sec. 74-178. Same—Hearing demand; review; council powers.

Any person whose permit is revoked or suspended, or any person whose application for a Permit is denied, shall have the right to a hearing before the city council, provided a written request therefore is filed with the city clerk within ten days following the delivery or mailing of the notice of revocation or suspension, or within ten days following the denial of the permit application. No person shall operate an Outdoor Dining establishment during any time when the Permit therefore has been suspended, revoked, or canceled.

Sec. 74-179. Revocation or suspension; notice required; service.

Written notice of suspension or revocation, stating the causes therefore, shall be delivered to the permittee personally or mailed to the address as shown in the permit application. Upon revocation of a license, all furnishings and fixtures shall be removed from public property within 24 hours.

Sec. 74-180. Renewal considered as original application.

Unless otherwise provided in this article, an application for renewal of a Permit shall be considered in the same manner as an original application.

Sec. 74-181. Transferal.

No permit issued under the provisions of this article or any other ordinance of the city shall be transferable.

Sec. 74-182. Violations.

- (a) Any person who operates an Outdoor Dining establishment public sidewalks or public property, without a Permit, or who shall violate any of the provisions of this article shall be responsible for a municipal civil infraction, punishable by a civil fine of not more than \$500.00 and the costs of prosecution.

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- (b) City council may establish the amount of a civil fine for a municipal civil infraction that may be paid at the city violations bureau for violations of this article, except that all violations alleging operating without a permit and other violations in excess of three in any calendar year may be handled by the district court.
 - (c) The city may suspend or revoke any permit issued, or deny the issuance of a permit as provided in section 74-179 regardless of whether the operator has been cited, paid a civil fine, or been found responsible for a violation of this article pursuant to this section.

Sec. 74-183. Severability.

If any clause, sentence, paragraph or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy and in which such judgment shall have been rendered.