

ORDINANCE NO. 22-10

ORDINANCE AMENDING SECTION 176.52 OF THE MARION CODE OF ORDINANCES REGARDING USE STANDARDS ASSOCIATED WITH SIDEWALK CAFES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARION, IOWA:

Section 1: That Chapter 176, Section 176 .52 of The Marion City Code of Ordinances is amended by adding the following subsection:

F. Sidewalk Cafes. Sidewalk Cafes shall comply with the following standards:

(a) Definitions

- i. "Sidewalk cafe" shall mean a group of tables, chairs, barriers or partitions, and trash receptacles maintained upon part of the public right-of-way next to a storefront used by an establishment with a valid food and drink permit for the sale to the public of food, refreshments and/or beverages of all kinds.
- ii. "Regular Season" shall mean the period of time from March 1st through December 1st of any year.

(b) Authorization.

- i. A sidewalk cafe in public right of way may be operated only as set forth in this Code of Ordinances.
- ii. A sidewalk cafe in the public right-of way may be allowed only where permitted by Chapter 176 of this Code of Ordinances.
- iii. The sidewalk cafe area must be contiguous with a side of a building wherein a restaurant, retail business, and/or food service establishment is located.
- iv. Only restaurants, bars, or other businesses where a majority of the business is the sale or dispensing of food or drink may request permission to operate a sidewalk cafe.

(c) Permit and Fee.

- i. No establishment owner shall operate a sidewalk cafe in the public right of way without a permit therefor. The restaurant owner shall file an application with the City Manager on a form provided by the City Manager. The owner shall agree to abide by all state and local laws governing use of the public right of way and with any Ordinances or policies, including the Outdoor Dining Design Guidelines Manual relating to sidewalk cafes. City Council may approve a deviation from the Outdoor Dining Design Guidelines Manual with both a showing of good cause for said deviation and said deviation does not cause substantial interference with the use of the sidewalk as a pedestrian right of way. The application for a new permit shall include the location of all trees, poles, benches, grating and other amenities or obstructions in the right of way, and the location of any proposed furniture or equipment. The application shall be accompanied by a photograph or detailed renderings of the sidewalk cafe area and all proposed tables, chairs, barriers or other furniture or equipment. The applicant shall pay a fee established by the City Manager or adopted by resolution of City Council. The permit shall be for one 12-month period from the date of issuance of the permit

and shall allow for continuous use of the sidewalk cafe area during the regular season and daily use as weather permits during all other times.

ii. The City Manager may revoke a sidewalk cafe permit upon written notice to the restaurant owner for a violation of the conditions of the permit and after a reasonable opportunity for the restaurant owner to remedy the violation has expired. Grounds for termination of the permit include, but are not limited to: 1) a violation of state liquor control laws; 2) a violation of this code including this article; or 3) the creation of a safety hazard, health hazard or public nuisance. The city manager may also terminate the permit if the city manager determines there is a substantial and reasonable need for use of the public right of way where the sidewalk cafe area is located for a valid public purpose.

iii. The restaurant owner shall provide a certificate of insurance with coverage satisfactory to the city manager and shall agree to hold the city, its officers and employees harmless from and against any and all claims of any kind arising out of the use of the public right of way

(d) Designated Area

- i. Allowing For Pedestrian Use: A sidewalk cafe area located on 7th Avenue shall not extend onto the sidewalk in a manner that will not allow a minimum of six feet (6) of unobstructed sidewalk adjacent to the street for pedestrian use. All other sidewalk cafes shall not extend onto the sidewalk in a manner that will not allow a minimum of five feet (5') of unobstructed sidewalk adjacent to the street for pedestrian use.
- ii. Obstructing Street Corners: No tables and chairs shall be placed in street corner areas defined by building lines extended to the street.
- iii. Delineation: The sidewalk cafe area shall be delineated by a suitable method which shall be clearly visible to pedestrians and shall be in conformance with the most current Outdoor Dining Design Guidelines Manual. City Council may approve a deviation from the Outdoor Dining Design Guidelines Manual with both a showing of good cause for said deviation and said deviation does not cause substantial interference with the use of the sidewalk as a pedestrian right of way.
- iv. Tables And Chairs Secured: During the regular season, any table, chairs, and other items that are used outdoors shall be secured within the sidewalk cafe area at the end of each day's operation of the sidewalk cafe area so that they are unusable and do not block or obstruct emergency exits from any building. If the sidewalk cafe area is used outside of the regular season all tables, chairs, and other items shall be removed from the area at the end of each business day.
- v. Public Amenities Prohibited: A sidewalk cafe area may not include any publicly owned amenities such as benches, seats, tables or trash receptacles.

(e) Days and Hours of Operation

i. A sidewalk cafe may be operated during the regular season unless there is a snow emergency or other emergency which requires the closing of cafe areas. During all other times, so long as the business has a valid permit, the sidewalk cafe may be used on a daily basis, but all items shall be removed from the area at the end of the business day.

ii. A sidewalk cafe shall not be operated between the hours of 2 a.m. and 6 a.m. each day, and alcohol shall only be served in cafe hours during times allowed by the establishment's liquor license.

(f) Sound Equipment: Amplified sound equipment shall not be permitted in a sidewalk cafe area.

(g) Operation:

i. Right To Limit Number Of Cafe Areas: The city manager shall have the right in the city manager's discretion to limit the number of sidewalk cafe areas.

ii. Blocking Building Entrances Or Exits: No building entrances or exits shall be blocked in a sidewalk cafe area.

iii. Obstructing Pedestrian Right Of Way: The operation of the sidewalk cafe shall not obstruct the pedestrian right of way adjacent to the sidewalk cafe area. No sidewalk cafe furniture or barricade shall be placed closer than four feet (4') to a street, light pole, meter pole or other infrastructure so as to create an unobstructed route of less than six feet (6') in width on 7th Avenue and five feet (5') in width in all other locations. The sidewalk cafe shall be enclosed by a barricade not less than thirty inches (30") high and not more than forty inches (40") high. A sidewalk cafe shall remain within the approved boundaries of the sidewalk cafe area as shown on the restaurant owner's application.

iv. Restroom Capacity: The building official may require additional restroom capacity for a with a sidewalk cafe to comply with building and housing requirements in this code.

v. Occupancy Limits: Occupancy limits for a sidewalk cafe area shall be determined as set forth in criteria for outdoor service of alcoholic beverages on public rights of way, and as provided in this Code of Ordinances.

vi. Parking: The establishment owner shall not be required to provide additional parking for the operation of a sidewalk cafe.

vii. Inspection: A sidewalk cafe area shall be subject to inspection at any time in the discretion of the city manager.

viii. Serving Food And Alcoholic Beverages; Employee To Monitor: A sidewalk cafe serving food or alcoholic beverages shall have at least one employee monitoring the area at all times when customers are being served in the cafe area. Service of food or alcohol beverages in a sidewalk cafe area shall be limited to persons seated at tables in the sidewalk cafe area.

ix. Trash And Litter Removal: The restaurant owner shall be responsible for trash removal and shall maintain the area and the area within five feet (5') of the sidewalk cafe area in a clean and litter free manner during all hours of operation. The restaurant owner shall restore the area and the area within five feet (5') of the sidewalk cafe area to its normal condition as a pedestrian way, free of litter after operation of the sidewalk cafe each day. Failure to comply with this section shall constitute a public nuisance.

x. Smoking And The Use Of Tobacco, Nicotine Products And Vaporizers Prohibited. Smoking in the Cafe Areas is prohibited at all times in accordance with Iowa Code 142D which prohibits smoking in any public place, outdoor seating for restaurants, or outdoor entertainment venue. Further, the use of any tobacco product, nicotine product, or electronic vaporizer, by any person in the Uptown Artway is also prohibited at all times. The term "tobacco product" as used in this section means any cigarette or tobacco product as defined in Chapter 453A of the Iowa Code. The term "nicotine product" as used in this section means any product containing nicotine including look-a-like products where the original would include tobacco or nicotine including products that are dissolvable, spit less, snus, or for chewing. The term "smoking" as used in this section means inhaling or exhaling from any lighted or heated pipe, cigar, cigarette, or

any other lighted or heated tobacco, plant material, liquid, oils, nicotine or other chemicals that may be inhaled by the user. The term "electronic vaporizer" as used in this section means any device, including, but not limited to e-cigarettes, e-pens, e-hookah, e-cigars, and vape pens used to vaporize plant material, liquids, oils, nicotine or other chemicals that may be inhaled by users. This section does not apply to the use of prescription medications by the person to whom the prescription was issued nor to the use of gum or patches designed as and marketed for smoking cessation.

xi. Fires. Setting a fire is prohibited except in fireplaces and/or designated areas.

xii. Access To Utilities. The establishment owner shall not in any way interfere with access to public or city utilities located and/or operated within the public right of way.

xiii. Conformance with State, Federal, and Local Laws. The operation of a sidewalk cafe shall conform to all applicable state, federal, and local laws.

Section 2: That all other sections and subsections shall remain unchanged.

Section 3: That all ordinances and parts of ordinances in conflict with the same are hereby repealed.

Section 4: This ordinance shall be in full force and effect from and after its passage, approval and publication, as provided by law.

Passed and approved on June 09, 2022.

Will Brandt, Mayor Pro Tem

ATTEST:

I, Rachel Bolender, City Clerk of the City of Marion, Iowa hereby certify that at a meeting of the City Council of said City, held on the above date, among other proceedings the above was adopted.

Rachel Bolender, City Clerk