

COMMUNITY DEVELOPMENTPlanning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement**MEMORANDUM**

To: Mayor and City Council Members
Cc: Gregg Mandsager, City Administrator
From: Andrew Fangman, City Planner
Date: March 12, 2015
Re: Outdoor Dining on Public Right-of-Way Ordinance Change

INTRODUCTION: Based on the success of the 2014 outdoor dining on public right-of-way pilot program, an amendment to City Code is being proposed that will make this a permanent program.

BACKGROUND:

In March of 2014, City Council approved an outdoor dining on public right-of-way pilot program, which allowed for downtown restaurants to place seating on public sidewalks and on platform placed on on-street parking spots. This was done to assist with Muscatine's certification as a Blue Zones Project Community and to further the implementation of a number of goals from the Comprehensive Plan. This was done as a pilot program in order to determine if such a program would be good for Muscatine, and to allow for a years' worth of experienced to be gained, prior to make any change to City Code. Based on the success of pilot program, an amendment to City Code is being proposed in order to make this a permanent program.

Adopting policies that promote outdoor dining that were undertook to achieve certification as a Blue Zones Community. Further, Action C.21.F of the Comprehensive Plan directs that the City of Muscatine "*Adopt policies to promote outdoor dining.*" Policy LU.15.A of the Comprehensive Plan Policy LU.15.A states, "*City regulations, policies, projects will structured to encourage land use and redevelopment in the Downtown that creates reasons for people to frequent the Downtown through activities such as entertainment, recreation and special events...*" The implementation of this pilot program was the first step in achieving these goals, making this a permanent program through changes to City Code is the next steps towards achieving these goals.

The aim of the pilot program was twofold. First was to promote the use of public right-of-way for outdoor dining on sidewalks where it is currently permitted. Prior to the pilot program very few restaurant tool advantage of the option to make use of adjacent public sidewalks for outdoor dining. The second aim of this pilot program was to conduct a trial of allowing outdoor dining on platforms placed on on-street parking spaces. Based on the overwhelmingly positive feedback received on this

pilot program, staff has prepared an ordinance making changes to City Code necessary to make this a permanent program.

Four downtown restaurants participated in the outdoor dining program, Avenue Subs – 113 Iowa Avenue and Salavatore’s Ristoranate – 313 E. 2nd Avenue, had tables on the sidewalk; and Boonie’s On the Avenue – 214 Iowa Avenue and Guadalajara – 203 E. 2nd Avenue had dining on platforms places in on street parking places.

The intent of the proposed ordinance is to allowing for outdoor dining on public right-of-way in a manner as similar as possible to how the 2014 pilot program operated. However based on the experiences of the pilot program a few minor changes are being proposed, these changes include:

- Each application, which will be required annually, will be approved by Council by resolution, after written notification to surrounding property owners.
- That a written notice shall be sent to all surrounding property owners prior to approval.
- Clear guidelines requiring that visibility along a sidewalk is maintained through and beyond any sidewalk café.
- Requiring on street dining platforms to be removed prior to October 15th, instead of October 31st.
- More detailed specification s for the information required on the site plan that accompanies any application.

RECOMMENDATION/RATIONALE:

Direct staff to bring for an amendment to City Code as outlined in the following attachment.

BACKUP INFORMATION:

1. Proposed ordinance

I. Sidewalk Café Easement Agreements

1. Sidewalk Café is defined as a permitted area within the public right-of-way consisting of tables and chairs where patrons may be served food and/or beverages from an adjacent café or restaurant.
2. No person shall operate a sidewalk café without an approved easement agreement.
3. The agreement shall be between the City and the café owner with the approval of the building owner, if different than the café owner.
4. The agreement shall provide that no property right is conferred and that it may be terminated if the City determines that the right of way is needed.
5. The agreement shall include provisions for insurance, indemnification, fencing, maintenance, including vegetation and the subsurface if applicable, and any other reasonable provision as determined by the City Administrator, or designee.
6. The agreement shall include a site plan that meets all the requirements of Section XXX
7. The easement agreement, at a minimum, shall require the café operator to provide a certificate of insurance satisfactory to the City, and shall agree to hold the City harmless against any and all liability arising from or relating to the operation of the sidewalk cafe or the location of the cafe on the public right of way including, but not area, limited to, all claims arising from occurrences or accidents within the sidewalk cafe including the walkway through a café.
8. Easement agreements shall expire on December 31st of the year in which they are issued.
9. Termination of easement agreements
 - A. After execution of an easement agreement, the City Administrator, or designee, shall retain the right to terminate the easement agreement but only after written notice of violation has been given and the time to cure the violation has expired. Grounds for termination of the easement agreement shall include, but not be limited to:
 - i. Violations of the state and liquor control laws,
 - ii. Violations of the easement agreement,
 - iii. Creating a safety hazard, health hazard and/or public nuisance under state or local law.
 - B. The City Administrator, or designee, retains the right to terminate the easement agreement and direct removal of sidewalk cafe operations if there is a substantial and reasonable need for use of the public right of way for a valid public purpose.

- C. The cafe owner has the right to appeal a decision to terminate the agreement to the City Council.

II. Approval of Easement Agreements

1. Easement Agreements shall approved by a resolution of City Council.
2. The City is not obligated to approve an easement agreement, even if it meets all criteria contained within this chapter, approval will be based on City Council making a determination that the proposed easement agreement is beneficial to the community.
3. City Council may attach any conditions to the approval of an easement agreement that it deems necessary.

5. Application for an easement agreement shall be made upon a form approved and provided by the City of Muscatine, and shall be accompanied an application fee, as set by resolution of City Council
6. Site Plan - A dimensioned site plan drawing showing the general layout of the sidewalk area and building frontage, including all of following items if applicable:
 - A. The general layout of the sidewalk area and building frontage.
 - B. Street, curb, sidewalk, property lines and all existing/proposed improvements in the sidewalk area.
 - C. Boundaries of the sidewalk café.
 - D. The distance between the sidewalk café and the entrance to any adjacent commercial business.
 - E. The distance between the railing of the sidewalk café and the curb.
 - F. The distance between any obstruction (parking meters, lights, signs, mail boxes, trees, tree grates, etc.)in the sidewalk area to the railing of the sidewalk café
 - G. Plans must reflect that the direction and extent of swing of gates or other objects placed within the sidewalk café area do not project beyond the delineated perimeter of the sidewalk café.
 - H. Type of sidewalk café enclosure used, such as railings, planters.
 - I. Height of enclosure
7. Prior to City Council rendering a decision on an easement agreement, the City of Muscatine shall mail all property owners and first floor occupants located on the same bock a notice that an application for an easement agreement has been filed. The notice shall: contain the Site Plan 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 City of Muscatine within 15 calendar days from the date of mailing the notice. The applicant shall also be required to post a copy of the public notice in a readily visible location on the frontage of the applying business establishment for 15 calendar days .

III. General Provisions

1. Sidewalk cafes are only allowed in the area bounded by Pine Street, 6th Street, Mulberry Avenue, and Mississippi Drive.
2. A sidewalk café must be arranged in a manner that leaves a unobstructed and continuous walkway of at least five feet on the existing public sidewalk. For a distance of no more than two feet, the width of the required walkway be reduced to three feet, if this reduction in width is caused a permanent publically owned installation such as a utility/light pole, sign pole, parking meter, fire hydrant, or street tree.
3. No additional parking is required for the operation of a sidewalk café permitted by this chapter.
4. The outdoor café owner is responsible for trash removal and shall maintain the area and surrounding five feet in a clean and litter free manner during all hours of operation.
5. The easement agreement holder shall be responsible for any damages to the public right of way caused by the placement of any anchored fencing.
6. Sidewalk cafes are subject to annual inspections and may be inspected at any other time at the City's discretion.
7. All kitchen equipment and refuse containers used to service the sidewalk cafes must be located inside the principal building.
8. No extension cords are allowed across sidewalks
9. Any of feature, measure, or structure deemed necessary by the City of Muscatine, as necessary for the safe operation of the sidewalk café.
10. **Vertical Clear Zone** - The clear zone is the area between a height of 3 feet and 7 feet. The vertical clear zone is the area above the sidewalk in which obstructions shall be minimized to provide a clear view.
 - A. **Obstruction Prohibited** - The vertical clear zone shall be free of obstructions, including but not limited to fences, walls, landscaping, signs, structures, tree canopies or parked vehicles.
 - B. **Exemption of Certain Point Obstructions**- The follow objects are permitted with in the vertical clear zone. Certain objects are considered point obstructions and are permitted because a driver can move slightly and be

able to see around them. The follow objects are permitted with in the vertical clear zone.

- i. Poles with a diameter of less than 1 foot
- ii. Tables and chairs
- iii. Fencing that is not more than 25% opaque
- iv. Official traffic control devices
- v. Utility equipment, such as but not limited to poles, transformers, distribution equipment, etc
- vi. Trees that are devoid of branches between 3 and 7 feet from the ground and that are spaced in manner that minimizes visual obstruction
- vii. Any obstruction that was permitted by City Code on the date that it was installed

11. Sidewalk cafes may be located on a platform on top of a public sidewalk if the City Administrator or designee determines there is excessive slope in the sidewalk and approves the design and if suitable access is provided for persons with disabilities.

12. Outdoor Cafes Located on public streets

- A. The portion of the café located on the street shall be on a platform. The design features of the platform shall be submitted with the application. The platform shall not impede drainage in the street gutter.
- B. For safety reasons there shall be a minimum four foot buffer on either end of the café and any on-street parking space.
- C. The platform shall include a physical barrier of at least three feet in height on all sides that are adjacent to the street.
- D. The City of Muscatine may require any of feature, measure, or structure deemed necessary by the City of Muscatine, as necessary for the safe operations.
- E. Cafes located on public streets cannot be set up before April 1 and shall be removed no later than October 15.