

Local Law No. P-5 of the year 2016.

Introduced by Mayor Calnon at a regular meeting of the Common Council held on March 23, 2016

At a regular meeting of the Common Council on \_\_\_\_\_

By Councilor \_\_\_\_\_; Seconded by Councilor \_\_\_\_\_

Roll Call:

Absent:

A local law adding Article VI entitled “Outdoor Cafes and Merchandise Displays on Public Streets and Sidewalks” to Chapter 233 “Streets and Sidewalks” the City Code of the City of Plattsburgh.

Be it enacted by the Common Council of the City of Plattsburgh as follows:

Article VI of Chapter 233 of the City Code of the City of Plattsburgh will be entitled “Outdoor Cafes and Merchandise Displays on Public Streets and Sidewalks” and will read as follows:

§ 233-38 Purpose

§ 233-39 Definitions

§ 233-40 Commercial Use of Public Streets and Sidewalks Restricted

§ 233-41 Permit Required and Where Permissible

§ 233-42 Permit Application Procedure

§ 233- 43 Permit Term

§ 233- 44 General Permit Regulations

§ 233-45 Revocation or Denial of Permit

§ 233-46 Temporary Suspension of Permit

§ 233-47 Permit and Use Fees

§ 233-48 Display of Permit

§ 233-49 Sale and Consumption of Alcoholic Beverages

§ 233-50 Penalties for Offense

§ 233- 51 Effective Date

**§ 233-38 Purpose**

Sidewalk cafes and merchandise displays on the public streets and sidewalks may promote the public interest by contributing to an active and attractive pedestrian environment. The purpose of accommodating sidewalk dining and sales is to add activity, attract pedestrians, extend their

visits and enhance overall community quality of life. Reasonable regulation of street and sidewalk cafes and merchandise displays is necessary to protect the public health, safety, and welfare, including the maintenance of pedestrian access. The intent of this article is to set forth the conditions and requirements under which a sidewalk café and sidewalk merchandise display, as defined, may operate by permit on a public sidewalk and street within the City of Plattsburgh.

### **§ 233-39 Definitions**

**Sidewalk Café:** Any portion of public sidewalks or streets in the downtown area in which tables, chairs, and associated exterior property are placed for the sole purpose of patrons consuming food and/or beverages (alcoholic or non-alcoholic) beverages served by a food establishment adjacent to the public sidewalk property.

**Clear Path of Travel:** Measured from the outside edge of the sidewalk café fencing, fence post base or other sidewalk café related obstruction (that limits pedestrian passage) to the planter/furniture zone where one exists or else to the curb zone. Clear path of travel must fall entirely within the pedestrian zone as defined below. Measurements must be clearly identified on the café permit application site plan.

**Curb Zone:** The first 6-inches of the sidewalk corridor immediately adjacent to the roadway.

**Frontage Zone:** The area between the pedestrian zone and the private property line. A standard frontage zone shall be at least 12-inches wide.

**Pedestrian Zone:** The area of the sidewalk corridor that is specifically reserved for pedestrian travel. It should be completely free of obstacles, protruding objects, and vertical obstructions which can be hazardous to pedestrians, particularly for individuals with vision impairments who may not be able to detect or avoid the hazard. A standard pedestrian zone should be at least 60-inches wide

**Planter / Furniture Zone:** Lies between the curb zone and pedestrian zones and is intended to house utilities, such as traffic poles and fire hydrants, trees, plants and pedestrian amenities, such as benches and bus shelters.

**Public Right-of-Way:** means any public street, alley, roadway, sidewalk, walkway, highway, bicycle lane right-of-way, or public way designed for vehicular, bicycle, or pedestrian travel that is dedicated to public use and/or publicly owned.

**Sidewalk Café Permit :** means a permit issued by the City Building Inspector for operation of a sidewalk cafe which meets all of the requirements of this section and all other applicable laws

and ordinances of the city and all state and federal laws.

**Merchandise Display Permits:** means a permit issued by the City Building Inspector for the temporary placement of merchandise on public sidewalk property by a commercial retail store adjacent to the public sidewalk property.

### **§ 233-40 Commercial Use of Public Streets and Sidewalks Restricted**

Use of public streets and sidewalks for any commercial purpose, including sidewalk cafes and merchandise displays, shall be unlawful except as specifically provided herein or as specifically authorized by this article.

### **§ 233-41 Permit Required and Where Permissible**

- (A) It shall be unlawful to sell, or offer for sale, any food, beverage, merchandise, or service on any street, sidewalk, alley, City parking lot or other thoroughfare or public right-of-way without first obtaining the applicable sidewalk café permit or merchandise display permit.
- (B) A sidewalk cafe shall be permitted only in zoning districts which allow indoor restaurants, or other indoor business selling food for consumption on the premises, and then only if the sidewalk cafe is contiguous to an indoor restaurant, or other indoor business selling food for consumption on the premises, and the cafe's operation is incidental to and a part of the operation of such contiguous indoor restaurant, or other indoor business selling food for consumption on the premises. A sidewalk cafe shall be located on the public sidewalk or public street right of way immediately contiguous to and abutting the indoor restaurant, or other indoor business selling food for consumption on the premises, which operates the cafe, provided that the area in which the sidewalk cafe is located extends no farther along the sidewalk's length than the actual sidewalk frontage of the operating indoor restaurant, or other indoor business selling food for consumption on the premises, and all other applicable provisions of this article are fulfilled.
- (C) A merchandise display permit shall be permitted only in zoning districts which allow for the retail sale of goods on the premises and then only if the merchandise display is contiguous to an indoor retail store and the merchandise display is incidental to and part of the operation of such contiguous indoor store. A merchandise display shall be located on the public sidewalk immediately contiguous to and abutting the retail store, provided that the display extends no farther along the sidewalk's length than the actual sidewalk frontage of the retail store, and all other applicable provisions of this article are fulfilled.
- (D) No signs shall be hung or attached to the sidewalk café or merchandise display unless a sign permit has been issued by the City Building Inspector pursuant to the City Code.

### **§ 233-42 Permit Application Procedure**

Applications for a sidewalk café permit and a merchandise display permit will be available in the City Building Inspector's Office. Applications shall be made on forms as approved by the Common Council by resolution. Necessary information shall include, but not be limited to: application forms, site plan details, pedestrian zone maintenance, insurance requirements, and proof of food and beverage licenses and permits. All permit and use fees will be established per section 233-47. The City Building Inspector may impose any other restriction on the location, size or design of the sidewalk café or merchandise display that, in their sole judgment, protects the accessibility, health, safety and welfare of the public.

### **§ 233- 43 Permit Term**

A sidewalk café permit and a merchandise display permit shall have a one year term from the date of issuance unless suspended or revoked pursuant to this article.

### **§ 233-44 General Permit Regulations**

A sidewalk café and merchandise display permitted, authorized and operated pursuant to this article shall:

- A. Comply with all plans submitted to and permits approved by the City Building Inspector.
- B. Serve no alcoholic beverages on or at any sidewalk café after 12:00 a.m. or before 8:00 a.m. All service of any kind whatsoever shall cease at 12:00 a.m. and not begin until 8:00 a.m.
- C. Ensure that by no later than 12:30 a.m. all patrons must be vacated from the sidewalk café and by no later than the closing of the establishment all furniture, utensils, containers or any other materials used in the operation of the sidewalk café or within the area used by the sidewalk café shall be removed from the sidewalk café area, provided that any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk café may be allowed to remain on the sidewalk area if specifically permitted in the Building Inspector's approval of the sidewalk café plans.
- D. Remove all sidewalk café structures by October 31 and not install prior to April 1 in any year for which a permit is granted.
- E. Not allow music, from whatever source (acoustical, electric or other), to be played on the premises outdoors between the hours of 12:00 midnight and 8:00 a.m.
- F. Not allow advertisements, signs, neon signs, decorations or displays to be placed in, on, or about the sidewalk café premises without the prior written approval of the Code Enforcement Officer.
- G. Not allow encroachment on the public sidewalk beyond the authorized sidewalk café premises or merchandise display into the public right-of-way.
- H. At all times, keep or cause to be kept the sidewalk café or merchandise display free of litter, trash, obscene material, paper and other waste including during special events held by other organizations.
- I. At the termination of the permit, return the sidewalk café or merchandise display premises to the City in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accidents excepted.

- J. Be located and permitted only where the sidewalk is wide enough to adequately accommodate a pedestrian zone in the area and the operation of the proposed sidewalk café or merchandise display.
- K. Comply with all other provisions of the Code of the City of Plattsburgh, state and federal regulations, including the Americans with Disabilities Act.

**§ 233-45 Revocation or Denial of Permit**

- A. Upon a finding by the City Building Inspector that an application for a permit is unable to comply with the requirements as set forth in the permit application, the City Building Inspector shall deny said permit.
- B. Upon a finding that an applicant has violated any provisions of this article, the City Building Inspector shall give notice of violation by personal delivery of written notice to the permit holder or their authorized agent or officer, or by first class mail addressed to the permit holder at the premises address set forth in the permit application. Said notice shall require the applicant to correct said operational violations within 24 hours of receipt of said notice by the City Building Inspector. Upon failure to correct said operational violation within 24 hours, the City Building Inspector may revoke the applicant's sidewalk cafe permit or merchandise display permit issued pursuant to this article. The City Building Inspector shall, in his or her sole judgment, give the violator reasonable time to repair any structure damage or physical violation of any provision of this article. If revoked for a violation, the permit holder will not be entitled to a refund of any permit or use fees. Any appeal of the City Building Inspector's revocation or denial of a permit issued under this article may be brought to the City of Plattsburgh Zoning Board of Appeals pursuant to the City Code.
- C. Any sidewalk café permit or merchandise display permit which allows commercial operations on the public right-of-way may be terminated at the will of the City without cause on 7 days' notice to the permit holder. If the permit is terminated without cause, the City will refund to the permit holder a prorated portion of the permit and/or use fee for the unexpired term of the permit. The City may give notice of termination by personal delivery of written notice to the permit holder or their authorized agent or officer, or by first class mail addressed to the permit holder at the premises' address set forth in the permit application.

**§ 233-46 Temporary Suspension of Permit**

A permit may be temporarily suspended, if it is determined by the Chief of Police or Fire Chief and/or their designees that, by reason of disaster, public calamity, riot, or other emergency, the public safety requires such suspension. A temporary suspension may also be issued by the Mayor

due to a special event or celebration on the public right-of-way. Written notice of the temporary suspension shall be provided, where practical, to the permit holder.

**§ 233-47 Permit and Use Fees**

A fee for the permit and use of the public right-of-way shall be charged based upon the direct and indirect costs of administration, inspection, and enforcement as set by resolution of the Common Council.

**§ 233-48 Display of Permit**

All permits shall be displayed at all times during the operation of the sidewalk café or merchandise display business.

**§ 233-49 Sale and Consumption of Alcoholic Beverages**

The area encompassed within a sidewalk cafe authorized pursuant to this article shall be considered duly licensed for sale and consumption of alcoholic beverages and shall not be subject to Chapter 129, Alcoholic Beverages, of the Code of the City of Plattsburgh.

**§ 233-50 Penalties for Offense**

- A. Any person who violates any of the provisions of this article shall, upon conviction thereof, be subject to a fine not exceeding \$250. Each day that such violation continues shall constitute a separate violation. In addition, the Building Inspector may cause any sidewalk cafe existing in violation of this article to be removed without notice. A fee of \$200 shall be charged to the licensee for the cost of such removal. The Department of Public Works may store the removed sidewalk cafe structure for a period of 30 days; and if unclaimed, the structure may be destroyed, sold or discarded.
- B. Any person who fails to remove a sidewalk cafe structure by October 31, or who receives two written notices from the Building Inspector's Office for a general permit violation as provided for in § 233-43, shall not be eligible for a sidewalk cafe or merchandise display permit in any following year.

**§ 233- 51 Effective Date**

This Local Law shall take effect immediately upon approval by the Mayor and filing with the New York Secretary of State.