

# **ORDINANCE NO. 595**

## **Ordinance Creating Section 11.19 (Sidewalk Café Permits)**

The Common Council for the City of Kiel, Calumet and Manitowoc Counties do ordain as follows:

**SECTION 1:** Created.

To following sections are created to read as follows:

### **11.19 SIDEWALK CAFÉ PERMITS.**

(1) Purpose. To enliven downtown and other areas of the city and provide opportunities for social and economic activities, the city council finds and determines:

- (a) That there exists the need for outdoor eating facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food consumption.
- (b) That sidewalk cafés will permit enhanced use of the available public rights-of-way, will complement business operations operating from fixed premises, and will promote economic activity in the area.
- (c) That the existence of sidewalk cafés encourages additional pedestrian traffic but may impede the free and safe flow of pedestrians such that a need exists for regulations and standards to ensure safety.
- (d) That the establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect and promote public health, safety and welfare.

(2) DEFINITIONS. For purposes of this Ordinance, the following terms have the following meanings:

- (a) "Alcohol Beverages" means fermented malt beverages and intoxicating liquor as defined in Wis. Stat. Sec. 125.02(1), (6) and (8) or any successor to that statute.
- (b) "Restaurant" as defined in Wis. Stat. Sec. 97.01(14g) and if serving alcohol, operating within the guidelines set forth in Kiel Municipal Code Sec. 11.26(6).
- (c) "Sidewalk Café" means an expansion of a restaurant, bistro, coffee shop or other establishment offering beverages or food that provides seating for more than 3 people in the form of a group of tables, chairs, benches, trash containers and suitable decorative devices maintained upon any part of the sidewalk for use on part of the public property that immediately adjoins the licensed premises for the purpose of consuming food or beverages of the patrons of the establishment.

(3) LOCATION.

- (a) No permit will be issued for a sidewalk café located in a nonresidential district if any part of the sidewalk café is within fifty (50) feet of a structure used for residential purposes and located on a residentially zoned parcel except

residential uses located in the same structure as the licensed premises or a residence which is owned by the same person who owns the licensed premises. Upon appeal to the City Council, a full or partial waiver of the distance requirements in this provision may be granted.

- (b) No permit will be issued to an establishment if it is located in a district zoned R-1 through R-3.

(4) APPLICATION. Application for a permit to operate a sidewalk café is submitted to the City Clerk's Office and will include at least the following:

- (a) A site sketch accurately depicting the dimensions of the existing sidewalk area or other public property and adjacent private property for the proposed location of the sidewalk café including the layout of any furnishings; and
- (b) The size and number of tables, chairs, steps, planters, location of doorways, trees, sign posts, hydrants, sidewalk benches, trash receptacles, heaters, traffic signal poles, light poles and any other obstructions, either existing or proposed.
- (c) If the applicant intends to sell or serve alcoholic beverages to patrons of the sidewalk café, the applicant must obtain the appropriate alcohol beverage license describing and including the outdoor area where alcoholic beverages will be sold, served or consumed.
- (d) The permittee is responsible for complying with the approved sidewalk café plan as submitted in the initial permit application.

(5) APPEALS. Any person denied a sidewalk café permit may appeal the denial. An appeal may be made in writing to City Clerk, who will forward the request to the City Administrator and City Council. The City Council will convene within 30 days of the appeal being filed with the Clerk to hear from the Chief of Police and the affected business. After deliberation, the City Council will act on the appeal. A written copy of the decision will be provided to the affected business.

(6) PERMIT AND FEES.

- (a) Fee for a sidewalk café permit is fifty (\$50.00) dollars per year.
- (b) The permit issued hereunder is not transferable by the owner to any other restaurant or any subsequent owner of the premises.

(7) DAYS AND HOURS OF OPERATION. Each sidewalk café permit is effective from March 15 to November 15, with hours of operation from 11:00 A.M. to 10:00 P.M. Operation of a sidewalk café outside of those days and hours is prohibited.

(8) SUSPENSION OR REVOCATION OF PERMIT. The City Administrator or the Chief of Police, upon obtaining reasonable information that any permittee has violated any provision of this Section or any state or federal law may immediately suspend or revoke a permit granted under this Chapter pending hearing by the City Council.

(9) LIABILITY & INSURANCE. No person may obtain a sidewalk café permit unless the applicant procures commercial liability insurance.

- (a) The permittee agrees to maintain insurance in the amount of \$1,000,000 per occurrence and name the City of Kiel as additional insured showing how the coverage extends to the area used for the sidewalk café, insured. The permittee must provide the City with a certificate of insurance and must execute an indemnification agreement.
  - (b) As a condition of the permit, the permittee must indemnify and hold the City harmless from any claims arising from the use of the permit.
- (10) STANDARDS & CONDITIONS.
- (a) No portion of any sidewalk café may encroach on the sidewalk adjacent to any other property other than the property that is licensed in this section.
  - (b) The permittee must maintain approximately a four-foot-wide unencumbered, open and accessible portion of the sidewalk for pedestrian traffic safety at all times. The permittee must comply with all applicable requirements of the Americans with Disabilities Act, 42 USC 12101 to 12213, and all applicable Federal, State and local laws.
  - (c) The permittee will provide for the removal of garbage and be responsible for the cleanliness of the outdoor area.
  - (d) The use of a portion of the public property as a sidewalk café is not an exclusive use and will not have any vested rights. All public improvements, including but not limited to, trees, light poles, traffic signals, manholes or any public initiated maintenance procedures will take precedence over said use at all times.
  - (e) The City Administrator, Chief of Police, or their designees may temporarily order the termination of sidewalk cafes for the following reasons, but not limited to, special events, including but not limited to, construction, parades, sponsored runs or walks, or for any reason to maintain the health, safety, and welfare of the public. The permittee is responsible for removing any furniture, furnishings, and equipment upon termination, and if the permittee fails to do so, the City may remove the furniture and other items and store them if necessary, at the permittee's expense.
- (11) FURNISHINGS: All furniture, furnishings, and equipment must be of safe, sturdy construction and maintained in good repair. Any heaters or other equipment/furnishings must be portable and approved for outdoor use. All umbrellas must be anchored in such a way that a sudden burst of wind will not lift them out of their holders or blow them over. No public property, including, but not limited to, light poles, utility poles, flower planters, trees or other amenities, may be used as a point of attachment for anything, including, but not limited to, ropes, posters or signs.
- (12) LIGHTING: The permittee must keep the sidewalk café area sufficiently illuminated so as to prevent injury to persons using the same. Any lighting of the outdoor area must be shielded so as not to shine directly onto adjoining property or create a glare which is distracting to adjoining property or vehicles traveling in the public right-of-way.
- (13) MUSIC/NOISE: Noise from any source that is emitted from the outdoor area must not exceed the standards contained in Kiel Municipal Code Sec. 9.06 Loud, Disturbing, or Unnecessary Noises Prohibited.

- (14) **SERVING OF ALCOHOL BEVERAGES.** The City of Kiel allows permittees to serve alcoholic beverages in outdoor cafes, provided the permittee complies with all requirements for obtaining an alcoholic beverage license, and the sidewalk café is listed on the alcohol beverage license application as being an extension of the licensed premises. Alcohol may be served at sidewalk café if:
- (a) The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
  - (b) No alcoholic beverages may be served at any time if the restaurant has not received Council approval for the enlargement of the premises under its liquor license that includes the area of the public sidewalk where the sidewalk café is located. Further, the liquor license will be automatically conditioned at the time of the enlargement of premises to allow for the consumption of alcoholic beverages within the sidewalk café area only. Approval of the enlargement of premise area (sidewalk café) does not grant any permittee or licensed premise any vested rights and such approval may be suspended or revoked or non-renewed without cause being shown.
  - (c) The outdoor area utilized for service and consumption of food and alcohol beverages must be visible from the restaurant establishment.
  - (d) Alcoholic beverages must be sold and served by the permittee or permittee's employees who have operator's licenses and sold, served, and consumed by patrons seated at tables in the sidewalk café. (Reference Wisconsin Statutes sections 125.32(2) and 125.68(2)).
  - (e) Alcoholic beverages may only be served at the sidewalk café when food service is available through the licensed establishment.
  - (f) The permittee will not allow patrons of the sidewalk café to bring alcohol beverages which were not purchased at the establishment into the sidewalk café, nor to carry open containers of alcohol beverages about in the sidewalk café area, nor to carry open containers of alcohol beverages served in the sidewalk café outside of the sidewalk café area.
  - (g) The permittee must display signage indicating alcohol may only be consumed by patrons seated at tables in the sidewalk café.
  - (h) Alcohol beverages must be dispensed inside the establishment. No food preparation or beverage dispensing equipment is permitted in the sidewalk café area except when permitted by a city issued special event permit.
  - (i) Permittee is responsible for the acts of all employees, patrons and agents of the business. A violation of any provision of this section, any City ordinance or Wis. Stat. Ch. 125, by a patron, agent or employee of the permittee, will constitute a violation by the permittee.
  - (j) If any person violates this ordinance on three or more occasions in any twelve-month period, and such violations do not involve the same incident, the City may order the revocation of the sidewalk café permit and the permittee is liable for all court costs incurred in pursuing the order.
- (15) **PENALTY.** Any person who commits a violation of this chapter is subject to a forfeiture as provided in Section 25.04 of this municipal code.

SECTION 2: Effective Date.

This ordinance shall take effect upon passage and publication as provided by law, with a publication and effective date of **July 1, 2021**.

Ordinance No. 595 introduced on June 22, 2021 by Alderperson \_\_\_\_\_,  
seconded by Alderperson \_\_\_\_\_.

Upon a call of votes, the result was as follows:

\_\_\_\_\_ Votes Cast  
\_\_\_\_\_ Votes Aye  
\_\_\_\_\_ Votes Nay

The Mayor declared Ordinance No. 595 introduced and approved this 22<sup>nd</sup> day of June, 2021.

\_\_\_\_\_  
MICHAEL STEINHARDT, Mayor

COUNTERSIGNED:

\_\_\_\_\_  
JAMIE J. AULIK, City Administrator