



Board of Aldermen Request for Action

MEETING DATE: 10/17/2023

DEPARTMENT: Development

AGENDA ITEM: RES 1281, Merchant Use of Sidewalk Area Guidelines

REQUESTED BOARD ACTION:

A motion to approve Resolution 1281, Merchant Use of Sidewalk Area Guidelines.

SUMMARY:

Approving the resolution would adopt the new guidelines presented at the September 19, 2023 work session and revamp the permitting process.

Following the completion of the first phase of the streetscape project, the Board of Aldermen adopted new regulations that would allow the sidewalk area in the Central Business District to be used by adjacent businesses by a new permit system. While the original intent was to review these guidelines annually, the COVID pandemic made that impossible for the first two years. As the COVID restrictions reduced, the Smithville Main Street District was beginning to get its feet under it to address downtown issues. Since this spring, city staff, the District's staff and members, as well as other stakeholders conducted meetings to address business concerns. These changed guidelines are the result. Upon passage of Bill No. 3011-23, which amends the ordinance to account for the changes in the policy, this policy can be adopted in accordance with Section 520.200 of the Code.

PREVIOUS ACTION:

The original guidelines were adopted in April of 2019. Proposed changes were reviewed at the September 19, 2023 work session.

POLICY ISSUE:

Comprehensive Plan Action Items BE1.4 and BE1.7

FINANCIAL CONSIDERATIONS:

No significant impact anticipated from permits

ATTACHMENTS:

- | | |
|---|-----------------------------------|
| <input type="checkbox"/> Ordinance | <input type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Plans |
| <input type="checkbox"/> Staff Report | <input type="checkbox"/> Minutes |
| <input checked="" type="checkbox"/> Other: Sidewalk Design and Use Guidelines | |

RESOLUTION 1281

A RESOLUTION ADOPTING NEW SIDEWALK DESIGN AND USE GUIDELINES FOR THE CENTRAL BUSINESS DISTRICT

WHEREAS, The Board of Aldermen adopted new procedures for merchant use of the sidewalk area in April of 2019; and

WHEREAS, the Smithville Main Street District organized and has been working on various things to promote the Central Business District; and

WHEREAS, the District and many of its' members met with city staff to work out several changes to the guidelines that would provide businesses more flexibility on how they can use the sidewalk areas and still comply with the Americans with Disabilities Act; and

WHEREAS, the Board of Aldermen conducted a work session on September 19, 2023 to understand the proposed changes and recommended the new items be brought forward for approval.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:

THAT A NEW SIDEWALK DESIGN AND USE GUIDLELINES DOCUMENT IS HEREBY APPROVED FOR USE IN THE CENTRAL BUSINESS DISTRICT.

PASSED AND ADOPTED by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 17th day of October, 2023.

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk



Sidewalk Design and Use Guidelines



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Authority

These Sidewalk Design and Use Guidelines are promulgated in accordance with Section 520.200 of the City of Smithville Code of Ordinances.

Purpose

Sidewalk cafés, merchant use and sale areas contribute to a vibrant urban culture and make Smithville streets more dynamic places to walk, socialize, dine and shop. Sidewalk cafés, use areas and sales are temporary uses that occupy only a part of the public right-of-way. This document is a guide to creating temporary sidewalk cafés, merchant use areas and sidewalk sales that are safe and attractive to patrons and pedestrians.

These guidelines provide acceptable dimensions for sidewalk café, merchant use areas and sales access and for public rights-of-way, sidewalk café barriers and the layout of outdoor service areas. Smithville encourages the use of durable and high-quality outdoor furnishings and materials to increase the safety and comfort of residents and visitors of sales and sidewalk café areas as well as merchant use areas.

Sidewalk cafés, merchant use areas and orderly sidewalk sales enhance the public realm and motivate city and regional residents to patronize Smithville establishments. Restaurant and other business owners who offer sidewalk cafés, merchant use areas and sales shall comply with these guidelines, which are applicable to all areas identified in Section 520.140 of the Code of Ordinances.

Definitions

For purposes of these guidelines, the terms defined in Section 520.150 of the Code shall have the same meanings in this document, with the additional information as this document shall provide.

Overview

Each block and each side of the street in the Central Business District (CBD) have different total widths measured from the building façade to the face of the street curb. There are areas as well where two different ADA Pathways are required to access a business and to allow access to the street crossings, which substantially reduce any effective area for merchant use of the sidewalks. **See Fig. 1**



Fig. 1 Two ADA Pathways Required

Depending upon the location of the business that seeks to use a portion of the sidewalk, the size of the usable area may be smaller or larger in order to meet certain access requirements.

With on-street parking adjacent to the fronts of buildings, passengers need space to open the vehicle door and exit the vehicle, as well as an unobstructed ADA pathway.

With these conditions in mind, the ADA pathway is defined as an area not less than 36" wide. The location of this pathway can be varied from business to business but should remain continuous throughout the block. In order to maintain the continuous nature, each merchant must omit any potential obstructions in the final 3 feet of its' façade width if the ADA path is different on the adjacent property. In no event can the pathway be located within 3' of the face of the street curb to allow passengers to exit vehicles parked at the curb. In areas where a guard is constructed as a part of the City sidewalk, the merchant area may not extend beyond the guard. An example is shown below, **See Fig. 2**

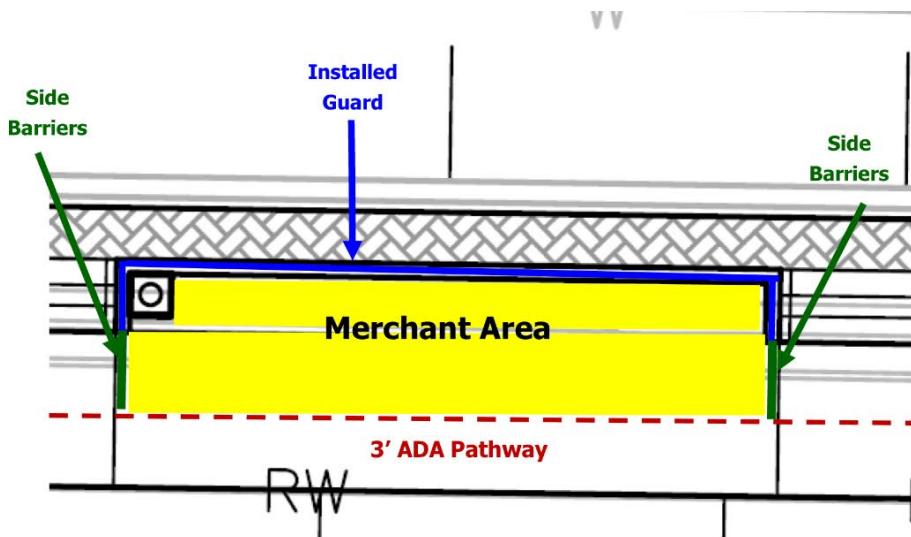


Fig. 2 Example Merchant Area with Installed Guards

The usable area of the sidewalks applies to any merchant use in the Central Business District, including Sidewalk Cafés, Merchant Use areas, Sidewalk Sales and Sidewalk Signs.

Sidewalk Cafés

All sidewalk cafés are limited to the usable space in front of the business that holds the restaurant license from Clay County Health Department, as well as any area in front of an adjacent business, so long as that business provides consent in writing. In order to promote both vibrant business activity in the sidewalk areas of the CBD and maintain a safe and ADA compliant area, there are certain other requirements.

All **furniture** may be of wood, metal or composite materials of a commercial grade and quality that will withstand the weather and usage. All aspects of a sidewalk café must comply with any ADA requirements, including furniture.

Umbrellas may be used in conjunction with tables but shall be made of fire-retardant materials and shall be of one color for the body but may have the restaurant logo affixed. The restaurant

logo must be for the business, and not for any products that the business may sell. The location of any umbrella shall be consistent with ADA requirements.

No tables, chairs or any other parts of sidewalk cafés shall be attached, chained or in any manner affixed to any tree, post, sign or other fixture, curb or sidewalk in or near the permitted area. Sidewalk café seating shall be included when determining the requirements for bathroom facilities of the restaurant. No cooking or fire apparatus shall be allowed on the public sidewalk.

The sidewalk café permit holder is responsible for cleaning and maintenance of the entire sidewalk area in front of its place of business, and any adjacent area used with the written consent of the owner. Such cleaning shall include pressure cleaning if necessary. If the area covered by the permit is not maintained in a neat and orderly appearance after five (5) days' written notice, the City may then take steps necessary to place the property in a neat and clean order and charge the permittee with the reasonable cost of repairs. Such action by the City does not create a continuing obligation on the part of the City to make further repairs or to maintain the property and does not create any liability against the City for any damages to the property if such repairs were completed in good faith.

During business hours, the area, and more particularly the ADA pathway shall be kept clear of obstructions as well as clean and safe. It is encouraged that plates and cups be shatterproof, and in no event shall glass bottles be allowed in a sidewalk café area. IF alcohol is served, the business is responsible for not allowing open containers to be outside the sidewalk café area, and that no outside alcoholic beverages are brought into the area in accordance with state and city liquor licenses.

There shall be no live entertainment or speakers placed in the permit area. The hours of operation for a sidewalk café shall be from the start of business until 11:00 P.M. or thirty (30) minutes after last food service, whichever is earlier, unless the sidewalk café is completely enclosed by fencing or barricades in which case the hours of operation for the sidewalk café shall cease at 1:00 A.M.

No permanent storage of dishes, silverware or other sidewalk café equipment shall be allowed in the permit area, in any portion of the public right-of-way or outside the structural confines of the building in which the restaurant is located; however, the permittee may maintain such non-permanent structures as rolling service stations in the permit area during hours of operation.

The only advertising or signage allowed in the merchant use area is logos on umbrellas, if present, as well as ONE sidewalk sign. . Any signage may only be placed during regular business hours and must be taken in at the close of business.

Any sidewalk café permit may be transferred to the new owner only for the location and area listed on the permit, but subject to the new owner providing an application for such permit. Any transfer of an existing permit does not extend the term of such permit.

The City may require the temporary removal of sidewalk cafés for special events, or when street, sidewalk or utility repairs necessitate such action and may order the immediate removal or relocation of all or parts of a sidewalk café in emergency situations or for safety

considerations, without notice. The City and its officers and employees shall not be responsible for sidewalk café fixtures relocated during emergencies.

Sidewalk Café Permit Process

A. No person shall establish a sidewalk café on any public right-of-way or sidewalk until a permit to operate the sidewalk café has been issued. Sidewalk cafés shall only be located where permitted by the City's zoning regulations and the Sidewalk Design Standards Policy. Sidewalk café permit applications shall be reviewed and approved in the manner as set forth in this Section.

B. General Application Criteria. Application for a sidewalk café permit shall be made to the City on a form provided by the Director of Development. The application shall include, but not be limited to, the following information and attachments:

1. The name, address, email address, and telephone number of the applicant;
2. The name and address of the restaurant;
3. A copy of a valid occupancy permit for the building where the proposed sidewalk café will be located;
4. A copy of a current certificate of insurance in the following categories and amounts:
 - a. Commercial general liability insurance in the amount of no less than the minimum amount stated in Section 537.610.1, RSMo., and as adjusted annually as determined pursuant to Section 537.610.5, RSMo., for all claims arising out of a single occurrence and for any one (1) person in a single accident or occurrence. All insurance shall be from companies duly authorized to do business in the State of Missouri. All liability policies shall provide that the City, its elected officials and employees are an additional insured as to the operation of the sidewalk café and shall provide the severability of interest provision.
5. A detailed site plan that is in compliance with the Sidewalk Design Standards Policy, including but not limited to, the following:
 - a. The proposed use, materials, colors and design;
 - b. Relationship of the sidewalk café to the adjacent existing building and their uses and entrance locations;
 - c. The location of any utilities that might affect or be affected by the proposal;
 - d. The relationship of the sidewalk café to the centerline of the adjacent street, if applicable, and to any existing or proposed public improvements including, but not limited to, benches, fire hydrants, light standards and landscaping;
 - e. A drawing or aerial photograph (to scale) showing the layout and dimensions of the existing sidewalk area and adjacent private property, existing fire hydrants, utility and above ground fixtures, proposed location, size and number of tables, chairs, steps, planters, umbrellas, location of doorways, sidewalk

benches, trash receptacles and any other sidewalk obstructions, either existing or proposed, within the pedestrian area;

f. Photographs, drawings or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects related to the sidewalk café;

g. A description of the property and the total square footage and exact dimensions of the proposed sidewalk café;

h. The existing and proposed pedestrian circulation pattern; and

i. Floor plan of the existing building and any proposed modification showing the relationship of food preparation areas to the sidewalk café.

6. Plans for the operation of the sidewalk café including, but not limited to, hours of operation, maintenance of the sidewalk café and services to be provided; and

7. A written, signed consent form from any adjacent business operator that allows the use of its' sidewalk area.

C. Application Review. The Department of Development shall review the application and approve or deny the permit. The Department may deny an application for a sidewalk café permit where:

1. The applicant has failed to comply with any of the submission requirements contained in this Section or with the Sidewalk Design Standards Policy;

2. The sidewalk café, as the applicant represents how it will be operated, fails to comply with the criteria set forth in this Section;

3. Any information submitted by the applicant is found to be incorrect; or

4. Staff review indicates that the sidewalk café would create an obstruction to or cause congestion of pedestrian or vehicular traffic due to existing conditions on the surrounding public right-of-way so as to represent a danger to the health, safety or general welfare of the public. In the event the Department of Development denies a permit, the applicant may within ten (10) days of the date of the denial appeal the denial to the Board of Aldermen. Notice of denial shall be sent to the applicant by United States mail, certified mail, return receipt requested at the address shown on the permit application. Upon an appeal of the denial of a permit, the Department of Development shall prepare a report for the Board. The Board shall hear the appeal at the next regularly scheduled meeting. The Board may affirm, reverse or reverse with conditions the decision of the Department of Development.

D. Permit Issuance. A sidewalk café permit shall be subject to the following conditions:

1. Effective period. Each permit shall be effective for one (1) year subject to annual renewal as provided below.

2. Hold harmless provision. The permit shall include an explicit hold harmless provision holding the City harmless from any and all liability arising out of the issuance of a sidewalk café permit and the operation of the sidewalk café.

3. Site plan controlled. The permit shall be specifically limited to the area shown on the exhibit attached to the application and made part of the permit.

E. Permit Renewal. The permit renewal fee will become due and payable thirty (30) days prior to the expiration of the permit. Together with such fee, the permittee shall provide the Department of Development with a renewal application on a form provided by the department containing the location of the sidewalk café. An application for renewal must include a new site plan **if** any changes are being made to the previously approved sidewalk café's structure or layout. Failure to pay the renewal fee or submit the renewal application with supporting documentation (where applicable) at least thirty (30) days prior to the expiration of the existing sidewalk café permit shall be grounds to reject the renewal application. In the event of rejection, the permittee shall remove the sidewalk café upon the expiration of the existing sidewalk café permit.

F. Permit Suspension or Revocation. The City may, as deemed necessary, inspect sidewalk cafés to determine compliance with the criteria set forth in this Section and the Sidewalk Design and Use Guidelines. The City may revoke or suspend a permit for any sidewalk café if it is found that:

1. Any necessary business or health permit has been suspended, revoked or canceled;
2. Permittee does not have insurance which is correct and effective in the minimum amount as required in this Section;
3. Changing conditions of pedestrian or vehicular traffic cause congestion necessitating the removal of the sidewalk café. Such decisions shall be based upon findings that the existing conditions represent a danger to the health, safety or general welfare of the public;
4. Permittee fails to maintain or keep the sidewalk safe and clean; or
5. Permittee has failed to correct violations of the City Code of Ordinances within five (5) working days of receipt of the official's notice of same delivered in writing to the permittee. Upon revocation or suspension of a permit, the Department of Development shall give notice of such action to the permittee in writing stating the action which has been taken and the reason therefor. The revocation or suspension shall become effective within fifteen (15) days following receipt of the notice by the permittee unless appealed as provided in this Code.

G. Fee. The annual fee for a sidewalk café permit is Fifty dollars (\$50.00) and shall not be prorated.

Merchant Use Areas

All merchants in the Central Business District are eligible to obtain a Merchant Use area Permit in the area in front of the business premises. The purpose of the Merchant Use area Permit is

to allow the merchant to place furniture, statutes, potted plants, or other similar decorations associated with the business, or to conduct sidewalk sales as limited below. The usable sidewalk area described above is the only areas available for use, and any permit holder is responsible for maintaining any displayed decorations above in the usable area in a safe manner.

Merchant Use Permit Process

A. General Application Criteria. Application for a merchant use permit shall be made to the City on a form provided by the Director of Development. The application shall include, but not be limited to, the following information and attachments:

1. The name, address, email address, and telephone number of the applicant;
2. The name and address of the business;
3. A copy of a current certificate of insurance in the following categories and amounts:

Commercial general liability insurance in the amount of no less than the minimum amount stated in Section 537.610.1, RSMo., and as adjusted annually as determined pursuant to Section 537.610.5, RSMo., for all claims arising out of a single occurrence and for any one (1) person in a single accident or occurrence. All insurance shall be from companies duly authorized to do business in the State of Missouri. All liability policies shall provide that the City, its elected officials and employees are an additional insured as to the operation of the sidewalk café and shall provide the severability of interest provision.

4 . A detailed site plan that is in compliance with the Sidewalk Design Standards Policy, including but not limited to, the following:

- a. The proposed use, materials, colors and design;
- b. Relationship of the use area to the adjacent existing building and their uses and entrance locations;
- c. The location of any utilities that might affect or be affected by the proposal;
- d. A drawing or aerial photograph (to scale) showing the layout and dimensions of the existing sidewalk area and adjacent private property, existing fire hydrants, utility and above ground fixtures, proposed location, size and number of tables, chairs, steps, planters, umbrellas, location of doorways, sidewalk benches, trash receptacles and any other sidewalk obstructions, either existing or proposed, within the pedestrian area; and,
- e. The existing and proposed pedestrian circulation pattern.

B. Application Review. The Department of Development shall review the application and approve or deny the permit. The Department may deny an application for a Merchant Use Area permit where:

1. The applicant has failed to comply with any of the submission requirements contained in this Section or with the Sidewalk Design Standards Policy;

2. Any information submitted by the applicant is found to be incorrect; or

4. Staff review indicates that the sidewalk merchant use area would create an obstruction to or cause congestion of pedestrian or vehicular traffic due to existing conditions on the surrounding public right-of-way so as to represent a danger to the health, safety or general welfare of the public. In the event the Department of Development denies a permit, the applicant may within ten (10) days of the date of the denial, resubmit the application with corrections as indicated on the notice of denial. If the applicant is denied after corrections are submitted, the applicant may appeal the denial to the Board of Aldermen. Final Notice of denial shall be sent to the applicant by United States mail. The applicant may within ten (10) days of the date of the Final Notice of Denial file an appeal of the denial of a permit. Upon receipt, the Department of Development shall prepare a report for the Board. The Board shall hear the appeal at the next regularly scheduled meeting. The Board may affirm, reverse or reverse with conditions the decision of the Department of Development.

D. Permit Issuance. A Merchant Use Area permit shall be subject to the following conditions:

1. Effective period. Each permit shall be effective for one (1) year subject to annual renewal as provided below.

2. Hold harmless provision. The permit shall include an explicit hold harmless provision holding the City harmless from any and all liability arising out of the issuance of the permit and the use of the area.

3. Site plan controlled. The permit shall be specifically limited to the area shown on the exhibit attached to the application and made part of the permit.

E. Fee. The permit is Twenty-five dollars (\$25.00) and shall not be prorated.

F. Permit Renewal. The permit renewal fee will become due and payable thirty (30) days prior to the expiration of the permit. Together with such fee, the permittee shall provide the Department of Development with a renewal application on a form provided by the department containing the location of the merchant use area. An application for renewal must include a new site plan if any changes are being made to the previously approved layout, and an updated certificate of insurance. Failure to pay the renewal fee or submit the renewal application with supporting documentation (where applicable) at least thirty (30) days prior to the expiration of the existing permit shall be grounds to reject the renewal application. In the event of rejection, the permittee shall remove all items upon the expiration of the existing permit.

G. Permit Suspension or Revocation. The City may, as deemed necessary, inspect the permit area to determine compliance with the criteria set forth in this Section and the Sidewalk Design and Use Guidelines. The City may revoke or suspend a permit if it is found that:

1. Permittee does not have insurance which is correct and effective in the minimum amount as required in this Section.

2. Changing conditions of pedestrian or vehicular traffic cause congestion necessitating the removal of the permit area. Such decisions shall be based upon findings that the existing conditions represent a danger to the health, safety or general welfare of the public.

3. Permittee fails to maintain or keep the sidewalk safe and clean; or

4. Permittee has failed to correct violations of the City Code of Ordinances within five (5) working days of receipt of the official's notice of same delivered in writing to the permittee.

Upon revocation or suspension of a permit, the Department of Development shall give notice of such action to the permittee in writing stating the action which has been taken and the reason therefor. The revocation or suspension shall become effective within fifteen (15) days following receipt of the notice by the permittee unless appealed as provided in this Code.

H. Sidewalk Sales limitations

Sidewalk sales are limited to three consecutive days and 45 cumulative days in any calendar year for any premises. The business must notify the City with the dates of such sales and maintain count for the cumulative total.

Use of Streetscape Banner hangers

Throughout the downtown areas with Streetscape improvements the streetlights have incorporated hangers for Banners. If a festival or event is scheduled in the Courtyard Park area, it may apply to use the streetlights to place banners of its' event on such streetlights. The installation of banners must be by city staff, and all banners must meet the design specifications of existing city banners in order to be installed. Any such banners may only be placed 14 days prior to the scheduled event, unless there is a prior event that will occur less than 14 days prior to proposed event.

The applicant must provide the city with the proposed design of the banners and provide assurance that the vendor making the banners understands the city's design specifications and will submit compliant banners. The applicant must also provide the proposed number of banners. No more than 20 banners may be installed (4 at the intersection of Bridge and Church, Bridge and Main, Main and Mill, Main and Commercial, as well as two at Main and 169 and two at Bridge and Meadow) and if the applicant seeks a different placement, the locations of the 20 banners must also be provided. Once the city is assured that the signs meet the design specifications, the applicant will be released to order the banners. The completed banners must be delivered to the city no later than five (5) business days prior to the proposed installation date. Once the city removes the banners, the applicant shall come pick up the banners within five (5) days of notification that the banners have been removed.

