

## **ORDINANCE NO. 07-O-2018-2019**

ORDINANCE AMENDING CHAPTER 10-6 OF TITLE X OF THE CITY CODE OF THE CITY OF STORM LAKE, IOWA, TITLED "PUBLIC WAYS," TO PROVIDE FOR NEW DEFINITIONS, PROVIDE FOR LIMITED REGULATED USE OF CERTAIN PUBLIC RIGHTS-OF-WAY, PROVIDE FOR A NEW PUBLIC RIGHT-OF-WAY USE PERMIT, AND PROVIDE FOR REGULATIONS CONCERNING PUBLIC RIGHTS-OF-WAY

WHEREAS, the City Council of the City of Storm Lake, Iowa has determined that the vibrancy and economic vitality of certain commercial areas in the City would be enhanced by permitting some limited and well-regulated use of certain public rights-of-way spaces for commercial enterprises serving the general public; and

WHEREAS, the City Council wishes to retain from the existing Chapter 10-6 of the City Code some of the regulations pertaining to sidewalks, with modifications necessitated by the enactment of the new provisions permitting limited use of some sidewalks.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA:

**SECTION 1.** Chapter 10-6 of Title X of the City Code of the City of Storm Lake, Iowa, titled, "Public Ways," is hereby amended by striking Sections 10-6-1 through 10-6-4 of such Chapter and substituting in lieu thereof the following new Sections 10-6-1 through 10-6-14:

### **Section 10-6-1 DEFINITIONS.**

As used in this chapter, the following definitions apply:

1. "Pedestrian" means any person traveling on foot or by wheelchair.
2. "Public right-of-way" means any public street, alley, roadway, sidewalk, walkway, right-of-way or public way designed for vehicular, bicycle or pedestrian travel and dedicated to public use.
3. "Restaurant" means a business whose primary function is the service of food to customers and which meets the following criteria:
  - A. Prepares meals on the premises and provides meal service to each floor of the premises which is open to the public while the kitchen is open; and has a food service menu from which customers may order;

- B. Has one staff person whose primary duty is the preparation of food and another staff person whose primary duty is to serve food to customers;
- C. Has a kitchen separate from the bar equipped with all of the following: a stove, a griddle, a grill or broiler, and a food refrigeration unit;
- D. Operates the restaurant service during at least sixty percent (60%) of the hours that the business is open to the public; and
- E. Holds itself out to be a restaurant and advertises itself as a restaurant if it advertises.

In addition, the term, "restaurant" includes a café, cafeteria, coffee shop, delicatessen, ice cream shop, lunchroom or tearoom whether or not any such business satisfies the criteria set out above for a restaurant.

- 4. "Retail Sales" means the sale by a merchant of goods and merchandise permitted to be sold in the Central Business District, in the area of the sidewalk directly adjacent to a building in which the same merchant operates a business where the same or similar goods and merchandise are sold.
- 5. "Sidewalk" means the improved portion of public right-of-way dedicated to pedestrian use, intended primarily for pedestrian use, or both.
- 6. "Sidewalk café" means an outdoor area located temporarily on a public sidewalk contiguous with any side of a building wherein a restaurant is located and where food, beverages, or both from such restaurant are taken for consumption by persons sitting or standing at tables in that area. Permitted sidewalk cafés must abide by the requirements and limitations as determined by the Council.

#### **Section 10-6-2 USE OF PUBLIC SIDEWALKS RESTRICTED**

Use of public sidewalks for sidewalk cafés, retail sales, or benches is unlawful except as specifically provided in this chapter.

#### **Section 10-6-3 PERMITTED USES.**

Subject to compliance with the provisions of this Chapter 10-6, sidewalk cafés, retail sales, and benches may be located or operated on a sidewalk in public right-of-way under the following conditions:

- 1. The sidewalk café area must be contiguous with any side of a building wherein a restaurant is located (such area so located being referred to hereinafter as the "sidewalk café area."

2. The sidewalk café, as part of a restaurant, must be licensed by the Buena Vista County Sanitarian and operated by the adjacent restaurant owner.
3. Retail sales shall be contiguous to and associated with the adjoining business.
4. Benches shall be installed in accordance with this chapter.
5. Beer, wine, and other alcoholic beverages shall not be served or consumed in a sidewalk café or retail sales area on the sidewalk.

#### **Section 10-6-4 USABLE SIDEWALK CAFÉ AREA.**

1. A sidewalk café area, retail sales area, or bench shall be positioned on the sidewalk in a manner that allows a minimum five (5) foot-wide clearance, except for trees, for pedestrian traffic on the sidewalk.
2. No tables, chairs, benches or retail sales area shall be placed in street corner areas defined by building lines extended to the street, or closer than ten (10) feet from an alley.
3. A sidewalk café or retail sales area may not utilize or include any public amenities such as benches, seats, tables or trash receptacles.

#### **Section 10-6-5 DAYS AND HOURS OR OPERATION.**

1. A sidewalk café may be operated and used from April 1 through October 31 of each year, subject to snow fall, and during special events when such use is specifically approved in advance by the Storm Lake City Council.
2. Sidewalk cafés and retail areas shall be operated each day only between the hours of 7:00 a.m. and 10:00 p.m., and at such times during special events as are approved by the Storm Lake City Council.
3. Sidewalk cafés shall not operate when the kitchen of the contiguous restaurant is closed.

#### **Section 10-6-6 SOUND EQUIPMENT.**

Amplified sound equipment is not permitted in sidewalk cafés or retail sales areas, with the exception of special events as approved by the Storm Lake City Council.

#### **Section 10-6-7 OPERATION OF SIDEWALK CAFES AND RETAIL SALES.**

The following regulations shall apply to the operation of sidewalk cafés and retail sales:

1. The furniture of a sidewalk café or retail sales area shall consist solely of moveable tables, moveable chairs, and moveable umbrellas. The only outdoor signs associated with a sidewalk café or retail sales area that are not affixed to the contiguous building shall be moveable sandwich board signs.
2. A sufficient number of trash containers must be present and readily accessible to patrons. Trash receptacles must be completely enclosed and must not be allowed to overflow.
3. The following conditions for furniture use and storage will apply:
  - a. Outdoor dining furniture materials are limited to the following: cast iron, wrought iron, expanded steel, wire steel, cast aluminum, extruded aluminum, wood, and plastic.
  - b. Furniture must be kept in good condition.
  - c. Outdoor dining furniture must be stored in the off-season and while not in use, and may not be stored or stacked on the exterior of the building.
4. Umbrellas will be permitted so long as they do not encroach outside the allowable sidewalk café or retail sales area.
5. Double-sided or single-sided sandwich board signs shall be limited to a maximum size of 36' x 60' and shall be non-illuminated. Signs shall be removed from the sidewalk and the public right-of-way at the end of business hours.
6. Failure to comply with this section or Section 10-6-3 through 10-6-7 can result in the revocation of suspension of the Public Right-of-Way Use Permit issued for such use.

#### **Section 10-6-8 PUBLIC RIGHT-OF-WAY USE PERMIT**

1. Persons or entities wishing to use part of the public right-of-way as permitted in this chapter must apply annually for and obtain a public right-of-way use permit from the City prior to use of the public right-of-way. Each applicant shall file an application with the Clerk, on forms provided by the City and containing all pertinent information as the City may require, and shall agree to abide by State and local laws governing use of public right-of-way.
2. In order to secure and retain a public right-of-way use permit, an applicant must agree in writing to (a) indemnify and hold harmless the City, its officers, agents, and employees for, from, and against, any liability for damages arising out of the placement of tables, chairs, benches, or any of them, in the public right-of-way, and for all claims, losses, and damages, including payment of attorney fees, arising from the applicant's use of the public right-of-way

pursuant to the public right-of-way use permit, or which are caused in whole or in part by any act or omission of the applicant, its agents, or employees and (b) have, maintain, and furnish proof to the City of a policy providing commercial general liability insurance coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury and property damage, with the City endorsed on the policy as an additional insured.

3. All public right-of-way use permits shall be issued by the Building Official, and a record kept, but only after approval by the Council as required by State and local law.
4. Even after Council approval of a public right-of-way use permit, the City shall retain the right to terminate such permit but only after written notice of violation has been given and the time to cure the violation specified in the notice has expired. Grounds for termination of the public right-of-way use permit shall include, but not be limited to, a violation of the conditions of, or requirements for, the issuance of the permit; a violation of this Chapter 10-6; or the creation of a safety hazard, health hazard, or public nuisance under State or local law. Additionally, the City retains the right to terminate the public right-of-way use permit and direct removal of sidewalk café or retail sales operations if, after deliberation, the Council determines there is a substantial and reasonable need for use of the public right-of-way for a valid public purpose.

#### **Section 10-6-9 DEBRIS ON SIDEWALKS.**

It is unlawful for a person to throw or deposit on any sidewalk any glass, nails, glass bottle, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any debris, or any substance likely to injure any person, animal, or vehicle.

#### **Section 10-6-10 MERCHANDISE DISPLAY.**

It is unlawful for a person to place upon or above any sidewalk any goods or merchandise for sale or for display in such a manner as to interfere with the free and interrupted passage of pedestrians on the sidewalk without first obtaining a public right-of-way use permit pursuant to Section 10-6-8.

#### **Section 10-6-11 SALES STANDS.**

It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables, or other substances or commodities on any sidewalk, with the exception of the Farmers Market as approved by the Storm Lake City Council.

#### **Section 10-6-12 REMOVAL OF SNOW AND ICE**

It shall be unlawful for any person, firm or corporation to remove snow, ice or accumulations of snow or ice from private premises and deposit or place the same upon any public highway, street, avenue, alley or public park within the City of Storm Lake, Iowa, unless said public park has been designated by the City as a snow depository.

**Section 10-6-13 OBSTRUCTION ON RIGHT OF WAYS**

It shall be unlawful for any person to place or cause to be placed over, into, or upon any of the public streets and sidewalks of the city any obstruction whatsoever, including any building, structure, furniture, decoration, fence, projection, lumber, timber, brick, stone, wood or other material, goods, wares or merchandise, rubbish, manure, refuse, produce or other commodities, except for the purpose of immediate transfer, or for immediate construction or lawful repair of such street or sidewalk, or except as may be allowed by this Chapter 10-6 or other ordinances of the city.

**Section 10-6-14 MUNICIPAL INFRACTION**

A violation of the provisions of this Chapter shall constitute a Municipal infraction subject to the penalties and alternative relief authorized by Title 1, Chapter 20 of this Code and by Section 364.22 of the Code of Iowa.

**SECTION 2. REPEALER:** All ordinances or parts of ordinances of the City of Storm Lake, Iowa in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 3. SAVINGS CLAUSE:** If any section, provision, sentence, clause, phrase, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase, or part thereof not adjudged invalid or unconstitutional.

**SECTION 4. EFFECTIVE DATE:** This Ordinance shall be in full force and effect from and after its passage and publication as approved by law.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Michael Porsch, Mayor

ATTEST:

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Mayra A. Martinez, City Clerk