

Ordinance #1190

ORDINANCE TO PERMIT SIDEWALK CAFES WITHIN THE TOWN OF NEW CARLISLE BUSINESS DISTRICT

WHEREAS, the New Carlisle Town Council are responsible for periodically updating and amending the Town Zoning Ordinances in order to enhance the attractiveness of the downtown and other areas of concentrated development within the Town; and

WHEREAS, the Town Council believes it would be a benefit to the residents of the Town as a whole to permit certain sidewalk cafes within guidelines, so as to promote pedestrian traffic and commercial areas as well as make beverages and food conveniently available for members of the public without creating a health or safety hazard or inconveniencing pedestrians; and

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED, by the Town Council of the Town of New Carlisle, that the zoning ordinance for the Town of New Carlisle shall be amended to add the following:

Article _____ Section _____ Sidewalk Cafes

Section _____ Purposes, Definitions

A. It is the purpose of this Article and Section to benefit the residence of the Town as a whole by promoting pedestrian traffic in certain commercial areas, enhancing the attractiveness of the downtown and other areas of concentrated development, and making beverages and food and retail wares conveniently available for members of the public, without creating a health and safety hazard or inconveniencing pedestrians.

B. As used in this Article and Section, the following terms shall have the meaning ascribed to them in this section:

1. Abutting retail business property means any real property used for retail business which abut, but is not located in the public sidewalk area.
2. Applicant means a person, corporation, partnership, limited partnership, association or any other entity with the power to sue and be sued who has submitted a registration application under this Article.
3. Café activity means the retail sale of beverages or food or the provisions of a place for the consumption of beverages, food or retail wares.
4. Café area means the area used for Café activity and shall include the entire sidewalk sales area and any part of the abutting retail business property used directly for Café activity.
5. Effective walkway width means that portion of the sidewalk in the public sidewalk area which is reasonably available for use by the pedestrian stream moving through the area including use by persons using mobility aid devices.
6. Public sidewalk area means the sidewalk area located in the public right-of-way or in an area in which the public has an easement for sidewalk purposes, or both.
7. Sidewalk sales area means the portion of the public sidewalk area which has been registered with the building commissioner and Town Clerk for Café activity.

Section _____ Registration Required

A. It shall be unlawful for a person to engage in Café activity on a sidewalk in the public right-of-way without first being registered and permitted therefore with the Town Clerk and building commissioner as provided in this article. However, retail sales of beverages or food may occur:

1. From carts or stands operated pursuant to a license issued under this Chapter except in a sidewalk sales area relative to which a registration has been granted under this section; or
2. On a temporary basis if written permission is granted by the appropriate governmental units and such writing is filed with and approved by the building commissioner.

B. A registrant under this article shall not be required to do the following:

1. Obtain a transient merchant activity license;

2. Obtain an encroachment license for a sidewalk café, or an awning or canopy which does not extend beyond the sidewalk sales area and which is used in connection with the café activity.

C. The annual fee for registration for a sidewalk café shall be \$25.00.

Section _____

A. Areas in the Town to be considered for café activity:

1. The only area within the Town that may be approved for Café activity is considered to be the downtown area, Michigan Street, between Race Street and Filbert Street.

Section _____ Requirements for Registration

A. The building commissioner is authorized to approve a registration application of an applicant to use the sidewalk sales area situated immediately next to the abutting retail business property owned or leased by the applicant, for the sole purpose of engaging in Café activity. The sidewalk sales area which the applicant utilizes for Café activity shall be located within the Town. A person who desires to register to use the sidewalk sales area for Café activity shall complete a registration form provided by the Town Clerk at Town Hall and file the form with the building commissioner and the Town Clerk.

B. The applicant shall submit a scale drawing or site plan with the registration application. The scale drawing or site plan shall show the appearance and location of:

1. All items to be placed within the sidewalk sales area, including, but not limited to, tables, chairs, barriers, signs, awnings, umbrellas, planters, and trash receptacles, as well as the colors of all items to be placed within the café activity area; and
2. All items existing on or in the public sidewalk area within ten (10) feet of the proposed sidewalk sales area at the time the registration form is submitted to the Town Clerk and building commissioner, including, but not limited to, parking meters, utility poles, sidewalk grate, sidewalk elevator, building stand pipe, fire hydrant, access ramps, street lights, and bus stops.

C. The building commissioner shall approve the registration and issue a _____ certificate of registration to each applicant qualified under the provisions of this section and chapter, if the requirements listed in this subsection are met.

1. The effect of walkway width of the public sidewalk area shall be no less than five (5) feet.
2. Sidewalk sales area shall meet these requirements:
 - a. Sidewalk sales area must be located next to the abutting retail business property, and the perimeter of the sidewalk sales area that is intended to seat more than six (6) persons on furniture provided by the registrant shall be marked by a fence or other structure that is authentic and complies with the architecture in the adjoining area as much as possible.
 - b. The building commissioner shall calculate the proposed five (5) foot pedestrian walkway area to insure that it does not materially impede accessibility.
 - c. No part of the sidewalk sales area shall be located within:
 1. Fifteen (15) feet of any bus loading zone;
 2. Five (5) feet of any sidewalk grate unless the registrant demonstrates that the purpose of the sidewalk grate is not frustrated by a sidewalk sales area within five (5) feet of the sidewalk grate;
 3. Five (5) feet of any building standpipe or building hydrant, unless the fire chief or fire marshal's designee determines upon inspection that access to the standpipe or hydrant is not impeded by a sidewalk sales area that is within five (5) feet of the standpipe or hydrant; or
 4. Five (5) feet of any taxi stand area, cross walk, drive-way, alleyway, or access ramp

5. No item may be placed in a sidewalk sales area unless the item is in the place shown in the scale drawing or site plan submitted with the registration application.
- D. The applicant shall be actively engaged in a retail business involving the sale of beverages, food, or retail in the abutting retail business property. The beverages, food, or other retail items sold in the Café area or normal business area will also be sold in the abutting retail business property. The floor area of the abutting retail business property must exceed the area of the sidewalk sales area.
 - E. Any applicable permits required by the Department of Health of St. Joseph County and other regularity agencies shall have been secured and are in force.
 - F. The applicant shall have provided a certificate of public liability insurance to the building commissioner, approved as to form by the attorney for the Town, insuring the person and naming the Town of New Carlisle as co-insured. The required amounts of personal injury and property damage insurance requirements shall be established by the Town's Council and shall be maintained by the registrant throughout the term of the registration.
 - G. The applicant shall have provided a document, approved as to formed by the Town's attorney, in which the registrant agrees to indemnify and hold harmless the Town for losses, damages, claims or expenses arising out of the use of the sidewalk sales area for Café activity.

Section _____ Restrictions on Café Activity

- A. Use of the Café area for Café activity under this article shall be subject to the following conditions:
 1. The registrant shall be required to obey the commands of law enforcement Officials, firefighters, and all other public authorities acting pursuant to law with respect to activity carried out in the sidewalk sales area, including the temporary removal of furniture and equipment and temporary cessation of Café activity;
 2. When Café activity is not being conducted or when the abutting retail business property is not open, the registrant shall remove from the sidewalk sales area, or otherwise secure, all furniture, equipment, and goods which are susceptible to movement by the elements or by unauthorized persons;
 3. All items associated with the sidewalk sales area must be susceptible of being removed within seven (7) calendar days from the date that notification by the building commissioner that such removal is necessary is deposited in the mail or otherwise delivered to the registrant;
 4. Provisions shall be made to assure the sidewalk will not be littered, including placement of adequate trash receptacles and periodic picking up of litter in the sidewalk sales area in the area twenty (20) feet from the perimeter of the sidewalk sales area;
 5. Sales and beverages or food shall not be accomplished by crying out or hawking;
 6. Pedestrians shall not be exposed to any undue safety or health hazard nor shall a public nuisance be created, and, notwithstanding other sessions of this Ordinance, the registrant shall keep the public sidewalk area in front of or adjacent to the sidewalk sales area in abutting retail business property cleared of snow and ice at all times;
 7. Sales of beverages and food may not be made to a person in or on any motorized vehicle;
 8. Beverages or food sold in a sidewalk sales area shall be provided only for consumption in the sidewalk sales area or in the abutting retail business property;
 9. The building commissioner may, by written notice to the registrant, forbid the use of the sidewalk sales area during the time and within the geographic boundaries of the special event designated by the Town Council, or require that the registrant meet the additional requirements imposed on all vendors by the special event sponsor;
 10. If the fence or other said structure required to be on the perimeter of the Café activity area includes a gate, including any means of entering or exiting the sidewalk sales area from the public sidewalk sales area, the gate should be accessible to all emergency equipment as determined by the Fire Marshall and the building commissioner as well as comply with any disabled pedestrian apparatus;

- B. A registrant's failure to comply with the conditions set forth in subsection (A) above shall be grounds for enforcement proceedings in termination of their Café activity registration permit.

Section _____ Certain Modifications or Variances Permitted

A. The Town Council may, with the final approval of the building commissioner, modify or vary any of the requirements of the subsections regarding Café activities end of this article on showing that the requirements imposes a special hardship on the registrant and the modification or variance of the requirement will not interfere with the achievement of the purpose of the article as set forth herein above.

Section _____ Registration Term

A. A registration under this article shall be issued on or after January 1st, of a particular year and shall be valid until December 31st of the following year.

Section _____ Renewal of Registration

- A. Prior to the time a registration under this article is renewed:
1. The registrant shall submit no later than November 1st an application for renewal of registration on a form provided by the building commissioner together with the fee required by said code. The building commissioner may review the pedestrian traffic flow and if appropriate, modify the sidewalk sales area or the days and hours the area may be used.
 2. The building commissioner may review the site plan to assure that any changed conditions comply with the objectives of this article and code.
 3. The building commissioner may review the operation of the sidewalk Café to determine if a continued operation is in the best interest of the Town.
- B. If, after renewal application is submitted and the review provided in subsection (A) of this section are completed, it is determined that there are no changed conditions that would not allow pedestrian traffic flow standards to be met, no changes in the detail site plan, and no change of circumstances such that the continued operation of the sidewalk Café would not be in the best interest of the Town, and registrations shall be renewed by the building commissioner, unless at the time of renewal the registration:
1. Has been revoked or suspended; or
 2. Is the subject of administrative or judicial proceedings which have the potential to result in the revocation or suspension of the registration, in which case the registration may continue in effect until the conclusion of the administrative or judicial proceeding.

Section _____ Enforcement

A. Inspections may be made and action to enforce the provisions of this article may be take by the building commissioner or by any law enforcement agency. The building commissioner shall be responsible for making periodic inspections of Café activity carried out in sidewalk sales areas. In the event the Town must enforce the provisions of this ordinance by Court action, the registrant will be unable to reimburse the Town for attorney fees and Court costs.

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE BY THE TOWN COUNCIL OF NEW CARLISLE AND PUBLICATION AS REQUIRED BY LAW, PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF NEW CARLISLE, ST. JOSEPH COUNTY, INDIANA, BY A MAJORITY VOTE ON THIS 12th DAY OF AUGUST, 2008.

NEW CARLISLE TOWN COUNCIL

AYES

NAYS

Carolyn Higgins,
Ronald P. Colpitts
John Gelow
Jack Mell
Dana Groves

ATTEST: Susan I. Moffitt, Clerk-Treasurer