

NOTICE OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CITY OF MORENCI ZONING ORDINANCE (Posted 4/2/2019)

The Morenci Planning Commission will hold a public hearing on April 18, 2019, at the City of Morenci Offices, 118 Orchard Street, Morenci, MI 49256, at 7:10 p.m., local time, to consider an amendment to Chapter 22 of the Morenci Code of Ordinances as it pertains to outside seating / café seating for businesses within the C-2 zoning district.

Copies of the amendment are available for inspection at the office of the City Administrator / Clerk, 118 Orchard Street, Morenci, MI 49256, during normal City business hours, 8:00 a.m. to 6:00 p.m., Monday through Thursday, excluding City holidays. A copy of the proposed ordinance is also available at www.CityofMorenci.org. Written comments concerning the proposed amendment may be submitted to the City Administrator / Clerk by first class mail or in person up to the meeting time.

ORDINANCE NO.

Amendment to Chapter 22 of the City Code

An ordinance to amend Chapter 22 of the City Code of the City of Morenci to add rules and regulations regarding outdoor seating / sidewalk cafes.

CITY OF MORENCI, LENAWEЕ COUNTY, MICHIGAN, HEREBY ORDAINS:

Section 1. Amendment.

Section 22-164 of Chapter 22 of the City of Morenci municipal code is added in its entirety to read as follows:

Section 22-164 – Outdoor Seating / Sidewalk Cafes in C-2 Business District

- (a) **Purpose.** The C-2, Central Business District (CBD) is a district that is designed to, among other things, promote convenient pedestrian shopping in the districts retail stores, shops, and restaurants. The intent of this ordinance is to regulate the private use of public sidewalks and rights of way within the C-2, CBD so as to ensure the provision and maintenance of safe, ADA-compliant pedestrian “clear paths” of appropriate width, free of objects, obstructions, and other hazards. The City recognizes that certain types of privately owned and provided sidewalk amenities, such as, by way of example, benches, tables, chairs, desks, signs, and plants, can add convenience, charm, and character to the downtown area, and serve a public purpose that should be allowed and regulated.
- (b) **Requirements.**
 - (1) No person, firm, corporation or other entity shall place, cause, or allow the placement of any outdoor sale items, benches, tables, chairs, desks, signs, plants, artworks, waste receptacles or other amenities or items of any kind on any sidewalk, City right of way, or within the width of their business in front or in back of their business in a City parking lot within the C-2, Central Business District for or in connection with any commercial or noncommercial enterprise or activity, without first applying for and receiving a valid permit issued by the City of Morenci allowing such use, subject to any restrictions such permit might contain.
 - (2) No person, firm, corporation or other entity shall place, cause, or allow the placement of any outdoor sale items, benches, tables, chairs, desks, signs, plants, artworks, waste receptacles or other similar amenities may be placed or allowed on any portion of any sidewalk or right of way within the C-2, Central Business District that is within the “clear path” of a specially permitted.

- (3) The “clear path” for each specially permitted use on a sidewalk or within any other part of the right of way shall:
- a. Consist of a straight path that is as wide as possible but in no case less than three (3) feet in width that traverses through all objects that are permitted for placement on the sidewalk or within the right of way;
 - b. Each end of the clear path shall align with the end of any permitted clear path located on adjoining property within the same block.
 - c. Tree grates may not be part of or included within any part of the clear path; and
 - d. No objects or obstructions of any kind may be placed in or allowed to remain within any clear path. (See Figure 1).
- (4) Any space remaining between the clear path and the building face on one side and between the clear path and the street on the other (the “amenity area”) may be used for the placement of outdoor sale items, benches, tables, chairs, desks, signs, plants, artworks, waste receptacles or other similar amenities for use by and in connection with permitted commercial and noncommercial enterprises and activities; provided that none of such objects extend into or intrude upon any part of the clear path.

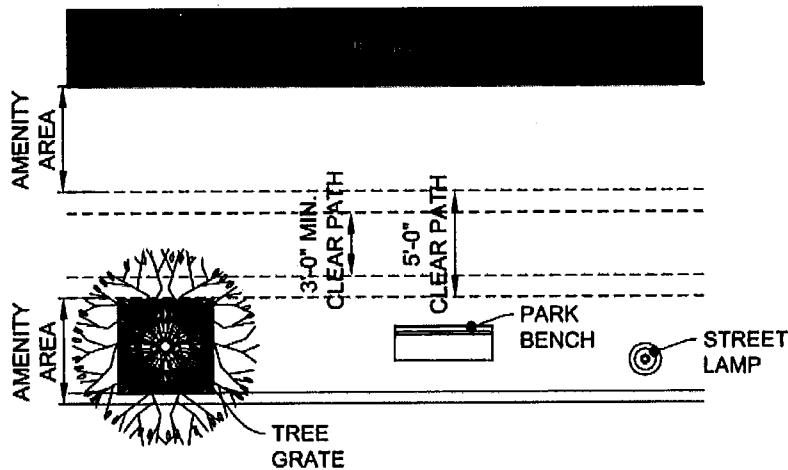


Figure 1

- (5) Items offered for sale within the permitted area of the public right of way shall be of merchandise that is also available inside and shall be called outdoor sale items. These items may not, either singly or in the aggregate:

- a. Obstruct over fifty (50) percent of the "window shopping" viewing area unless the items are at a height that does not impede the ability to view merchandise within the business.
 - b. Except for food and drink at a permitted café or restaurant, a permit holder shall not conclude or undertake the conclusion of the sale of any outdoor sale items to members of the general public or otherwise, except within the interior of the permit holder's business or enterprise.
 - (6) All outdoor sale items must be brought in at the close of business every day. Any such items as are left after closing will be considered abandoned and may be removed and disposed of by the City in such manner as it determines appropriate without notice to the affected permit holder. Amenities for outdoor dining / sidewalk cafe may sit outside at the close of business and shall be secured as to prevent the amenities from being stolen or taken at night. A permit is not required if items are only displayed for sale and brought in at the end of the night. Clear path shall be observed for items that are simply sat outside for display.
 - (7) All frame or sandwich board signs shall comply with the provisions of Chapter 22 of the Morenci Municipal Code.
 - (8) By applying through this ordinance as outdoor dining / sidewalk cafe means that the applicant is not required to go through the Special Permitted Use process for Outdoor Seating Restaurant in the C-2 ordinance.
- (c) **Restrictions.**
- (1) No item may be affixed to lampposts, signposts, sidewalk, hydrants, utility boxes or public amenity without the prior written permission of the City Administrator / Clerk. No item may be in such a location as to constitute a hazard or an obstruction to the general public or to the performance of public service by any City or other governmental agency having jurisdiction over the area.
 - (2) Outdoor Dining/Sidewalk cafes may be operated only upon and pursuant to the issuance of an annual permit subject to the following restrictions and conditions:
 - a. All previously noted restrictions and conditions.
 - b. Review and approval by Planning Commission of a site plan.

- c. Outdoor dining/sidewalk cafe may be located on public sidewalks only adjacent to or abutting the indoor restaurant that operates the outdoor dining/sidewalk cafe.
- d. No permit shall in any way excuse an applicant from complying with any applicable requirement imposed by the Liquor Control Commission of the State of Michigan on the sale and consumption of alcohol. Such sale and consumption of alcohol shall be allowed within the permitted area only in accordance with and subject to the provisions of any licenses and permits required and issued by the Liquor Control Commission and any other applicable state statutes, state regulations or municipal ordinances.
- e. Applicant may use the space within a parking lot to setup a temporary outdoor dining / sidewalk cafe, as long as the space does not take up a parking spot in a City parking lot and does not go beyond the width of the business. The space taken in the parking lot shall not interfere with traffic patterns. All activity must adhere to municipal noise ordinance regulations.

(d) **Application Process.**

- (1) An application for a permit pursuant to this ordinance must be submitted to the Zoning Administrator for approval and contain the following information:
 - a. The name, address, and contact information of both the applicant and the business.
 - b. The name, address and contact information of the property owner if other than the applicant.
 - c. A site plan showing the proposed location of outdoor sale items, the proposed location and number of benches, tables, chairs, desks, signs, plants, artworks, waste receptacles or other similar amenities, and the location and number of all related equipment, such as, by way of example, outdoor electrical outlets, umbrellas, and railings.
 - d. The proposed area of occupancy including square feet and dimensions, and the location of existing grates, hydrants, trees, shrubs, and other public items.
 - e. The proposed clear path to accommodate pedestrian traffic and circulation through and within the use area by customers and members of the general public.

- f. If the sale of alcohol is proposed, a copy of approval from the Michigan State Liquor Control Commission.
 - g. A signed agreement committing and requiring the applicant:
 - i. To provide proof of public liability and property damage insurance with coverage that is satisfactory to City and limits of liability of not less than a single limit of One Million and 00/100 (\$1,000,000.00) Dollars, with the City designated therein as a named insured, to be and remain in force for the duration of the permitted use of City's sidewalk and right of way, such proof to be provided at the time of execution of the agreement
 - ii. To agree that it will defend, indemnify, and hold the City harmless from all damages, claims, demands, causes of action, lawsuits, attorney fees and related expenses, as a result of actual or claimed personal injury, including death, property damage or other damage or loss of any kind or nature which is or is claimed to arise out of or because of the use of the City's sidewalk or right of way by the negligence, gross negligence, or intentional act of applicant or any of its agents, servants, employees, guests, vendors, invitees, and members of the public, and whether caused in part by negligence of the City, its employees, agents, servants, or representatives.
 - iii. To agree to repair any damage caused to the sidewalk or right of way as a result of the placement of any permitted item or the operation of a permitted business or other activity on a sidewalk or within any other part of the right of way at the applicant's expense.
 - iv. To represent and covenant that it does not discriminate against any employee, applicant for employment, and shall not discriminate against any general public that will participate in the event it is staging under this agreement or any other member of the public because of race, color, religion, national origin, age, height, weight, marital status or other legally protected class.
- (2) The Zoning Administrator shall review the application for compliance with the ordinance for approval/disapproval. If determined to be in compliance, the Zoning Administrator or his designee shall seek Planning Commission approval on the permit; if determined to be in substantial but not complete compliance, approve the issuance of the permit subject to restrictions; or if determined to be substantially non-compliant, disapprove and deny the issuance of the permit, as the circumstance requires.

- (3) Permits must be applied for annually and all activities or other actions taken under them shall adhere to all specifications of the City of Morenci CBD Sidewalk Use Ordinance and the terms and restrictions contained within the permit. Failure to do so will result in the Zoning Administrator notifying the permit holder of a violation, either in writing or verbally. If the violation is designated as a safety hazard, it shall be corrected and rectified within the twenty-four (24) hour period next following notification. All violations that are not designated as safety violations shall be corrected and rectified within the seventy-two (72) hour period next following notification. If any violation is not corrected and rectified within the time specified, the permit in question shall automatically become void and of no further force or effect, and all items placed on the sidewalk and all business or other activities taken pursuant to it shall be immediately removed and terminated.

(e) **Appeals.**

- (1) Appeals involving the interpretation or application of these rules, the imposition of restrictions and the denial of a permit may be taken to the Zoning Board of Appeals under such provisions and process as prescribed in Section 22 of the Morenci Municipal Code.

Section 2. Repeal of Conflicting Provisions.

All other City ordinances, City Council resolutions, and parts thereof that conflict with provisions of this Ordinance are hereby repealed and shall be of no further force or effect.

Section 3. Severability.

All sections, terms, provisions or clauses of this Ordinance shall be deemed independent and severable. Should a court of competent jurisdiction hold any section, term, provision or clause void or invalid, all remaining sections, terms, provisions and clauses not held void or invalid shall continue in full force and effect.

Section 4. Publication and Effective Date.

Publication of this ordinance shall be made by causing a true copy thereof to be inserted once in the State Line Observer, a newspaper circulating within the City of Morenci. This ordinance shall take effect ten (10) days after the ordinance is published.

YEAS:

NAYS:

ABSENT:

Ordinance declared adopted on

Jeffrey D. Bell, Mayor
City of Morenci

CERTIFICATION OF ADOPTION AND PUBLICATION

I, Michael S. Sessions, the City Clerk, certify that the foregoing ordinance was properly enacted by the City Council of the City of Morenci, Lenawee County, Michigan on and that it was published in the State Line Observer on

Michael S. Sessions, City Clerk
City of Morenci