

**South Portland City Council
Position Paper of the City Manager**

Subject:

ORDINANCE #11-13/14 – Amending Chapter 14, “Licenses, Permits, and Business Regulations Generally,” regarding public sidewalk use. Passed first reading on 4/23/14. ROLL CALL VOTE. Passage requires majority vote.

Position:

In May of 2013, the City Council entered into a License Agreement with Cia’, a coffee/ice cream/art establishment on Ocean Street in Knightville, allowing it to place tables and chairs on the sidewalk in front of its establishment. The typical sidewalk width in South Portland is between 4 to 5 feet wide; however, Knightville and areas of Willard Square now have sidewalks up to 8-feet in width. The re-design of Main Street is proposed to have up to 8-foot wide sidewalks. This type of width could allow this activity to occur, while leaving ample enough room for pedestrians.

Ordinance Sections 23-4 and 23-11, though may not necessary “prohibit” the specific activity from happening, it does not say it is allowed either.

Sec. 23-4. Altering sidewalks.

No person shall make any alteration in any sidewalk in the city without first obtaining the consent of the council or the consent of some person authorized by the council.
(Code 1966, § 6-6-1.10)

Sec. 23-11. Obstructing streets, sidewalks with material, appliances, etc.: Permit required; space permitted to be obstructed; occupant's duty.

- (a) No person shall place or cause to be placed upon a public street, gutter, public sidewalk, or parts thereof, any materials, appliances or other devices used in connection with the construction, repair or alteration of any building without first obtaining a permit from the director of public works.
- (b) Such obstructions shall not occupy more than one-third (1/3) the width of any street, nor more than one-half (1/2) the width of any sidewalk.
- (c) The temporary occupant shall give acceptable assurance sufficient to the director that the obstructions shall be confined to the area for which the permit was issued. (SOUTH PORTLAND CODE) (Code 1966, § 7-3-4)

The Council issued a license agreement last summer to Cia`, a local coffee, ice cream, art establishment on Ocean Street. The license was a "trial" to see how outdoor seating would work on City sidewalks. The trial allowed time for staff to monitor the activity and register any complaints prior to making changes to the ordinance. A recent polling of staff members resulted in no complaints received and no issues experienced. Corporation Counsel recommends the change take place in Chapter 14.

Code Enforcement

I have no adverse comments; I like the idea that the sidewalk has to be a minimum width to be used for outdoor seating.

Fire Department

I have reviewed the new proposal and have no concerns with the document. I would suggest that something be put into the ordinance reference securing the furniture and umbrellas in the event of a known storm or wind event.

Public Works

I'm fine with it as long as nothing is permanently attached to the sidewalk.

Economic Development

As you know I am a supporter of expanding sidewalk opportunities where appropriate in the city.

Police Department

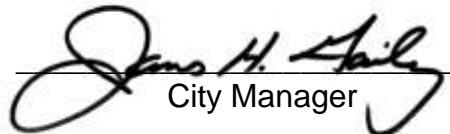
I have not been made of any concerns from staff regarding this ordinance or the trial agreement with CIA. Good to go from the PD.

The proposed language establishes a public sidewalk use license, addresses insurance requirements and outlines terms and conditions for outdoor seating.

This ordinance amendment passed first reading on April 23, 2014 and is in order for second reading and action.

Requested Action:

Council passage of Ordinance #11-13/14.


City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

District One
MICHAEL R. POCK

ORDINANCE #11-13/14

THE COUNCIL of the City of South Portland hereby ordains that Chapter 14, "Licenses, Permits and Business Regulations Generally" of the "Code of Ordinances of the City of South Portland, Maine," be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

District Two
PATRICIA A. SMITH

Chapter 14

District Three
MELISSA E. LINSKOTT

LICENSES, PERMITS AND BUSINESS REGULATIONS GENERALLY*

District Four
LINDA C. COHEN

• • •

Sec. 14-3. License regulations; schedule.

District Five
GERARD A. JALBERT

• • •

KEY TO SCHEDULE:

At Large
MAXINE R. BEECHER

- CC Denotes license granted by City Council
- CLK Denotes license granted by City Clerk
- CMR Code of Maine Rules
- MRSA Denotes Maine Revised Statutes Annotated, as may be amended from time to time
- OY Denotes one year from date of issuance

At Large
THOMAS E. BLAKE

Business or Occupation	Reference	P/L	Granted by	Exp
Peddlers or solicitors	§ 14-15			
• • •	• • •	• • •	• • •	• • •
<u>Public Sidewalk, Use of for Outdoor Seating</u>	<u>§ 14-24</u>	<u>L</u>	<u>CC</u>	<u>varies</u>
• • •	• • •	• • •	• • •	• • •

• • •

Sec. 14-8. Standards for denial, suspension or revocation.

• • •

(c) Insurance requirements.

The City Clerk or City Council, as appropriate, shall request proof of the insurance listed below before granting a license for the following:

- (1) circus – general liability insurance in the amount of at least \$1 million each occurrence and \$2 million general aggregate to cover loss, damage or injuries to persons or property that might result from the circus;
- (2) carnival - general liability insurance in the amount of at least \$1 million each occurrence and \$2 million general aggregate to cover loss, damage or injuries to persons or property that might result from the carnival;
- (3) Farmers' Market – as required by Section 14-105;
- (4) fireworks –as required by Section 14-34;
- (5) taxicab – as required by Section 14-59;
- (6) towing business/wrecker – as required by Chapter 15 of the Code of Ordinances;
- (7) waste hauler – as required by Chapter 9 of the Code of Ordinances;
- (8) mobile food vendor - automotive liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage in the amount of at least \$1 million each accident;
- (9) mobile ice cream vending unit - automotive liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage in the amount of at least \$1 million each accident; or
- (10) use of public sidewalk for outdoor seating - as required by Section 14-24.

• • •

Sec. 14-24. Use of public sidewalk for outdoor seating ~~Repealed.~~

- (a) No person, corporation, association or other business entity shall use a public sidewalk for outdoor seating unless licensed therefor by the City Council. A license granted pursuant to this section obviates the need for the user to obtain a permit under Section 23-11 of the Code of Ordinances as relates to use of a public sidewalk for outdoor seating.
- (b) Application for a use of public sidewalk for outdoor seating license (hereinafter "public sidewalk license") shall be made upon a form provided by the City Clerk and said license shall be for such term as determined appropriate by the City Council, but in no event shall the license be valid prior to **March 15th of each year or expire later than November 1st** of each year. The application shall contain a sketch showing the portion of the public sidewalk sought to be used as the licensed premises. The fee for such license shall be as specified in the Schedule of License, Permit and

Application Fees established by City Council order.

- (c) No public sidewalk license shall be issued by the City Council until the applicant has filed with the City Clerk a certificate, in a form satisfactory to the Corporation Counsel, evidencing general liability coverage in an amount not less than \$400,000 combined single limit for personal injury and property damage, or such other amount as may be required to meet the maximum coverage provisions of the Maine Tort Claims Act (14 M.R.S.A. § 8001 *et seq.*) as it may be amended, whichever amount shall be greater, and naming the City as an additional insured. The Licensee shall maintain such insurance at all times while engaged in use of the public sidewalk, and the Licensee shall provide the City Clerk with not less than ten (10) days' advance written notice of the cancellation, expiration or non-renewal of said insurance.
- (d) No public sidewalk license shall be granted by the City Council until the Fire Chief, the Police Chief, the Director of Public Works, the Director of Parks and Recreation and the Code Enforcement Officer have all made a positive recommendation upon the applicant's ability to comply with the terms and conditions in subsection (e) below.
- (e) Terms for public sidewalk license. To be issued a public sidewalk license, a person, corporation, association or other business entity must agree to the following terms and conditions, which terms and conditions are a part of any license issued:
- (i) Licensee's use of the public sidewalk shall be limited to the specific sidewalk area approved by the City Council ("the Licensed Property"). Licensee's use of the public sidewalk will comply with all applicable laws, ordinances, and regulations, including, without limitation, any and all requirements regarding licensing and land use approvals.
- (ii) Hours of operation at the Licensed Property are limited to 7:00 a.m. through 9:00 p.m., seven (7) days/week.
- (iii) The Licensee, his/her/its employees, guests, patrons and invitees shall not engage in or allow any illegal activity to occur at the Licensed Property. Illegal drugs and/or tobacco products shall not be brought onto or consumed within the Licensed Property. The sale or consumption of alcohol on the Licensed Property is prohibited. Notices stating that smoking is prohibited on the Licensed Property shall be prominently displayed thereon.
- (iv) Thirty-six inches (36") in width of the public sidewalk must be left clear of any obstructions to safe pedestrian and wheelchair passage on the portion of the sidewalk that is not a part of the Licensed Property; provided, however, that umbrella canopies may encroach into this clearance width if they comply with subsection (vii) below.
- (v) Nothing shall be permanently attached to the Licensed Property or any other City property. Heat lamps and tents are prohibited on the Licensed Property.

- (vi) No sign, billboard, panel, placard, poster, notice or other advertising device in, upon or above the Licensed Property or so situated with respect to the Licensed Property shall interfere with or distract motorists on adjacent streets or otherwise be so situated as to prevent the safe use or maintenance of adjacent streets.
- (vii) No umbrella canopy shall be no larger than seventy-two inches (72") at its widest dimension when open. An umbrella shall have a minimum height of seven feet (7'), as measured from the lowest point of the sidewalk to the lowest point of the umbrella canopy when open. No umbrella shall obstruct safe pedestrian and wheelchair passage on the portion of the sidewalk that is not a part of the Licensed Property.
- (viii) No tables, chairs, umbrellas, trash receptacles or other items of personal property shall block any means of ingress or egress to Licensee's own premises. All tables, chairs, umbrellas, trash receptacles and other items of personal property shall be properly secured in the event of a storm. The Fire Chief or his designee must approve the number, method of securing and arrangement of tables, chairs, umbrellas, trash receptacles and other items of personal property located within the Licensed Property, and once so approved, the Licensee shall not increase the number of, or substantially change, the arrangement of tables, chairs, umbrellas, trash receptacles and other items of personal property located within the Licensed Property without first obtaining an amended approval from the Fire Chief or his designee.
- (ix) The Licensee shall provide at least one trash receptacle located within the Licensed Property.
- (x) The Licensed Property shall be cleaned as reasonably necessary, but no less than daily, using a broom, hose and/or other equipment as appropriate.
- (xi) The Licensee is responsible for any damage to the Licensed Property or any part thereof caused directly or indirectly by the Licensee or his/her/its agents, employees, guests, or invitees. The City shall not be liable for any damage or loss to any property of the Licensee from any cause whatsoever while said Licensee's personal property is located at the Licensed Property for storage purposes or otherwise.
- (xii) The Licensee is responsible for leaving the Licensed Property in the same condition in which it was received, reasonable wear and tear excepted, and shall be responsible for any loss or damage to the Licensed Property. The Licensee shall be charged for any required repair or cleanup costs incurred as a result of the Licensee's use of the Licensed Property.
- (xiii) The Licensee releases and agrees to defend, indemnify and hold harmless the City, its agents, officers and employees, from any and all liability, actions, damages and claims of any kind and nature whatsoever for any

injury, harm or damage to persons or damage to property that may arise or occur during or in connection with the Licensee's use of the Licensed Property.

(xiv) In the event of suspension, revocation or expiration of the license, Licensee shall have forty-eight (48) hours to clean the Licensed Property and to complete the removal of all furniture, equipment and other personal property from the Licensed Property; Licensee shall repair all damages resulting from such removal. Any personal property not removed at the end of the term hereof shall be deemed abandoned by the Licensee and shall become the property of the City, and Licensee hereby waives any claim to such personal property and agrees to indemnify the City against all costs and expenses incurred by the City in storing, removing and disposing of any such personal property.

• • •

Fiscal Note: Less than \$1,000

Date: April 23, 2014