

**ORDINANCE NO. 2020-22**

**AN ORDINANCE**, creating regulations and permit requirements for private use of City streets and sidewalks for sidewalk cafes, storefront enhancements and display of goods, parklets, and streateries.

**WHEREAS**, the City desires to promote the vitality of downtown and a mixed-use environment, support sustainability of business, improve the pedestrian experience, create an active street environment, and promote the public health, safety and welfare; and

**WHEREAS**, the City Council created a demonstration period implemented through Resolution 2012-101 and subsequent resolutions extending the demonstration period through December 31, 2020; and

**WHEREAS**, the City Council passed Resolution 2016-18 creating a pilot program for up to four parklets or streateries; and

**WHEREAS**, the demonstration period and pilot program provided opportunities to test and develop standards and processes for implementing outdoor use of public spaces by private businesses on City streets and sidewalks; and

**WHEREAS**, the City Council desires to formalize rules and regulations for private use of public streets and sidewalks.

**SECTION I**

Amending Title 7 of the WCC with the addition of the following new

Chapter 7.40 Private use of public right of way – Streets and Sidewalks:

- 7.40 Private use of public right of way – Streets and Sidewalks
  - 7.40.010 Purpose and Intent
  - 7.40.020 Definitions
  - 7.40.030 Applicability
  - 7.40.040 Private use of sidewalk allowed – permit exempt

- 7.40.050 Private use of streets and sidewalks prohibited without permit
- 7.40.060 Sidewalk café - permit required
- 7.40.070 Applications for sidewalk café permit
- 7.40.080 Conditions of sidewalk cafe permit
- 7.40.090 Streatery - permit required
- 7.40.100 Applications for streatery permit
- 7.40.110 Conditions of a streatery permit
- 7.40.120 Security device, insurance, and other requirements
- 7.40.130 Permit issuance fees for sidewalk café or streatery permit
- 7.40.140 Violations and penalties

#### 7.40.010 Purpose and Intent

It is the intent of the City of Wenatchee to promote and improve the vitality of its downtown by encouraging pedestrian scale use of public sidewalks to support a high-quality public experience, ground floor retail business and upstairs residential use, all consistent with the City's Comprehensive Plan.

It is the policy of the City that sidewalks are primarily to provide safe and convenient pedestrian use by the general public. Limited secondary uses may be considered for sidewalk cafes, display of goods and storefront enhancements only to the extent that such uses promote and display Wenatchee business districts as pedestrian and people-oriented areas.

Furthermore, it is the policy of the City that the streets are primarily to provide safe and convenient motorist use by the general public in balance with the City's complete streets policy. Limited secondary uses of parking areas may be considered for parklets and streateries only to the extent that such uses promote and display Wenatchee's business districts as pedestrian and people-oriented areas, while maintaining City transportation, parking and circulation goals. Parklets and streateries provide an economical and creative solution to the desire for wider sidewalks necessary for increased outdoor business and activity. Development of these facilities are intended to be a cooperative effort between the downtown business owners, property owners, public and the City to achieve the objectives and intent set forth in this section.

#### 7.40.020 Definitions

**Parklet:** A parklet is a public space that resembles a park typically with benches or seating areas and greenery such as flower baskets. Parklets include a creative design approach to add to the aesthetic. While parklets are often built to support local eateries, they may not be controlled by private businesses. Parklets are initiated and implemented by the City and required to be open to the public 24 hours per day, 7 days per week.

Streatery: A streatery is a facility that is used specifically to support an adjoining restaurant. A streatery can be controlled as an exclusive space for the restaurant during business hours. Streateries must remain open to the public after hours. Streateries are similar to sidewalk cafes except they occupy parking spaces instead of the sidewalk. Often streateries and sidewalk cafes are combined to create a larger outdoor dining space.

Sidewalk Café: Sidewalk cafes are areas of the sidewalk permitted under WCC 7.40.060. Sidewalk cafes are delineated areas that are under exclusive control of the operating business. Sidewalk cafes may provide for the serving of alcohol.

#### 7.40.030 Applicability

The use of the sidewalk shall only be allowed where sidewalk exists and the sidewalk width is in excess of 10 feet for sidewalk cafes. Parklets and streateries are only allowed within the boundaries of the Central Business District; only two parklets or streateries may be permitted per block, and only one parklet or streatery may be permitted on each side of the street. Each parklet or streatery is limited to a maximum of 40 linear feet, requests for additional footage will be reviewed by the Public Works Director on a case by case basis.

The use of public streets and sidewalks for private uses is only permitted when the use is incidental to a legal permitted use (parklets are exempt from this requirement) and is limited to the frontage of property in which the subject use is occupied. Adjacent property owners may enter into an agreement for extension of a private use along their combined frontage. A streatery may be combined with a sidewalk café.

All private use of streets and sidewalks shall comply with all applicable federal, state, and City laws and regulations. Use of public space shall not be detrimental to the health, safety, or welfare of the public.

All private use of streets and sidewalks shall be subject to standards set forth by the Department of Public Works. Such standards may be amended as needed to ensure safe and orderly use of the public right of way. The Department of Public Works shall maintain current standards and keep them on file. Updates of the standards will be distributed to both permit holders and exempt users in coordination with the Wenatchee Downtown Association.

#### 7.40.040 Private use of sidewalk allowed – permit exempt

Restaurants and retail establishments may use the public space along its building frontage to display goods and storefront enhancements. Restaurants and retail

establishments shall maintain a minimum five-foot wide unobstructed pedestrian corridor adjacent to the display area.

Restaurants and retail establishments may place chairs, tables, and flower pots on the sidewalk on a temporary basis providing a five-foot wide unobstructed pedestrian corridor is maintained with clear sight lines to allow safe pedestrian passage. Temporary basis shall mean non-permanent fixtures and is intended to be easily movable. Alcohol may not be served under this provision.

Tables and chairs placed in the sidewalk will be treated as public space amenity and be available to all public using the sidewalk. Restaurants seeking dedicated use of the sidewalk for tables and chairs for their customers will need to apply for a sidewalk café permit.

All items placed on the public space must be removed and stored inside the business at closing.

The outdoor space must be kept clean at all times.

#### 7.40.050 Private use of streets and sidewalks prohibited without permit

It is unlawful for any person to either temporarily or permanently use or utilize any portion of a street right-of-way (whether or not improved and including sidewalk or walkway) for personal use, place of business or other private use, without first obtaining from the City a street use permit except as provided in Section 7.40.040 and further provided, that this section shall not be construed to prohibit the incorporation of the unused right-of-way portion of an improved street into the landscaping design of the abutting private property.

#### 7.40.060 Sidewalk café - permit required

A sidewalk cafe permit allowing a portion of a public right-of-way to be used as a sidewalk café is required for any such private use of a public right-of-way. Such permit shall be valid from January 1st through December 31st of the year in which the permit may be issued. The Director of Public Works shall issue the permit for the use of a public right-of-way as a sidewalk cafe only if the criteria set forth in all subsections of WCC 7.40.070 are met.

#### 7.40.070 Applications for sidewalk café permit

A complete application for a sidewalk cafe permit shall be submitted to the Department of Public Works for review and approval. Applications shall include the minimum following information:

- (a) A detailed site plan illustrating the sidewalk area and compliance with all standards set forth by the Department of Public Works and as described herein. Site plan shall include the following minimum information:
  - a. Existing features such as building façade, street trees, fire hydrants, planters, signs, awnings, etc.
  - b. Proposed features such as fencing, sidewalk demarcations, attachments to the sidewalk, locations of ingress/egress, planters, umbrellas, tables/chairs, serving equipment, etc.
- (b) Proof of a valid City of Wenatchee business license is required prior to permit issuance.
- (c) Proof of security, insurance, hold harmless agreement and other requirements according to WCC 7.40.090.
- (d) If applicable, a copy of a food handling permit from the Chelan Douglas Health District.
- (e) If applicable, a copy of the applicant's current liquor license.

#### 7.40.080 Conditions of sidewalk cafe permit

A sidewalk café permit, when issued, shall be subject to the following conditions:

- (a) No alcoholic beverage may be served or consumed within the permit area, except under the following conditions:
  - (i) Any establishment seeking to extend outside liquor services shall comply with all applicable Washington Liquor and Cannabis Board regulations, including but not limited to WAC 314-02-130 and WAC 314-03-200.
  - (iii) All Liquor and Cannabis Board regulations, including regulations relating to “extended outside service areas” shall be adhered to;
  - (iv) A breach of any of the foregoing conditions shall be grounds for immediate suspension or termination of the permit pursuant to subsection (f) of this section;
- (b) The entire sidewalk, including both the permit area and the unobstructed pedestrian corridor, plus a distance of fifty feet either side thereof, shall be maintained in a clean and litter-free condition and shall be cleaned by the permittee not less often than once daily;

The minimum height for umbrellas and other shade devices shall be seven feet in order to provide unobstructed passage for pedestrians.

- (c) No food preparation shall take place within the permit area;
- (d) No food service or other activity shall be carried on by the permittee from or within the pedestrian corridor;
- (e) Trash receptacles and ash trays shall be cleaned and emptied as required, but not less often than once a day;
- (f) The City may, and reserves the right to, temporarily or permanently suspend a sidewalk café permit during the course of areawide special events or in the interest of the public health, safety and welfare.
- (g) The Director of Public Works shall have the authority to approve administrative regulations and design guidelines that supplement the regulations and standards set forth in this section. Any supplementation of these regulations shall be based on the City's observations and experience with respect to implementation of this section. The City shall promptly notify affected establishments of any supplementation of the regulations in this section.

#### 7.40.090 Streatery - permit required

A streatery permit allowing a portion of a public right-of-way to be used as a streatery is required for any such private use of a public right-of-way. Such permit shall be valid from January 1st through December 31st of the year in which the permit may be issued. The Director of Public Works shall issue the permit for the use of a public right-of-way as a streatery only if the criteria set forth in all subsections of WCC [7.40.100](#) are met.

#### 7.40.100 Applications for streatery permit

A complete application for a streatery permit shall be submitted to the Department of Community Development for review and approval. Applications shall include the following two-step review process. The process is intended to obtain concept approval and clear requirements associated with parking changes and Health District and Liquor and Cannabis Board requirements (if applicable) first, prior to private investment into the final design of the streatery and prior to presenting to the Planning Commission. The following steps provide an outline to the process. Deviation from the process may be permitted with approval from the Community Development Director as long as the intent is met.

Step 1 (Pre- Application Process):

- (a) Develop a preliminary site plan sketch and use description for the streatory taking into account design guidelines.
- (b) The applicant shall confer with the Wenatchee Downtown Association and neighboring property owners and businesses.
- (c) Schedule and attend a pre-application conference with City staff.
- (d) Refine preliminary site plan and obtain Liquor and Cannabis Board and Health District approval if applicable.

Step 2 (Formal Application Process):

- (a) The application shall include:
  - a. Letter of support from the Wenatchee Downtown Association;
  - b. Proof of Liquor Control Board and Health District approval if applicable;
  - c. A detailed site plan of the final design of the streatory detailing the location of existing street features such as fire hydrants, sidewalk width, trees, catch basins, street lights, etc.;
  - d. An operational plan illustrating ADA compliant ingress and egress along with safety features to protect users and the structure.
  - e. Structural plan if applicable;
  - f. Aesthetics plan (visuals) and sample materials if necessary to illustrate the proposed look and feel intended;
  - g. Proof of insurance;
  - h. Hold harmless agreement;
  - i. Security device; and
  - j. Proof of City business license.
  
- (b) Once the application is deemed complete and city staff comments have been addressed, the applicant will present the design and aesthetic information to the Planning Commission for design review. The Applicant shall provide an overview of the project at a public planning commission meeting. The City will provide notice to property owners within 300 feet of the proposed streatory location. The Wenatchee Planning Commission shall make a recommendation to the Community Development Director concerning the aesthetics of the streatory. The form of the recommendation will be in the form of either approval, denial, or modification of aesthetics.

- (c) The Community Development Director shall make the final approval determination in consultation with the Mayor, Public Works Director, Police Chief, and Parks and Recreation Director. Given this application approval concerns private use of public space, the decision is final and not subject to appeal.
- (d) Upon approval of the application, a right of way permit shall be issued to construct the streatory. Upon completion, approval by the Health District and Liquor and Cannabis Board (if applicable) and inspection by the City, a revocable streatory permit shall be issued by the Department of Public Works.

#### 7.40.110 Conditions of a streatory permit

A streatory permit, when issued, shall be subject to the following conditions:

- (a) No alcoholic beverage may be served or consumed within the permit area, except under the following conditions for streateries:
  - (i) Any establishment seeking to extend outside liquor service shall comply with all applicable Washington Liquor and Cannabis Board regulations, including but not limited to WAC 314-02-130 and WAC 314-03-200.
  - (ii) All Liquor Control Board regulations, including regulations relating to “extended outside service areas” shall be adhered to;
  - (iii) A breach of any of the foregoing conditions shall be grounds for immediate suspension or termination of the permit pursuant to subsection (i) of this section;
- (b) The minimum height for umbrellas and other shade devices shall be seven feet in order to provide unobstructed passage for pedestrians.
- (c) No food preparation shall take place within the permit area;
- (d) No product displays shall be placed within the permit area;
- (e) No off-premises advertising signs or displays are permitted within the permit area;
- (f) Trash receptacles and ash trays shall be cleaned and emptied as required, but not less often than once a day;
- (g) Signing for the streatory providing notice of the availability of public use shall be installed per design guidelines established by the Department of Public Works.



(h) Streateries may be required to be removed during the winter to allow for snow plowing.

(i) The City may, and reserves the right to, temporarily or permanently suspend a streatery permit during the course of areawide special events or in the interest of the public health, safety and welfare.

(j) The Director of Community Development shall have the authority to approve administrative regulations and design guidelines that supplement the regulations and standards set forth in this section. Any supplementation of these regulations shall be based on the City's observations and experience with respect to implementation of this section. The City shall promptly notify affected establishments of any supplementation of the regulations in this section.

#### 7.40.120 Security device, insurance, and other requirements

As part of a valid sidewalk café or streatery permit and prior to issuance, the applicant shall file with the City and maintain throughout the duration of the permit the following:

(a) An agreement, approved by the City, wherein the applicant agrees to defend, save, and hold harmless the City of Wenatchee;

(b) The permittee shall obtain, at its sole expense, comprehensive liability insurance, with limits of not less than five hundred thousand dollars per occurrence, and shall provide the city with satisfactory proof of continued insurance coverage during the life of the permit. Such insurance shall include the City of Wenatchee as an additional named insured;

(c) If permittee intends to permanently secure something to City right of way, the permittee shall file with the City, on a form approved by the City Attorney, a security device. Such device shall be in the amount of one thousand dollars and conditioned upon the permittee's faithful performance of all conditions and requirements of the permit. An appropriate security device can be a cash deposit, assignment of an account, a surety bond, or similar device.

#### 7.40.130 Permit issuance fees for sidewalk café or streatery permit

Upon approval and prior to issuance of a sidewalk café or streatery permit, the applicant shall pay a one-time fee in accordance with Chapter 1.99 WCC. There shall be no fee for annual renewals of the permit providing the use is in accordance with prior permit approvals.

Any change to the use requiring City review shall constitute a new application and is subject to a new one-time fee. Change of ownership of the permit shall constitute

a new application and is subject to a new one-time fee in accordance with Chapter 1.99 WCC.

#### 7.40.140 Violations and penalties

Enforcement of this chapter shall be in accordance with Title 16 WCC. The Director of Public Works or Community Development shall have the authority to immediately revoke or suspend permits in accordance with Chapter 16.12 WCC in the case of the need to address public safety. Both permitted and non-permitted use of the public space shall be subject to all remedies provided for under Title 16 WCC.

### **SECTION II**

Chapter 1.99 WCC shall be and hereby is amended by adding the following application fees:

Sidewalk Cafe permit - \$150.00

Streatery permit - \$250.00

### **SECTION III SEVERABILITY**

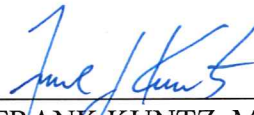
If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall have no effect on any other section, sentence, clause or phrase of this Ordinance.

### **SECTION IV EFFECTIVE DATE**

This Ordinance shall be in full force and effect thirty (30) days following publication of a summary hereof consisting of the title.

PASSED BY THE CITY COUNCIL OF THE CITY OF  
WENATCHEE at a regular meeting thereof, this 3<sup>rd</sup> day of December, 2020.


CITY OF WENATCHEE, a municipal  
Corporation

By:   
FRANK KUNTZ, Mayor

ATTEST:

By:   
TAMMY STANGER, City Clerk

APPROVED:

By:   
STEVE D. SMITH, City Attorney