

CITY OF MONROE
ORDINANCE NO. 008/2015(SUB)

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, AMENDING TITLE 12 MMC BY THE ADDITION OF A NEW CHAPTER 12.30, SIDEWALK USE PERMITS; ESTABLISHING REGULATIONS GOVERNING THE APPROVAL AND USE OF CERTAIN SIDEWALK AREAS FOR MERCHANDISE DISPLAYS, SEATING AND SIDEWALK CAFES; AMENDING CHAPTER 12.20 MMC, BEAUTIFICATION OF COMMERCIAL AREAS, AND CHAPTER 5.28 MMC, SPECIAL EVENTS, TO REFLECT SUCH REGULATIONS; PROVIDING FOR SEVERABILITY; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE

WHEREAS, the City of Monroe is committed to the revitalization and reestablishment of Monroe's downtown area as a vital economic sector of the City for the community's benefit; and

WHEREAS, a healthy, vibrant downtown makes all other economic development initiatives in the community easier to achieve; and

WHEREAS, the City of Monroe recently widened certain sidewalks located within the City's downtown and commercial areas, and such additional width is sufficient to safely accommodate both pedestrian traffic and use of the sidewalk area by adjacent businesses; and

WHEREAS, the City of Monroe recognizes that use of the sidewalk area by adjacent businesses will increase the vitality of Monroe's downtown and will further advance the City's planning goals of fostering a pedestrian-oriented streetscape for the downtown area; and

WHEREAS, the City is authorized by applicable state law, including without limitation RCW 35.21.220, to regulate and permit the use of sidewalks by abutting owners under such terms and conditions as the City may determine.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment of Title 12 MMC. Title 12 of the Monroe Municipal Code is hereby amended by the addition of a new Chapter 12.30, Sidewalk Use Permits, to provide in its entirety as follows.

Chapter 12.30 Sidewalk Use Permits

Sections:

- 12.30.010 Applicability.
- 12.30.020 Permit required.
- 12.30.030 Authorizing officials.
- 12.30.040 Definitions.
- 12.30.050 Filing of application.
- 12.30.060 Form of application.
- 12.30.070 Processing of applications.
- 12.30.080 Approval - considerations.
- 12.30.090 General requirements.
- 12.30.100 Specific requirements – Sidewalk cafés.
- 12.30.110 Liability insurance.
- 12.30.120 Permit duration, revocation, and public place restoration.
- 12.30.130 Authority to remove occupancy.
- 12.30.140 Permit - Fees.
- 12.30.150 Appeals.
- 12.30.160 Expressive activities exempt.

12.30.010 Applicability.

The provisions of this chapter shall apply exclusively to the sidewalk area lying immediately adjacent to a commercial building containing a currently licensed operating retail business engaged in the sales of goods and merchandise, services, or the business of food service establishment located on:

- A. Main Street, between Madison Street and the Burlington Northern Santa Fe railroad tracks;
- B. Lewis Street (SR203), between MacDougall Street and the Burlington Northern Santa Fe railroad tracks;
- C. Hill Street, between Madison Street and Ferry Street; and
- D. Fremont Street, between Blakeley Street and Ann Street.

12.30.020 Permit required.

A sidewalk use permit is required to use any part of the sidewalk area for:

- A. The display and/or sale of merchandise,
- B. The placing of tables and chairs, or
- C. The operation of a sidewalk café, as defined herein.

12.30.030 Authorizing officials.

The community development director and the public works director, or their respective designees, shall jointly review and issue decisions concerning applications for a sidewalk use permit under this chapter.

12.30.040 Definitions.

A. "Sidewalk café" means a portion of the sidewalk area in which tables and chairs are placed for the use of patrons consuming food or beverages, which may include alcoholic beverages, that is operated by a food service establishment located on abutting property.

B. "Tables and chairs" means tables and chairs set out on the sidewalk adjacent to a business. While available to their patrons, these tables and chairs are open for use by the general public, table service may not be provided, and alcohol cannot be consumed or served. No other fixed or moveable improvements (i.e., a railing or other obstruction) may be installed within the sidewalk area.

C. "Merchandise displays" means the display and sales of goods and merchandise, or services, of a like kind and quality that is displayed and offered for sale within the abutting commercial building.

12.30.050 Filing of application.

An applicant, or agent authorized to submit an application on behalf of an applicant, may file an application for a permit to use the sidewalk area to:

- A. Place merchandise displays on the sidewalk.
- B. Place tables and chairs on the sidewalk.
- C. Place a sidewalk café on the sidewalk.

12.30.060 Form of application.

Applications shall be on a form provided by the city and shall contain an accurate description of:

- A. The proposed use;
- B. The sidewalk or defined portion of the sidewalk to be used;
- C. Any existing public improvements, utilities, or structures in the vicinity of the area to be used and any trees that may be affected;
- D. The plans and specifications for any equipment, utility, or structure (including but not limited to heating appliances, tables, chairs, railings, and fences) proposed in or on the sidewalk; and
- E. Other requested information specific to the application as required by the authorizing officials.

The application shall be signed by the adjacent property owner and business owner, or authorized agents thereof.

12.30.070 Processing of applications.

A. The authorizing officials identified in MMC 12.30.030 shall examine each application for a permit for compliance with the Monroe Municipal Code, including the approval criteria set forth in this chapter.

B. The authorizing officials may jointly approve, approve with conditions or deny an application submitted under this chapter. The decision of the authorizing officials shall be in writing.

12.30.080 Approval - considerations.

A. If the application conforms to the requirements of the Monroe Municipal Code and the proposed use will not unreasonably interfere with the rights of the public, the authorizing officials may approve the application; fix the duration and the terms or conditions of the permit; and, when required, upon the applicant's furnishing of a deposit or surety bond, insurance, covenant, and indemnification, and payment of any applicable fees, issue the permit. The original permit shall remain in the custody of the city, and a copy shall be given to the permittee and shall be visibly posted at the site.

B. The permit shall specify the portion of the sidewalk that may be occupied, the dates or days and hours of use, and the allowed use. The permit shall only be valid for the portion of the sidewalk, the dates or days and hours of use, and the use as identified on the permit.

C. Factors for consideration in evaluating an application for a permit include, but are not limited to, the site and its terrain; the public and private benefits of the proposed use; and the impact of the proposed use on the following:

1. The paramount purpose of street and sidewalk area for travel and transportation, specifically including without limitation pedestrian access and use rights and site distance considerations;
2. Utilities; authorized secondary street uses; and any use being made by the public of the site;
3. Fire access and public safety;
4. Uses under permit; street trees; and other proposed or past uses of the site;
5. Rights of light, air, and access and lateral support of abutting properties and/or access or easements of properties dependent upon the public place for access;
6. The environment;
7. Drainage; and

8. Where applicable, city land use, transportation, open space, shoreline, and beautification regulations and policies.

12.30.090 General requirements.

A. A minimum area of the sidewalk shall be reserved for pedestrian use not less than five feet in width or the minimum width required by applicable local, state and federal law, whichever is greater, and shall be within the area between the curb/bollards and the adjacent building, and shall be for the entire width of said building. Such pedestrian area shall be maintained free and clear of all obstructions at all times, and shall allow for a continuous walkway along the entire front of the building, connecting with pedestrian walkway areas, if any, on both ends thereof.

B. A minimum area shall be reserved for vehicle loading and unloading not less than three feet in width adjacent to the curb/bollards.

C. Pedestrian entrances to all buildings shall intersect with such pedestrian walkway areas, shall be not less than forty-two inches in width, and shall be maintained free and clear of all obstructions at all times. In addition, no obstruction shall be placed in a manner that impedes persons from entering or exiting parked vehicles.

D. The community development director is hereby authorized to promulgate administrative standards, consistent with this chapter, for the use of sidewalk areas.

12.30.100 Specific requirements - Sidewalk cafés.

A. The permittee shall maintain the sidewalk café and all adjoining and abutting public places free of all refuse of any kind generated from the operation of the sidewalk café and the permittee's business.

B. Only materials and supplies used by the permittee for the daily operation of the sidewalk café may be located within the sidewalk café and the permittee shall not store other supplies or other materials in the sidewalk café or adjoining public places unless authorized by separate city permit or approval.

C. The surface of the adjoining public place shall not be altered and fixtures of any kind shall not be installed in the public place unless authorized by a street use permit.

D. A sidewalk café shall not be secured to any public amenity unless authorized by a street use permit.

E. The permittee shall temporarily remove the sidewalk café and clear the public place as the authorizing officials deem necessary to temporarily accommodate access to abutting properties or utilities.

F. The permittee is responsible for ensuring that the sidewalk café does not encroach into the roadway or cause pedestrians to divert from the pedestrian zone.

G. The permittee shall not operate the sidewalk café in a way that restricts or interferes with access to the abutting property; prevents the use of the sidewalk area for pedestrian traffic, including without limitation use by disabled persons; creates a nuisance or hazard to public health, safety, or welfare; increases traffic congestion or delay; or constitutes an obstruction for fire, police, or sanitation vehicles.

H. The permittee shall immediately remove the sidewalk café when ordered by the authorizing officials or the police chief.

I. Liquor, as defined in RCW 66.04.010(25), as now existing or as amended, may only be used or sold at a sidewalk café if authorized by: the street use permit; the permit issued by the Snohomish health district; and all applicable licenses, permits and/or other approvals issued by the Washington State Liquor Control Board.

12.30.110 Liability insurance.

All permittees of a sidewalk use permit under this chapter shall, prior to being granted such permit, enter into an agreement with the city of Monroe in which they agree to defend, indemnify and hold harmless the city, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property arising by reason of their use and/or occupancy of the sidewalk for such purposes, except only such injury or damage as shall have been occasioned by the sole negligence of the city. Such agreement shall be in a form approved by the city and shall contain such other reasonable provisions as the city may require in its sole discretion. At all times during the duration of such permit, the permittee shall maintain commercial general liability insurance of not less than one million dollars per occurrence, two million dollars general aggregate, and two million dollars products-completed operations aggregate limit naming the city of Monroe as an additional insured.

The permittee shall procure and maintain, if applicable, liquor liability insurance in the amount of one million dollars each occurrence. The city of Monroe shall be named as an additional insured on liquor liability insurance.

The permittee shall furnish the city with original certificates of insurance and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the applicant before issuance of the permit.

12.30.120 Permit duration, revocation, and public place restoration.

A. A sidewalk use permit shall expire automatically upon the earlier of:

1. At the end of the calendar year in which it is issued;
2. If the business changes ownership; or
3. If the business license for the business expires and is not renewed.

B. The authorizing officials may, upon issuing the annual street use permit invoice and receipt of the renewal fee, renew a street use permit provided: the permittee is in compliance with all permit conditions; the ownership or business has not changed; and the space is not needed for transportation, utility, or any other public-use purpose.

C. The authorizing officials may modify the conditions of sidewalk use permit, including permitted hours or days of operation, after providing the permittee with written notice ten days before modifying the sidewalk use permit. A copy of the modified sidewalk use permit shall be mailed by first-class mail to the permittee at the address listed on the sidewalk use permit application.

D. All use authorizations approved under the provisions of this chapter shall be of a temporary nature and shall vest no permanent right; and may in any case be revoked upon thirty calendar days' notice; or without notice, in case any use or occupation is dangerous or any structure or obstruction permitted is insecure or unsafe; or is not constructed, maintained, or used in accordance with the provisions of the Monroe Municipal Code. Without prejudice to the foregoing, the city may immediately terminate or suspend a permit issued under this chapter if the sidewalk area in question is required for a public purpose, specifically including without limitation a public works project of the city or another governmental entity.

E. If a permit to use a sidewalk area is revoked or terminated, the sidewalk area shall be restored by the permittee, at the permittee's expense, to the condition that existed prior to permittee's use.

12.30.130 Authority to remove occupancy.

If any structure, obstruction, use, or occupancy is not discontinued on notice from the city to do so, the city, may:

A. Prohibit its further use;

B. Remove it from the public place;

C. Make repairs to it as may be necessary to render it secure and safe at the expense of the permittee or the permittee's successor or user responsible for the structure, obstruction, use, or occupancy; and/or

D. Collect from the permittee all expenses incurred in rendering it secure and safe and restoring the public place in the manner provided by law.

12.30.140 Permit—Fees.

Permit fees under this chapter may be established by the city council by periodic resolution.

12.30.150 Appeals.

An applicant may appeal any written decision of the authorized officials issued under this chapter to the hearing examiner by filing a written statement with the city clerk no later than ten working days after the date of such decision. Payment of the appeal fee, as specified in the city's fee resolution, shall occur at the time the appeal is filed. The hearing examiner shall consider such appeal at an open record hearing and issue a written decision within ten working days of the date of such hearing. The decision of the hearing examiner shall be final and not subject to further administrative appeal.

12.30.160 Expressive activities exempt.

Nothing herein shall be construed and/or enforced in a manner that violates the constitutional rights of free expression as defined by applicable federal and state law.

Section 2. Amendment of MMC 5.28.010. Subsection 5.28.010(E) of the Monroe Municipal Code is hereby amended as follows:

5.28.010 Definitions.

E. "Special event" means any parade, fair, show, festival, carnival, rally, party, filming of movie, video or television show, motorcade, run, street dance, bike-a-thon, race, walks, athletic event or other attended entertainment or celebration that is to be held in whole or in part upon publicly owned property and/or public right-of-way, or, if held wholly upon private property, will nevertheless affect or impact the ordinary and normal use by the general public of public property or public rights-of-way within the vicinity of the event. Special event shall also mean any activity to be held in whole or in part upon publicly owned or controlled property and/or public rights-of-way where merchandise or services are offered for sale, whether by for profit or nonprofit organizations, **except where such activity is expressly authorized by a sidewalk use permit issued pursuant to Chapter 12.30 MMC.**

Section 3. Amendment of MMC 12.20.030. Section 12.20.030 of the Monroe Municipal Code is hereby amended to provide as follows.

12.20.030 Display of items.

No right shall be presumed or exercised by the owner or lessee for the display of items of merchandise, but such permissive use shall be limited only to items for beautification as above stated **unless expressly authorized by this code.**

Section 4. 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 not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

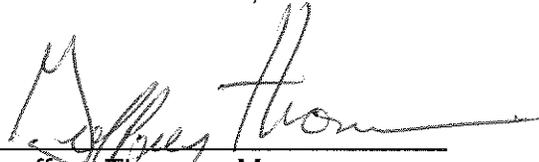
Section 5. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 9th day of June, 2015.

1st Reading June 2, 2015
Final Reading: June 9, 2015
Published: June 16, 2015
Effective: June 21, 2015

(SEAL)

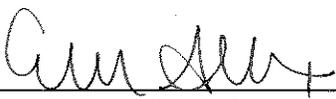
CITY OF MONROE, WASHINGTON:



Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:



Elizabeth M. Smoot, MMC, City Clerk



J. Zachary Lell, City Attorney