

ORDINANCE NO. 35-19

AN ORDINANCE of the City of Richland amending Chapter 5.14 of the Richland Municipal Code related to sidewalk use license.

WHEREAS the city has an established process for the review and issuance of licenses for limited use of the city's sidewalks and airspace; and

WHEREAS the current process for the review and issuance of Sidewalk Use Licenses takes approximately 60 days; and

WHEREAS previous Sidewalk Use Licenses reviewed by the Planning Commission have garnered very little, if any, public response; and

WHEREAS conditions of approval placed upon Sidewalk Use Licenses reviewed by the Planning Commission have matched the conditions of approval suggested by staff; and

WHEREAS eliminating the Planning Commission from review of Sidewalk Use Licenses will expedite the review process for city customers; and

WHEREAS removing the Planning Commission review of Sidewalk Use Licenses will likely not change the conditions of approval placed upon Sidewalk Use Licenses.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Chapter 5.14 of the Richland Municipal Code, as enacted by Ordinance No. 09-09, is hereby amended as follows:

**Chapter 5.14  
SIDEWALK USE LICENSE**

**Sections:**

- 5.14.010 Definitions.**
- 5.14.020 License required.**
- 5.14.030 Application.**
- 5.14.040 Uses allowed.**
- 5.14.050 Terms and conditions.**
- 5.14.060 Liquor.**
- 5.14.070 ~~Public hearing required for sidewalk use license~~ Review process and appeal.**
- 5.14.080 Return of sidewalk to original condition.**
- 5.14.090 Release of liability, surety and insurance.**
- 5.14.100 Sidewalk condition.**

- 5.14.110 Vested rights not created.**
- 5.14.120 Compensation.**
- 5.14.130 Design and placement standards.**

**5.14.010 Definitions.**

“Air space” means the vertical area above city sidewalks or right-of-way that is projected upon by private signs, building elements, canopies, awnings, flags, banners, antennas, or overhead pedestrian walkways.

“Allowed merchandise” are products permitted for sale in the adjoining zoning district.

“Decoration” refers to privately owned objects placed on city-owned sidewalks including, but not limited to, seasonal ornament displays, lighting, flags, landscape planters and artwork.

“Merchandise display” means to place objects for sale by an adjoining, licensed business operating on private property on a city-owned sidewalk.

“Newsstands and mail services” are facilities intended to distribute newspapers, magazines and other literature or other facilities providing mail and package drop-off services.

“Sidewalk cafe” means an open-air seating area on a public sidewalk provided by an eating or drinking establishment located on the adjoining property and delineated by a fixed, semi-permanent enclosure such as a rail, wall or other partition.

“Sidewalk furniture” means any temporary and unaffixed improvements used as seating, tables, weather protection, or signage.

“Surety instrument” means a performance bond supplied by a licensee to guarantee the return of city property in an original, pre-license condition.

“Vending cart” is a non-motorized cart used to prepare, store and sell food products.

**5.14.020 License required.**

The **community** development **services** department will issue licenses for limited use of the city’s sidewalks and airspace. It shall be unlawful to utilize city sidewalks and rights-of-way, and air space over the sidewalks and rights-of-way, without a license. Decoration, merchandise display, sidewalk furniture, newsstands and mail services are not subject to the license requirement but remain subject to the remaining standards of this chapter.

**5.14.030 Application.**

An application for a sidewalk use license shall be made available from the **community** development **services** department. ~~A completed application including all necessary supporting plans and diagrams will initiate a maximum 60-day review period.~~ There will be a ~~\$200.00~~ fee for the license as set forth in the City of Richland fee schedule.

#### **5.14.040 Uses allowed.**

Subject to the conditions and limitations set forth in this chapter, the city will allow use of city-owned sidewalks or fee simple public property, by property or business owners for newsstands and mail services and by adjoining property or business owners for merchandise display, decoration, sidewalk cafes, sidewalk furniture, vending carts, and air space intrusions. In no circumstance will uses or encroachments be allowed within right-of-way or fee simple property utilized by vehicular traffic.

#### **5.14.050 Terms and conditions.**

A. The ~~community~~ development services department may issue a sidewalk use license only if:

1. The applicant is the owner of the adjoining property or business or is a designated representative, except for newsstands and mail service applications;
2. The proposed use would not unduly and unreasonably impair passage to and fro by the public on the sidewalk for which the license is sought and is consistent with the design standards contained herein; and
3. Prior to issuance of a sidewalk use license, ~~P~~ proposed sidewalk cafe users obtain an approved food-service establishment permit issued by the Benton-Franklin hHealth ~~e~~Department, and a liquor license by the State of Washington Liquor & Cannabis Control Board, if applicable. Both permits must ~~and that said permits~~ include the sidewalk use area, ~~prior to issuance of a sidewalk use license.~~

B. The ~~community~~ development services department may include in the license such terms and conditions as the department ~~may~~ deems appropriate to satisfy applicable local, state and federal standards; ~~in addition to:~~ general compatibility of the proposed sidewalk with the existing neighborhood, special events, and public access; ~~;~~ high visual quality; and facilitation of a harmonious relationship between the public and private sectors. Conditions attached to a license approval may include, but are not limited to, the following:

1. Restrictions as to the number and placement of tables and chairs and as to the hours and dates of use;
2. Provisions that the licensee shall maintain the adjoining sidewalk in a clean and safe condition for pedestrian travel;
3. A requirement that the licensee clear the sidewalk as may be reasonably necessary to accommodate deliveries to adjacent or other nearby properties;
4. Regulations upon lighting and illumination of the sidewalk cafe; limitations upon noise; and restrictions upon the placement of equipment;

5. The prompt repair of damaged or failing improvements that present a safety risk to the public;

6. Collection of indemnity documentation, insurance, and/or surety instruments as contained herein;

7. Duration of the license and renewal procedure;

8. A requirement that furniture, equipment, and other appurtenances related to sidewalk uses remain clean, in good repair and visually appealing. ~~sightly.~~

C. Unless expressly authorized by the city, no pavement shall be broken, no sidewalk surface disturbed, and no permanent fixture of any kind shall be installed in or on sidewalk area in connection with a sidewalk use.

D. The ~~community~~ development services department may suspend or revoke a license issued under this chapter ~~the permission granted~~ if an applicant violates this title, any implementing rules, or the terms and conditions of the ~~permit~~ license. Such revocation or suspension shall not occur ~~not~~ sooner than ten (10) calendar days following written notice of intent to suspend or revoke the license. Suspension or revocation of a sidewalk use license is appealable to the city manager consistent with RMC 5.04.560.

#### **5.14.060 Liquor.**

Liquor, as defined in RCW 66.04.010(16), as now existing or hereinafter amended, may be used and sold at a sidewalk cafe when authorized in both the sidewalk use permit and provided for in this chapter and by permit of the Washington State Liquor & Cannabis ~~Control~~ Board, and not otherwise.

#### **5.14.070 Review and appeal process. ~~Public hearing required for sidewalk use license.~~**

~~Proposed sidewalk cafes and use of public air space shall require a public hearing. Notice of public hearing shall be published at least once in the official newspaper of the city. In addition, written notice shall be mailed to the owner or owners of the property involved, and to all property owners of record within a radius of 300 feet of subject property pursuant to a title insurance company report required by RMC 23.70.190. Both published and mailed notices shall be given at least 10 days in advance of the public hearing. The notice of hearing shall also be affixed to the property to be clearly seen from the proposed sidewalk use area at least 10 days in advance of the public hearing.~~

~~The notice of a public hearing required in this chapter shall at a minimum contain: the name of the applicant; the nature of the proposed use including a diagram clearly delineating the sidewalk, pedestrian circulation, proposed outdoor seating area, any fence, wall or partition wall, any proposed overhead projections into the city's air space, and adjoining buildings; and description of the affected property, which may be in the form of either a vicinity map or written description, reasonably sufficient to inform the public of its location; the date, time and place of the hearing; a statement that all interested persons~~

~~may appear and provide testimony and the location where information may be examined prior to the hearing.~~

~~The planning commission shall conduct an open record public hearing and shall issue a decision by a recorded motion, which shall incorporate the findings of fact of the commission and the reasons for its action; and the motion shall refer expressly to the maps, description and other matters intended by the commission to constitute approval. The planning commission's findings of fact shall be based on: general compatibility of the proposed sidewalk use with the existing neighborhood, special events and pedestrian access; coordination with state and local regulations for liquor consumption and food establishments, and assurance that the public is protected via appropriate insurance and surety instruments.~~

Within ten (10) business days of receipt of a complete sidewalk use license application, the development services department will refer the application to Public Works, Finance, Parks & Public Facilities, Police, Fire & Emergency Services, and any other city department potentially impacted by a determination to grant the license. The receiving city departments will have fourteen (14) business days from the date of receipt to review the application and send comments on the application to the development services department. Within five (5) business days thereafter, the development services department will notify the applicant that either the sidewalk use license has been granted, or that the application has been placed on hold pending the submission of additional information.

Any sidewalk use license decision made by the development services department ~~planning commission shall be~~ may be subject to appealed to the hearings examiner. ~~city council.~~

#### **5.14.080 Return of sidewalk to original condition.**

The licensee shall return the sidewalk to original, pre-license condition at no cost to the city at the time a license expires or the sidewalk use ceases.

#### **5.14.090 Release of liability, surety and insurance.**

A. Release of Liability. All persons utilizing the city sidewalk for air space, sidewalk cafe, and/or vending carts shall release the city from liability in writing on a form available from the ~~community~~ development services department ~~in writing~~ and acknowledged by the applicant, ~~to hold and save the city free and harmless from any and all claims, actions or damages of every kind and description which may accrue to, or be suffered by, any persons by reason of or related to the operation of such sidewalk use.~~ Under the release, the applicant shall hold harmless the city of Richland, 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, which arises out of applicant's use of premises, or from the conduct of applicant's business, or from any activity, work or thing done, permitted, or suffered by applicant in or about the premises, except only such injury or damage as shall have been occasioned by the city's sole negligence. In addition, such agreement shall contain a provision that the permit is wholly of a temporary nature,

that it vests no permanent right whatsoever, that upon 30 days' notice, posted on the premises, or by publication in the official newspaper of the city, or without such notice, in case the permitted use shall become dangerous or unsafe, or shall not be operated in accordance with the provisions of this title, the same may be revoked and the improvements shall be removed by the licensee immediately or by the city using associated surety instrument, if any, at the discretion of the **community** development services director or designee.

B. Surety Instrument. Certain sidewalk uses will require the licensee to post a surety bond to ensure the return of the sidewalk to an original, pre-license condition.

C. Insurance. ~~Sidewalk cafes shall i~~n addition to releasing liability and providing a surety instrument, sidewalk cafes shall also extend private commercial general liability building insurance to include the sidewalk use area allowed in an associated license, and name the city of Richland as an additional insured. Commercial general liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. and provide \$1,000,000 of accident coverage per incident. Said insurance shall include a provision prohibiting cancellation or reduction in coverage of policy except upon 30 days' prior written notice to the city. The amount of insurance coverage may be adjusted annually by the city with and notice ~~of such adjustment shall be given in writing~~ to the licensee. A sidewalk use license for a sidewalk cafe will be revoked if the required **necessary** private insurance does not remain in full effect.

The **community** development services director shall require such release of liability, license, surety instrument and/or private insurance as follows (Y = yes and N = no):

Type of Use	Release of Liability	License Required	Surety Instrument	Private Insurance	Public Hearing
Air Space	Y	Y	N	Y	Y
Decoration	N	N	N	N	N
Newsstand and Mail Services	N	N	N	N	N
Merchandise Display	N	N	N	N	N
Sidewalk Cafe	Y	Y	Y*	Y	Y
Sidewalk Furniture	N	N	N	N	N
Vending Cart	Y	Y	N	Y	N

\* **If** Required when substantial modifications are made to city property, that are undesirable if the use ceases. Surety instrument, if required, shall be 115 percent of the estimated cost to revert the improvement to a pre-license, original condition as determined by the city engineer.

#### **5.14.100 Sidewalk condition.**

The applicant shall comply with the terms and conditions of the sidewalk use license issued and maintain the sidewalk clean and free of debris, refuse, stains, and in a safe condition for pedestrian travel, and shall immediately clear the sidewalk area when ordered to do so by the ~~community~~ development services director or other appropriate city officer such as the chief of police or fire chief or their authorized representatives for matters of public safety, health and welfare.

#### **5.14.110 Vested rights not created.**

The grant of sidewalk uses pursuant to this chapter shall be subject always to the city's ownership of the right-of-way and the public health, safety, convenience and necessity. Grant of a sidewalk use shall not constitute a street vacation. No vested rights shall be created by grant of any sidewalk use. Such limitation shall be prominently displayed on all permits issued pursuant to this chapter.

#### **5.14.120 Compensation.**

Authorized sidewalk uses benefit the public by offering an active and pleasing streetscape environment. ~~and~~ Therefore, no compensation is ~~therefore~~ required.

#### **5.14.130 Design and placement standards.**

A. Exceptions. Sidewalk uses are expected to meet ~~these~~ the following design standards except in cases where special accommodation is made by the city via contract, special event permit, or other approval.

B. Pedestrian Clear Area. Sidewalk uses shall be placed so as to maintain at least five (5) feet in width of unobstructed pedestrian travel and no more than 30-degree changes of direction around uses. The pedestrian clear area does not include the radius for the door openings of buildings.

C. Separation from Curb. Sidewalk uses may be placed adjacent to buildings and not closer than two (2) feet from the curb and shall accommodate the pedestrian clear area. In all cases, the intersection sight distance, as required in Chapter 12.11 RMC, shall be met.

D. Fencing. Unless otherwise determined by the ~~community~~ development services director, any containment of outdoor cafes shall be limited to 36 inches high maximum and shall allow at least 50 percent visibility.

E. Overhead Use of City Airspace. No projection of private building elements, signage, antennas, flags, banners, awnings, canopies, or overhead pedestrian walkways shall occur lower than ten (10) feet as measured vertically from sidewalk grade and must also ~~shall meet~~ Washington State Department of Transportation clearance standards for particular street classifications.

F. Allowable Sidewalk Use Area. Only portions of the sidewalk that directly adjoin a property for which a license is sought are eligible for use, except sidewalks used for newsstands and mail services.

G. Any vending cart shall be removed from the city right-of-way daily.

H. Newsstands and mail delivery services shall not: impair loading; hinder egress from parked vehicles; open toward the roadway if located on the curbside of the sidewalk; obscure signage; be fastened to any public utility poles, signs or equipment; contain advertising other than that which relates exclusively to the publication sold or distributed; or be used for purposes other than the sale and distribution of such publications.

Section 2. This ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 17<sup>th</sup> day of September, 2019.

  
ROBERT J. THOMPSON  
Mayor

ATTEST:

  
TONI FULTON, Acting Deputy City Clerk

APPROVED AS TO FORM:

  
HEATHER KINTZLEY, City Attorney

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