

CHAPTER 8

Street Use Permit

SEC. 7-8-1 STREET USE PERMITS.

- (a) **PURPOSE.** The streets in possession of the City are primarily for the use of the public in the ordinary way. However, under proper circumstances, the City Clerk may grant a permit for street use, subject to reasonable municipal regulation and control. Therefore, this Section is enacted to regulate and control the use of streets pursuant to a Street Use Permit to the end that the health, safety and general welfare of the public and the good order of the City can be protected and maintained.
- (b) **APPLICATION.** A written application for a Street Use Permit by persons or groups desiring the same shall be made on a form provided by the City Clerk and shall be filed with the City Clerk. The application shall set forth the following information regarding the proposed street use:
- (1) The name, address and telephone number of the applicant or applicants.
 - (2) If the proposed street use is to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization and of the authorizing responsible heads of such organization.
 - (3) The name, address and telephone number of the person or persons who will be responsible for conducting the proposed use of the street.
 - (4) The date and duration of time for which the requested use of the street is proposed to occur.
 - (5) An accurate description of that portion of the street proposed to be used.
 - (6) The approximate number of persons for whom use of the proposed street area is requested.
 - (7) The proposed use, described in detail, for which the Street Use Permit is requested.
 - (8) Applications for a street use permit must be completed and filed with the City Clerk not less than thirty (30) days prior to the scheduled date of the street use.
- (c) **REPRESENTATIVE AT MEETING.** The person or representative of the group making application for a Street Use Permit shall be present when the Board of Public Works and Common Council gives consideration to the granting of said Street Use Permit to provide any additional information which is reasonably necessary to make a fair determination as to whether a permit should be granted.
- (d) **REVIEW BY CHIEF OF POLICE AND DIRECTOR OF PUBLIC WORKS.** Before any application for a Street Use Permit is considered by the Common Council, the application shall be reviewed by the Director of Public Works and Chief of Police for their recommendation as to the effect that the temporary closing of the street will have on the public safety and traffic movement in the area during the time the street may be closed.
- (e) **MANDATORY DENIAL OF STREET USE PERMIT.** An application for a Street Use Permit shall be denied if:
- (1) The proposed street use is primarily for private or commercial gain.
 - (2) The proposed street use would violate any federal or state law or any ordinance of the City.
 - (3) The proposed street use will substantially hinder the movement of police, fire or emergency vehicles, constituting a risk to persons or property.
 - (4) The application for a Street Use Permit does not contain the information required above.
 - (5) The proposed use could equally be held in a public park or other location. In addition to the requirement that the application for a Street Use Permit shall be denied, as hereinabove set forth, the Common Council may deny a permit for any

other reason or reasons if it concludes that the health, safety and general welfare of the public cannot adequately be protected and maintained if the permit is granted.

- (f) **PERMIT FEE.** Each application for a Street Use Permit shall be accompanied by a fee of Twenty-five Dollars (\$25.00).
- (g) **ALCOHOL BEVERAGE LICENSES.** If the applicant requests permission to possess, sell or offer for sale fermented malt beverages and/or wine containing not more than six percent (6%) alcohol by volume within the perimeter of the street use permit area, the applicant shall follow the procedure for a Temporary Class “B” Picnic License under SEC. 7-2-1(e)(1) of the Code of Ordinances. The Common Council may impose conditions for the street use permit not inconsistent with a concurrent alcohol beverage license and applicable laws.
- (h) **INSURANCE.**
 - (1) The applicant for a Street Use Permit may be required to indemnify, defend and hold the City and its employees and agents harmless against all claims, liability, loss, damage or expense incurred by the City on account of any injury to or death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the permit, the applicant may be required to furnish a Certificate of Comprehensive General Liability Insurance with the City of Menasha. The applicant may be required to furnish a performance bond prior to being granted the permit.
 - (2) Any street use applicant may apply to meet the insurance requirements through the office of the Risk Manager by purchasing insurance through a TULIP program. (Tenant/Users Liability Insurance Program.) Any fees or costs shall be prepaid by such street use applicant prior to Common Council consideration of any Street Use Permit.
 - (3) The City Attorney or Risk Manager shall review any Street Use Permit Application for satisfactory insurance coverage.
 - (4) Proof of insurance is not required for parades sponsored by the Menasha Public Schools or St. Mary's Central High School.
- (i) **TERMINATION OF A STREET USE PERMIT.** A Street Use Permit for an event in progress may be terminated by the Police Department if the health, safety and welfare of the public appears to be endangered by activities generated as a result of the event or the event is in violation of any of the conditions of the permits or Ordinances of the City of Menasha. The Chief of Police has the authority to revoke a permit or terminate an event in progress if the event organizers fail to comply with any of the regulations in the street use policy or conditions stated in the permit.
- (j) The City of Menasha may require a deposit fee to insure that appropriate clean-up or dismantling of structures is done upon the conclusion of the event. This deposit shall be in an amount established by the Common Council.
- (k) The City of Menasha may require any Street Use applicant to pay any costs necessary for additional staffing to maintain safety of participants or the public or to satisfactorily clean up after the event.
 - (1) The Chief of Police and Fire Chief are allowed to authorize a use of the streets for a short duration without other compliance with this section.
 - (2) The Common Council may waive any of the requirements of this section in the event of special mitigating circumstances.
- (m) The Common Council may waive any of the requirements of sections 7 – 8 – 1 (c), 7 – 8 – 1 (d) or 7 – 8 – 1 (e) in the event of special mitigating circumstances. Any such motion to waive any of these requirements must state the specific mitigating circumstances.

SEC. 7-8-2 OUTDOOR RESTAURANT SERVICE.

- (a) **Intent.** The intent of this section is to establish standards for the limited use of public right-of-way and other public property for Outdoor Restaurant Service by licensed restaurants in the historic downtown while maintaining right-of-way and other public property accessibility, safety, and preserving the historic character of the area.
- (b) **Purpose.** To promote and encourage the revitalization of Downtown and historic Main Street areas of the City of Menasha, including the development of social and economic activity.
- (c) **Definition of Outdoor Restaurant Service.** Outdoor Restaurant Service is an expansion of an establishment creating an outdoor seating facility on part of the public right-of-way/sidewalk or other public property that immediately adjoins the licensed premises for the purpose of consuming food and beverages prepared at the full service restaurant adjacent thereto.
- (d) **General Standards.** The Common Council may grant a permit to licensed restaurants located in the C-2 Central Business Zoning District for serving food and beverages on public right-of-way/ sidewalks, or other public property adjoining and adjacent to the restaurant. Such service, referred to herein as “Outdoor Service,” shall be in compliance with the requirements set forth in this section.
 - (1) Outdoor Service shall be allowed by permit only.
 - (2) Outdoor Service shall be permitted from April 1 through November 30. Hours of outdoor service shall be allowed between 6:00 a.m. and 10:00 p.m. An Outdoor Service shall not be open during hours when food and beverage service is not available.
 - (3) Permits issued under this section may not be valid on any day that a permitted special event will close the right-of-way/sidewalk or other public property in front of the outdoor service area to normal use or traffic, at the discretion of the city.
 - (4) All food and beverages to be sold or served in an Outdoor Service area must be prepared in the regular on-site kitchen or bar facilities, as approved by the Menasha Health Department.
 - (5) Outdoor Service area capacity is limited to the number of seats located at tables within the service area. No person shall be served unless seated.
 - (6) A permit holder may sell and serve alcoholic beverages in an outdoor service area only if a valid and appropriate alcohol beverage license for the principal premises has previously been obtained.
 - a. The alcoholic beverage license must include the Outdoor Service area in the description of the licensed premises.
 - b. Alcoholic beverages may only be sold and/or served to persons seated at tables in the Outdoor Service area by a licensed bartender in compliance with the alcoholic beverage laws, ordinances, and regulations.
 - c. The alcoholic beverage license holder shall be responsible for monitoring the area to ensure only customers of the legal drinking age are in possession of or consuming any alcoholic beverages.
 - d. The alcohol beverage license holder shall not allow patrons of the Outdoor Service area to bring alcoholic beverages into the Outdoor Service area from another location, nor carry open containers of alcoholic beverages about in the Outdoor Service area, nor carry open containers of alcoholic beverages served in the Outdoor Service area outside the Outdoor Service area.
 - (7) The placement of tables and chairs on the public right-of-way/sidewalks or other public property for the purpose of Outdoor Service shall conform to the following standards:

- a. The Outdoor Service area shall be limited to the length of the building facade of the licensed restaurant's designated address. Outdoor Service areas may extend into adjacent building frontage(s) with written consent from the neighboring property owner(s). At any time, the neighboring property owner may terminate the use of the extended Outdoor Service within their designated building frontage if submitted in writing to both the city and the Outdoor Service permit holder.
 - b. At least five (5) feet of any right-of-way/ sidewalk, or public property must remain open to and be easily accessible for pedestrian or other traffic.
 - c. There must be no interference with the flow of pedestrian or vehicular traffic or interference with any designated public parking space. No part of the Outdoor Service shall obstruct access to or view of any fire hydrant or other public safety fixture from the street.
 - d. No Outdoor Service shall be permitted within five (5) feet of any bus stop, curb-cut opening, marked crosswalk, or other street amenity (such as sidewalk bench, bicycle rack, kioske, etc.).
 - e. No portion of an Outdoor Service area shall be located on any grass, lawn, or other unpaved area of the right-of-way or public property.
 - f. All Outdoor Service furnishings should enhance the aesthetics of the surrounding area and shall be in good repair, safe, sturdy, and designed for outdoor use. All furnishings shall be readily removable and not be physically attached, chained, or affixed to any structure, tree, post or other fixture. No Outdoor Service furnishings shall be used as advertisement of off-premise activities, products, or uses.
 - g. The City is not responsible for loss or damage to Outdoor Service furnishings or fixtures.
- (e) **Sanitation.** The restaurant shall maintain the Outdoor Service area and adjacent right-of-way/sidewalk or public property in a clean and sanitary manner as well as be responsible for removing any trash, litter, grease, beverage-food stains, or other unsightly conditions caused by the Outdoor Service. Additionally, the restaurant shall remove trash and litter from abutting properties which may have originated from the Outdoor Service area. Such maintenance shall be done on a daily basis.
- (f) **Noise.** No musical instruments, radios, juke boxes, or other means of electric sound amplification may be used or operated in a permitted Outdoor Service area after 9:30 p.m.
- (g) **Liability Insurance.** Any request for such permit must include an agreement by the licensed premise and property owner to indemnify and hold harmless the City of Menasha for any damages or liabilities whatsoever resulting from the Outdoor Service on the public right-of-way/sidewalk or other public property. As evidence of liability insurance, the permit holder shall furnish a Certificate of Insurance, on a form acceptable to the City, evidencing the existence of adequate liability insurance naming the City of Menasha, its employees and agents as additional insureds in the amount not less than one million dollars (\$1,000,000). Whenever such policy is cancelled, not renewed, or materially changed the insurer and the permit holder shall notify the City of Menasha by certified mail.
- (h) **Application Procedures.** The procedure to obtain a permit for Outdoor Restaurant Service on the public right-of-way/sidewalk or other public property shall consist of the following:
- (1) The applicant shall submit the following information to the City Clerk at least ten (10) days prior to the next scheduled Common Council meeting:
 - a. An application and fee as established by the Common Council.

- b. A drawing to show the right-of-way/sidewalk or other public property to be utilized for Outdoor Service and the location, number and size of the proposed amenities including but not limited to tables and chairs.
 - c. Liability agreement as described in 7-8-2(g).
 - d. Any other material necessary to evaluate the application.
- (2) The City Clerk shall distribute copies of the application material to the Director of Public Works, Public Health Director, the Police Chief, the Fire Chief, the Community Development Director, and the City Attorney who shall make such appropriate recommendations to the Common Council prior to its consideration. The application shall be placed on the agenda of the next scheduled Common Council meeting.
 - (3) After consideration of the recommendations of City staff, the Common Council may grant a permit for Outdoor Restaurant Service on the public right-of-way/sidewalk or other public property by majority vote. The Common Council shall have discretion in applying conditions or limitations to the permit as deemed necessary.
 - (4) All permits are valid on April 1 and expire on November 30 of the same year of its issuance. Applicants may reapply for a new permit on an annual basis.
- (f) **Revocation.** The approval of an Outdoor Service area permit is conditional at all times. An Outdoor Service area permit may be revoked or suspended by the city when necessary to protect the public health, safety, or welfare; to prevent nuisance from developing or continuing; in emergency situations; or due to nonconformance with this section, the Municipal Code, or applicable state or federal law.
 - (1) The Chief of Police, Police Lieutenant or Police Sergeant may order such Outdoor Service to cease for the balance of that day if, in his/her discretion, the circumstances so warrant.
 - (2) The Mayor, Chief of Police, or designee, without notice, may close an Outdoor Service area at any time if the health safety, welfare or good order of the city is threatened.
 - (3) The Common Council may temporarily or permanently revoke the permit by majority vote due to violations of the Menasha Code of Ordinances or other circumstances deemed appropriate for revocation.
 - (g) **Penalties.** Any violations of the requirements listed in this section shall be subject to the penalties listed in Section 1-1-7 of the Menasha Code of Ordinances.