



# CITY OF LODI

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Amend Municipal Code chapters 9 and 12 relative to encroachments within the public right-of-way for sidewalk seating and alcohol consumption

**MEETING DATE:** September 2, 1998

**PREPARED BY:** Community Development Director

**RECOMMENDED ACTION:** That the City Council approve the modifications to the Municipal Code relative to encroachments within the public right-of-way and conduct first reading of the attached ordinance.

**BACKGROUND INFORMATION:** Staff from various City departments, as well as members of the Downtown Lodi Business Partnership, have been working on a set of standards which downtown business owners can follow should they desire to encroach onto the public sidewalk. The standards outlined in the ordinance provide minimums for access, visibility and design issues. Further, a specific section dealing with alcoholic beverage consumption has been added to allow greater flexibility to the Business Partnership in conducting their special events.

The new language pulls together several chapters of the Code and places all the standards within the Encroachment Section in order to reduce confusion and ease the application process. As a result of this modification, business owners in the downtown will be able to utilize the sidewalk area for tables and chairs, restaurants, with the proper permits, be able to serve alcoholic beverages and the downtown business association will have the ability to sell and have alcohol consumed within the right-of-way for special events.

The diagram that follows indicates graphically the standards contained within the Ordinance. This will be used as an information sheet and accompany the application package.

**FUNDING:** Not Applicable

Konradt Bartlam  
Community Development Director

KB/lw

Attachment

cc: Police Chief  
Economic Development Coordinator  
Administrative Assistant  
Downtown Business Partnership

Richard C. Prima, Jr.  
Public Works Director

APPROVED: \_\_\_\_\_

H. Dixon Flynn -- City Manager

#### 9.04.010 Alcoholic Beverage - Open Container in Public.

No person shall drink or have in his possession an open container of any alcoholic beverage in the public right-of-way. Further, no person shall drink or have in his possession an open container of any alcoholic beverage within fifty feet of any public right-of-way while on private property open to public view without the express permission of the owner, his agent or the person in lawful possession thereof.

##### A. Exceptions:

1. In the Downtown, as delineated by the "Downtown Development Standards and Guidelines" as approved by the City Council, the sale and consumption of alcohol within the public right-of-way may be allowed in conjunction with an event sponsored or conducted by the Downtown Lodi Business Partnership. Said event shall have an alcoholic beverage license issued by the State of California Department of Alcoholic Beverage Control and written approval of the City Manager.
2. Sidewalk Seating Areas as defined in Chapter 12.04 "Encroachments."

#### 12.04.10 Definitions

F. "Sidewalk Seating Area" means the use of a public sidewalk for the placement of tables, chairs, benches and related items.

#### 12.04.425 Sidewalk seating area

Establishment of a sidewalk seating area shall require the review and approval of an Encroachment Permit by the Public Works Director and be consistent with the following standards:

A. Location: Sidewalk seating within the public right-of-way is only permitted within the Downtown as it is delineated in the "Downtown Development Standards and Guidelines" as approved by the City Council.

##### B. Physical Requirements:

1. A minimum four-foot unobstructed sidewalk for pedestrians shall be maintained at all times from a table, chair, bench, display, planter or any other appurtenance used as part of a sidewalk seating area.
2. No sidewalk seating area shall block access to or from a building.

3. All sidewalk furniture shall be removable and shall be removed, along with seats, tables, and other appurtenance if the business is closed for more than 48 hours unless otherwise approved by the Public Works Director.
4. Any umbrella or similar feature shall be secured safely to a table, chair or ground.
5. The design and appearance of all proposed improvements or furniture shall present a coordinated theme and shall be compatible with the appearance of the principal building and furniture within the establishment.
6. No signs shall be permitted in connection with a sidewalk seating area except as may be required by the City for reasons of public health or safety.

C. Maintenance:

1. The permittee shall maintain the sidewalk area and the adjoining street, curb and gutter in a neat, clean and orderly condition at all times. This shall include all tables, chairs, benches, planters or other appurtenances placed in the public right-of-way. Trash receptacles to serve the seating area shall be provided as required by the Public Works Director.

D. Special Standards for Sidewalk Seating Areas with Alcoholic Beverage Service.

1. Alcoholic beverages may only be served in sidewalk seating areas which are established in conjunction with a restaurant. For purposes of this section, a restaurant is a business operating within an enclosed building, which has as its primary purpose, the serving of meals prepared on the premises which devotes the majority of its floor space to food preparation and dining, and where any bar or liquor service area is clearly subordinate in both area of the premises and share of gross receipts to the primary dining function of the restaurant.
2. The sidewalk seating area shall be physically separated from the rest of the sidewalk by a barrier as required by the State of California Department of Alcoholic Beverage Control. The barrier shall be compatible with the appearance and design of the building and the rest of the sidewalk seating area.
3. No bar shall be allowed in the sidewalk seating area.
4. Empty beverage containers shall be removed from the sidewalk seating area as soon as possible.

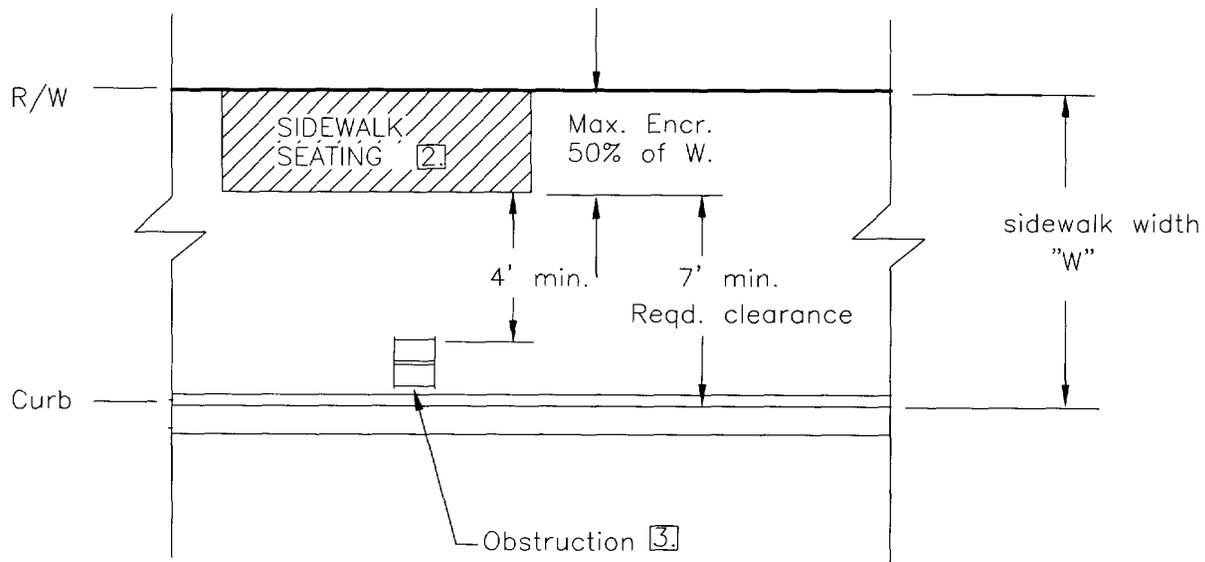
5. The appropriate City of Lodi Use Permit and Alcoholic Beverage Control License shall be obtained prior to the operation of a sidewalk seating area serving alcoholic beverages and shall be maintained continuously as long as alcoholic beverages are served in the sidewalk seating area. Loss of such permit or license shall automatically constitute termination of the City approval to serve alcoholic beverages in the sidewalk seating area.
- E. Indemnification/Insurance: The permittee shall defend, indemnify, and hold harmless the City and its officers and employees from and against all claims, losses, damage, injury, and liability for damages arising from the permittee's use of the public right-of-way. The permittee shall provide to the City, in a form and in amounts acceptable to the Risk Manager, certificates of insurance, naming the City as an additional insured covering the area subject to the permit.
  - F. Suspension of Permit: The Public Works Director shall have the right to suspend or prohibit the operation of a sidewalk seating area or require removal at any time because of anticipated or actual problems or conflicts in the use of the sidewalk area. Such problems or conflicts may arise from, but are not limited to, scheduled festivals, parades, marches, and similar special events; repairs to the street, sidewalk, or other public facility; or from demonstrations or emergencies occurring in the area. To the extent possible, the city will give prior written notice of any time period during which the operation of the sidewalk seating area must be suspended.



# CITY OF LODI

PUBLIC WORKS DEPARTMENT

## SIDEWALK SEATING ENCROACHMENT CRITERIA



### Notes:

1. All side seating areas require an encroachment permit. Specific conditions of the permit supercede these criteria.
2. Sidewalk seating areas in which alcoholic beverages are served shall be enclosed or fenced. The maximum encroachment with includes allowance for seats and tables at their widest "in use" position. Fences/enclosures shall not exceed 42" in height except as approved for shrubs or other accent features.
3. Measurements to obstructions are made to the nearest vertical face within 7 ft above the sidewalk, or the edge of the ADA compliant surface.
4. On School St between Lodi Ave and Locust St, fences/enclosures shall be removable and shall be removed, along with seats, tables and other fixtures, if the business is closed for more than 48 hours unless specified otherwise on the permit. At other locations, they may be fixed in place.
5. Trash pickup and cleaning of the seating area and adjacent sidewalk shall be done by the permittee as required by the City.
6. Permittee shall provide insurance naming the City as a additional insured as required by the Risk Manager.

ORDINANCE NO. 1666

AN ORDINANCE OF THE LODI CITY COUNCIL  
REPEALING AND REENACTING LODI MUNICIPAL  
CODE TITLE 9, PUBLIC PEACE, MORALS AND  
WELFARE, CHAPTER 9.04.010, RELATING TO  
ALCOHOLIC BEVERAGE – OPEN CONTAINER IN  
PUBLIC

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. Lodi Municipal Code Title 9, Public Peace, Morals and Welfare, Chapter 9.04.010 – Alcoholic Beverage – Open Container in Public - is hereby repealed and reenacted to read as follows:

**9.04.010 Alcoholic Beverage – Open Container in Public.**

No person shall drink or have in his possession an open container of any alcoholic beverage in the public right-of-way. Further, no person shall drink or have in his possession an open container of any alcoholic beverage within fifty feet of any public way while on private property open to public view without the express permission of the owner, his agent or the person in lawful possession thereof.

A. Exceptions:

1. In the Downtown, as delineated by the “Downtown Development Standards and Guidelines” dated June 1997, the sale and consumption of alcohol within the public right-of-way may be allowed in conjunction with an event sponsored or conducted by the Downtown Business Improvement Area #1. Said event shall have an alcoholic beverage license issued by the State of California Department of Alcoholic Beverage Control and written approval of the City Manager or his designee.
2. Sidewalk Dining Areas as defined in Chapter 12.04 “Encroachments.”

Section 2. - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. - Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this \_\_\_\_ day of \_\_\_\_\_, 1998

\_\_\_\_\_  
JACK A. SIEGLOCK  
Mayor

Attest:

ALICE M. REIMCHE  
City Clerk

State of California  
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1666 was introduced at a regular meeting of the City Council of the City of Lodi held September 2, 1998 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 1998, by the following vote:

Ayes:	Council Members –
Noes:	Council Members -
Absent:	Council Members –
Abstain:	Council Members -

I further certify that Ordinance No. 1666 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE  
City Clerk

Approved as to Form:

  
RANDALL A. HAYS  
City Attorney

ORDINANCE NO. 1667

AN ORDINANCE OF THE LODI CITY COUNCIL  
AMENDING LODI MUNICIPAL CODE CHAPTER 12.04 –  
ENCROACHMENTS BY ADDING SECTIONS 12.04.10 (F)  
“DEFINITIONS”, AND 12.04.425 “SIDEWALK DINING  
AREA”

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. Lodi Municipal Code Chapter 12.04 – Encroachments is hereby amended by adding Sections 12.04.10 (F) “Definitions” and 12.04.425 “Sidewalk Dining Area” to read as follows:

**12.04.010 (F) Definitions - Sidewalk Dining Area**

- F. “Sidewalk Dining Area” means the use of a public sidewalk for the placement of tables, chairs, benches and related items for the purpose of serving food and/or beverages in conjunction with and adjacent to an indoor restaurant, delicatessen or ice cream/yogurt shop.

**12.04.425 – Sidewalk Dining Area**

Establishment of a sidewalk dining area shall require the review and approval of an Encroachment Permit by the Public Works Director and be consistent with the following standards:

- A. Location: Sidewalk dining within the public right-of-way is only permitted within the Downtown as it is delineated in the “Downtown Development Standards and Guidelines” dated June 1997.
- B. Physical Requirements:
1. A maximum of fifty (50) percent of the walk may be used providing a minimum four-foot unobstructed sidewalk for pedestrians shall be maintained at all times from a table, chair, bench, display, planter or any other appurtenance used as part of a sidewalk dining area.
  2. No sidewalk dining area shall block access to or from a building.
  3. On a corner lot, no sidewalk dining area shall be located within the sidewalk area contained within the extensions of the right-of-way.
  4. All sidewalk dining furniture shall be removable and shall be removed, along with seats, tables, and other appurtenance if the business is closed for more than 48 hours unless otherwise approved by the Public Works Director.
  5. Any umbrella or similar feature shall be secured safely to a table, chair or ground.

6. Sidewalk dining area shall only be located adjacent to the establishment providing the food or beverage service. Such areas may not be extended beyond the premises frontage.
7. The design and appearance of all proposed improvements or furniture shall present a coordinated theme and shall be compatible with the appearance of the principal building and furniture within the establishment.
8. No signs shall be permitted in connection with a sidewalk dining area except as may be required by the City for reasons of public health or safety.

C. Maintenance:

1. The permittee shall maintain the sidewalk area and the adjoining street, curb and gutter in a neat, clean and orderly condition at all times. This shall include all tables, chairs, benches, planters or other appurtenances placed in the public right-of-way. Trash receptacles to serve the dining area shall be provided as required by the Public Works Director.

D. Special Standards for Sidewalk Dining Areas with Alcoholic Beverage Service.

1. Alcoholic beverages may only be served in sidewalk dining areas which are established in conjunction with a restaurant. For purposes of this section, a restaurant is a business operating within an enclosed building, which has as its primary purpose, the serving of meals prepared on the premises which devotes the majority of its floor space to food preparation and dining, and where any bar or liquor service area is clearly subordinate in both areas of the premises and share of gross receipts to the primary dining function of the restaurant.
2. The sidewalk dining area shall be physically separated from the rest of the sidewalk by a barrier as required by the State of California Department of Alcoholic Beverage Control. The barrier shall be compatible with the appearance and design of the building and the rest of the sidewalk dining area.
3. No bar shall be allowed in the sidewalk dining area.
4. Empty beverage containers shall be removed from the sidewalk dining area as soon as possible.
5. The appropriate City of Lodi Use Permit and Alcoholic Beverage Control License shall be obtained prior to the operation of a sidewalk dining area serving alcoholic beverages and shall be maintained continuously as long as alcoholic beverages are served in the sidewalk dining area. Loss of such permit or license shall automatically constitute termination of the City approval to serve alcoholic beverages in the sidewalk dining area.

- E. Indemnification/Insurance: The permittee shall defend, indemnify, and hold harmless the City and its officers and employees from and against all claims, losses, damage, injury, and liability for damages arising from the permittee's use of the public right-of-way. The permittee shall provide to the City, in a form and in amounts acceptable to the Risk Manager, certificates of insurance evidencing the existence of a general liability policy covering the area subject to the permit.
- F. Suspension of Permit: The Public Works Director shall have the right to suspend or prohibit the operation of a sidewalk dining area or require removal at any time because of anticipated or actual problems or conflicts in the use of the sidewalk area. Such problems or conflicts may arise from, but are not limited to, scheduled festivals, parades, marches, and similar special events; repairs to the street, sidewalk, or other public facility; or from demonstrations or emergencies occurring in the area. To the extent possible, the City will give prior written notice of any time period during which the operation of the sidewalk dining area must be suspended.

Section 2. - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. - Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this \_\_\_\_ day of \_\_\_\_\_, 1998

\_\_\_\_\_  
JACK A. SIEGLOCK  
Mayor

Attest:

ALICE M. REIMCHE  
City Clerk

State of California  
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1667 was introduced at a regular meeting of the City Council of the City of Lodi held September 2, 1998 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 1998, by the following vote:

Ayes: Council Members –

Noes: Council Members -

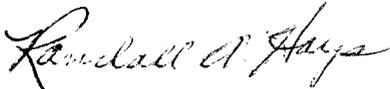
Absent: Council Members –

Abstain: Council Members -

I further certify that Ordinance No. 1667 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE  
City Clerk

Approved as to Form:



RANDALL A. HAYS  
City Attorney