

## ORDINANCE NO. 1314

An Ordinance to Enact a New Article 10 to  
Chapter 115 of the Mandan Code of Ordinances  
Relating to Outdoor Seating Areas and Outdoor Display Areas

Be it Ordained by the Board of City Commissioners as follows:

An Ordinance to create a new Article 10 to Chapter 115 of the Mandan Code of Ordinances relating to outdoor seating areas on public sidewalks is hereby enacted as follows:

### **Article 10. – OUTDOOR SEATING AND OUTDOOR DISPLAY AREAS**

#### **Section 115-10-1. - Definitions.**

Operator means any person or entity which owns, operates, or manages a business that uses or applies to use an outdoor seating area.

Outdoor display area means a permitted outdoor display located on a public right-of-way that is used to display merchandise or other items located within the public right-of-way.

Outdoor seating area means a permitted seating area on a public right-of-way that is used for seating purposes by a permit holder.

Permit holder means any person or entity which holds a current permit for an outdoor seating area or outdoor display.

Permitted business means a business that is allowed to use an outdoor seating area or outdoor display area as authorized under this section.

#### **Section 115-10-2. - Right-of-way Use Limited; Outdoor Seating Area And Outdoor Display Area Permit.**

- (1) No business may use a public right-of-way to seat its patrons or display merchandise or other items without first obtaining a permit for an outdoor seating area or outdoor display issued by the City. No person shall place any item within the public right-of-way in conjunction with a business without first obtaining a

permit for an outdoor seating area or outdoor display area that is issued by the City.

- (2) A business may obtain a permit from the City to operate an outdoor seating area or outdoor display area on the terms and conditions set out in this section. The permit for outdoor seating area and outdoor display area shall include the following:
  - a. The specific area of the public right-of-way to be used;
  - b. the furniture or other items to be placed within the public right-of-way;  
and
  - c. the proposed arrangement of the furniture or other items.
- (3) An outdoor seating area or outdoor display area permit authorizes a limited use of the public right-of-way so long as that private use does not interfere with the public interest or public use of the right-of-way.
- (4) Exception. Outdoor display areas exempted from the permitting requirements include small benches or flower pots or other store front items as identified as being cosmetically beneficial by the Destination Development Association. Any such items shall allow a minimum 44-inch wide unobstructed pedestrian corridor at all times. The North Dakota Department of Transportation (NDDOT) has operational control over state highways. Additional permissions may be required.
- (5)

### **Section 115-10-3. - Right-of-way Areas Eligible for Outdoor Seating Areas and Outdoor Display Areas.**

An outdoor seating areas and outdoor display areas shall meet all of the following requirements:

- (1) The building in which the permitted business operates must share a common boundary line with the respective public right-of-way of the application for which a permit is being applied.
- (2) The outdoor seating areas and outdoor display areas shall not extend beyond the boundaries abutting the permitted business.
- (3) The operation of the outdoor seating areas and outdoor display areas must be related to the permitted business.

- (4) The outdoor seating areas and outdoor display areas shall allow a minimum 44-inch wide unobstructed pedestrian corridor at all times. Wider pedestrian corridors or increased clearances may be required where warranted by pedestrian traffic or other circumstances or to comply with applicable building codes, the Americans with Disabilities Act, or other laws.
- (5) A minimum clearance of five feet must be maintained between the outdoor seating areas or outdoor display areas and edge of driveways, alleys, and handicapped ramps.
- (6) Outdoor seating areas and outdoor display areas at corners must not extend to within sight triangles at street intersections or driveway entrances.
- (7) Clear unobstructed height of seven feet must be maintained between the sidewalk surface and overhead objects including umbrellas.
- (8) The outdoor seating areas and outdoor display areas must not block access to public amenities like street furniture, trash receptacles, and way finding, or directional signs.
- (9) Above-ground City public utilities infrastructure or transportation infrastructure shall not be enclosed without written authorization of the Public Works Director.
- (10) Furniture must be made of durable material. No plastic furniture is permitted.
- (11) Planters or pots may be used to define the outdoor dining space but are not required.
- (12) Other than what is required by this Section, all signage shall follow Section 105-1-15 of this Code related to signs.
- (13) All privately owned outdoor fixtures, such as fencing or barricades, must be freestanding. No portion of privately owned outdoor fixtures, such as fencing or barricade materials, shall be anchored to the sidewalk or any other object within the public right-of-way.
- (14) The permit holder shall not have on the premises any bell, siren, horn, loudspeaker, or any similar device to attract the attention of possible customers; nor shall the permit holder use any such device to attract attention.
- (15) The permit holder shall comply with the prohibitions on disturbing, annoying, and unnecessary noises set forth in Section 16-6 of this Code.
- (16) The North Dakota Department of Transportation (NDDOT) has operational control over state highways. Additional permissions may be required.

**Section 115-10-4. - Alcoholic Beverages.**

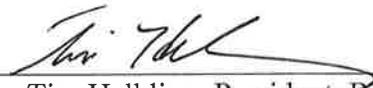
- (1) For any outdoor seating area where alcoholic beverages are served, the permit holder shall comply with all state and local regulations for the sale, possession, and/or consumption of alcoholic beverages and shall provide the City with a diagram and/or plans showing the location of the outdoor seating area where alcoholic beverages will be served.
- (2) The area where alcoholic beverages are sold, possessed, and/or consumed must be effectively bordered by a partition, temporary fence, or other rigid device designed and intended to separate the outdoor seating area from passerby. The barrier must be no less than 32 inches in height.
- (3) Permit holders and operators shall ensure that the permitted business obeys all laws related to alcohol service and consumption. Permit holders shall post visible signs at all exit points from the outdoor seating area to the public right-of-way reminding patrons that they cannot possess open containers of alcohol outside the outdoor seating area. To retain an outdoor seating area permit, permit holders and operators shall ensure that no alcohol is served or consumed outside the permitted outdoor seating area.
- (4) If the permitted business does not have direct access to the outdoor seating area, employees of the permit holder for the outdoor seating area must carry all alcoholic beverages in the non-fenced public right-of-way. No alcoholic beverages may be transported by patrons in the non-fenced public right-of-way.
- (5) Employees of the permit holder for the outdoor seating area shall not consume alcoholic beverages while working in the outdoor seating area.

### Section 115-10-5. - Application; Permit Requirements.

- (1) A person owning, operating, or managing a business may apply for an outdoor seating area or outdoor display area permit on a form approved by the City. Applications are available from the Engineering and Planning Department.
- (2) The permit holder shall comply with all City health and other applicable regulatory agency requirements, including but not limited to the requirements for food service. The permit holder shall display in a conspicuous location all such required permits and/or licenses and shall provide copies of those permits and/or licenses to the City prior to the issuance of a permit for an outdoor seating area or outdoor display area. The permit holder shall continuously maintain the required approvals, permits, and/or licenses, and provide evidence to the City upon request.
- (3) Cooking or food preparation shall not be allowed in outdoor seating area or outdoor display area.
- (4) Smoking, including vapor smoking and the use of electronic cigarettes, shall not be allowed in outdoor seating area or outdoor display areas. Permit holders shall post visible signs reminding patrons that they cannot smoke in the outdoor seating area.
- (5) No outdoor seating area or outdoor display area equipment or furniture may be placed in such a manner as to obstruct a building exit.
- (6) The design of the furniture, canopies, fencing, and/or other accessories of an outdoor seating area or outdoor display area must be approved by the City, to include at a minimum the Mandan Architectural Review Commission and Departments of Building, Engineering, and Fire, prior to a permit being issued. The applicant must provide a photograph, drawing, or sketch of the design of the furniture and accessories to be used for the outdoor seating or outdoor display area as part of the application for a permit.
- (7) An encroachment agreement with the City shall be obtained prior to implementation of any outdoor seating area or outdoor display area. The encroachment agreement is effective up to a five-year term and will expire on December 31 of the whole or partial fifth year, provided there are not significant modifications to the previously approved configuration or street fixtures located within the right-of-way.
- (8) No changes to the permitted arrangement and/or design shall be allowed without first obtaining approval by the City, to include at a minimum the Mandan Architectural Review Commission and Departments of Building, Engineering, and Fire.

**Section 115-10-6. - Permit Renewals.**

- (1) The permit holder must renew the permit annually. A permit issued under this section shall be valid from the date of issuance and shall expire each year on November 1.
- (2) Permits are effective from April 1 to October 31 each year. Tables, chairs, fences or dividers, and any other structure or item placed within the public right-of-way must be removed by November 1 each year and may not be set out until April 1 each year.

By:   
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Tim Helbling, President, Board of  
City Commissioners

Attest:

  
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James Neubauer, City Administrator

First Consideration:

March 17, 2020

Second Consideration and Final Passage:

April 7, 2020