

**ORDINANCE NO. 5404**

**AN ORDINANCE TO CREATE A SIDEWALK CAFÉ PERMIT BY  
AMENDING SUBSECTION 12.20.020(E) OF THE RAPID CITY  
MUNICIPAL CODE.**

WHEREAS, the State of South Dakota has given municipalities the general police power to promote the health, safety, morals, and general welfare of the community; and

WHEREAS, the State of South Dakota has given municipalities the power to permit the sale and consumption of alcoholic beverages on a sidewalk abutting a licensed premises pursuant to House Bill 1203; and

WHEREAS, the City of Rapid City currently may authorize the placement of certain signs and facilities upon public sidewalks subject to certain conditions; and

WHEREAS, the Common Council of the City of Rapid City deems it to be in the City's best interests to adopt an ordinance to allow the sale and consumption of alcoholic beverages on certain sidewalks.

NOW, THEREFORE, BE IT ORDAINED by the City of Rapid City that Subsection 12.20.020(E) is hereby amended to read as follows:

E. Notwithstanding any other provision of this section or §12.20.030 of this code, the Common Council may authorize ~~the placement of certain signs and facilities~~ businesses to operate sidewalk cafes upon public sidewalks as hereinafter described, subject to the conditions hereinafter set forth. A sidewalk café is an outdoor area located in the public right of way which is operated and maintained by an establishment, coffeehouse, tea shop, restaurant or bar. The area in which sidewalk cafes may be permitted is the area within the following boundary: Commencing from the intersection of East Omaha and East Boulevard, west to West Boulevard, south to the alley between Kansas City Street and Quincy Street, east to Ninth Street, south to Quincy Street, east to 4<sup>th</sup> Street, north to the alley between Quincy Street and Kansas City Street, east to 1<sup>st</sup> Street, north to Kansas City Street, east to East Boulevard, and north to the point of origin.

1. An application for a sidewalk café permit shall be filed with Growth Management at least 14 days prior to the Planning Commission meeting at which the request shall be considered. There shall be a one-time application fee of \$250. The application shall include a site plan which identifies the location of tables, chairs, awnings, umbrellas, trash receptacles, heaters, barricades, and landscape features as applicable.
2. Design Criteria.

a. Sidewalk cafes are permitted only on sidewalks with a minimum width of 10 feet from the property line to the curb face. The location of the sidewalk café must be directly in front of the business operating the café, and may not extend beyond the side property lines. Sidewalk cafes must maintain a clear pedestrian path of at least five feet at all times. This pathway must be free of any obstructions such as trees, parking meters, and utility poles to allow pedestrian passage. Sidewalk cafes shall not interfere with any utilities or other facilities such as telephone poles, fire hydrants, fire protection appurtenances, parking meters, mailboxes, or signs located in the public right-of-way. All applicable sight triangle requirements shall be met at all times by sidewalk cafes. No café elements may be located within 2 feet of the curb face.

b. All elements associated with sidewalk cafes, including but not limited to tables, chairs, umbrellas, temporary barricades, heaters and awnings must be of quality design, workmanship, and materials to ensure safety and convenience to patrons. All such elements will be reviewed as part of the permit process.

c. Elements of the sidewalk café may not be attached permanently to the sidewalk or public right-of-way. The property owner is responsible for the restoration of the sidewalk or public right-of-way if any damage is caused by the sidewalk café. Physical barriers may not exceed four feet in height. Bolting a barrier to the sidewalk is not considered permanent as long as the method of bolting allows the barrier and the bolts to be readily removed.

d. Umbrellas must be designed to be secure during windy conditions. Umbrellas must be at least seven feet above the sidewalk when open.

e. Lighting for sidewalk cafes is subject to approval during the permitting process. Such lighting shall not cause a glare to passing motorists or pedestrians. Tabletop lighting may include candles and battery-operated fixtures.

f. Sidewalk cafes are prohibited from playing amplified music, whether live or recorded.

g. Physical barricades are required if alcoholic beverages are sold at the sidewalk café.

h. Any signs authorized hereunder shall be of a size, dimension, orientation and placement as to be directed toward the attention of pedestrians within 50 feet thereof and, under no circumstances, directed toward the attention of persons traveling in motor vehicles. The signs shall not exceed 42 inches in height above the sidewalk or more than 24

inches in width on any face or no more than 2 faces total. Any such sign shall contain no off-premises advertising, and shall display no logo or advertising copy other than for the primary business of the occupant of the abutting property.

- ~~2. Tables and chairs may be authorized for public use and convenience.~~
- ~~3. Any signs or other facilities shall be placed and kept in such manner that there is constantly maintained a clear path for pedestrians not less than 7 feet in width measured from the back of the parking curb and shall be placed and kept in such manner that there is constantly maintained a clear path not less than 50 inches in width to provide access to any door or fire hydrant or valve on the abutting or neighboring property.~~
- ~~4. Any signs or other facilities shall be of a design and materials that they are freely moveable in the event of inclement weather or when directed to be moved by the emergency service personnel or building official.~~
- ~~5. The signs or other facilities are authorized only in the area bounded by Fifth Street on the east, Rapid Street on the north, West Boulevard on the west, and Kansas City Street on the south.~~
- ~~6. Nothing herein shall be construed as authorizing the placement, display or vending of any merchandise other than food and beverages on any sidewalk.~~
- ~~7. No authorization may be granted to any business or property owner unless the business and property are fully in compliance with all applicable laws, codes and regulations. Any authorization granted pursuant to this subsection shall be revocable, in the sole discretion of the Council, immediately upon notice to the owner of the business conducted upon the abutting property, his or her agent, or any other person present and apparently in a position of authority with the business.~~
3. Vending machines, carts, or other objects for sale are prohibited from inclusion in a sidewalk café. Nothing in this section shall preclude the Common Council from authorizing vending carts or similar uses outside of sidewalk cafes.
4. All services provided to sidewalk café patrons as well as all patron activity must occur within the designated sidewalk café area. No alcoholic beverages may be stored or mixed in the sidewalk café.
5. The permit holder is responsible for proper supervision of the sidewalk café in order to ensure the requirements of this section are met.

6. Every sidewalk café permit holder shall furnish a certificate of insurance proving commercial insurance coverage of at least \$2,000,000 for bodily injury, death, disability, and property damage liability. The City of Rapid City shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operation of a sidewalk café. In the event that the insurance is cancelled, the permit holder has 24 hours to reinstate the insurance or the permit shall be revoked.
7. Permit holders must ensure that the requirements for operation are met. These include:
  - a. Patrons must wear shoes and shirts at all times.
  - b. All sidewalk cafes must maintain at least one opening for ingress and egress at all times. All sidewalk cafes shall abide by all accessibility requirements of the currently adopted Building Code.
  - c. Sidewalk cafes must adhere to size, design, and other requirements approved by the City.
8. All areas within and surrounding a sidewalk café must be maintained in a clean, neat, and sanitary condition. All cleaning must be performed in accordance with city regulations.
9. An exception may be granted by the Planning Commission to any of the provisions of the design criteria set forth in Section 2 a-f and the decision of the Planning Commission is appealable to the Common Council.
10. Any person or party has the right to appeal the decision of the Planning Commission regarding a sidewalk café permit. Appeals must be made in writing and submitted to the Planning Commission by close of business on the seventh full calendar day following action by the Planning Commission. Appeals shall be reviewed and acted upon by the Common Council at its next regularly scheduled meeting.
11. All permit holders shall be required to abide by all federal, state, and local laws.
12. A sidewalk café permit may be revoked for cause, consisting of failure to maintain the standards required for the initial permit. A notice of intent to revoke a sidewalk café permit shall be given in writing 10 days prior to actual revocation and shall specify the area or areas of continued failure to meet requirements and maintain conditions the city may have imposed. If, during that period, proof of compliance is made by the holder of the permit, the permit may be permitted to be continued in force. If a hearing

has been requested following receipt of notice to revoke, the Planning Commission shall hold a public hearing on the matter and shall make a determination whether to revoke. A permit holder may appeal the Planning Commission's decision in accordance with Section(E)(10).

CITY OF RAPID CITY

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Finance Officer

(SEAL)

First Reading:

Second Reading:

Published:

Effective: