

## ORDINANCE NO. 4930

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO CHAPTER 4.14A "STREATERIES, PARKLETS, AND SIDEWALK CAFES" AND AMENDING SECTIONS 4.14A.020, 4.14A.030, AND 4.14A.070 OF THE ELLENSBURG CITY CODE.

WHEREAS, the Ellensburg City Council adopted Ordinance No. 4912 which created a new Ellensburg City Code Chapter entitled "4.14A Streateries, Parklets, and Sidewalk Cafes" on March 20, 2023; and

WHEREAS, staff has discovered some amendments that need to be made to this Chapter for efficient implementation and consistency with the International Building Code; and

WHEREAS, a citizen-initiated amendment to ECC 4.14A.070 was submitted on July, 11, 2023; and

WHEREAS, the proposed amendments to the Ellensburg City Code were issued a SEPA Determination of Non-Significance on August 29, 2023; and

WHEREAS, the proposed amendments were reviewed by the Planning Commission in a public hearing on September 28, 2023, and recommended for approval by the City Council consideration; and

WHEREAS, the City Council held a duly noticed public hearing on the matter of adopting the proposed amendments to Title 4.14A at a regular meeting on October 16, 2023. The City Council approved the proposed amendments and the first reading of Ordinance 4930; and

NOW, THEREFORE, the City Council of the city of Ellensburg, Washington, do hereby ordain as follows:

**Section 1. Chapter 4.14A.020 of the Ellensburg City Code, as last amended by Ordinance 4912, is hereby amended to read as follows:**

### **4.14A.020 Definitions**

In this chapter, the following definitions shall apply:

"Applicant" means any person who seeks a right-of-way use permit from the city under this chapter.

"City" means the city of Ellensburg.

“Director” means the community development director of the city of Ellensburg or their designee, unless otherwise specified.

“Parklet” means the use of the public right-of-way designed to be used as a gathering space which is free and open to the public.

“Permit” means a permit issued by the community development department pursuant to this chapter.

“Right-of-way” means land acquired or dedicated for use as a public road, street, alley, and/or sidewalk, regardless of whether such land has been opened or improved for such use.

“Sidewalk cafe” means tables, seating, and other amenities such as umbrellas, landscaping or fencing adjacent to a lawfully operating business establishment in or on the public sidewalk, maintained by the owner of such establishment for the use of patrons of the business.

“Streatery” means the use of the public right-of-way, typically in a vehicle parking space, that has been designed to allow for food and beverage services.

“Traffic” means circulation or movement of vehicles, bicycles, and pedestrians. [Ord. 4912 § 2, 2023.]

**Section 2. Chapter 4.14A.030 of the Ellensburg City Code, as last amended by Ordinance 4912, is hereby amended to read as follows:**

**4.14A.030 Right-of-way permits – Applications.**

A. Permit Required. A right-of-way permit is required to use any portion of city right-of-way for streateries or parklets. Sidewalk cafe permits are issued separately pursuant to ECC 4.14A.070. This chapter does not include right-of-way construction permits required under Chapter 4.06 ECC.

B. Application – Permit. A completed “application for right-of-way (streatery/parklet) permit” must be submitted for any use of the right-of-way for streateries or parklets. Permits are issued for a maximum of one year. Once permitted, a permittee may apply for a new permit as set forth in subsection (D)(8) of this section. Permits shall not be renewed automatically. If there are more applicants for a city block than parking spaces permitted by this chapter, the permit(s) shall be selected based on when the application(s) was deemed complete by the director.

C. Complete Application. A permit application is deemed complete for the purposes of this section when it meets the submittal requirements of this chapter even though additional information may be required or subsequent permit modifications may occur. The determination of completeness shall not preclude the director from requesting additional information either at

the time of the determination of completeness or later if new information is required to complete review of the application or substantial changes in the permit application are proposed.

D. The application shall comply with the following requirements:

1. Payment of a \$50.00 nonrefundable application fee required for the administrative costs associated with the permit request process.
2. Submission of a narrative describing the proposed design of the streaterly or parklet, with a clear dimensional sketch including the width and height, and description of the location within the public right-of-way proposed for use. The boundary description shall also include the square footage of the request. ~~Any temporary structure greater than 200 square feet or enclosed on two or more walls requires a building permit.~~
3. Submission of a list of construction materials and colors (with color names and cutsheets).
4. The requested permit period (if less than one year).
5. No more than four parking stalls per block (including both sides) shall be used for any combination of streateries and parklets.
6. An application for a streaterly permit shall be submitted to the community development department. City review of an application will be completed within 30 days of receipt of a complete application and include review by other city departments and the fire marshal, as appropriate. The director may extend the review period when reasonably necessary because additional information is required from the applicant or to allow time to consider comments received per subsection (D)(7) of this section. The director may issue the streaterly permit with any conditions necessary that are consistent with the requirements of this chapter, or any other local or state law.
7. An application for a streaterly permit shall be published on the city's website and appropriate social media sites and provide notice to the public of an opportunity to comment on the application for a period of 10 days from posting of the application. Public comment shall be limited to the issue of whether the proposed streaterly meets the design criteria in ECC 4.14A.040. The director may, but is not required to, consider public comments when deciding whether to issue the streaterly permit and/or any conditions on the permit.
8. A streaterly or parklet permit application may be submitted no earlier than September 1st for use of the streaterly or parklet the following year (or portion thereof). Permits are valid for one year beginning January 1st each year.



9. Any streateries or parklet permitted under temporary regulations as of March 31, 2023, must be removed to allow for downtown street slurry work planned for mid-2023. Thereafter, the temporary permittee must comply with the design requirements of this chapter by submitting to the director the information required in subsections (D)(2) and (3) of this section. The director will notify the temporary permittee of their approval of the design or any required changes within 30 days of receipt of the information. [Ord. 4912 § 2, 2023.]

**Section 3. “Chapter 4.14A.070 of the Ellensburg City Code, as last amended by Ordinance 4912, is hereby amended to read as follows:**

**4.14A.070 Sidewalk cafe permit.**

Sidewalk cafes are subject to the following requirements:

A. **Permit Required.** A sidewalk cafe permit (“sidewalk use permit”) is required for use of a limited portion of city sidewalk area for the service of food and beverage (“sidewalk service area”) as an extension of the applicant’s business fronting directly upon said sidewalk. The sidewalk use permit allows for the placement of tables and chairs only, and related barriers when required in conjunction with the service of alcoholic beverages.

B. **Application Required.** A completed “sidewalk use permit” application must be submitted for any business use as a sidewalk service area as an extension of the applicant’s business fronting directly upon said sidewalk area. Application can only be made by the owner of such business.

1. Clear dimensional plans that depict the proposed location of all tables, chairs, and barriers (when required), as well as the location of all present fixed and movable objects located in or upon the affected sidewalk area shall be submitted with the application. The plans shall include specific measurements of all distances between the various tables, chairs, barriers, objects, curb and adjacent building or property line.

2. City review of an application will be completed within 30 days of receipt of a complete application and include review by other city departments and the fire marshal, as appropriate. The director may extend the review period when reasonably necessary because additional information is required from the applicant and may issue the sidewalk use permit with any conditions necessary that are consistent with the requirements of this chapter, or any other local or state law.

C. **General Provisions.**

1. Placement of tables, chairs, and any barriers must allow for a minimum of five linear feet of unobstructed passage for passersby between any table, chair or barrier and the outside edge of the sidewalk, and between any table, chair or barrier and any other object located in or upon the sidewalk.
2. Table Size Limitations. Tables may be circular, square, or rectangular only, and no side or diametrical dimension of such a table shall exceed 32 inches in length.
3. The maximum number of chairs authorized for use under this permit shall not exceed ~~twice the number of~~ four per tables ~~placed for use under this permit and~~ must be visible from inside the permittee's business.
4. There shall be a maximum of one table ~~and two chairs~~ for each 10 linear feet of the permittee's business fronting directly upon the sidewalk. If the business has a sidewalk frontage depth that would allow additional seating, and the seating can still be seen from the inside of the business and allows for a minimum of five linear feet required in 4.14A.070.C.1, the business is allowed additional tables.
5. All tables, chairs and barriers placed on the sidewalk under this permit must be directly visible from the interior of the business.
6. The allowed hours of use of the sidewalk service area shall be 7:00 a.m. to 10:00 p.m.
7. The placement, use and removal of all tables, chairs and barriers authorized by this permit shall be at no cost to the city.
8. A sidewalk cafe must be ADA-accessible. A wheelchair user must be able to access at least one seat at a table, unless the business has other dining that is ADA-compliant and available for customer use.
9. The permittee, and permittee's officers and employees, shall comply with all applicable local, state, and federal laws, ordinances and regulations.

D. Additional Provisions When Alcoholic Beverages Are Served in a Sidewalk Cafe Area. The permittee's use of the sidewalk cafe area identified may include the service of alcoholic beverages if the following additional provisions are satisfied:

1. The sidewalk cafe area shall have a perimeter barrier during all hours of use, and the barrier shall be at least 42 inches in height. The barrier shall consist of a physical structure, such as a folding metal gate or moveable fence, that bars movement between two areas. Barriers may not be affixed to the sidewalk, nor may the sidewalk be disturbed in any way.

2. Service of alcoholic beverages and use of the sidewalk service area must be in accordance with all applicable provisions of RCW Title 66 ("Alcoholic Beverage Control") and WAC Title 314 ("Liquor and Cannabis Board").

E. Fees. The fee for a sidewalk cafe is based on the number of tables placed on the city sidewalk. The annual fee shall be \$25.00 for each table authorized for use and the amount payable by the city for the leasehold excise tax assessed for the permit, due and payable at the time of issuance of the permit. There shall be no proration or refund of fees for only a portion of a year, regardless of the reason the use is for less than a full year.

F. Revocation and Removal.

1. A sidewalk cafe permit is nonassignable, revocable and may be terminated, revoked or suspended at the sole discretion of the city upon 30 days' written notice. No vested rights shall accrue to the applicant hereunder.

2. Except in cases of emergency, in which case no prior notice need be given to revoke or suspend the use herein permitted, the city will give permit holder 30 days' advance notice of the effective date of the termination, revocation or suspension of this permit.

3. Permittees are required to remove its property from the city's sidewalk upon city termination, revocation or suspension of this permit. Permittee shall be liable for all costs of removal and storage incurred by city, and any unclaimed property will be deemed abandoned in accordance with applicable state law.

4. In the event the city suspends, revokes or terminates this permit, requiring removal of the permittee's property, permittee shall not be entitled to any compensation.

G. The provisions of ECC 4.14A.090, 4.14A.100 and 4.14A.110 shall apply to sidewalk cafes. [Ord. 4912 §§ 1, 2, 2023; Ord. 4574 § 1, 2010. Formerly 4.14.170.]

**Section 4. Severability.** If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance.

**Section 5. Corrections.** Upon the approval of the City Attorney, the City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.



**Section 6. Effective Date.** This ordinance shall take effect and be in force five (5) days after its passage, approval, and publication.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 6th day of November 2023.

  
MAYOR

ATTEST:

  
City Clerk

Approved as to form:

  
CITY ATTORNEY

Publish: 11-9-2023

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4930 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4930 was published as required by law.

  
BETH LEADER