

§ 92.64 ENCROACHMENTS.*(A) Trees, bushes and shrubs.*

(1) All trees, bushes and shrubs in the street right-of-way of the Village of Pinckney shall be trimmed or pruned by the abutting property owner so that no branch thereof grows or hangs lower than eight and one-half feet above the level of the sidewalk, and shall also be pruned so that they shall not encroach onto the sidewalk or street.

(2) All trees, bushes and shrubs on private property, the branches of which extend over the line of a street, or sidewalk shall be trimmed and pruned so that no branch grows or hangs over the line of the street or sidewalk lower than eight and one-half feet above the level of the sidewalk and shall also be pruned so that they shall not encroach onto the street or sidewalk.

(3) For any tree, bush or shrub in the street right-of-way that has not been trimmed or pruned as provided in division (A)(1) above, the village shall cause those trees, bushes or shrubs to be trimmed or removed at the expense of the village. For any tree, bush or shrub on private property that has not been trimmed or pruned as provided in division (A)(2) above, the village shall cause those trees, bushes or shrubs to be trimmed or removed at the expense of the property owner. After the trimming or removal by the village, the actual cost thereof shall be reported to the Village Clerk. The Village Clerk shall keep a record specifying the description of the premises and the trees, bushes or shrubs trimmed or removed, and the cost, to the making of the annual assessment roll by the Village Treasurer. The Council may, by resolution, direct the Treasurer to levy on the next general assessment roll the amount which describes the property and trees, bushes or shrubs trimmed or removed by the village and shall state separately the expense chargeable to each description, which amount shall be assessed against the property in the resolution. The amounts of the special assessment for trimming or removal of trees, bushes or shrubs herein provided for shall be collected by the Village Treasurer at the same time and in the same manner as general village, state and county taxes and, upon nonpayment thereto, shall be reported to the County Treasurer in the manner provided by law.

(B) Outdoor cafés.

(1) *Definitions.* For the purposes of this subchapter, the term **OUTDOOR CAFÉ** shall mean an outdoor food service area operated adjacent to and in conjunction with a lawfully established restaurant or other establishment that sells food for immediate consumption on the premises. This definition shall include outdoor cafes on private property, a public sidewalk and/or a public right-of-way.

(2) *Permit.* The Zoning Administrator may issue a revocable outdoor café permit for an outdoor café, operated in connection with a lawfully established restaurant or other establishment that sells food for immediate consumption on the premises. The permits shall be issued subject to annual review and the following conditions:

(a) The outdoor café shall fully comply with the requirements of the Livingston County Department of Public Health, Michigan Liquor Control Commission and all other applicable state and local laws. For an outdoor café adjacent to a state trunkline (M-36), the applicant must first obtain a permit for the use from the Michigan Department of Transportation and shall submit a copy of the permit to the Zoning Administrator.

(b) The outdoor café shall not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity.

(c) The outdoor café shall be permitted to operate only during the normal operating hours of the associated restaurant.

(d) No furnishings may be attached by any means to any public area or public property.

(e) All tables, chairs and other equipment shall be constructed and set up in such a manner as to be easily removable, durable, easily cleaned, in sound condition and good repair.

(f) No food may be stored, cooked or otherwise prepared in the outdoor café area.

(g) No soiled food service equipment, utensils or tableware may be kept in the outdoor café area. All clean food service equipment, utensils and tableware must be covered at all times. Trash receptacles shall also be covered at all times and leak proof.

(h) The gross area occupied by the outdoor café shall be included in the required parking calculation under the village's Zoning Ordinance.

(i) No music, intercom or other noise shall be permitted that impacts adjacent properties.

(j) Umbrellas and similar temporary, easily removable shading devices are permitted provided the lowest point of the umbrella or covering is not lower than six feet, eight inches from the ground.

(k) In no event shall the operation of the outdoor café, including the placement of equipment or furnishings:

1. Interfere with the passage of pedestrian or vehicle traffic, or reduce the open portion of the public sidewalk to less than five feet, clear of all obstructions, measured from the edge of the sidewalk closest to the curb, lamppost or parking meter. In addition, no seating or other equipment shall be closer than five feet to any street tree or public sign;

2. Interfere with the use of or access to public or private property, including any building, parking space, curb cut, bus stop, crosswalk, mailbox, fire hydrant, fire escape, fire door or other means of ingress or egress;

3. Obstruct the clear view of any traffic signal, regulatory sign or street sign;

4. Interfere with street cleaning or snow removal activities; and

5. Cause damage to any street, sidewalk, tree, public bench, landscaping or other object lawfully located therein.

(l) The outdoor café may be located only along the length of the associated restaurant building. Under no circumstances shall the area of the outdoor café extend beyond the exterior building facade of the associated restaurant, or in any way encroach upon adjacent private or public property, except as provided for herein.

(m) The permit holder shall provide the village, in a form acceptable to the Village Attorney:

1. An agreement to indemnify, defend and hold harmless the village for any and all claims for liability or damages to persons or property resulting from the operation of the outdoor café; and

2. A certificate of general liability insurance naming the Village of Pinckney as the insured party. The amount of required general liability coverage shall not be less than \$1,000,000 for the injury or death of a person in any one incident and \$50,000 for damage to property in any one incident. Evidence of the required insurance shall consist of certification executed by an authorized agent of the insurance company indicating the amount and type of insurance, the location of coverage and shall certify that the insurance shall not be canceled unless notice of the intent to cancel is filed with the village at least ten days prior to the cancellation. The insurer shall have no less than a B++ rating by the most recent AM Best Insurance Rating Guide.

(n) The permit holder shall be responsible for the maintenance and upkeep of the public or private area used for the outdoor café and the replacement of damaged public property. Maintenance shall include daily cleaning of the area and repair or replacement of damaged pavement.

(o) The plot plan submitted and approved as part of the outdoor café permit shall show all of the information required in § 152.389(B), as well as the following:

1. Existing facade of the associated building;

2. All points of ingress and egress;

3. Proposed location of tables, chairs, serving equipment, planters, borders, awnings, umbrellas and other facilities to be included in the seating area; and

4. Location of existing public improvements including fire hydrants, street signs, street lights, traffic signals, mail boxes, trees and tree grates, parking meters, planting boxes, planting areas, fire escapes or similar obstructions.

(p) The person requesting issuance of the outdoor café permit for an outdoor café shall pay the permit fee as established by resolution adopted by Village Council.

(3) *Revocation.* A outdoor café permit for an outdoor café may be revoked by the Zoning Administrator upon a finding that the outdoor café does not meet the standards of this section, any other provisions of this code or other applicable law, or that the space is needed for other purposes, or as provided for the revocation of permits under § 152.023. For an outdoor café adjacent to a state trunkline (M-36), the outdoor café permit shall be automatically revoked upon the revocation or expiration of the permit for the use from the Michigan Department of Transportation.

(4) *Appeal.* Persons who are refused a permit for an outdoor café, have their permit revoked or wish to protest the issuance of a permit that has been approved, may appeal that determination before the Zoning Board of Appeals, which shall review the appeal under the same standards applied in reviewing appeals of decisions of the Zoning Administrator under the Village Zoning Ordinance. Requests for a hearing or an appeal must be made within 30 calendar days of the decision in question.

(Ord. 33, passed 7-10-2000; Ord. 77, passed 2-12-2007; Ord. 92, passed 10-26-2009)