



Sidewalk Cafes and other Business Use of Sidewalks

Municipalities are frequently faced with issues associated with the proprietary use of its sidewalks by third parties. A brief review of the rights and liabilities of a municipality (and of a third party) may assist in determining the scope of use granted.

What is a sidewalk?

A sidewalk is defined by the Michigan motor vehicle code as “that portion of a street between the curb lines, or the lateral lines of roadway, and the adjacent property lines intended for the use of pedestrians.” (MCL 257.60) The municipality generally has the same control over a sidewalk as it does a street even if the sidewalk was constructed by the abutting property owner and even if the fee ownership is in the abutting property owner.

An abutting owner, including a business owner, has no more right in the sidewalk than in the street. However, a merchant may, if necessary, use the sidewalk in a reasonable manner for a temporary period of time for loading and unloading of goods if not restrained by ordinance.

Power of municipality to regulate:

Michigan courts have held that a municipality, by constitutional authority, is vested with the power to control in a reasonable manner the use of its streets which would include, by definition, its sidewalks. The public, on the other hand, has the right to have its public ways maintained free from obstructions or unreasonable encroachments. The Michigan Supreme Court has held that a municipality’s power to regulate its sidewalks for ordinary and usual purposes should be sparingly exercised, “but when it comes to the use of streets as a definite means . . . for carrying on a private business, such right may be given or withheld.”¹ As a consequence, Michigan municipalities have adopted regulations regarding the issuance of permits for sidewalk cafes and other similar types of businesses on a limited basis. Without exception, such regulations do not permit obstructions to the safe passage of pedestrian traffic.

A municipality, if authorized to do so, may permit by express delegation the use of sidewalk stands and the like, subject to the public’s right of passage. A municipality may not, however, foreclose all use of newsracks or other newspaper vending devices. Courts have held that First Amendment protections of speech and press are applicable to the public distribution of newspapers through the use of vending boxes placed on public sidewalks. Municipalities may impose reasonable “time, place and manner” regulations which are narrowly drawn in order to avoid arbitrary curtailment of the freedoms of speech and press.

Liability of municipality:

From a liability standpoint, the Michigan governmental tort liability act specifically includes sidewalks in its definition of “highway.” The statutory highway exception to governmental immunity applies to all parts of the highway, including the sidewalk.

¹ People v Dmytro, 280 Mich 82 (1937).