

## ORDINANCE NO. 15,882

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 102-576 and 102-577, relating to sidewalk cafes.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 102-576 and 102-577, relating to sidewalk cafes, as follows:

### **Sec. 102-576. Sidewalk Cafes.**

- (a) Any person seeking to operate a sidewalk cafe upon the public sidewalk or other property owned by the city shall make application for a sidewalk cafe permit or a sidewalk cafe lease to the permit and development center upon a form to be provided by the city staff for that purpose. Each application for a sidewalk cafe permit or lease shall be accompanied by payment of an application fee in the amount set in the schedule of fees adopted by the city council by resolution.
- (b) The community development director, or his designee, may sign a sidewalk cafe permit agreement on behalf of the city if the permit agreement complies with the requirements of this division and is in the form of sidewalk cafe permit agreement approved by resolution of the city council, with such additions and changes as may be required by the community development director and approved by the city legal department.
- (c) Following approval of an application for a sidewalk cafe lease by the community development director, the real estate division manager may sign a sidewalk cafe lease agreement on behalf of the city. For renewal sidewalk cafe lease agreements, following approval of an application for a sidewalk cafe lease by the community development director, the real estate division manager may sign such renewal if the leased premises was leased for use as a sidewalk cafe in the current or preceding calendar year, the lease is in good standing, and the lease agreement complies with the requirements of this division, and is in the form of a sidewalk cafe lease agreement approved by resolution of the city council, with such additions and changes as may be required by the real estate division manager and approved by the city legal department.
- (d) Any decision by the community development director to deny a sidewalk cafe lease or permit shall be set forth in a written decision which identifies the basis for such denial. The decision shall be promptly served upon the applicant by personal service, by service upon a cashier at the business address shown on the application, or by regular mail addressed to the applicant at such business address. If the denial is for reasons other than that the proposed site of the sidewalk cafe is needed for a public purpose, the decision shall also give notice that it may be appealed to an administrative hearing officer by filing a notice of appeal with the city clerk within ten business days of the date of the decision. If the denial is, in whole or in part for the reason that the proposed site of the sidewalk cafe is needed for a public purpose, the decision shall also give notice that it may be appealed

to the city council by filing a notice of appeal with the city clerk within ten business days of the date of the decision.

- (e) The decision of the community development director to deny a sidewalk cafe permit or lease pursuant to this subsection for reasons other than that the proposed site of the sidewalk cafe is needed for a public purpose may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code. If the denial is, in whole or in part for the reason that the proposed site of the sidewalk cafe is needed for a public purpose, the decision may be appealed to the city council pursuant to section 102-578.
- (f) Any sidewalk cafe lease agreement for premises that were not leased for use as a sidewalk cafe in the current or preceding calendar year shall not be effective until the proposed lease area has been vacated and approved by the city council.
- (g) No sidewalk cafe permit agreement shall be issued until the applicant has paid the rental in the amount set in the schedule of fees adopted by the city council by resolution. No sidewalk cafe lease agreement shall be issued until the applicant has paid the fair market lease rate, as determined by the real estate division.
- (h) The real estate division manager shall monitor and keep a record of all sidewalk cafe leases issued pursuant to this division, with a copy provided to the community development director. The community development director shall monitor and keep a record of all sidewalk cafe permits issued pursuant to this division.
- (i) The community development director shall be responsible for enforcement of any violations of the requirements for all sidewalk cafe permits and sidewalk cafe leases issued pursuant to this division.

**Sec. 102-577. Suspension, revocation or non-renewal for cause.**

- (a) Upon complaint or reasonable suspicion that a permit holder or lessee, their employees or agents, have violated or failed to comply with any of the requirements of the sidewalk cafe permit agreement or lease agreement or any provision of this Code, the community development director may cause the matter to be investigated. If the community development director finds that the permit holder or lessee, their employees or agents, have materially violated or failed to comply with any of the requirements of the applicable permit agreement or lease agreement or any provisions of this Code, the community development director may give notice to the permit holder or lessee of the city's intent to suspend or revoke the permit or lease, or to deny its renewal.
- (b) Notice of the city's intent to suspend, revoke, or deny the renewal of a sidewalk cafe permit agreement or lease agreement and a brief summary of the factual basis for such remedial action shall be served upon the permit holder or lessee. Such notice shall inform the permit holder or lessee of the time, date and place of a meeting where the permit holder or lessee may meet with the community development director for the purpose of presenting additional information regarding the intended remedial action and the factual basis therefore, and that a final decision on appropriate remedial action will be made after the scheduled time for such meeting. Such notice shall be served upon the permit holder or lessee by personal service or by service upon a cashier for the business at the leased or permitted premises, or by regular mail addressed to the permit holder or the lessee at the business address shown on the permit agreement or lease agreement a minimum of five business days prior to the date set for the meeting.

- (c) If, after the scheduled meeting and after consideration of all the available information including any information provided at the meeting by the permit holder or lessee, the community development director makes a finding based on substantial evidence that a material violation of this article or another provision of this Code did in fact take place as alleged, the community development director may revoke or temporarily suspend the permit or lease or deny its renewal; the determination of whether to so suspend, revoke or deny renewal of a sidewalk cafe permit agreement or lease agreement shall be in the discretion of the community development director and shall be dependent upon the circumstances surrounding the violation and its severity. The decision to suspend, revoke or deny renewal of a permit agreement or lease agreement shall be in writing and shall identify the basis for such action. The decision shall be promptly served in the same manner as required for the service of the notice required under subsection (b), and shall not be effective until ten days after the date of the decision. The decision shall also give notice that it may be appealed to an administrative hearing officer by filing a notice of appeal with the city clerk within ten business days of the date of the decision.
- (d) The decision of the community development director to suspend, revoke or deny renewal of a sidewalk cafe permit agreement or lease agreement pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.
- (e) Any violation for nonpayment of rent shall not be subject to the requirements of this division and shall be subject to the termination provisions contained in the permit or lease agreement.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED

Lisa A. Wieland, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest: I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 20-0650), passed by the City Council of said City at a meeting held on April 20, 2020 signed by the Mayor on April 20, 2020 and published and provided by law in the Business Record on May 8, 2020. Authorized by Publication Order No. 11113.

P. Kay Cmelik, City Clerk