

Date January 28, 2013

RESOLUTION APPROVING AMENDMENTS TO
THE DES MOINES SIDEWALK CAFE PROGRAM

WHEREAS, on June 19, 2006, by Roll Call No. 06-1255, the City Council approved the City of Des Moines Sidewalk Cafe Program which established an expedited process for the utilization of public sidewalks for private cafe use, and by Roll Call No. 06-1256, the City Council gave first reading to an Ordinance to implement the Program; and,

WHEREAS, on July 10, 2006, by Roll Call No. 06-1361, the City Council gave final passage to Ordinance No. 14,574 amending the City Code to implement the Sidewalk Cafe Program, and by Roll Call No. 06-1362, approved the *Design Standards for Sidewalk Cafes*; and,

WHEREAS, on August 13, 2012, the City Council requested a review of the Sidewalk Cafe Program in response to the problems that lead to the City Council taking action on that date to deny renewal of a sidewalk cafe lease at 208 3rd Street, and to deny a proposed new sidewalk cafe lease at 214 3rd Street; and,

WHEREAS, the City Staff have reviewed the Sidewalk Cafe Program and recommend amendments to the design standards, to the form of the agreements, and to the administrative procedures which were presented to the City Council at a workshop on December 17, 2012, and are more specifically described in the *Design Standards and Operational Requirements for Sidewalk Cafes*, the *Application for Sidewalk Cafe Lease* and the *Application for Sidewalk Cafe Permit*, which are on file and available for public inspection in the office of the City Clerk.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The *Design Standards and Operational Requirements for Sidewalk Cafes* are hereby approved and shall be incorporated into all future sidewalk cafe leases and permits.
2. The proposed forms of the *Application for Sidewalk Cafe Lease*, and the *Application for Sidewalk Cafe Permit*, are hereby approved, subject to such minor changes and additions that may be required by the City Manager and approved by the Legal Department to address new or unique issues relative to each particular site.

(Council Communication No. 13- 037)

(continued)

★ **Roll Call Number**

Agenda Item Number

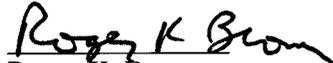
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Date December 7, 2012

MOVED by _____ to adopt, subject to final passage of the pending ordinance regarding the administration and operation of sidewalk cafes on City property.

FORM APPROVED:


 Roger K. Brown
 Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| GRIESS | | | | |
| HENSLEY | | | | |
| MAHAFFEY | | | | |
| MEYER | | | | |
| MOORE | | | | |
| TOTAL | | | | |
| MOTION CARRIED | | | APPROVED | |

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ Mayor

_____ City Clerk

City of Des Moines Sidewalk Cafe Program

Introduction and Overview

The City of Des Moines is pleased to offer an expedited process for the utilization of public sidewalks for private sidewalk cafe use. The goals of this process are to ensure that the public use of the sidewalks is unimpeded, that the process is straightforward, simple and efficient, and that sidewalk cafes are safe and compliant with city standards.

The operation of a cafe on a public sidewalk requires that a Sidewalk Cafe Lease or Permit be obtained from the City.

- A sidewalk cafe operated under authority of a **Sidewalk Cafe Permit** cannot use used for the sale of alcoholic beverages and must be cleared at the end of each business days of all barriers, tables, chairs, equipment and other obstructions.
- A sidewalk cafe operated under authority of a **Sidewalk Cafe Lease** must be enclosed by an approved barrier in compliance with the City of Des Moines Design Standards for Sidewalk Cafes. The leased area can be used for the sale of alcoholic beverages and for the semi-permanent placement of tables, chairs and other fixtures and equipment for the term of the Lease.

Sidewalk Cafe Leases for sites previously leased as a sidewalk cafe within the same or prior calendar year, and all Sidewalk Cafe Permits may be issued by City staff within 5 business days of receipt of a complete application. A Sidewalk Cafe Lease for a site not previously leased as a sidewalk cafe within the same or prior calendar year must be approved by the City Council and may require two weeks to more than 60 days for issuance, depending upon whether the affected public sidewalk has already been vacated (officially closed).

There are separate application packets for Sidewalk Cafe Leases and Permits. It is important that the appropriate application packet be accurately completed, and that all required drawings and other documents be submitted with the application. The submission of an incomplete application will delay the approval process and may result in the denial of the application.

The design and operation of sidewalk cafes are subject to the City of Des Moines Design Standards and Operational Requirements for Sidewalk Cafes. An applicant for a Sidewalk Cafe Lease or Permit must demonstrate that the proposed sidewalk cafe will conform with those design standards and can be operated in conformance with those operational standards. The applicant must also demonstrate that the operation of the sidewalk cafe will not detrimentally impact the use and enjoyment of adjoining properties, and will not materially increase the noise or traffic within an "R" District or portion of a "PUD" District designated for residential use. Nonconformance with any of these standards may result in the denial of the application.

If you have questions regarding this material, please contact the Permit and Development Center at 515-283-4200.

Completed applications should be presented to: City of Des Moines, Permit and Development Center, 602 Robert D. Ray Drive, Des Moines, IA 50309.

We look forward in assisting you with your sidewalk cafe application, and wish you success in your endeavor.

Sincerely
Phil Delafield, Community Development Director

City of Des Moines
Design Standards and Operational Requirements for Sidewalk Cafes
(Applicable to Sidewalk Cafe Leases and Permits)

A. Design Standards. Any sidewalk cafe located upon a public sidewalk must conform to the following design standards:

- 1) *Maintenance of pedestrian pathway.* A 6 feet clear passageway must be maintained at all times upon the adjoining public sidewalk for pedestrian travel. If any permanent structure, such as but not limited to, a parking meter, planter, fire hydrant, light pole, or traffic control device is placed within the adjoining public right-of-way at any time, the operator of the sidewalk cafe shall make accommodation for the required clearance for pedestrian travel. The leased area shall not be cut out around a permanent structure and shall not impede pedestrian traffic.
- 2) *Permanent improvements prohibited under Permit.* Any sidewalk cafe operated under authority of a Permit must be designed to allow all tables, chairs and other materials placed upon the public sidewalk to be removed from the sidewalk and the sidewalk must be restored for public use whenever the sidewalk cafe is not open for business. A temporary enclosure (such as poles with ropes) may be used to enclose the sidewalk cafe area, if it complies with the standards in paragraph 1 above and is removed whenever the sidewalk cafe is not open for business.
- 3) *Enclosure required for a Lease.* Any sidewalk cafe operated under authority of a Lease must be enclosed by a physical barrier conforming to the requirements in paragraph 1) above, and the following. The barrier shall separate the sidewalk cafe from the remainder of the public way. The barrier may be a partition, fence, planters, railing fence, or combination of the above, and shall have a minimum height of 36 inches, and shall be no more than 42 inches in height. The barrier must be of such configuration that it will not topple over due to wind or incidental contact with patrons or pedestrians. The barrier must be maintained in place at all times that the leased area is open to the public. No portion of the barrier shall be placed on or extend over the public sidewalks outside the leased area. Any such enclosure must contain exits in accordance with building code, and must have a 6-inch 'toe kick' (solid, not recessed) at the base to comply with ADA requirements. The leased area shall be sufficient to reasonably allow for the placement and use of tables and chairs, and provide maneuvering area for service staff.
- 4) *No encroachment into adjoining sidewalk.* All portions of any barrier and materials used to enclose a sidewalk cafe, and all tables, chairs, umbrellas, canopies, and other materials used for the sidewalk cafe must be fully contained within the sidewalk cafe area as described in the Lease or Permit.
- 5) *Removal of Improvements from Leased Area.* The improvements placed on a public sidewalk under authority of a Lease shall be temporary in nature so as to assure that the sidewalk can be readily restored to its original condition upon the expiration of the Lease. If any platforms or other permanent improvements are proposed, the City may require a sufficient bond for the restoration of the sidewalk as a condition of the Lease.
- 6) *Signage.* No advertising signs may be placed within the sidewalk cafe area or on any fixtures used for an enclosure, with the exception of advertising on individual table umbrellas or equipment that customarily includes advertising.

- 7) *Lighting.* No lighting may be used that would create a trip hazard or nuisance to patrons, pedestrians, traffic or adjacent property owners (no strobe lights, electrical cords, etc.).
- 8) *Bathrooms.* Adequate toilet facilities must be available to accommodate the added seating.
- 9) *Location on Sidewalk.* The sidewalk cafe must be located adjacent to the building occupied by the cafe operator, and not across a pedestrian passageway from the building.

B. Operational Standards. Any sidewalk cafe located on a public sidewalk must conform to the following operational standards:

- 1) *General.* All sidewalk cafe employees shall be subject to and comply with applicable state, local standards for a retail food establishment.
 - a) Patrons must wear shoes and shirt at all times.
 - b) All sidewalk cafes must have openings for entrance and egress at all times. Required building and sidewalk cafe exits must not be obstructed.
 - c) All sidewalk cafes must adhere to the size, design, and specifications contained in the approved License or Permit and these Design Standards and Operational Requirements for Sidewalk Cafes.
 - d) Strict adherence to hours of operation, clear space for pedestrians, enclosure barriers, and lighting and sound limitations is mandatory.
 - e) The occupancy of an enclosed sidewalk cafe shall not exceed the number of individuals who can be seated at tables within the area of the sidewalk cafe, together with service staff.
- 2) *Insurance.* The owner/operator of the sidewalk cafe must provide insurance conforming to the City's standards.
- 3) *Sale of alcohol.* A Lease for a sidewalk cafe (rather than a Permit) is required for the sale or consumption of alcoholic beverages. The sale and consumption of alcoholic beverages in the sidewalk cafe must conform with the requirements of Chapters 10 and 134 of the City Code (regarding licensing, permitted location, hours of operation, etc.).
- 4) *Trash removal.* The operator of a sidewalk cafe must ensure the removal of all wrappings, litter, debris, food and other trash from the sidewalk cafe area and surrounding area. Sidewalks must be washed down on a regular basis. Trash from the cafe shall not be disposed of in city containers.
- 5) *Noise.* A sidewalk cafe shall comply with the Noise Control Ordinance codified at Section 42-246 et. seq. of the City Code. Amplified sound is not allowed at any time, unless authorized by an appropriate sound permit.
- 6) *Loitering.* The operator of a sidewalk cafe must employ best business practices to maintain the free flow of pedestrian traffic on the adjoining public sidewalk by discouraging patrons within the business and sidewalk cafe from interacting with individuals on the adjoining public sidewalk in a manner that encourages those individuals to assemble in a manner that blocks the adjoining public sidewalk.
- 7) *Inspections.* Sidewalk cafes are subject to routine inspections by the City staff. A copy of the sidewalk cafe Lease or Permit shall be kept on the premises and shall be immediately presented for review upon request by a uniformed police officer.

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The issuance of a Lease or Permit for the use of the public right-of-way for the operation of a sidewalk cafe is a privilege granted by the City Council. The City of Des Moines urges you to comply with all rules and regulations to demonstrate respect for the community in which your cafe is located.

Approved by Roll Call No. _____ on _____, 2013.