

Staff Report

**FOLLOW-UP REGARDING SIDEWALK CAFÉ
REQUIREMENTS, ALCOHOL SERVICE**

February 14, 2017

BACKGROUND:

At the September 20, 2016, City Council meeting, City staff presented a list of proposed changes to the Sidewalk Café ordinance. These changes originated from a letter sent by Campustown Action Association (CAA) to the City Council in 2012. A draft ordinance change was prepared to implement both CAA's requested changes and modifications proposed by City staff. At the September 20, 2016, meeting, the City Council raised several issues related to Sidewalk Cafes; those issues and staff's responses to them are indicated below:

1. Ensure that umbrellas can be made of fabric.

City staff has modified the draft ordinance to clarify that fabric umbrellas are acceptable.

2. How can we ensure that sidewalk café components won't be made from inappropriate materials (e.g., umbrella weights made from five-gallon buckets of concrete)?

Staff has modified the section of the proposed Code revision to require sidewalk café components to be made of "commercial quality materials marketed for the use(s) in which they are employed in the sidewalk café."

3. Since the City Council has modified new development standards to require the installation of five-foot sidewalks, do sidewalk cafes need to ensure five feet of clear space, or is four feet acceptable?

The 2010 ADA Accessibility Guidelines provide for a minimum accessible route width of four feet, with a five-foot passing space at least every 200 feet. This 200-foot length is far greater than that of any existing sidewalk café. The proposed and current Sidewalk Café Codes call for a four-foot clear space. If the City Council is concerned about meeting the five-foot-every-200-feet requirement, City staff feels this could be addressed on a case-by-case basis.

If the City Council fundamentally feels that five feet of sidewalk space should be the minimum standard in all locations where possible, it could direct staff to increase the required clear space to five feet. It should also be noted that under

both the existing and proposed Sidewalk Café Codes, a sidewalk café may not occupy more than 50% of the width of the sidewalk (e.g., for a 10-foot sidewalk, the maximum sidewalk café space is five feet, leaving a five-foot path for pedestrian travel).

4. What requirements exist in other communities to bring in sidewalk café elements at the end of each day?

The current Municipal Code requires Sidewalk Café components to be stored indoors at any time when the café is not in operation. A summary of comparable cities' requirements is below:

CITY	REMOVE DAILY?	NOTES
Cedar Falls, IA	Varies	Within 30 minutes of closing each night, all elements must either: 1) be removed, or 2) orderly secured by means of chains and locks or other secure means in a way that prevents their use to cause damage to persons or property. Secured elements must be arranged so they do not obstruct snow removal or other maintenance.
Cedar Rapids, IA	Varies	There is a distinction between permanent sidewalk cafes, which are not required to remove their furnishings, and temporary sidewalk cafes, which are required to remove their furnishings each night.
Des Moines, IA	Varies	Any sidewalk café serving alcohol must have a 36" wrought iron or similar fence. Sidewalk cafés not serving alcohol may have a similar enclosure. Furniture can be left within that enclosure overnight. If no enclosure is present, any sidewalk café furniture must be taken in each night.
Dubuque, IA	No	Any tables, chairs, etc., shall be secured within the sidewalk café area at the end of the day's operation so they are unusable and do not block emergency exits from any building.
Iowa City, IA		
Evanston, IL	Yes, unless fee paid	Tables, chairs, etc. may be stored upon the City sidewalk overnight for an additional fee of \$200 per year (in addition to standard sidewalk café permit fee of \$200). There are no specific requirements to secure or lock down those items. The Permit Office indicates most businesses bring items in each night.
Lawrence, KS	No	Sidewalk cafes are required to have a fenced enclosure. Tables and chairs are not required to be removed from the enclosure or locked up, although many businesses do lock them up.
Manhattan, KS		

It appears a variety of approaches are taken with respect to the daily removal of sidewalk café furniture. In several of the communities where removal is not required, the sidewalk café barriers are also required to be more substantial and in some instances are secured to the pavement, providing a more secure enclosure against tampering with sidewalk café furniture.

City staff's interest in this provision is to prevent sidewalk café furnishings from becoming an attractive nuisance. Removal of the furniture nightly resolves this concern. However, City staff is comfortable with a requirement to secure furnishings with locks and chains or cables. In this case, City staff would request information on the permit application regarding the method of securing the furnishings.

5. How can the City ensure that any parklet used for a sidewalk café could be removed quickly if necessary?

The application process for a parklet has not yet been defined. However, one of the criteria for an application could be for the applicant to describe how he/she would remove the parklet in a timely manner if required to do so.

6. What are methods through which alcohol service could be allowed at the sidewalk café of an establishment that does not qualify as a "restaurant" under Municipal Code?

The City Council's original direction to City staff was to "provide ways in which alcohol service at sidewalk cafes could be made a safe initial effort." City staff responded by proposing that alcohol service at sidewalk cafes only be allowed at establishments that allow minors on the premises under Section 17.16 of Municipal Code. As currently written, Section 17.16 distinguishes between establishments whose sales of alcohol are less than 50% of their total sales, which are permitted to have minors on the premises (restaurants), and those whose sales of alcohol are greater than 50%, which may not have minors on the premises (bars).

If the City Council wishes to allow alcohol service at the sidewalk cafés of some establishments that are considered bars, but not at all of them, the question is how to distinguish between establishments in a manner that is not arbitrary. Options to address this include:

a) City Council Granted Exception

A business that does not meet the "restaurant" criteria, but wishes to provide sidewalk café service, could submit a request for an exception allowing the service of alcohol. The City Council would receive a staff report indicating the establishment's alcohol compliance history and the measures proposed to control the service of alcohol. The City Council

would then decide whether to allow an exception for that establishment to serve alcohol at its sidewalk café.

This option could be coupled with the ability for the City Council to impose additional conditions on a case-by-case basis to ensure safety. As with any sidewalk café, the City Manager could revoke the establishment's sidewalk café permit if the business is non-compliant or if a safety issue is created.

b) Allow with Increased Safety Standards

The Municipal Code could be modified to automatically allow for alcohol service at establishments that are considered "bars" if they meet additional safety criteria. These could include the use of substantial fencing instead of standard barrier materials (as is required in Des Moines, Lawrence, and Manhattan), a greater staffing requirement, earlier service cut-off times, a prohibition on liquor consumption, or other requirements.

This option would apply a blanket standard for any "bar" that wishes to serve alcohol at a sidewalk café. The challenge lies in determining what standard would achieve the appropriate balance between hospitality and safety, especially since both the City and potential proprietors have little to no experience with alcohol service in a sidewalk café setting. City staff would need direction from the City Council regarding what additional restrictions should be imposed.

c) Prohibit Sidewalk Café Alcohol Service at Bars; Revisit in One Year

Under this option, the proposed ordinance would remain as-drafted, with only restaurants being allowed to serve alcohol at a sidewalk café. After one year of experience with this new system, City staff would return this discussion to the City Council to consider options for allowing alcohol service at sidewalk cafes attached to bars.

Providing alcohol at sidewalk cafes is something with which the City has no experience. Limiting alcohol service to restaurants for a period of time allows both the establishments and City staff to gain familiarity with the operation of the new sidewalk café ordinance. This would allow for fine-tuning of the ordinance if necessary, before expanding the service of alcohol at sidewalk cafes to bars.

NEXT STEPS:

The City Council may choose to provide specific direction regarding the items indicated above, or additional issues related to sidewalk cafes. **Once this final direction has been received, it would be appropriate for the City Council to direct staff to prepare an ordinance modifying the Sidewalk Café Code with these changes.** This

ordinance would be then returned to the City Council for a hearing and three readings. It is City staff's intent to complete the ordinance change in time for the start of the Sidewalk Café season, which begins in April.

In order to refresh your memory regarding other issues related to a possible café ordinance that were presented to the Council last September, a copy of the power point slides is attached for your review.



City of Ames Sidewalk Café and Vending Code Workshop

Smart Choice



SIDEWALK CAFÉ BACKGROUND

- 2012: Request from CAA
 - Allow wait service at tables
 - Do not require barriers
 - However, if barriers required, ensure they are aesthetically pleasing
 - Allow alcoholic beverage service

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SIDEWALK CAFÉ BACKGROUND (2)

- City staff proposed additional modifications to Code
- City Council discussions in November 2012, May 2014
- Consultation with CAA, MSCD during process

Smart Choice



SIDEWALK CAFÉS – SITE



Standard Configuration (currently allowed)

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SIDEWALK CAFÉS – SITE (2)



Offset Configuration (proposed addition)

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SIDEWALK CAFÉS – SITE (3)

- Proposed Revision: Attached or offset cafes allowed
 - Must maintain four-foot clear path for pedestrians
 - Use of parklets allowed for offset cafes
 - Must be reviewed for safety, stormwater
 - Must request use of metered parking space from City Council, arrange for payment

Smart Choice



SIDEWALK CAFÉS - ACCESSORIES

- Proposed Revision: Accessory devices allowed
 - Air conditioners, fans permitted
 - Heaters permitted if approved by Fire Inspector
 - Noisemaking devices permitted if in compliance with Noise Ordinance

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SIDEWALK CAFÉS - MATERIALS

- Proposed Revision: Furniture and delineators may not be made of plastic, plastic resin, or fabric.
 - Per CAA's request
 - Staff proposes exception to allow furniture made of HDPE, which is similar in durability to wood but does not rot (it is used to make some park benches)

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SIDEWALK CAFÉS – TABLE SERVICE

- Proposed Revision: Table service is permitted
 - Tables must be bused promptly to keep waste materials from blowing away or being attractive to animals
 - Soiled tableware may not be kept in an outdoor bus stop (consistent with current Code)

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SIDEWALK CAFÉS – REVOC./DENIAL

- Proposed Revision: Appeals process for revocation or denial of a permit mirrors Vending License process
 - 20 days for licensee to appeal to City Council
 - License can be temporarily revoked for public safety purposes, failure to meet requirements of the Code, etc.

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SIDEWALK CAFÉS – DELINEATION

- Proposed Revision: Barriers at least 42 inches in height to separate patrons from pedestrian area or street.
 - Acceptable materials: ropes, chains, planters, fencing, other sturdy materials
 - Barriers required in comparable communities
 - Important to contain sidewalk café and keep clear path of travel
 - Alcohol service – Must take place within a defined “premises”

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SIDEWALK CAFÉS – ALCOHOL

- Proposed Revision: Alcohol permitted if safety requirements are met
 - City Council directed staff to work to make alcohol service a safe initial effort
 - Restrictions (only for sidewalk cafes where alcohol is served) include:
 - Allowing alcohol service only at “restaurants” as defined by the City’s 50/50 alcohol ordinance. Prohibits minors from being on the premises where 50% or more of the business’ sales are alcohol.
 - Prohibiting consumption of outside food and beverage

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SIDEWALK CAFÉS – ALCOHOL (2)

- Limiting number of patrons allowed to the number of chairs or fire code limit, whichever less
 - Prohibiting alcohol service in sidewalk cafés after 10:00 p.m.
 - Requiring staff supervision of the sidewalk cafe
 - If at an “offset” sidewalk café, prohibiting patrons from loitering with alcohol between the business and the sidewalk cafe
- Intent is that alcohol service is incidental to the dining experience. Not intended to extend bars onto the sidewalk.

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SIDEWALK CAFÉS – NEXT STEPS

- Sidewalk café season April 1 – October 31
 - Code revision will be presented to City Council

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