

**COUNCIL ACTION FORM**

**SUBJECT: ADOPTION OF SIDEWALK CAFÉ CODE REVISIONS**

**BACKGROUND:**

At the February 14, 2017 City Council meeting, the City Council directed staff to prepare an ordinance modifying the Sidewalk Café Code. That ordinance is attached, and is presented to the City Council for first passage.

The key changes to the Sidewalk Café Code are as follows:

1. Allows for an offset sidewalk café, which is a type that does not abut the building. Also allows the use of parklets to extend the sidewalk café into a parking space.
2. Alcoholic beverages are allowed, provided:
  - a. The premises are controlled and monitored
  - b. Alcohol may not be sold or served later than 10 p.m.
  - c. The establishment is of the type that is allowed to have minors on the premises (and therefore is more akin to a “restaurant” than a “bar”)
    - i. A “bar” may request an exemption from this requirement, which may be granted by the City Council. The City Council may consider the compliance history, training, and other factors, and may impose additional restrictions if it chooses.
3. Air conditioners, fans, heaters, and speakers are permitted with certain restrictions.
4. Sidewalk café components must be made of commercial quality materials (details of what is acceptable are in the Code). Certain specific materials that would tend to break easily are not acceptable (details are in the Code).
5. Within an hour of the closing time, sidewalk café components must either be removed and stored indoors or secured via chains, cables, locks, etc.
6. Table service at a sidewalk café is permitted, but tables may not be pre-set with utensils; soiled dishes must be bused promptly. Public street furniture and trash receptacles may not be used for sidewalk café operations.

7. The City Manager and any duly sworn peace officer have the power to prohibit the operation of a sidewalk café or require the service of alcohol to cease at any time due to actual or anticipated problems (e.g. nuisances, planned events).
8. The permit revocation, denial, and appeals processes have been modified to align with the process for Vending Licenses.

**ALTERNATIVES:**

1. Approve on first reading the attached ordinance modifying the Sidewalk Café Code.
2. Direct staff to modify the proposed ordinance.
3. Do not approve the ordinance.

**MANAGER’S RECOMMENDED ACTION:**

The City Council has provided direction regarding a variety of elements of the Sidewalk Café Code. The proposed language incorporates the suggestions identified by the Campustown Action Association, as well as revisions proposed by City staff to clarify the language and address its implementation. The revision is presented to the City Council with time for it to be approved on third reading and adopted prior to the start of the 2017 sidewalk café season.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving on first reading the attached ordinance modifying the Sidewalk Café Code.

**It should be emphasized that even with the passage of this ordinance, establishments seeking to serve alcohol within sidewalk cafes will still need to obtain an “outdoor service area privilege” from the State of Iowa Alcoholic Beverages Division.**

**ORDINANCE NO.**

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING CHAPTER 22, SECTION 22.24A AND ENACTING A NEW DIVISION VII, SECTION 22.32 THEREOF, FOR THE PURPOSE OF MODIFYING THE SIDEWALK CAFÉ CODE ; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**BE IT ENACTED**, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by repealing Chapter 22, Section 22.24A and enacting a new Division VII, Section 22.32 as follows:

**DIVISION VII  
SIDEWALK CAFÉ PERMITS**

**Sec. 22.32. SIDEWALK CAFÉ PERMITS.**

The purpose of this subsection is to set forth the conditions and requirements under which a sidewalk cafe, as defined, may be permitted to operate by Sidewalk Cafe Permit on a public sidewalk within the City of Ames. The fee for a Sidewalk Cafe Permit is listed in Appendix D.

(a) **Definition.** A sidewalk cafe is any group of tables and/or chairs, and its authorized decorative and accessory devices, situated and maintained upon the public sidewalk for use in connection with ordering, purchasing and consuming food and beverages sold to the public from, or in, an adjoining indoor restaurant. For the purposes of this section, an indoor business selling food for consumption on the premises shall be considered an adjoining indoor restaurant.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(b) **Where Permissible.** A sidewalk cafe shall be permitted as follows:

- (1) In zoning districts which allow indoor restaurants, and
- (2) Adjacent to an indoor restaurant, which shall be construed as either:
  - (i) being immediately contiguous to and abutting the indoor restaurant on

the public sidewalk, or

- (ii) being offset from the indoor restaurant, where a clear path of pedestrian travel exists between the indoor restaurant and the sidewalk café. An offset sidewalk café may be created upon the public sidewalk, or by the installation of one or more semi-permanent seating structures or “parklets” in an adjacent on-street parking area, or by a combination of the two. The installation of a seating structure or “parklet” in an on-street parking area is subject to City Council approval, and the City Council may require reimbursement for any lost parking meter revenue, and

- (3) Where the cafe's operation is incidental to and a part of the operation of its adjacent indoor restaurant, and

- (4) Provided the area in which the sidewalk cafe is located extends no farther along the sidewalk's length than the actual sidewalk frontage of the operating indoor restaurant, and all other applicable provisions of this subsection are fulfilled.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(c) **Restrictions on Smoking and Alcoholic Beverages.** Permittees shall enforce the following prohibitions or restrictions:

(1) Smoking tobacco or using an electronic smoking device at a sidewalk café is prohibited.

(2) Alcoholic beverages may be served at sidewalk cafes pursuant to a valid liquor control license, and in accordance with state and local alcoholic beverage control laws, provided the following additional requirements are met:

(i) Patron entrance to and egress from the sidewalk café shall be controlled by staff of the establishment, who shall continuously monitor the sidewalk café during times alcoholic beverages are being sold or consumed, and

(ii) No alcoholic beverages may be sold or served to patrons later than 10 p.m., and

(iii) Patrons shall not be permitted to consume any beverages within the sidewalk café that were not purchased on the premises, and

(iv) If the sidewalk café is an offset sidewalk café per Sec. 22.32(b)(ii), the establishment shall ensure that no patron loiters in the clear path of pedestrian travel while in possession of an alcoholic beverage. Patrons may be in possession of an alcoholic beverage in the clear path of pedestrian travel only for the purpose of moving to the sidewalk café from the adjoining indoor restaurant or vice versa, and

(v) Alcoholic beverages shall not be served or dispensed at the sidewalk café of any establishment where minors are prohibited according to Section 17.16, except that establishments permitted to have minors on the premises only during certain hours of the day according to Section 17.16 may serve alcohol at their sidewalk café only during those hours. An establishment which is not permitted to have minors on the premises at any time may request, and the City Council may grant, an exception to this requirement on a case-by-case basis. The City Council shall consider the site conditions, the compliance history of the establishment and its staff, staff training, and any other factors it deems relevant to ensuring the safe and responsible use of City sidewalks. The City Council may impose special conditions in addition to those indicated in this Section on any sidewalk café granted an exception to dispense alcohol.

(d) **Number of Sidewalk Cafes.** An indoor restaurant shall be permitted to operate only one sidewalk cafe, and each sidewalk cafe shall be confined to a single location on the sidewalk. The City may limit the number of permits issued for sidewalk cafes if necessary to maintain adequate pedestrian flow and access to buildings, to safeguard pedestrian and traffic safety, to preserve the aesthetic quality of the surrounding area, or for any other valid public purpose.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(e) **Sidewalk Clearances.** A sidewalk café shall be permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the proposed cafe. A sidewalk cafe shall not occupy more than 50 percent of the sidewalk's width at any point as measured from the curb, or measured from the street-side edge of any semi-permanent seating structure installed in an on-street parking space. There shall be a minimum of four (4) feet of sidewalk width clear of obstructions. No part of the sidewalk café or its accessory elements shall obstruct any entrance to or exit from any adjacent structure. No sidewalk café shall be situated within eight (8) feet of any designated bus stop, or within twenty (20) feet of a street intersection, or within eight (8) feet of a fire hydrant or fire sprinkler post indicator valve.

*(Ord. No. 3437, Sec. 1, 5-27-97)*

(f) **Tables and Chairs, Location and Requirements of Furniture.** All tables and chairs comprising a sidewalk cafe shall be set within the area designated on the sidewalk café permit application and it shall be the responsibility of the permit holder to ensure tables, chairs, and other sidewalk café furniture do not encroach upon any part of the sidewalk not designated on his or her sidewalk café permit.

All outdoor dining furniture, including tables, chairs, umbrellas, barriers, and authorized accessory items, shall be readily movable. "Readily movable" shall mean that no object as stated above, which is part of the sidewalk cafe, shall be leaded, cemented, nailed, bolted, power riveted, screwed-in or affixed, even in a temporary manner, to either the sidewalk on which the sidewalk cafe is placed, to the building, or to any other structure which the sidewalk cafe abuts. Umbrellas must be secured with a minimum base of not less than 60 pounds.

Accessory devices for the comfort of patrons, such as air conditioners, fans, amplified sound, or speakers may be used at a sidewalk café, provided, however, that any such devices, cables, or wiring are installed and operated in a safe and responsible manner in compliance with applicable codes. Any noisemaking devices shall comply with the City's Noise Ordinance. Devices with a heating element may be permitted with the approval of the Fire Inspector.

Sidewalk café components, such as tables and chairs, shall be constructed of commercial quality materials marketed for the use(s) in which they are employed in the sidewalk café. No components of a sidewalk café may be constructed primarily of plastic, plastic resin, or fabric; however, sidewalk café components made of dimensional pieces of high-density polyethylene (HDPE), and umbrellas made of fabric are acceptable.

Within one hour of the close of the sidewalk café for the night, and on days when the sidewalk café is not in operation, tables, chairs, barriers, accessory devices, and all other elements used in the operation of an outdoor café shall be either:

(1) Removed from the sidewalk and stored indoors, or  
(2) Orderly secured by means of chains or cables and locks, or other secure means, in a manner that prevents the use of the sidewalk café elements to cause injury to persons or property. Secured elements shall be arranged in such a manner as to not obstruct maintenance of the sidewalk.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(g) Signs shall not be allowed at any outdoor café, except for the name of the establishment on an awning or umbrella fringe. Notwithstanding any provision of the Code to the contrary, however, within the Downtown Service Center (DSC), temporary portable signs may be permitted at any outdoor café pursuant to a permit issued as provided in Municipal Code Chapter 21.

(1) A proprietor of a business establishment located within the DSC who holds a valid Sidewalk Cafe Permit issued pursuant to this section and who applies for a permit for a temporary portable sidewalk sign permit for the same location shall be required to pay only one application fee for both permits, the applicable fee being the one, if the fees are different, that is the greater of the two.

(2) A proprietor of a business establishment located within the DSC who holds a valid Sidewalk Cafe Permit issued pursuant to this section and who applies for a permit for a temporary portable sidewalk sign permit for the same location shall be required to maintain on file with the city clerk only one insurance certificate if applicable to both permits.

(h) **Maximum Occupancy.** The maximum occupancy of a sidewalk café shall be the lesser of the number of seating places available to patrons within the sidewalk café area or the occupancy limit of the sidewalk café as established by local building or fire codes adopted by the City.

(i) **Delineating Sidewalk Cafe Area.** The sidewalk cafe shall be delineated by barriers at least forty-two (42) inches in height separating patrons from the pedestrian traffic on the sidewalk and, if applicable, roadway traffic. Barriers may consist of ropes, chains, planters, fencing, or other sturdy material that physically separates the sidewalk café from the adjoining right-of-way. Barriers separating a sidewalk café from roadway traffic must be secured to other barriers or weighted to prevent their encroachment into driving or parking lanes. Barriers shall comply with detectability requirements as set forth in the current version of the Americans with Disabilities Act Accessibility Guidelines. Barriers shall be set within the 50 percent of the sidewalk designated for the sidewalk cafe, to ensure a minimum of four (4) feet of sidewalk width clear of obstructions.

(j) **Food and Beverages.** A sidewalk cafe shall serve only food and beverages prepared, or stocked for sale, at the adjoining indoor restaurant.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(k) **Service Requirements.** The outdoor preparation of food is prohibited at sidewalk cafes. Sidewalk café patrons may obtain food and beverages from within the adjoining indoor restaurant, or staff from the adjoining indoor restaurant may provide table service. The presetting of sidewalk café tables with utensils, glasses, napkins, condiments, and the like is prohibited. All tables shall be bused promptly, and soiled tableware shall be taken inside for cleaning. No soiled tableware shall be kept in an outdoor busing station. Public street furniture and waste receptacles shall not be used in the operation of a sidewalk café. Restrooms for the cafe shall be provided in

the adjoining indoor restaurant, and the cafe seating shall be counted in determining the restroom requirements of the indoor restaurant.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(l) Trash and refuse storage for the sidewalk cafe shall not be permitted within the outdoor dining area, or on adjacent sidewalk areas, and the permittee shall remove all trash and litter as they accumulate. All exterior surfaces within the sidewalk café, including tables, chairs, barriers, and the sidewalk surface, shall consist of materials that are easily cleaned, and shall at all times be kept in a clean and safe condition.

(m) **Days and Hours of Operation.** Sidewalk cafes may operate on days whenever fair weather would enhance outdoor dining from the dates of April 1, to October 31, of the said given year that the Sidewalk Cafe Permit was issued. The hours of operation are limited to between 7:00 a.m. and 11:00 p.m. No sidewalk café shall be in operation during times when the kitchen of the adjoining restaurant is closed. The City Manager or designee, and any duly sworn peace officer shall have the power to prohibit the operation of a sidewalk cafe or require the service of alcohol to cease at any time because of anticipated or actual problems or conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades or marches, repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. To the extent possible, the permittee shall be given prior written notice of any time period during which the operation of the sidewalk cafe will be prohibited by the City, but any failure to give prior written notice shall not affect the right and power of the City to prohibit the cafe's operation at any particular time.

(n) **Findings and Conditions.** In connection with granting approval for any Sidewalk Cafe Permit, the City Manager shall make findings that the proposed operation meets the limitations of this subsection, and the Manager may impose such conditions in granting approval as are needed to assure that the proposed operation will meet the operating requirements and conditions set forth in this article, and to assure that the public safety and welfare will be protected.

(o) **Term and Renewal.** A Sidewalk Cafe Permit shall be approved by the City Manager for a maximum period of one year. Thereafter, the City Manager, if an extension application is filed prior to any expiration date of the Sidewalk Cafe Permit, may extend the permit for additional periods, not to exceed one year each, following review and approval of the cafe's operations. The City Manager may make any renewal of a Sidewalk Cafe Permit subject to additional and revised conditions and requirements. Any renewal granted by the City Manager shall not exceed a period of one year. All applications shall be filed with the City Clerk, who shall refer them to the City Manager. The City Clerk shall maintain the records of permits issued, denied, or revoked.

(p) **Revocation.** The City Manager may revoke or deny a Sidewalk Cafe Permit at any time, without advance notice, for any of the following reasons:

- (1) It is determined by the Chief of Police or Fire Chief that public safety requires such revocation or denial;
- (2) The application is incomplete;
- (3) The application is determined to be fraudulent, to include a misrepresentation, or to contain a false statement;
- (4) The applicant has had a license or permit revoked by the City for any reason within the preceding two (2) years;
- (5) The permittee has an outstanding arrest warrant in this or any other jurisdiction, or is a fugitive from this or from any other jurisdiction;
- (6) The permittee's insurance has been canceled;
- (7) The permittee violates any administrative rules or policies authorized by this division.
- (8) The permittee violates any provision of this ordinance, other City of Ames ordinances, or State or federal laws
- (9) It is determined that a need exists to evaluate or ensure the safety of the community as it pertains to Sidewalk Cafés.

(q) **Appeal Process.** Any party aggrieved by the City Manager's decision to deny, revoke, suspend, or issue a Sidewalk Cafe Permit may appeal the determination to the City Council if, within twenty (20)

working days after the decision, the party files a written notice of appeal with the City Clerk. In such event, a hearing shall be held by the City Council no later than its next regularly scheduled meeting, assuming the appeal is filed in time to allow notice of said appeal in accordance with Chapter 21 of the Iowa Code. Upon such hearing, the City Council may, based upon the standards enumerated herein, reverse, affirm or modify in any regard the City Manager's decision. The City Council's decision is the final decision.

(r) **Insurance.** An insurance certificate naming the City of Ames, its officers, and employees as an additional insured with comprehensive general liability limits in the amount of \$500,000 combined single limit shall be in full force and effect during the life of a Sidewalk Cafe Permit. The coverage shall be at least as broad as the ISO Form Number CG0001 covering commercial general liability written on an occurrence basis only. A copy of the current insurance certificate shall be maintained on file with the City Clerk.

*(Ord. No. 3968, 9-9-08; Ord. No. 4064, 05-10-11)."*

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

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

Passed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor