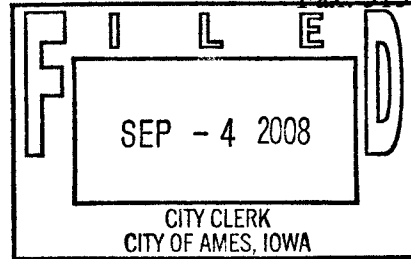




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September 4, 2008

The Honorable Ann Campbell, Mayor,  
and Members of the City Council  
of the City of Ames, Iowa



Re: Amendments to City of Ames Municipal Code Chapter 22 and Appendix D to allow for food orders to be placed and paid for at sidewalk cafes

Dear Mayor Campbell and Members of the City Council:

The City Council directed the City Attorney to draft an ordinance to allow food orders to be placed and paid for at sidewalk cafes. In response to this directive, the attached code amendments include the changes listed below.

1. Amend §22.13 to indicate a particular license or permit is required, and list Vendor's License, Newspaper Dispenser Permit, and Sidewalk Cafe Permit as examples.
2. Remove §22.4(3) Sidewalk Cafes from §22.4 TEMPORARY OBSTRUCTIONS, and add it as a new section, §22.24.A. SIDEWALK CAFE PERMIT with the following changes:
  - a. Replace every reference to 'Temporary Obstruction' permit with 'Sidewalk Cafe' permit.
  - b. Include in the first paragraph, 'Fees pertaining to this subsection shall be in such amounts as shall be established from time to time by resolution of the city council.'
  - c. Change the 'sidewalk cafe' definition to include 'ordering, purchasing and consuming.'
  - d. Add to §22.24.A.(c) the prohibitions of consumption of alcoholic beverages and smoking, and the requirement that a permittee enforce such prohibitions.
  - e. Add §22.24.A.(q), the insurance requirement. This addition is necessary only due to reformatting, and is not a substantive change.
3. Renumber §22.4(4) as §22.4(3) and remove the reference to sidewalk cafes.

In conjunction with the changes to Chapter 22, it is recommended the changes listed below be made to the Fee Schedule in Appendix D. Changes to the Fee Schedule clarify the process but do not change the fees. It is recommended you approve by resolution these changes to the Fee Schedule upon passage of the ordinance, so that changes to Chapter 22 and to the Fee Schedule become effective simultaneously.

1. Remove '(Temporary Obstruction)' from the Sidewalk Cafe Permit entry.
2. Specify that a fee for a Sidewalk Cafe Permit is charged per permit or permit renewal.

Regards,  
  
\_\_\_\_\_  
Douglas R. Marek  
City Attorney

\_\_\_\_\_  
Amanda J. Laird  
Special Assistant City Attorney

Attachment

a) The city council may, after investigation, approve, modify or reject the application. 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 the encroachment 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. The Council may waive the requirement of an insurance certificate as described herein if the applicant is an agency of the State of Iowa.

*(Ord. No. 3746, 11-18-03; Ord. No. 3906, 3-27-07)*

b) Non-breakaway mailboxes. Permits for non-breakaway mailboxes may, after investigation, be approved by the city traffic engineer if it is determined by the city traffic engineer that the installation does not create a dangerous or hazardous situation.

*(Ord. No. 809, Sec. 3; Code 1956, Sec. 37-3)*

(4) **Issuance of permit; records.** Upon approval of an application for an encroachment permit by the city council or city traffic engineer, the city clerk shall, upon receipt of the Certificate of Insurance, unless waived as provided in this section, collect the payment of a minimum fee of twenty-five dollars (\$25.00) or one dollar (\$1.00) per square foot of encroachment, whichever is the larger amount, and issue the permit and retain a record thereof. The permit issued shall set forth in detail any requirements imposed by the city council or city traffic engineer in granting the permit.

*(Ord. No. 809, Sec. 5; Code 1956, Sec. 37-5; Ord. No. 2429, Sections 1, 2, 1-2-73, Ord. No. 3746, 11-18-03; Ord. No. 3806, 3-27-07)*

(5) **Revocation.** The city council may at any time revoke any permit issued under and by virtue of the terms of this chapter when the privilege granted thereunder conflicts with the city's use of the streets, alleys or sidewalks, any contract or agreement to the contrary notwithstanding.

*(Ord. No. 809, Sec. 6; Code 1956, Sec. 37-6)*

(6) **Inspection fee; failure to pay.** The city council may require the payment of an annual fee as it shall prescribe for the purpose of covering costs of making inspection of the encroachment. Failure to pay the fee when due shall operate to cancel the permit.

*(Ord. No. 809, Sec. 4; Code 1956, Sec. 37-4)*

*(Ord. No. 3411, Sec. 1, 11-26-96)*

## 22.4 TEMPORARY OBSTRUCTIONS

(1) It is unlawful for any person to place any building or other materials, or to erect barricades, false work, form work or place other temporary obstructions within the limits of streets, alleys, public parking lots or sidewalks in the city without first obtaining written permission from the city manager setting out the time to do the work.

*(Ord. No. 3916, 05-22-07)*

(2) No person shall construct any sidewalk, residence, building or other improvement, or while make repairs to the same, or for any other purpose, pile sand, dirt, brick, lumber, or other material upon any street, avenue, alley, or public place, or within the street limits, without maintaining at and thereon, at proper places, a lighted barricade, lighted lantern or flares between the hours of sunset and sunrise, sufficiently bright to be easily observed at a distance of three hundred (300) feet.

*(Ord. No. 809, Sec. 7; Ord. No. 812, Sections 67, 71; Code 1956, Sections 37-7, 76-67, 76-71; Ord. No. 3003, Sec. 34, 2-23-88)*

~~(3) **Sidewalk Cafes.** 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 Temporary Obstruction Permit on a public sidewalk within the City of Ames.~~

~~(a) **Definition.** A sidewalk cafe is any group of tables and chairs, and its authorized decorative and accessory devices, situated and maintained upon the public sidewalk for use in connection with the consumption of food and non-alcoholic beverages sold to the public from, or in, an adjoining indoor restaurant, or other indoor business selling food for consumption on the premises.~~

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

~~(b) **Where Permissible.** A sidewalk cafe shall be permitted only in zoning districts which allow indoor restaurants, or other indoor business selling food for consumption on the premises, and then only if the sidewalk cafe is contiguous to an indoor restaurant, or other indoor business selling food for consumption on the premises, and the cafe's operation is incidental to and a part of the operation of such contiguous indoor restaurant, or other indoor business selling~~

furniture used in the operation of an outdoor cafe shall be removed from the sidewalk and stored indoors at night, and whenever the cafe is not in operation.

The City shall have the right and power, acting through the City Manager or his designee, to prohibit the operation of a sidewalk cafe at any time because of anticipated or actual problems of 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 Temporary Obstruction Permit for a sidewalk cafe, 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 Temporary Obstruction Permit for a sidewalk cafe 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 Temporary Obstruction Permit, may extend the permit for additional periods, not to exceed one year each, following review and approval of the cafe's operations. In the event the City Manager decides additional or revised conditions are necessary, to which the applicant objects, or if the City Manager decides that the permit should not be renewed at all, the application shall be referred to the City Council, which shall hold a public hearing and thereafter decide the matter. The City Manager may make any renewal of a Temporary Obstruction 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.** A Temporary Obstruction Permit may be revoked by the City Manager, following notice to the permittee and a hearing, upon a finding that one or more conditions of the permit or of this article have been violated, or that the sidewalk cafe is being operated in a manner which constitutes a nuisance, or that the operation of the sidewalk cafe unduly impedes or restricts the movement of pedestrians past the sidewalk cafe.

*(Ord. 3125, 4-9-91)*

(43) **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 any temporary obstruction permit, including a permit for a sidewalk café. 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 waiver of this requirement may be granted by the City Manager for Sections 22.4(1) and (2). A copy of the current insurance certificate shall be maintained on file with the City Clerk.

(a) Waivers of the insurance requirement shall be based on the following criteria:

- (1) Type of obstruction
- (2) Nature of the event requiring an obstruction
- (3) Anticipated volume of traffic and whether street closings will be required
- (4) Whether the event is for a commercial or private purpose
- (5) The zoning of the area in which the obstruction will occur. Areas with commercial and high density residential zoning will [likely] require insurance

*(Ord. No. 3746, 11-18-03; Ord. No. 3916, 05-22-07)*

## **Sec. 22.5. EXCAVATIONS.**

(1) The following definition of terms applies to all provisions of this section.

(a) Concrete pavements include all Portland cement and asphaltic concrete pavements and concrete base with any type of bituminous wearing surface.

(b) Stabilized base pavements include pavement with base stabilized with gravel, stone, cinders and a cementing material other than Portland cement, and with or without a bituminous wearing surface.

(c) Street appurtenances include all concrete curbs, curb and gutter and sidewalks within the street limits.

(d) Street surfaces include all other street surfaces of earth, unstabilized gravel or stone, cinders or similar material.

DIVISION III  
VENDING

**Sec. 22.11. FINDINGS AND PURPOSE.**

It is found and declared that:

- (1) The primary purpose of the public streets and sidewalks is for use by vehicular and pedestrian traffic;
- (2) Vending on the public streets and sidewalks promotes the public interest by contributing to an active and attractive pedestrian environment;
- (3) Reasonable regulation of street and sidewalk vending is necessary to protect the public health, safety and welfare.
- (4) The following regulations for street and sidewalk vending are not intended to restrain speech but merely to regulate conduct which is commercial in nature.

*(Ord. No. 2849, Sec. 1, 6-7-83)*

**Sec. 22.12. DEFINITIONS.**

- (1) "Stand" means any table, showcase, bench, rack, pushcart, wagon vehicle or device used for displaying, keeping and offering of articles for sale by a vendor.
- (2) "Vendor" means any person engaged in selling, or offering for sale, of food, beverages, or other merchandise from a stand, motor vehicle or from the vendors person, on the public streets, alleys, parking lots, sidewalks, thoroughfares, and ways.

*(Ord. No. 2849, Sec. 1, 6-7-83)*

**Sec. 22.13. LICENSE REQUIRED.**

It shall be unlawful to sell, or offer for sale, any food, beverage or merchandise on any street, sidewalk, alley, city parking lot or other thoroughfare without first obtaining ~~an annual~~ the applicable license or permit, such as a Vendor's License, a Newspaper Dispenser Permit, or a Sidewalk Cafe Permit. ~~therefore.~~

*(Ord. No. 2849, Sec. 1, 6-7-83)*

**Sec. 22.14. APPLICATIONS.**

The application for a vendor's license shall include:

- (1) The name, home and business address of the applicant, and the name and address of the owner, if other than the applicant, of the vending business, stand or motor vehicle to be used in the operation of the vending business.
- (2) A description of the type of food, beverage or merchandise to be sold.
- (3) A description of the proposed location or routes of the vending business.
- (4) A certificate of inspection by the city sanitarian.
- (5) 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 the street vendors license. 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. 2849, Sec. 1, 6-7-83; Ord. No. 3065, Sec. 1, 11-21-89, Ord. No. 3746, 11-18-03)*

**Sec. 22.15. ISSUANCE**

(1) Not later than 30 days after the filing of a completed application for a vendor's license, the applicant shall be notified by the city of the decision on the issuance or denial of the license. The decision shall be made by the city manager or the manager's designee.

(2) The city manager shall consider the standards set forth in state restaurant regulations, and state itinerant merchants regulations. No license shall be issued by the city unless there is proof that all required state licenses and permits have been applied for or obtained. In the event that two or more applications for the same location are received,

the approval of the Department of Public Works; but, they shall not be attached in any manner to any public utility pole, street light pole, traffic sign, tree, bench, fire hydrant or any other city property, including pavement.

(7) If any person shall complain to the city that a permitted newspaper dispensing device on city property is a present or potential cause of harm to persons or property, notice shall be given to the permittee. If the permittee does not choose to voluntarily remove the device in response to the complaint, a hearing shall be held after five days' notice before a panel composed of the Traffic Engineer, and two other persons designated by the City Manager to hear and review the testimony, evidence and arguments of all concerned. If the panel finds a hazard as aforesaid, the device shall be removed within one business day of notice. Failure to remove the device as directed shall constitute a violation of this section. (Ord. 3129, 6-11-91)

**Sec. 22.24.A. SIDEWALK CAFE PERMIT.** ~~(3) Sidewalk Cafes.~~

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 ~~by Temporary Obstruction Permit~~ on a public sidewalk within the City of Ames. Fees pertaining to this subsection shall be in such amounts as shall be established from time to time by resolution of the city council.

(a) **Definition.** A sidewalk cafe is any group of tables and chairs, and its authorized decorative and accessory devices, situated and maintained upon the public sidewalk for use in connection with ordering, purchasing and consuming ~~the consumption~~ of food and non-alcoholic beverages sold to the public from, or in, an adjoining indoor restaurant, or other indoor business selling food for consumption on the premises.

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

(b) **Where Permissible.** A sidewalk cafe shall be permitted only in zoning districts which allow indoor restaurants, or other indoor business selling food for consumption on the premises, and then only if the sidewalk cafe is contiguous to an indoor restaurant, or other indoor business selling food for consumption on the premises, and the cafe's operation is incidental to and a part of the operation of such contiguous indoor restaurant, or other indoor business selling food for consumption on the premises. A sidewalk cafe shall be located on the public sidewalk immediately contiguous to and abutting the indoor restaurant, or other indoor business selling food for consumption on the premises, which operates the cafe, provided that 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, or other indoor business selling food for consumption on the premises, and all other applicable provisions of this article are fulfilled.

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

(c) **Alcoholic Beverages and Smoking Prohibited.** The service of alcoholic beverages, to customers consumption of alcoholic beverages, and smoking are prohibited at a sidewalk cafe, and a permittee shall enforce prohibition of such conduct. ~~using the sidewalk cafe is prohibited.~~

(d) **Number of Sidewalk Cafes.** An indoor restaurant, or other indoor business selling food for consumption on the premises, shall be permitted to operate only one sidewalk cafe, and each sidewalk cafe shall be confined to a single location on the sidewalk.

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

(e) **Sidewalk Clearances.** A sidewalk cafe 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, and there shall be a minimum of four (4) feet of sidewalk width clear of obstructions.

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

(f) **Table and Chairs, Location and Requirements of Furniture.** All tables and chairs comprising a sidewalk cafe shall be set within the 50 percent of the sidewalk measured from the indoor restaurant, or other indoor business selling food for consumption on the premises, building exterior wall, and shall not be situated within eight feet of any designated bus stop, and 20 feet from any street intersection.

All outdoor dining furniture, including tables, chairs, umbrellas, 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. Outdoor heaters, fans, air conditioners, amplified sound, or speakers are prohibited.

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

(g) Signs shall not be allowed at any outdoor cafe, except for the name of the establishment on an awning or umbrella fringe.

(h) **Reserved.**

(i) **Delineating Sidewalk Cafe Area.** The sidewalk cafe shall be delineated by barriers separating patrons from the pedestrian traffic on the sidewalk. The detailed requirements for each sidewalk cafe will be determined as warranted. The barriers will be within the 50 percent of the sidewalk designated for the sidewalk cafe, or 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 non-alcoholic beverages prepared, or stocked for sale, at the adjoining indoor restaurant, or other indoor business selling food for consumption on the premises.

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

(k) **Service Requirements.** The outdoor preparation of food and busing, or service stations, are prohibited at sidewalk cafes. The presetting of tables with utensils, glasses, napkins, condiments, and the like is prohibited. All exterior surfaces within the sidewalk cafe shall be easily cleanable, and shall be kept clean at all times by the permittee. Restrooms for the cafe shall be provided in the adjoining indoor restaurant, or other indoor business selling food for consumption on the premises, and the cafe seating shall be counted in determining the restroom requirements of the indoor restaurant, or other indoor business selling food for consumption on the premises.

(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. The permittee shall be responsible for maintaining the outdoor dining area, including the sidewalk surface and furniture, and adjacent areas in a clean and safe condition.

(m) **Days and Hours of Operation.** Sidewalk cafes shall 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 ~~Temporary Obstruction~~ Sidewalk Cafe Permit was issued. The hours of operation are limited to between 7:00 a.m. and 11:00 p.m. Tables, chairs and all other furniture used in the operation of an outdoor cafe shall be removed from the sidewalk and stored indoors at night, and whenever the cafe is not in operation.

The City shall have the right and power, acting through the City Manager or his designee, to prohibit the operation of a sidewalk cafe at any time because of anticipated or actual problems of 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 ~~Temporary Obstruction Permit for a sidewalk cafe~~, 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 ~~Temporary Obstruction Permit for a sidewalk cafe~~ 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 ~~Temporary Obstruction Permit~~, may extend the permit for additional periods, not to exceed one year each, following review and approval of the cafe's operations. In the event the City Manager decides additional or revised conditions are necessary, to which the applicant objects, or if the City Manager decides that the permit should not be renewed at all, the application shall be referred to the City Council, which shall hold a public hearing and thereafter decide the matter. The City Manager may make any renewal of a Sidewalk Cafe Permit ~~Temporary Obstruction 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.** A Sidewalk Cafe Permit ~~Temporary Obstruction Permit~~ may be revoked by the City Manager, following notice to the permittee and a hearing, upon a finding that one or more conditions of the permit or of

this article have been violated, or that the sidewalk cafe is being operated in a manner which constitutes a nuisance, or that the operation of the sidewalk cafe unduly impedes or restricts the movement of pedestrians past the sidewalk cafe.  
(Ord. 3125, 4-9-91)

**(q) 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.

DIVISION IV  
PARKING AREA USES

**Sec. 22.25. PARKING AREA IRRIGATION APPARATUS.**

(1) The provisions of Section 22.3 on encroachments notwithstanding, the owner of the abutting lot may install permanent irrigation apparatus in the street parking upon first executing a written registration and responsibility agreement in a form provided by the City Department of Public Works.

(2) Such apparatus shall be so designed and operated as to not cast water onto either the abutting street or any abutting or adjacent public walkway.

(3) The terms of the said responsibility agreement shall make it clear that the city, other utilities and cable television operators, have no duty of care with respect to said apparatus; and, that the owner of the abutting lot shall indemnify and hold the city, other utilities and cable television operators harmless from any claims, demands or liability whatsoever pertaining to such irrigation apparatus.

(4) The said agreement shall also be executed by mortgagees of said lot; it shall run with the land to bind successors and assigns; and, it shall be filed for record with the county recorder before the installation apparatus is installed.

(Ord. No. 3225, Sec. 1, 5-11-93)

**Sec. 22.26. PENALTIES FOR OFFENSES PERTAINING TO STREETS AND SIDEWALKS.**

A violation of any provision of Chapter 22, Streets and Sidewalks, shall be a municipal infraction punishable by a penalty of \$500 for a person's first violation thereof, and a penalty of \$750 for each repeat violation.

(Ord. No. 3497, Sec. 43, 8-25-98)

## PERMITS

Road Race	\$25.00
Fireworks	\$25.00
Encroachment	\$1.00/sf or \$25.00 minimum
Pawnbroker's Permit (for an annual permit)	\$100.00
Peddler's Permit (for 60 day license)	\$35.00
Precious Metals Dealer's Permit (for an annual permit)	\$25.00
Sign	
Non-Illuminated	\$55.00
Illuminated	\$74.00
Sidewalk Cafe <u>Permit or Permit Renewal</u> ( <del>Temporary Obstruction</del> )	\$35.00
Newspaper Vending Permit	\$20.00/machine