

COUNCIL ACTION FORM

SUBJECT: REQUEST FROM NOIR (405 KELLOGG AVENUE) TO ALLOW ALCOHOL SERVICE AT A SIDEWALK CAFÉ

BACKGROUND:

In 2017, the City Council adopted new regulations regarding Sidewalk Cafés. These regulations allow for alcohol service in certain circumstances. Establishments that, under Section 17.16 of *Municipal Code*, may allow minors on the premises are permitted to serve alcohol at their sidewalk cafés without prior special approval. These applications are approved by staff as long as the applicant obtains the appropriate Outdoor Service Privilege for its license. **Establishments that are not allowed to have minors on the premises under Section 17.16 of *Municipal Code* must request approval from the City Council to serve alcohol at their sidewalk cafés.**

Noir (405 Kellogg Avenue) has submitted a request to implement a sidewalk café and serve alcohol at it. This is the first time the City has received a request from this establishment for a sidewalk café. Noir has a Class C Liquor License and, because a majority of its sales come from selling alcoholic beverages, may not have minors on the premises according to Section 17.16 of *Municipal Code*. Therefore, approval from the City Council is required to allow alcohol service at its proposed sidewalk café.

The sidewalk café regulations call for the City Council to consider requests from establishments in Noir's situation on a case-by-case basis. The Code specifies that the City Council shall consider the following factors when presented with a request:

1. **Site Conditions** – Noir's proposed site contains sufficient room without obstructions to facilitate the proposed set of three tables and six chairs. The proposed sidewalk café will be permitted to take up no more than 5.5 feet of the 11-foot sidewalk.
2. **Compliance History/Staff Training** – A review of Police records indicates no liquor or nuisance violations since the opening of Noir. The establishment passed the most recent alcohol compliance check. According to the applicant, most of the service staff has participated in I-PACT (Iowa Program for Alcohol Compliance Training), and others have taken ServeSafe training. All employees are re-certified every two years. The establishment has a policy to check IDs for any customer who appears under 40 years of age. Police records indicate none of the establishment's staff has participated in the Police Department ID card training.

3. **Other Factors the Council Deems Relevant** – During the review of similar requests, the City Council has not identified other factors to consider when weighing whether to grant approval for requests of this type. Should the City Council have specific concerns, staff could request additional information from the applicant before the Council moves forward with approving or denying the request.

In addition to the above three specific issues the Council must take into consideration with this request, the *Municipal Code* requires that any sidewalk café at which alcohol is served must operate with additional restrictions compared to those where alcohol is not served. The additional, required restrictions that would apply to Noir are:

- Patron ingress and egress shall be controlled and continually monitored by staff
- No alcoholic beverages may be sold or served later than 10 p.m.
- Patrons may not consume outside beverages on the premises

Finally, the *Municipal Code* empowers the City Council to impose special conditions on any sidewalk café granted an exception to dispense alcohol if it feels such restrictions are appropriate.

Upon staff review of the application materials, the application appears complete and in order. Noir does not currently have an Outdoor Service Privilege on file. Because holding the appropriate liquor control license is a pre-requisite to allow alcohol service at a sidewalk café, Council approval of Noir's request to serve alcohol must be made subject to obtaining and maintaining an Outdoor Service Privilege throughout the 2022 Sidewalk Café season.

ALTERNATIVES:

1. Approve the request from Noir to allow alcohol service at its sidewalk café during the 2022 sidewalk café season, subject to Noir obtaining and maintaining its Outdoor Service Privilege.
2. Approve the request as described in Alternative #1, but require Noir staff to complete Police Department ID card training within the next 90 days as a condition of ongoing approval.
3. Deny the request.

CITY MANAGER'S RECOMMENDED ACTION:

It is important to ensure that alcohol service in public places occurs in an appropriate environment. Municipal Code requires a higher level of scrutiny for establishments where alcohol service is taking place and there is little to no food service, as compared to establishments where alcohol is ancillary to the food service.

In this instance, the establishment has an exceptional compliance record, and has adopted procedures that maintain a safe, controlled environment where alcohol is served. The application for the sidewalk café indicates a proposed outdoor service area that can be easily monitored and that does not attempt to overcrowd the area.

It should be noted that the alternatives presented indicate approval is for only the 2022 sidewalk café season (April through October, according to *Municipal Code*). Sidewalk café applications must be completed anew each season; they do not carry over from year-to-year. This follows the practice established with approval of previous requests for alcohol service at sidewalk cafes. Requiring new requests each year ensures an opportunity to review performance and impose special conditions or withhold approval if the establishment fails to meet the Council's expectations.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.