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## **Sec. 6-10-5. Sidewalk cafe permits.**

A. *Purpose.* To enliven downtown and other areas of the city and provide opportunities for social and economic activities, the city council finds and determines:

- (1) That there exists the need for outdoor eating facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food consumption.
- (2) That sidewalk cafes will permit enhanced use of the available public rights-of-way, will complement business operations operating from fixed premises, and will promote economic activity in the area.
- (3) That the existence of sidewalk cafes encourages additional pedestrian traffic but may impede the free and safe flow of pedestrians such that a need exists for regulations and standards to ensure safety.
- (4) That the establishment of permit conditions and safety standards for sidewalk cafes is necessary to protect and promote public health, safety and welfare.

B. *Definitions.* For purposes of this section, the following terms have the following meanings:

*Alcohol beverages.* Fermented malt beverages and intoxicating liquor as defined in Wis. Stats. § 125.02(1), (6) and (8), or any successor to that statute.

*Barriers.* Any physical structure designed that restricts ingress and egress from the sidewalk cafe to designated openings and that is not less than four feet in height surrounding no less than 80 percent of the sidewalk cafe area. At a minimum, one designated opening shall be created of sufficient width to accommodate ease of ingress or egress, other than through the licensed establishment, for emergency purposes.

*Sidewalk cafe.* An expansion of a restaurant, bistro, coffee shop, bar, or other establishment offering beverages and/or food that provides seating for more than three people in the form of a group of tables, chairs, or benches, with barriers, trash containers and suitable decorative devices maintained upon any part of the sidewalk for use on part of the public property that immediately adjoins the licensed premises for the purpose of consuming food or beverages of the patrons of the establishment.

C. *Location.*

- (1) No permit shall be issued for a sidewalk cafe located in a nonresidential district if any part of the sidewalk cafe is within 50 feet of a structure used for residential purposes and located on a residentially zoned parcel, except residential uses located in the same structure as the licensed premises or a residence which is owned by the same person who owns the licensed premises. Upon appeal to the city council, a full or partial waiver of the distance requirements in this provision may be granted.
- (2) No permit shall be issued to an establishment if it is located in a district zoned R-1 through R-4.

D. *Application.* Application for a permit to operate a sidewalk cafe shall be submitted to the city clerk's office and shall include at least the following:

- (1) A layout/drawing accurately depicting the dimensions of the existing sidewalk area or other public property and adjacent private property for the proposed location of the sidewalk cafe.
- (2) The size and number of tables, chairs, steps, planters, location of doorways, trees, sign posts, hydrants, sidewalk benches, trash receptacles, heaters, traffic signal poles, light poles and any other obstructions, either existing or proposed.
- (3) If the applicant intends to sell or serve alcoholic beverages to patrons of the sidewalk cafe, the applicant shall obtain the appropriate alcohol beverage license describing and including the outdoor area where alcoholic beverages will be sold, served or consumed.

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- (4) The permittee shall be responsible for complying with the approved sidewalk cafe plan as submitted in the initial permit application.
- E. *Appeals.* Any person denied a sidewalk cafe permit may appeal the denial. An appeal shall be made, in writing, to the city clerk, who shall forward the request to the city manager and city council. The city council will convene within 30 days of the appeal being filed with the clerk to hear from the chief of police and the affected business. After deliberation, the city council shall act on the appeal. A written copy of the decision shall be provided to the affected business.
- F. *Permit and fees.* Fees for a sidewalk cafe permit shall be \$50.00 per year.
- (1) Each permit shall be effective for one year from July 1 to June 30.
- (2) The permit issued hereunder is not transferable by the owner to any other restaurant or any subsequent owner of the premises.
- G. *Suspension or revocation of permit.* The city manager or the chief of police, upon obtaining reasonable information that any permittee has violated any provision of this chapter or any state or federal law, may suspend or revoke a permit granted under this chapter pending hearing by the city council.
- H. *Liability and insurance.* No person shall obtain a sidewalk cafe permit unless the applicant procures commercial liability insurance.
- (1) The permittee agrees to maintain insurance ~~in the amount of \$1,000,000.00 per occurrence~~ and name the City of Two Rivers as additional insured showing how the coverage extends to the area used for the sidewalk cafe insured. The permittee shall ~~furnish a certificate of liability insurance with limits of at least \$1,000,000 for one person and \$3,000,000 for any number of persons injured or killed in one accident and \$100,000 property damage per incident~~ ~~provide the city with a certificate of insurance~~ and shall execute an indemnification agreement, approved by the city attorney, prior to operation of the sidewalk cafe.
- (2) As a condition of the permit, the permittee must indemnify and hold the city harmless from any claims arising from the use of the permit.
- I. *Standards and conditions.*
- (1) Every sidewalk cafe shall have a barrier established surrounding a minimum of 80 percent of the beer garden area with such barrier not less than four feet in height above the ground of the area immediately outside of the enclosed area of the sidewalk cafe, except as otherwise provided herein. At a minimum, one designated opening shall be created of sufficient width to accommodate ease of ingress or egress, other than through the licensed establishment, for emergency purposes.
- (2) No portion of any sidewalk cafe may encroach on the sidewalk adjacent to any other property other than the property that is licensed in this chapter.
- (3) The permittee shall maintain approximately a four-foot-wide unencumbered, open and accessible portion of the sidewalk for pedestrian traffic safety at all times. The permittee shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 to 12213, and all applicable federal, state and local laws.
- (4) The permittee shall provide for the removal of garbage and be responsible for the cleanliness of the outdoor area.
- (5) The use of a portion of the public property as a sidewalk cafe shall not be an exclusive use and shall not have any vested rights. All public improvements, including, but not limited to, trees, light poles, traffic signals, manholes or any public-initiated maintenance procedures, shall take precedence over said use at all times.

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- (6) The city manager, chief of police, or his/her designees may temporarily order the termination of sidewalk cafes for the following reasons, but not limited to, special events, including, but not limited to, construction, parades, sponsored runs or walks, or for any reason to maintain the health, safety, and welfare of the public. The permittee shall be responsible to remove any furniture, furnishings, and equipment upon termination, and if the permittee fails to do so, the city may remove the furniture and other items and store it, if necessary, at the permittee's expense.
  - (7) *Furnishings.* All furniture, furnishings, and equipment shall be of safe, sturdy construction and shall be maintained in good repair. Any heaters or other equipment/furnishings shall be portable and approved for outdoor use. All umbrellas shall be anchored in such a way that a sudden burst of wind will not lift them out of their holders or blow them over. No public property, including, but not limited to, light poles, utility poles, flower planters, trees or other amenities, may be used as a point of attachment for anything, including, but not limited to, ropes, posters or signs.
  - (8) *Lighting.* The permittee shall keep the sidewalk cafe area sufficiently illuminated so as to prevent injury to persons using the same. Any lighting of the outdoor area shall be shielded so as not to shine directly onto adjoining property or create a glare which is distracting to adjoining property or vehicles traveling in the public right-of-way.
  - (9) *Music/noise.* Noise from any source that is emitted from the outdoor area shall not exceed the standards contained in section 9-2-5, loud and unnecessary noises, under subsection C., noise limits.
  - J. *Hours of operation.* Sidewalk cafes shall remain closed to the public between the hours of 11:00 p.m. and 6:00 a.m.
  - K. *Serving of alcohol beverages.* The City of Two Rivers allows permittees to serve alcoholic beverages in outdoor cafes, provided that the permittee complies with all the requirements for obtaining an alcoholic beverage license and the sidewalk cafe is listed on the alcohol beverage license application as being an extension of the licensed premises. Alcohol may be served at sidewalk cafe if:
    - (1) The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
    - (2) No alcoholic beverages may be served at any time if the restaurant has not received council approval for the enlargement of the premises under its liquor license that includes the area of the public sidewalk where the sidewalk cafe is located. Further, the liquor license shall be automatically conditioned at the time of the enlargement of premises to allow for the consumption of alcoholic beverages within the sidewalk cafe area only. Approval of the enlargement of premises area (sidewalk cafe) shall not grant any permittee or licensed premises any vested rights and such approval may be suspended or revoked or nonrenewed without cause being shown.
    - (3) The outdoor area utilized for service and consumption of food and alcohol beverages shall be visible from the restaurant establishment.
    - (4) Alcoholic beverages must be sold and served by the permittee or permittee's employees who have operator's licenses and sold, served and consumed by patrons seated at tables in the sidewalk cafe.
    - (5) Alcoholic beverages may only be served at the sidewalk cafe when food service is available through the licensed establishment.
    - (6) The permittee shall not allow patrons of the sidewalk cafe to bring alcohol beverages into the sidewalk cafe, nor to carry open containers of alcohol beverages about in the sidewalk cafe area, nor to carry open containers of alcohol beverages served in the sidewalk cafe outside the sidewalk cafe area.
    - (7) The permittee shall display signage indicating alcohol may only be consumed by patrons seated at tables in the sidewalk cafe.

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- (8) The bar from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk cafe area.
  - (9) The permittee shall be responsible for the acts of all employees, patrons and agents of the business. A violation of any provision of this section, any city ordinance or Wis. Stats. Ch. 125, by a patron, agent or employee of the permittee shall constitute a violation by the permittee.
  - L. *Penalty.* Any person in violation of this section shall be subject to a forfeiture of \$50.00, plus costs; provided, however, that such persons shall be subject to a forfeiture of \$100.00, plus costs, for a second offense not arising out of the same incident and occurring within any 12-month period; and \$200.00, plus costs, for a third and any subsequent offenses not arising out of the same incident and occurring within any 12-month period. If any person shall violate this section on three or more occasions, in any 12-month period, and such violations do not involve the same incident, the city may order the revocation of the sidewalk cafe permit and the permittee shall be liable for all court costs incurred in pursuing the order.

(Added 9-8-2020)

State law reference(s)—Wis. Stats. §§ 125.32(2) and 125.68(2).