

§1128.010**SIDEWALK CAFÉS****§1128.020**

§1128.010 **PURPOSE.** This chapter is intended assist eligible businesses by allowing them to use the adjacent public sidewalk areas for sidewalk cafés with the issuance of a permit from the City and subject to certain regulations to help protect the public's continued safe use of the public sidewalks, keep public sidewalks clean and orderly, and to minimize negative impacts to neighboring businesses and the public.

§1128.020 **DEFINITIONS.** For the purposes of this chapter, the following terms shall have the meaning given them in this section.

Subd. 1. **City Manager.** The appointed City Manager for the City of White Bear Lake. The term includes any City staff member designated by the City Manager to manage all or some portion of the permitting process under this chapter.

Subd. 2. **Eligible Business.** A business located within the City that regularly and customarily sells food or drink to customers for consumption on the business premises, and that is either a restaurant licensed by the Minnesota Department of Health under Minnesota Statutes, section 157.16 or holds a current liquor license issued by the City pursuant to City Code, article X.

Subd. 3. **Permittee.** An eligible business holding a current sidewalk café permit issued by the City under this chapter.

Subd. 4. **Public Right-of-Way.** Has the meaning given the term in §906.030, subd. 36 of this Code.

Subd. 5. **Public Sidewalk.** A sidewalk owned by the City that is generally available for use by the public for pedestrian traffic. The term does not include any portion of a bike lane, public trail, city parking lot, or area within a public right-of-way intended for vehicular traffic.

Subd. 6. **Sidewalk Café.** An identified portion of a public sidewalk adjacent to an eligible business within which the business is allowed by a city-issued permit to place and use tables, chairs, and accessory items for the service of food or beverages to its customers for on-site consumption as part of its regular business operations.

Subd. 7. **Sidewalk Café Area.** The portion of a public sidewalk adjacent to an eligible business within which a permittee is authorized to operate its sidewalk café under a permit issued by the City.

Subd. 8. **Sidewalk Café Permit or Permit.** A permit issued by the City under this chapter to an eligible business allowing it to operate a sidewalk café on an identified portion of public sidewalk adjacent to the business.

§1128.030 SIDEWALK CAFÉ PERMIT.

Subd. 1. Required. No person, business, or entity may use a public sidewalk to place tables, chairs, or other seating on a public sidewalk in conjunction with a business without first obtaining a sidewalk café permit from the City.

Subd. 2. Exception. A permit is not required under this chapter for a business to temporarily place stands, racks, or tables on a public sidewalk to display their goods or products during a community celebration or sidewalk sales event authorized by the City, but only to the extent allowed by the City.

Subd. 3. Eligibility. Only a business that qualifies as an eligible business under this chapter and that is located in the City's B-1, B-5, or DCB zoning district may obtain a permit.

Subd. 4. Ineligible Places. A permit issued under this chapter shall not allow a permittee to place tables, chairs, or other seating in any of the following locations:

- (a) Any portion of a public right-of-way designated for vehicular travel or as a bike lane;
- (b) A bike or walking trail;
- (c) Private sidewalk or other private property;
- (d) A City parking lot; or
- (e) Any place prohibited by state law.

§1128.040 APPLICATION PROCEDURE. An application for a permit shall be submitted and processed in accordance with this section.

Subd. 1. Permit Application. An eligible business may apply for a permit on the application form furnished by the City and submitted to the City Clerk. An application shall not be considered complete, and shall not be processed, unless it contains all of the following:

- (a) A scaled site plan identifying the proposed location of the sidewalk café, furniture layout, specific location within which liquor will be served (if applicable), and demonstrating compliance with the requirements of this chapter;
- (b) The applicable application fee as provided in the City's fee schedule;
- (c) Evidence of a valid commercial general liability insurance policy, through an insurance carrier authorized or eligible to do business in the state,

covering damage to the public sidewalk, and for any costs and damages the City might incur because of property damage or personal injury arising out of the use of the public sidewalk for a sidewalk café. The minimum coverage limit of the policy shall be \$1,000,000 per occurrence, but the City may require a higher limit based on the location of the proposed sidewalk café. The City shall be listed as an additional insured on the commercial general liability policy;

- (d) An indemnity agreement, approved by the City Attorney, requiring the permittee to indemnify and hold harmless the City and its officers, agents and employees from any claim arising or resulting from the operation of the sidewalk café; and
- (e) A Sewer Availability Charge (SAC) Determination from the Metropolitan Council and the City.

Subd. 2. Permitting Decision. The City Manager is authorized to determine whether to approve a permit application. The City Manager shall not approve an application if the City Manager determines the proposed sidewalk café does not satisfy the requirements of this chapter or would interfere with the public interest or public use of the public sidewalk. The City Manager may place conditions on a permit as the City Manager determines are needed to further the intent of this chapter and to protect the public sidewalk and public safety. A condition of every permit is the continued compliance by the permittee with state law, this chapter, and any other applicable provisions of this Code related to the sidewalk café and the permittee's eligible business. The permit shall identify the specific area of the public sidewalk authorized for use as the sidewalk café area and the approved type and arrangement of furniture to be used within the sidewalk café. Approval of a sidewalk café permit does not indicate approval of any other permits or licenses required to operate within the City. A sidewalk café permit is not transferrable or assignable.

Subd. 3. Reconsideration. If the City Manager denies a permit application, the eligible business may, within 30 days of the denial, submit a revised application for the same business that addresses the concerns associated with the original denial. A new application fee is not required for the resubmitted application if the City receives it within the 30-day period. Any application received after that period will be considered a new application and must be accompanied by a new application fee. The City will process and act on a resubmitted application in the same manner as an original application.

Subd. 4. Appeal. An applicant may appeal the denial of its application to the City Council by filing a written notice of appeal with the City Clerk within 10 days from the date of the denial. Upon receipt of a timely appeal, the City shall provide the applicant at least 10 days written notice of a hearing before the City Council on the appeal. The City Council shall hear from the City Manager regarding the denial and provide the applicant an opportunity to be heard. The City Council may uphold the

denial or direct the City Manager to issue the permit with such conditions as the City Manager recommends together with any other conditions the City Council may direct be imposed on the permit.

§1128.050 PERMIT TERM AND RENEWALS.

Subd. 1. Permit Term. A permit issued under this chapter shall be valid from the date of issuance or April 15, whichever is later, and shall expire on October 15 of each year. The City Manager shall have the authority to modify the operating season as weather conditions may warrant. A permittee shall remove all its personal property related to the sidewalk café from the public sidewalk by October 15 of each year and periodically in the event the City needs to maintain the public sidewalk for any purposes. If a permittee fails to remove its personal property by that date, the City may remove such property and dispose of it as abandoned property if the permittee fails to remove it after at least 10 days written notice to remove it. The City shall not be liable to the permittee for any loss or damage to the personal property caused by the removal.

Subd. 2. Permit Renewal. An eligible business must renew its permit annually. A renewal application shall contain all information required on the renewal application form, the renewal application fee as established in the City's fee schedule, a current certificate of insurance showing the required commercial general liability coverage and naming the City as an additional insured, and a new indemnity agreement. If the eligible business proposes to change the configuration of its sidewalk café, the renewal application shall also include a new scaled drawing showing the proposed new configuration.

§1128.060 SIDEWALK CAFÉ CRITERIA AND RESTRICTIONS. The City Manager shall consider the following criteria in determining whether to approve a sidewalk café application.

Subd. 1. Direct Access. The eligible business must front on, and have direct and unobstructed access to, the portion of the public sidewalk to be used for the sidewalk café. The sidewalk café area shall not extend beyond the boundaries abutting the eligible business.

Subd. 2. Pedestrian Corridor. The sidewalk café shall be located to always provide at least a four-foot-wide unobstructed pedestrian corridor. The permittee shall also maintain at least a two-foot setback from the curb edge. The City may require as a condition of a permit a wider pedestrian corridor or increased clearances if it determines such additional area is needed to accommodate pedestrian traffic, public safety, or to comply with the state building code, Americans with Disabilities Act, or other applicable laws.

Subd. 3. Clearance. A clear unobstructed height of eight feet must be maintained between the sidewalk surface and overhead objects, including umbrellas, associated with the sidewalk café.

Subd. 4. Obstruct Public Amenities. The sidewalk café must not block access to public amenities such as street furniture, trash receptacles, or public signage.

Subd. 5. Spacing. The proposed footprint and seating for the sidewalk café shall not exceed the amount of space available on the public sidewalk under all applicable building and fire code requirements.

Subd. 6. Potential Impacts. The City Manager shall consider the proposed site plan in the context of the surrounding environment, and it may impose additional conditions as it determines is appropriate to ensure the safety of pedestrians, patrons, business employees, adjacent traffic, and to preserve public assets.

Subd. 7. Furniture. The furniture used for the sidewalk café must be made of durable material and not detract from the character of the surrounding environment.

Subd. 8. Planters. City-approved planters or pots may be used to define the sidewalk café area, but are not required. Any proposed planters or other barriers shall be included in the submitted site plan.

Subd. 9. Umbrellas. Table umbrellas are permitted if the umbrellas are completely contained within the sidewalk café, and do not block the site lines of adjacent vehicular traffic.

Subd. 10. Lighting. Lighting associated with the sidewalk café must not cause glare to pedestrians or vehicular traffic, and must not be affixed to City trees or infrastructure.

Subd. 11. Sound. Loudspeakers or amplified sound, including amplified sound from inside the eligible business that is audible outside, are prohibited.

Subd. 12. Liquor. If liquor will be served within the sidewalk café, the additional requirements set out in §1128.080 of this chapter must be complied with along with all applicable federal, state, and local liquor laws, rules, regulations, and ordinances.

§1128.070 OPERATION OF SIDEWALK CAFÉS. A permittee shall operate its sidewalk café in accordance with all the requirements and limitations in this section.

Subd. 1. Business Use. A sidewalk café may be used only by the permittee and only for the seating of patrons in the furniture provided by the permittee. Every patron within the sidewalk café must have their own chair. No overcrowding of the sidewalk café with standing patrons is allowed.

Subd. 2. Hours of Operation. A sidewalk café may only be operated between the hours of 7:00 a.m. and 10:00 p.m., and then only to the extent the eligible business is

open to customers. The City Manager may further limit the hours of operation as a condition of the permit.

Subd. 3. Maximum Occupancy. The number of persons within the sidewalk café shall not exceed the number of seats permitted in the permit, excluding the permittee's staff while working.

Subd. 4. Open Air. The sidewalk café area shall be open to the air, except that seating may be located under approved umbrellas, awnings, or canopies.

Subd. 5. Cleaning. Permittee shall keep the sidewalk café and the adjacent public space surrounding it clean of any solid waste, including food debris, paper, cups, cans, cigarette butts, and any other garbage associated with the operation of the sidewalk café area on a daily basis. Permittee shall wash down the adjacent public sidewalk and right-of-way with water and detergent as often as needed to remove any stains or spills related to the operation of the sidewalk café. Permittee shall properly dispose of all waste and trash in its own trash receptacles. Permittee shall not use public trash receptacles for disposing of business generated waste or trash.

Subd. 6. Maintenance. The permittee shall at all times keep the sidewalk café area and the associated furniture and accessories clean, orderly, and in good repair. Permittee shall promptly repair or remove any damaged furniture from the public sidewalk. Permittee is responsible for securing its furniture as it determines is needed to discourage theft or to prevent it from damaging adjacent properties or public infrastructure during a storm.

Subd. 7. Extended Closure. The permittee shall remove all furniture, enclosures, and barriers from the public sidewalk if the eligible business is closed for more than 14 consecutive days, unless previous arrangements have been made with the City.

Subd. 8. Compliance. The permittee shall obtain and maintain all other permits and permits that may be required, and shall remain in compliance with all applicable city, state and federal laws and regulations, for operation of the eligible business and the sidewalk café.

Subd. 9. Temporary Suspension. The City Manager may temporarily suspend the use of a public sidewalk for a sidewalk café if it determines such use will interfere with a special event, parade, public celebration, a public maintenance, repair, or improvement project, or as needed to protect public safety. The City will endeavor to give the permittee reasonable advance notice before issuing a temporary suspension. Unless expressly provided otherwise in the suspension notice, the permittee shall remove its furniture from the public sidewalk prior to the beginning of the suspension period. If a permittee fails to remove its furniture by the indicated date, the City may remove the furniture at the permittee's expense. The City shall not be liable to the permittee for any loss or damage to the personal property caused by the City's removal

or storage. Operation of the sidewalk café during a suspension period is a violation of this chapter.

Subd. 10. Additional Prohibitions. A permittee shall not violate any of the following prohibitions related to the operation of its sidewalk café:

- (a) No cash registers, tents, minibars, or similar appurtenances shall be allowed within the sidewalk café area.
- (b) Food preparation is not allowed in the sidewalk café area;
- (c) Nothing shall be permanently affixed to a sidewalk or to other public property. All improvements (including furniture and fixtures) must be readily removable without damage to the sidewalk or other public property;
- (d) No business activities may occur outside of the approved sidewalk café area;
- (e) Smoking is not allowed within the sidewalk café area; and

§1128.080 ADDITIONAL REQUIREMENTS FOR ELIGIBLE BUSINESSES SERVING ALCOHOL. In addition to all other provisions of this chapter, a permittee serving alcohol within its sidewalk café area shall comply with the requirements of this section in addition to the other requirements of this chapter.

Subd. 1. Liquor Permit. The permittee must obtain an amendment to its liquor license to include the sidewalk café area as part of the licensed premises within which it may sell and serve liquor before any sales or consumption of liquor may occur within the sidewalk café area.

Subd. 2. Barriers. The permittee shall provide and place stanchions or other portable, visible, above ground barriers between the approved sidewalk café area and the remainder of the public sidewalk whenever the sidewalk café is in use. The items and materials proposed to be used for the barriers must be identified in the permit application. The permittee may only use barriers consistent with those identified in the City's permit approval. The sidewalk café area in which liquor is served must be compact and contiguous to the permittee's eligible business.

Subd. 3. Liquor Compliance. The permittee shall remain in compliance with all laws related to alcohol service and consumption. The permittee shall post visible signs at all exit points from the sidewalk café to the public sidewalk reminding patrons that they cannot possess open containers of alcohol outside of the sidewalk café area. The permittee shall not permit patrons to carry their own alcohol into the sidewalk café area or to carry alcohol sold by the permittee outside of the sidewalk café area.

§1128.090 ENFORCEMENT.

Subd. 1. Administrative Penalties. A violation of any provision of this chapter constitutes an administrative offense and is subject to a civil penalty as provided in City Charter, section 8.05 and City Code, chapter 205 in the amount established in the City's fee schedule. The City shall issue and process notices of administrative violations in accordance with the procedures set out in City Code, chapter 205.

Subd. 2. Permit Actions. The City Manager is authorized to take action against a permittee's license for failing to comply with the requirements of this chapter or any of the conditions imposed on the permit.

- (a) Temporary Permit Suspension. The City Manager is authorized to suspend a permit for up to 10 days if the City Manager determines the permittee has violated a provision of this chapter. The City Manager shall issue a written notice of suspension identifying the violation, the period of suspension, and the corrective actions required to bring the sidewalk café back into compliance with this chapter. If the permittee fails to correct the violation by the date indicated in the suspension notice, or if any other violations occur within 30 days of the end of the temporary suspension period, the City Manager may revoke the permit as provided in this subdivision.
- (b) Permit Revocation. The City Manager may revoke a permit if a permittee fails to comply with the requirements of this chapter, a condition placed on the permit, a suspension notice, or of any regulations governing the use of the public sidewalk or the business activities occurring with the sidewalk café. Before revoking a permit, the City Manager shall provide the permittee a written notice of violation that identifies the violation and provides a reasonable time in which to correct the violation. If the City Manager determines a violation directly obstructs pedestrian use of the public sidewalk or creates an immediate threat to public safety, the City Manager may immediately suspend the permit for the period allowed to correct the violation. If the permittee fails to correct the violation within the correction period, the City Manager may issue the permittee a written notice of revocation that identifies the violation and includes a statement regarding the process to appeal the revocation. The eligible business shall immediately cease using the public sidewalk for its business operations requiring a permit under this chapter.
- (c) Appeal. An eligible business may appeal a revocation of its permit to the City Council by filing a written notice of appeal with the City Clerk within 10 days from the date of revocation. Upon receipt of a timely appeal, the City shall provide the applicant at least 10 days written notice of a hearing before the City Council on the appeal. The City Council shall hear from the City Manager regarding the revocation and provide the applicant an

opportunity to be heard. The City Council may sustain or overturn the revocation. If the City Council overturns the revocation, it may add conditions to the permit as it determines are needed to address the violations identified by the City Manager.

Subd. 3. Other Remedies. In addition to administrative penalties and any actions against the permit, a violation of this chapter is a misdemeanor and may also be enforced through injunctive or other equitable relief, or a combination of remedies.

§1128.100 CODE CHAPTER CONTROLLING. To establish a uniform set of regulations for sidewalk cafés on public sidewalks, the provisions of this chapter shall supersede and preempt conflicting provisions covering the same topic and applicable to public sidewalks and rights-of-way located elsewhere in this Code. An eligible business permitted under this chapter is not required to obtain a right-of-way obstruction permit under this Code, provided its activities are limited to those contemplated in this chapter and comply with the terms and conditions of the permit.

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