

CHAPTER 570
SIDEWALK CAFÉS

Section

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570.01 Definitions.

The following terms, as used in this Chapter, shall have the meanings stated in this section:

“Chapter 580” means Chapter 580 of the Waconia City Code.

“Eligible venue” means: i) a restaurant currently holding a license from the Minnesota Department of Health that was issued pursuant to Minn. Stat. §157.16, Subd. 1; ii) a premises currently holding an on-sale intoxicating liquor license that was issued pursuant to Chapter 580; iii) a premises currently holding a wine license that was issued pursuant to Chapter 580; or iv) a premises currently holding a brew pub license that was issued pursuant to Chapter 580.

“Municipal parking lot” means a parking lot owned by the City that is generally available for use by the public for vehicular parking.

“Restaurant” shall have the meaning given it by Minn. Stat. §157.15, Subd. 12.

“Public sidewalk” means a sidewalk owned by the City that is generally available for use by the public for pedestrian traffic.

“Sidewalk café” means tables, chairs, benches and appurtenant equipment located on a public sidewalk or municipal parking lot: i) for the exclusive use by patrons of an abutting, eligible establishment; and ii) where the service of food or beverages is offered to persons using such tables, chairs and benches.

570.02 Licenses.

Subd. 1 License Required. A person may use a public sidewalk or municipal parking lot for a sidewalk café in connection with the operation of an eligible venue if the person holds a current sidewalk café license issued pursuant to this Chapter.

The operation of a sidewalk café under any other circumstance is prohibited.

Subd. 2 License Period. Each sidewalk café license issued on or before April 1st shall run from the beginning of the day on April 1st to the end of the day on October 31st for the year to which the license applies. Each sidewalk café license issued after April 1st shall run from the beginning of the day the license was issued to the end of the day on October 31st for the year to which the license applies.

Subd. 3 Nature of Use. A sidewalk café license only grants the license holder a temporary license to encroach upon a public sidewalk or municipal parking lot, subject to the requirements and restrictions contained in this Chapter.

Subd. 4. License Application. A person desiring to use any portion of a public sidewalk or municipal parking lot for a sidewalk café in connection with the operation of an eligible venue must apply for a sidewalk café license using forms supplied by the City Clerk. Each application must include a plan, drawn to scale, illustrating: i) the exact location of the proposed sidewalk café; ii) distances to, and dimensions of, adjoining buildings; iii) all sidewalks, curbs and striped parking stalls within 100 feet of the perimeter of the proposed sidewalk café; iv) the distance to and location of the traveled portion of the nearest adjacent street; and v) distances to all obstructions in the vicinity.

Subd. 5. Fees.

- A. An application for a sidewalk café license for a sidewalk café located on a public sidewalk shall be accompanied by the appropriate sidewalk café license fee set forth in Section 1100 of the Waconia City Code.
- B. An application for a sidewalk café license for a sidewalk café located on a municipal parking lot shall be accompanied by the appropriate sidewalk café license fee, which shall be calculated by adding the base fee to the total parking stall fee listed in Section 1100 of the Waconia City Code. The parking stall fee shall be calculated by multiplying the number of parking stalls impacted by the sidewalk café by the per stall fee listed in Section 1100 of the Waconia City Code. A parking stall shall be deemed impacted by a sidewalk café if the sidewalk café shown in the application: i) touches the parking stall; ii) lies within 3 feet of the parking stall; iii) or prevents reasonable access to the parking stall, as determined by the City Council.
- C. The license fee for any sidewalk café license issued after April 1st of a year shall be prorated based upon the number of days between April 1st and the date of issuance as compared to the number of days between the date of issuance and October 31st.
- D. If the application is denied, the sidewalk café license fee, less \$100.00, shall be returned to the applicant.

- E. If a sidewalk café license is surrendered by a license holder or revoked before October 31st of any calendar year, no refund shall be given.

Subd. 6. License Requirements. No license for a sidewalk café shall be issued or renewed until all of the following conditions are met:

- A. The applicant possesses valid licenses from the State of Minnesota and the City to operate the eligible venue.
- B. The area occupied by the sidewalk café abuts to, and will be operated as part of, the applicant's eligible venue and no part of the sidewalk café adjoins any premises other than the applicant's eligible venue.
- C. A distance of at least 150 feet exists between the nearest point of the sidewalk café to the nearest point of any property used for residential purposes, excepting residential property owned by the applicant.
- D. The applicant has furnished the City Clerk with acceptable evidence that the applicant maintains commercial general liability insurance for any death, personal injury or property damage arising from the ownership, maintenance or operation of the sidewalk café in amounts not less than:
 - \$1,000,000.00 for injury to or death of one person;
 - \$3,000,000.00 for any one incident; and
 - \$100,000.00 for damage to property arising from any one incident.

The applicant shall maintain such insurance in effect at all times during the term of the sidewalk café license. The City shall be named as an additional insured in the policy providing such insurance. The applicant shall produce a certificate to the City when any sidewalk café license is issued or renewed evidencing the required insurance. Further, such certificate shall obligate the insurer to endeavor to give the City not less than thirty (30) days advanced notice of any modification or cancellation of coverage.

- E. The applicant has furnished the City Clerk with acceptable evidence of workers' compensation coverage as required by Minn. Stat. §176.182.
- F. The City has not received notice from the Minnesota Department of revenue prohibiting issuance or renewal of the sidewalk café license.
- G. The applicant has executed and delivered a written agreement to the City Clerk, using a form of agreement provided by the City Clerk, that: i) acknowledges the sidewalk café only exists as a permitted encumbrance for the applicable license period; and ii) that obligates the applicant to indemnify and hold the City and the City's officials and employees harmless from any loss, costs, damages and expenses arising out of the use, design, operation or maintenance of the sidewalk café.

- H. The applicant has delivered the Damage Deposit required by Section 570.03 to the City Clerk.
- I. The City Council has found that the sidewalk café will not unduly restrict the safe usage of the public sidewalk or municipal parking lot, as applicable, after taking into consideration the location of the proposed sidewalk café, pedestrian traffic and vehicular traffic.

570.03 Damage Deposit.

Subd. 1 Deposit Required. No sidewalk café license shall issue until the applicant has delivered a sidewalk café damage deposit to the City Clerk in the amount required by Section 1100 of the Waconia City Code. Such deposit shall be paid by the applicant in cash or certified funds. The City shall have the right to commingle any deposit with the City's other funds. Further, any interest associated with any deposit shall belong to the City.

Subd. 2 Use of Deposit. The City may use a damage deposit, or any part thereof, to repair damage to public property resulting, in whole or in part, from the operation of the sidewalk café. If any portion of the damage deposit is used, the person that made the deposit shall, within five (5) days after written demand therefor, deposit cash or certified funds with the City in an amount sufficient to restore the damage deposit to its original amount. Any failure to restore a deposit shall constitute grounds for revocation of the sidewalk café license to which the deposit applies.

Subd. 3 Return of Deposit. The City shall return any remaining portion of a sidewalk café damage deposit to the person that made it within thirty (30) days after the sidewalk café license to which the deposit relates expires or otherwise terminates.

570.04 Operation.

Subd. 1 Requirements. Every sidewalk café shall be operated in strict conformance with the following requirements:

- A. The conditions set forth in subsections A, B, C and D of Section 570.02, Subd 6, shall be met on a continuing basis. No expansion of the area occupied by the sidewalk café from that shown on the license application shall be made.
- B. Only food or beverages for immediate consumption shall be offered for sale.
- C. Intoxicating liquors, beer or wine may be consumed only if the sidewalk café meets all of the requirements of Chapter 580 including, but not limited to, Section 580.04, Subd. 2, C, *Outdoor Areas Adjacent to Structure*, and Section 580.05, Subd. 15, *Requirements Applicable to Outdoor Areas Adjacent to Structure*.

- D. The sidewalk café shall be maintained in a clean and sanitary condition.
- E. The person holding the sidewalk café license shall, at such person's expense, promptly repairs any damage to public property resulting, in whole or in part, from the operation of the sidewalk café.
- F. If the sidewalk café is located in a municipal parking lot, any public sidewalk between the eligible venue and the sidewalk café shall, at all times, remain open for public traffic, subject to ingress and egress between the eligible venue and its sidewalk café.

Subd. 2 Inspection. The City may inspect a sidewalk café at any time to confirm compliance with the requirements of this Chapter 570.

Subd. 3 Revocation. The City may revoke any sidewalk café license if any requirement set forth in Subdivision 1 above is violated or if the Minnesota Department of Revenue sends the City notice requiring revocation. Nothing herein shall be interpreted as preventing the City from also prosecuting any violation of this Chapter 570 as a criminal violation pursuant to Chapter 102 of the Waconia City Code.

570.05 Expiration of Licenses.

Subd. 1 Date of Expiration. Licenses issued pursuant to this Chapter 570 expire on October 31st of each calendar year.

Subd. 2 Surrender. On or before the date a sidewalk café license expires, the applicant shall surrender the sidewalk café area to the City in the same order and condition as existed on the date the sidewalk café license was issued, ordinary wear and tear excepted. Without limiting the general nature of the preceding sentence, the applicant shall remove all personal property from the sidewalk café area and repair all damage caused by such removal, all at the applicant's expense.

570.06 Right to a Hearing.

Except for a denial or revocation required by the Minnesota Department of Revenue, any applicant that has been denied the issuance of a sidewalk café license or any person whose sidewalk café license has been revoked may, upon written request to the City Clerk promptly made after the denial or revocation has occurred, request a hearing before the City Council to present evidence and to appeal the decision.

3. Section 580.03, Subd. 1, of the Waconia City Code, *Consumption in Public Places Prohibited*, is amended in its entirety to read as follows:

Consumption in Public Places Prohibited. No person shall consume an alcoholic beverage in a public park, on any public street, sidewalk, parking lot or alley, or in any other public

place, except as expressly allowed by: i) this Chapter 580; ii) Minn. Stat. Chapter 340A; or iii) a sidewalk café license issued pursuant to Chapter 570 of the Waconia City Code.

4. Section 1100 of the Waconia City Code, *Fees*, is amended to add the following annual fees:

Sidewalk café license, fee for sidewalk use - \$500.00

Sidewalk café license, fee for municipal parking lot use - \$500 base fee *plus* \$300.00 for each parking stall (or portion of a parking stall) impacted by the sidewalk café

Sidewalk café license, damage deposit - \$1,000.00