

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Chapter 14.50 of the Lincoln Municipal Code relating  
 2 to sidewalk cafes to streamline the application and the application process and to clarify the types  
 3 of establishments eligible for sidewalk cafes and the number of patrons that can be served in a  
 4 sidewalk café; and repealing Sections 14.50.010, 14.50.030, 14.50.040, 14.50.050, 14.50.060,  
 5 14.50.085, and 14.50.090 of the Lincoln Municipal Code as hitherto existing.

6 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7 Section 1. That Section 14.50.010 of the Lincoln Municipal Code be amended to read  
 8 as follows:

9 **14.50.010 Sidewalk Café Definition.**

10 Sidewalk café shall mean that portion of the public right-of-way kept, used, maintained, and  
 11 held out to the public as a place where food and/or drink are served for consumption on the premises,  
 12 or which is used directly in conjunction with a pedestrian pick-up window.

13 Section 2. That Section 14.50.030 of the Lincoln Municipal Code be amended to read  
 14 as follows:

15 **14.50.030 Licensees.**

16 The record owners of business property abutting public space in areas zoned B-1 Local  
 17 Business, B-2 Planned Neighborhood Business, B-3 Commercial, B-4 Lincoln Center Business, and  
 18 B-5 Planned Regional Business District pursuant to the Lincoln Municipal Code may, subject to the  
 19 provisions of this chapter and despite any provisions in the Lincoln Municipal Code to the contrary,  
 20 obtain a permit to utilize so much of the surface space on which their properties abut as the City  
 21 Council determines is not needed for the use of the general public during specified times on specified  
 22 days for sidewalk cafes. Any record owner who desires to authorize another to occupy the public  
 23 space abutting the record owner's property shall file with the City Council Clerk a notarized copy

1 of the agreement covering the space to be occupied prior to the issuance of the permit; provided,  
2 however, that any person may obtain a permit for sidewalk café for that portion of Centennial Mall  
3 from R Street to P Street and from K Street to M Street with the approval solely of the City Council.  
4 In said area of Centennial Mall, permits will not be limited to only abutting property owners. A  
5 sidewalk café permit may not be issued for a business which proposes to sell alcoholic drinks unless  
6 that business demonstrates that the sale of alcoholic drinks is not the primary purpose of the business  
7 by meeting one of the following qualifications:

8 (1) The business has a licensed kitchen and offers a full menu during the hours  
9 and days of operation of the sidewalk café; or

10 (2) Gross sales from the sale of alcoholic drinks do not exceed forty percent  
11 (40%) of the gross sales of food and drink.

12 Section 3. That Section 14.50.040 of the Lincoln Municipal Code be amended to read  
13 as follows:

14 **14.50.040 Application for Permit; Context.**

15 Application for such permit shall be made to the City Clerk upon a form to be furnished by  
16 the city, which application shall set forth the following:

17 (a) Owner and manager of applicant business;

18 (b) Hours and days of operation;

19 (c) How the extended premises will be supervised and maintained;

20 (d) Description of any permitted advertising and a description or photo of street furniture  
21 to be used, if any;

22 (e) Maximum ~~N~~number of patrons to be accommodated and description of the seating  
23 to accommodate the maximum number of patrons;

24 (f) Description of any requested modification or waiver of the requirements of  
25 subsections (b)(2), (c), or (p) of Section 14.50.060;

26 (f g) Six copies of a plat or drawing indicating, to scale, the amount of surface the  
27 applicant is seeking permission to use and the location of the furniture, equipment, and any other  
28 article occupying public space, if any;

1           (g h) Description of the food and drink (alcoholic and/or non-alcoholic) to be offered for  
2 sale. If alcoholic drinks are to be offered for sale, documentation must be included with the  
3 application demonstrating to the satisfaction of the City that:

4           (1) The business has a licensed kitchen and offers a full menu during the hours  
5 and days of operation of the sidewalk café; or

6           (2) The gross sales from the sale of alcoholic drinks does not exceed forty percent  
7 (40%) of the gross sales of food and drink.

8           (h i) Such application shall also contain a statement by applicant that said applicant will,  
9 in consideration of being issued a permit for the use of surface space, agree to hold harmless the City  
10 of Lincoln and the officers and employees of the city for any loss or damage arising out of the use,  
11 or the discontinuance of any use; that said applicant understands that the use of the surface space is  
12 to be temporary, on a day-to-day basis; that said applicant shall not acquire any right, title, or interest  
13 in such space; that said applicant may be required by the city at any time to vacate all or any part of  
14 the surface space said applicant has been given permission to use; that upon demand to vacate such  
15 space, said applicant will promptly remove any personal property placed thereon by such applicant  
16 and return the surface space to the same condition that it was prior to the commencement of use by  
17 said applicant, or reimburse the City for the cost of moving such personal property and restoring the  
18 surface space to its prior condition; and that said applicant shall have no recourse against either the  
19 city or its officers or agents, either for any loss or damage occasioned by his or her being required  
20 to vacate all or any part of the surface space which said applicant has been granted permission to use.

21           Section 4. That Section 14.50.050 of the Lincoln Municipal Code be amended to read  
22 as follows:

23 **14.50.050     Review and Recommendations.**

24           The City Clerk shall forward the application to the Sidewalk Café Review Committee,  
25 consisting of representatives from the Health Department, Planning Department, Department of  
26 Public Works and Utilities, Police Department, Urban Development Department, and Fire  
27 Prevention Bureau, and to the Urban Design Committee for their recommendation and report  
28 regarding approval, conditional approval, or disapproval of the application. Such application shall

1 be reviewed by the ~~Planning Department~~ Sidewalk Café Review Committee in regard to the urban  
2 design relationship of the application to the streetscape, ~~and by the Department of Public Works and~~  
3 ~~Utilities relative to the amount of pedestrian movement to be accommodated, and~~ the accuracy and  
4 appropriateness of the area to be licensed, ~~and any recommended changes.~~ The application shall also  
5 ~~concurrently be reviewed~~ by the Urban Design Committee in regard to the appropriateness of the  
6 design and materials.

7 ~~Upon receipt of t~~The reports from ~~Planning, Public Works and Utilities,~~ the Sidewalk Café  
8 Review Committee and the Urban Design Committee shall be returned to the City Clerk within  
9 forty-five (45) days from receipt of the complete application. If both reports recommend approval  
10 of the application, the City Clerk shall grant the permit subject to the provisions of Section  
11 14.50.060. If the reports recommend conditional approval or a combination of approval and  
12 conditional approval of the application and the applicant in writing consents to the conditions of  
13 approval, the City Clerk may grant the permit subject to the provisions of Section 14.50.060. If the  
14 applicant does not consent to any of the conditions of approval or any report recommends  
15 disapproval of the application, the City Clerk shall place such sidewalk café permit request on the  
16 Council agenda.

17 Section 5. That Section 14.50.060 of the Lincoln Municipal Code be amended to read  
18 as follows:

19 **14.50.060 Permit Conditions.**

20 (a) ~~Each applicant for a sidewalk café permit shall demonstrate to the satisfaction of the~~  
21 ~~council that t~~The use to be made of such space shall be in conformance with Chapter 14.50 of the  
22 Lincoln Municipal Code and any applicable standards adopted by resolution of the City Council ~~and~~  
23 ~~shall include provisions for the maintenance of a~~

24 (b) A clear, unobstructed passageway not less than six feet in width at all points, entirely  
25 across the frontage of the property occupied by the occupant parallel to the line of the street and  
26 generally in the line of pedestrian traffic; ~~provided that~~ shall be maintained at all times; except as  
27 follows:

1           (1) If the ~~Council~~ City shall find special circumstances involving site  
2 characteristics or the flow of pedestrian traffic at such location, the ~~City Council~~ conditions of  
3 approval may require a passageway greater than six feet or may prohibit operation of the sidewalk  
4 café for certain specified periods.

5           (2) If the ~~Council~~ City shall find that usually or at certain periods during the day  
6 or evening the flow of pedestrian traffic is sufficiently light to permit a passageway narrower than  
7 six feet, the conditions of approval may authorize a passageway as narrow as four feet ~~may be~~  
8 ~~approved by the Council~~, either at all times when such surface space is permitted or for certain  
9 specified periods during the time when such use is permitted.

10           **(b c)** Except for sidewalk cafes which (i) serve solely by takeout and (ii) do not desire  
11 exclusive use of the permit area, the permit area shall be separated from the pedestrian passageway  
12 with a fence or other rigid barrier having a minimum height of thirty-six inches but not greater than  
13 sixty inches except for necessary pedestrian ingress and egress. Sidewalk cafes approved for a  
14 maximum occupancy of 50 or more shall provide two exits. Sidewalk cafes approved for the sale  
15 of alcohol shall have no more than one open entrance and said entrance shall not exceed eight (8)  
16 feet in width. Clearance from ground level to the bottom of the barrier shall be no more than twenty-  
17 seven inches. In specific, unusual locations that have light pedestrian traffic and relatively wide  
18 areas between the curb and the private property line the ~~City Council~~ conditions of approval may  
19 waive the requirement that the permit area be separated from the pedestrian passageway by a fence  
20 or other rigid barrier; provided that if such barrier is waived the permittee may not claim exclusive  
21 use of the permit area for his or her customers.

22           **(e d)** That such space shall only be used for the activity or activities specified on the permit  
23 in accordance with the requirements of these or any other applicable regulations;

24           **(d e)** That such use is temporary, and that the user acquires no right, title, or interest in the  
25 space permitted to be used;

26           **(e f)** That the City ~~council~~ may require such space to be vacated, restored to its prior  
27 condition upon demand, and its use discontinued, with no recourse against the city for any loss or  
28 damage occasioned by any such requirement.

1           (f g) That if any such space be not vacated and restored to its prior condition and such use  
2 be not discontinued by the time specified, the city may remove from such space any property left  
3 thereon at the risk and expense of the permittee and restore such space to its prior condition at the  
4 expense of the permittee.

5           (g h) That the permittee shall promptly remove any litter deposited on or in the vicinity of  
6 the surface space used by the permittee resulting from the activity or activities conducted by the  
7 permittee on or adjoining such space.

8           (h i) That the permittee shall at all times conduct such activity or activities in an orderly  
9 fashion and in such a manner as to protect the public health and safety.

10          (i j) That such space shall be used for business purposes only during the hours specified  
11 on the permit authorizing such use, and neither before nor after such hours.

12          (j k) That the permittee shall comply with all health and sanitation regulations.

13          (k l) That the permit issued pursuant to this section is a personal privilege and may not be  
14 transferred or alienated voluntarily or involuntarily.

15          (l m) Where exigent circumstances exist and a police officer or other authorized officer or  
16 employee of the city gives notice to a permittee to temporarily move from a location, such permittee  
17 shall comply with the notice.

18           For the purpose of this subdivision, exigent circumstances shall include, but not be limited  
19 to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public space  
20 at or near such location, an accident, fire, or other emergency situation at or near such locations, or  
21 a parade, demonstration, or other such event or occurrence at or near such location.

22          (m n) No permittee shall sound or permit the sounding of any signal from any stationary  
23 bell, chime, siren, whistle, or device for non-emergency purposes or use or operate any loudspeaker,  
24 public address system, radio, sound amplifier, or similar device which may be heard beyond fifty feet  
25 from its source.

26          (n o) No advertising shall be permitted on or in any sidewalk café or any extension thereof  
27 except to identify the product and/or the name of the vendor, and shall in all respects comply with  
28 the provisions of Title 22 and 27 of this code regulating signage.

1           (σ ρ) ~~Any~~ No umbrella, canopy, or similar device in any sidewalk café shall be ~~no~~ more  
2 than six and one-half feet above ground level without approval of the City ~~Council~~.

3           (ϕ ϑ) All sidewalk cafes shall be located only in the exact location described in the  
4 approved application. Approved furnishings, including the number of tables and chairs to be  
5 provided, may not be modified or substituted.

6           (r) Service of food and/or drinks in all sidewalk cafes shall be limited to persons seated  
7 at tables in the sidewalk café.

8           Section 6. That Section 14.50.085 of the Lincoln Municipal Code be amended to read  
9 as follows:

10 **14.50.085     Bond.**

11           If the City ~~Council~~ determines that the sidewalk café use requested is different from the  
12 regular and normal use of the surface space, the City ~~Council~~ may require as a condition of granting  
13 such permit the providing of a surety bond to guarantee the removal of the applicant's personal  
14 property and restoration of the surface space to its prior condition.

15           Section 7. That Section 14.50.090 of the Lincoln Municipal Code be amended to read  
16 as follows:

17 **14.50.090     Renewal and Termination of Permits.**

18           All permits shall be due and payable on the first day of June of each year and all permits shall  
19 expire on the thirty-first day of May following issuance. After the initial approval of a permit by the  
20 City Clerk or City Council for a specific location, annual renewals of such permits may be made for  
21 one year by application to the City Clerk.

22           Section 8. That Sections 14.50.010, 14.50.030, 14.50.040, 14.50.050, 14.50.060,  
23 14.50.085, and 14.50.090 of the Lincoln Municipal Code as hitherto existing be and the same are  
24 hereby repealed.

1                   Section 9. That this ordinance shall take effect and be in force from and after its  
2 passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this ___ day of _____, 2004:  _____ Mayor
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