

Chapter 14.50

SIDEWALK CAFÉS

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14.50.010 Sidewalk Café Definition.

Sidewalk café shall mean that portion of the public right-of-way kept, used, maintained, and held out to the public as a place where food and/or drink are served for consumption on the premises, or which is used directly in conjunction with a pedestrian pick-up window. (Ord. 18378 §1; June 14, 2004: prior Ord. 15039 §1; October 31, 1988: Ord. 12987 § 1; September 8, 1980: Ord. 12965 § 1 August 4, 1980).

14.50.020 Purpose.

It is found and declared that sidewalk cafés promote the public interest by:

- (a) Making B-zoned districts an active and attractive pedestrian environment;
- (b) Providing the opportunity for creative, colorful, pedestrian-focused commercial activities on a day/night and seasonal basis;
- (c) Encouraging commercial activities which add excitement, charm, vitality, diversity, and good design to B-zoned districts;
- (d) Encouraging the up-grading of store fronts and the development of compatible and well-designed elements within such districts; and
- (e) Promoting land conservation, redevelopment, energy savings, and indirect tax revenue. (Ord. 12987 § 2; September 8, 1980: prior Ord. 12965 § 2; August 4, 1980).

14.50.030 Licensees.

The record owners of business property abutting public space in areas zoned B-1 Local Business, B-2 Planned Neighborhood Business, B-3 Commercial, B-4 Lincoln Center Business, and B-5 Planned Regional Business District pursuant to the Lincoln Municipal Code may, subject to the provisions of this chapter and despite any provisions in the Lincoln Municipal Code to the contrary, obtain a permit to utilize so much of the surface space on which their properties abut as the City determines is not needed for the use of the general public during specified times on specified days

for sidewalk cafés. Any record owner who desires to authorize another to occupy the public space abutting the record owner's property shall file with the City Clerk a notarized copy of the agreement covering the space to be occupied prior to the issuance of the permit; provided, however, that any person may obtain a permit for sidewalk café for that portion of Centennial Mall from R Street to P Street and from K Street to M Street with the approval solely of the City. In said area of Centennial Mall, permits will not be limited to only abutting property owners. A sidewalk café permit may not be issued for a business which proposes to sell alcoholic drinks unless that business demonstrates that the sale of alcoholic drinks is not the primary purpose of the business by meeting one of the following qualifications:

- (1) The business has a licensed kitchen and offers a full menu during the hours and days of operation of the sidewalk café; or
- (2) Gross sales from the sale of alcoholic drinks do not exceed forty percent (40%) of the gross sales of food and drink. (Ord. 18378 §2; June 14, 2004; prior Ord. 12987 § 3; September 8, 1980: Ord. 12965 § 3; August 4, 1980).

14.50.040 Application for Permit; Context.

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

- (a) Owner and manager of applicant business;
- (b) Hours and days of operation;
- (c) How the extended premises will be supervised and maintained;
- (d) Description of any permitted advertising and a description or photo of street furniture to be used, if any;
- (e) Maximum number of patrons to be accommodated and description of the seating to accommodate the maximum number of patrons;
- (f) Description of any requested modification or waiver of the requirements of subsections (b)(2), (c), or (p) of Section 14.50.060;
- (g) Six copies of a plat or drawing indicating, to scale, the amount of surface the applicant is seeking permission to use and the location of the furniture, equipment, and any other article occupying public space, if any;
- (h) Description of the food and drink (alcoholic and/or non-alcoholic) to be offered for sale. If alcoholic drinks are to be offered for sale, documentation must be included with the application demonstrating to the satisfaction of the City that:
 - (1) The business has a licensed kitchen and offers a full menu during the hours and days of operation of the sidewalk café; or
 - (2) The gross sales from the sale of alcoholic drinks does not exceed forty percent (40%) of the gross sales of food and drink.
- (i) Such application shall also contain a statement by applicant that said applicant will, in consideration of being issued a permit for the use of surface space, agree to hold harmless the City of Lincoln and the officers and employees of the city for any loss or damage arising out of the use, or the discontinuance of any use; that said applicant understands that the use of the surface space is to be temporary, on a day-to-day basis; that said applicant shall not acquire any right, title, or interest in such space; that said applicant may be required by the city at any time to vacate all or any part of the surface space said applicant has been given permission to use; that upon demand to vacate such space, said applicant will promptly remove any personal property placed thereon by such applicant and return the surface space to the same condition that it was prior to the commencement

of use by said applicant, or reimburse the City for the cost of moving such personal property and restoring the surface space to its prior condition; and that said applicant shall have no recourse against either the city or its officers or agents, either for any loss or damage occasioned by his or her being required to vacate all or any part of the surface space which said applicant has been granted permission to use. (Ord. 18378 §3; June 14, 2004: prior Ord. 16981 §1; May 6, 1996: Ord. 15039 § 2; October 31, 1988: Ord. 12987 § 4; September 8, 1980: Ord. 12965 § 4; August 4, 1980).

14.50.050 Review and Recommendations.

The City Clerk shall forward the application to the Sidewalk Café Review Committee, consisting of representatives from the Health Department, Planning Department, Department of Public Works and Utilities, Police Department, Urban Development Department, and Fire Prevention Bureau, and to the Urban Design Committee for their recommendation and report regarding approval, conditional approval, or disapproval of the application. Such application shall be reviewed by the Sidewalk Café Review Committee in regard to the urban design relationship of the application to the streetscape, the amount of pedestrian movement to be accommodated, and the accuracy and appropriateness of the area to be licensed, and by the Urban Design Committee in regard to the appropriateness of the design and materials.

The reports from the Sidewalk Café Review Committee and the Urban Design Committee shall be returned to the City Clerk within forty-five (45) days from receipt of the complete application. If both reports recommend approval of the application, the City Clerk shall grant the permit subject to the provisions of Section 14.50.060. If the reports recommend conditional approval or a combination of approval and conditional approval of the application and the applicant in writing consents to the conditions of approval, the City Clerk may grant the permit subject to the provisions of Section 14.50.060. If the applicant does not consent to any of the conditions of approval or any report recommends disapproval of the application, the City Clerk shall place such sidewalk café permit request on the Council agenda. (Ord. 18378 §4; June 14, 2004: prior Ord. 16951 §104; March 11, 1996: Ord. 12987 § 5; September 8, 1980: Ord. 12965 § 5; August 4, 1980).

14.50.060 Permit Conditions.

(a) The use to be made of such space shall be in conformance with Chapter 14.50 of the Lincoln Municipal Code and any applicable standards adopted by resolution of the City Council and.

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

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

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

(c) Except for sidewalk cafés which (i) serve solely by takeout and (ii) do not desire exclusive use of the permit area, the permit area shall be separated from the pedestrian passageway with a fence or other rigid barrier having a minimum height of thirty-six inches but not greater than sixty inches except for necessary pedestrian ingress and egress. Sidewalk cafes approved for a

maximum occupancy of 50 or more shall provide two exits. Sidewalk cafes approved for the sale of alcohol shall have no more than one open entrance and said entrance shall not exceed eight (8) feet in width. Clearance from ground level to the bottom of the barrier shall be no more than twenty-seven inches. In specific, unusual locations that have light pedestrian traffic and relatively wide areas between the curb and the private property line the conditions of approval may waive the requirement that the permit area be separated from the pedestrian passageway by a fence or other rigid barrier; provided that if such barrier is waived the permittee may not claim exclusive use of the permit area for his or her customers.

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) No umbrella, canopy, or similar device in any sidewalk café shall be more than six and one-half feet above ground level without approval of the City.

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

(r) Service of food and/or drinks in all sidewalk cafes shall be limited to persons seated at tables in the sidewalk café. (Ord. 18378 §5; June 14, 2004: prior Ord. 16981 §2; May 6, 1996: Ord. 15039 §3; October 31, 1988: Ord. 12987 §6; September 8, 1980: Ord. 12965 §6; August 4, 1980).

14.50.070 Suspension or Revocation of Permit.

Any permit issued pursuant to this chapter may be suspended or revoked by the Council after notice for any of the following causes:

(a) Fraud, misrepresentation, false statement contained in the application for the license;

(b) Violation of this chapter or any of the provisions of the Lincoln Municipal Code;

(c) Conduct of the business licensed under this chapter in an unlawful manner or in such a way as to constitute a menace to the health or safety of the public;

(d) Upon demand of the City Council. (Ord. 12987 § 7; September 8, 1980: prior Ord. 12965 § 7; August 4, 1980).

14.50.080 Insurance.

The applicant shall be required to:

(a) At all times maintain public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by the City Attorney, with a minimum combined single limit of \$500,000.00 aggregate for any one occurrence. The coverage required herein shall be subject to review and approval by the City Attorney for conformance with the provisions of this section;

(b) At all times keep on file with the City Clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for conformance with the provisions of this section evidencing the existence of valid and effective policies of insurance naming the city as an additional insured for the coverage required by subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and a copy of an endorsement placed on each policy requiring thirty day's notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declarations page of such policies. Any termination or lapse of such insurance shall automatically revoke any permit issued pursuant to this chapter. (Ord. 15654 § 9; July 9, 1990; prior Ord. 12987 § 8; September 8, 1980: Ord. 12965 § 8; August 4, 1980).

14.50.085 Bond.

If the City determines that the sidewalk café use requested is different from the regular and normal use of the surface space, the City may require as a condition of granting such permit the providing of a surety bond to guarantee the removal of the applicant's personal property and restoration of the surface space to its prior condition. (Ord. 18378 §6; June 14, 2004: prior Ord. 16981 §3; May 6, 1996).

14.50.090 Renewal and Termination of Permits.

All permits shall be due and payable on the first day of June of each year and all permits shall expire on the thirty-first day of May following issuance. After the initial approval of a permit by the City Clerk of City Council for a specific location, annual renewals of such permits may be made for one year by application to the City Clerk. (Ord. 12987 § 9; September 8, 1980; prior Ord. 12965 § 9, August 4, 1980).

14.50.100 Permit Fee and Fee for Space.

Any person issued a permit under this chapter shall pay to the city an annual permit fee of \$100.00 for each permit and in addition, as rental or compensation for the use or occupation of such space, the sum of twenty-five cents (25¢) per annum for each square foot so used. (Ord. 16981 §4; May 6, 1996; prior Ord. 15039 §4; October 31, 1988: Ord. 12987 §10; September 8, 1980: Ord. 12965 §10, August 4, 1980).