

ORDINANCE NO. 14,574

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by repealing Sections 10-3, 102-286 and 102-287 thereof, and enacting new Sections 10-3 and 102-286 thereto, and by adding and enacting a new Division 5 to Article VII of Chapter 102 containing Sections 102-575 and 102-576, and by adding and enacting a new subsection 13 to Section 102-604 regarding outdoor areas used for the sale of alcoholic beverages, the process for vacation and conveyance of public streets and alleys, and the issuance of licenses for sidewalk cafes, all to expedite the process for review and approval of sidewalk cafes.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. The Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as amended by Ordinance No. 14,230 passed May 5, 2003, and by Ordinance No. 14,236 passed May 5, 2003, be and is hereby amended by repealing Sections 10-3, 102-286 and 102-287 thereof, and enacting new Sections 10-3 and 102-286 thereto, and by adding and enacting a new Division 5 to Article VII of Chapter 102 containing Sections 102-575 and 102-576, and by adding and enacting a new subsection 13 to Section 102-604 regarding outdoor areas used for the sale of alcoholic beverages, the process for vacation and conveyance of public streets and alleys, and the issuance of licenses for sidewalk cafes, all to expedite the process for review and approval of sidewalk cafes, as follows:

**Chapter 10. Alcoholic Beverages**  
**Article 1. In General**

**Sec. 10-3. Outdoor service.**

- (a) Any person who is a licensee or permittee pursuant to this chapter may serve the type of alcoholic liquor, beer or wine permitted by the license or permit in an outdoor area only after complying with the following conditions:
- (1) The outdoor area shall be enclosed by a permanent retainer, which clearly encloses the outdoor area adjacent to the licensed establishment, as follows:
    - a. The retainer must measure a minimum of 36 inches in height from finish floor surface or grade to the top of the retainer;
    - b. A permanent retainer shall consist of a top rail with lower intermediate rails spaced so that a 12-inch sphere cannot pass

- through, or a fence consisting of a top rail with permanent fencing material, both of which shall be supported by columns or posts spaced no more than ten feet on center;
- c. Snow fence, field fence or plastic fence shall not be deemed permanent retainer material for purposes of this section;
  - d. Notwithstanding subsections (a)(1)a through (1)c of this section, densely planted shrubbery may be considered equivalent to the intermediate rails or fencing, subject to approval of the building official;
- (2) Exits shall be provided in accordance with the building code;
  - (3) A diagram which illustrates the outdoor area, including how it will be enclosed, shall be submitted to the city clerk;
  - (4) An application from the licensee or permittee which indicates what dates the outdoor area will be used shall be submitted to the city clerk at least 30 days prior to the proposed first date for outdoor service;
  - (5) An endorsement from the insurance company acknowledging that the outdoor area is covered by the dram shop insurance policy shall be submitted to the city clerk; and,
  - (6) If the outdoor service area is located upon land leased from the City , the outdoor service area shall conform with the Design Standards for Sidewalk Cafes adopted by resolution of the city council.
- (b) Upon completion and approval of fire and building inspections, the city clerk shall forward the appropriate information to the city council which may approve the outdoor service area and authorize the city clerk to forward the information to the state alcoholic beverages division.

**Chapter 102. Streets, Sidewalks, Skywalks and other Public Places**  
**Article III. Streets and Alleys**  
**Division 5. Vacation and Conveyance**

**Sec. 102-286. Procedures.**

- (a) *Application.* Any person holding an interest in real estate may file an application with the community development department for the vacation or vacation and conveyance of any street or alley adjoining such real estate. The application shall contain the following:
- (1) The name, address and telephone number of the applicant and the legal description, if known by the applicant, of the real estate owned by the applicant adjacent to the street or alley sought to be vacated.
  - (2) A description of the street, alley, or portion thereof sought to be vacated.
  - (3) Proof of payment to the city treasurer of the required fee for an application to vacate a street or alley.
  - (4) A consent to the proposed vacation on a form acceptable to the legal department signed by all owners of land adjoining the portion of street or alley sought to be vacated. However, such consents are not needed if the street or alley is not open and in regular use.

- (5) The interest, if any, in the vacated right-of-way sought to be conveyed to the owners of the adjoining property.
- (b) *Investigation and recommendation.* The plan and zoning commission shall make a timely report and recommendation to the city council regarding such application. In preparing its report and recommendation the commission may hold a public hearing thereon. However, if the right-of-way sought to be vacated is for use as a sidewalk cafe in conformance with the adopted Design Standards for Sidewalk Cafes, or is otherwise determined by the city traffic engineer to have no significant impact upon the public use of the right-of-way, the city manager may instead present a staff report and recommendation to the city council without review by the commission
- (c) *Initial determination.* Upon receipt of the report and recommendation of the plan and zoning commission or city manager, the city council shall determine if the city is interested in pursuing the proposed vacation. No further action shall be taken under this section if the council determines that the city is not interested in pursuing the proposed vacation.
- (d) *Documentation.* Upon instruction by the city council, the city staff shall prepare the necessary documents and proposed legislation to complete the vacation, or vacation and conveyance as appropriate.
- (e) *Final action.* Upon completion of the necessary documents and proposed legislation and receipt of the estimated publication and recording expense as determined by the city clerk, the proposed vacation, or vacation and conveyance shall be presented to the city council for its consideration. The council shall consider the matter at a public hearing as provided by law. Upon a finding that there is no public need for the right-of-way, the council may approve the vacation or vacation and conveyance of the right-of-way subject to such conditions and reservations as the council deems to be in the public interest.
- (f) *Fee.* The required fee for a petition to vacate a street or alley shall be in the amount set in the schedule of fees adopted by the city council by resolution. The required fee and the publication costs collected pursuant to paragraph (e), above, shall not be refundable. If the proposed vacation is rejected by the city council, the recording expense deposited by the applicant shall be refunded. Such fees and costs are in addition to the purchase price set for such conveyance in accordance with city policies.

## **Article VII. Use of Streets and Sidewalks for Business Purposes**

### **Division 5. Sidewalk Cafes**

#### **Sec. 102-575. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Design standards for sidewalk cafes* means those standards adopted by resolution of the city council establishing standards for the design and operation of a sidewalk cafe upon property leased or licensed from the city.

*Sidewalk cafe* means the use of a portion of the public sidewalk by an adjoining business for the operation of an outdoor service area for the sale of food and beverages.

*Sidewalk cafe lease* means a lease agreement approved by the city council granting the lessee the right to lease a vacated portion of the public sidewalk or other property owned by the city, for the operation of a sidewalk cafe for a term not exceeding three years.

*Sidewalk cafe license* means a license agreement approved by the city manager or the city manager's designee granting the licensee the right to temporarily use a portion of the public sidewalk or other property owned by the city, for the operation of a sidewalk cafe not involving the sale of alcoholic beverages, for a term not exceeding three years, subject to the sidewalk or other licensed area being restored for public use during all hours the business is not in operation and open to the public.

**Sec. 102-576. Sidewalk Cafes.**

- (a) Any person seeking to operate a sidewalk cafe upon the public sidewalk or other property owned by the city shall make application for a sidewalk cafe license or a sidewalk cafe lease to the permit and development center upon a form to be provided by the city staff for that purpose. Each application for a sidewalk cafe lease or license shall be accompanied by payment of an application fee in the amount set in the schedule of fees adopted by the city council by resolution.
- (b) The city manager or his designee may sign a sidewalk cafe license agreement on behalf of the city if the license agreement complies with the requirements of this division and is in the form of sidewalk cafe license agreement approved by resolution of the city council, with such additions and changes as may be required by the city manager and approved by the city legal department. No sidewalk cafe license agreement shall be issued until the applicant has paid a license fee in the amount set in the schedule of fees adopted by the city council by resolution.
- (c) All sidewalk cafe lease agreements shall be presented for consideration and approval by the City Council. No sidewalk cafe lease agreement shall be issued until the applicant has paid the rental in the amount set in the schedule of fees adopted by the city council by resolution.
- (d) The community development director or his designee shall keep a record of all sidewalk cafe licenses and leases issued pursuant to this division.

**Article VIII. Encroachments**

**Sec. 102-604. Exemptions from article.**

Nothing in this article shall be held in any way to prohibit or regulate the maintenance or placement of the following:

- (13) The use of a sidewalk or other city-owned property for a sidewalk cafe operated pursuant to a sidewalk cafe license agreement or sidewalk cafe lease agreement pursuant to section 102-576.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

T.M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 06- 1361), passed by the City Council of said City at a meeting held July 10, 2006 signed by the Mayor on July 10, 2006 and published as provided by law in the Business Record on July 24, 2006 Authorized by Publication Order No. 5133.

Diane Rauh, City Clerk