

ORDINANCE NO. 15,161

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 amending Sections 102-575 and 102-576, and paragraph 13 of Section 102-604 thereof, and by adding and enacting new Sections 102-577 and 102-578 regarding the administration and operation of sidewalk cafes on City property.

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

Section 1. That 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. 14,574 passed July 10, 2006, be and is hereby amended by amending Sections 102-575 and 102-576, and paragraph 13 of Section 102-604 thereof, and by adding and enacting new Sections 102-577 and 102-578, regarding the administration and operation of sidewalk cafes on City property as follows:

**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:

*Community development director* means the head of the community development department or that person's duly authorized representative.

*Design standards and operational requirements for sidewalk cafes* means those standards and requirements adopted by resolution of the city council for the design and operation of a sidewalk cafe upon city property occupied under authority of a sidewalk cafe permit or lease.

*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 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. The leased area may be used for the sale of alcoholic beverages and for the placement of semi-permanent improvements for the term of the lease, subject to obtaining all necessary licenses and permits.

*Sidewalk cafe permit* means a permit agreement approved by the city granting the permit holder the right to use a 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. The permitted area cannot be used for the sale of alcoholic beverages, and the permitted area must be cleared and 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 permit 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 permit or lease 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 community development director may sign a sidewalk cafe permit agreement on behalf of the city if the permit agreement complies with the requirements of this division and is in the form of sidewalk cafe permit agreement approved by resolution of the city council, with such additions and changes as may be required by the community development director and approved by the city legal department.
- (c) The community development director may sign a sidewalk cafe lease agreement on behalf of the city if the leased premises was leased for use as a sidewalk cafe in the current or preceding calendar year, and the lease agreement complies with the requirements of this division and is in the form of sidewalk cafe lease agreement approved by resolution of the city council, with such additions and changes as may be required by the community development director and approved by the city legal department.
- (d) Any decision by the community development director to deny a sidewalk cafe lease or permit shall be set forth in a written decision which identifies the basis for such denial. The decision shall be promptly served upon the applicant by personal service, by service upon a cashier at the business address shown on the application, or by regular mail addressed to the applicant at such business address. If the denial is for reasons other than that the proposed site of the sidewalk cafe is needed for a public purpose, the decision shall also give notice that it may be appealed to an administrative hearing officer by filing a notice of appeal with the city clerk within ten business days of the date of the decision. If the denial is, in whole or in part for the reason that the proposed site of the sidewalk cafe is needed for a public purpose, the decision shall also give notice that it may be appealed to the city council by filing a notice of appeal with the city clerk within ten business days of the date of the decision.
- (e) The decision of the community development director to deny a sidewalk cafe permit or lease pursuant to this subsection for reasons other than that the proposed site of the

sidewalk cafe is needed for a public purpose may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code. If the denial is, in whole or in part for the reason that the proposed site of the sidewalk cafe is needed for a public purpose, the decision may be appealed to the city council pursuant to section 102-578.

- (f) Any sidewalk cafe lease agreement for a premises that was not leased for use as a sidewalk cafe in the current or preceding calendar year shall not be effective until approved by the city council.
- (g) No sidewalk cafe permit agreement or 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. The community development director shall keep a record of all sidewalk cafe permits and leases issued pursuant to this division.

**Sec. 102-577. Suspension, revocation or non-renewal for cause.**

- (a) Upon complaint or reasonable suspicion that a permit holder or lessee, their employees or agents, have violated or failed to comply with any of the requirements of the sidewalk cafe permit agreement or lease agreement or any provision of this Code, the community development director may cause the matter to be investigated. If the community development director finds that the permit holder or lessee, their employees or agents, have materially violated or failed to comply with any of the requirements of the applicable permit agreement or lease agreement or any provisions of this Code, the community development director may give notice to the permit holder or lessee of the city's intent to suspend or revoke the permit or lease, or to deny its renewal.
- (b) Notice of the city's intent to suspend, revoke, or deny the renew of a sidewalk cafe permit agreement or lease agreement and a brief summary of the factual basis for such remedial action shall be served upon the permit holder or lessee. Such notice shall inform the permit holder or lessee of the time, date and place of a meeting where the permit holder or lessee may meet with the community development director for the purpose of presenting additional information regarding the intended remedial action and the factual basis therefore, and that a final decision on appropriate remedial action will made after the schedule time for such meeting. Such notice shall be served upon the permit holder or lessee by personal service or by service upon a cashier for the business at the leased or permitted premises, or by regular mail addressed to the permit holder or the lessee at the business address shown on the permit agreement or lease agreement a minimum of five business days prior to the date set for the meeting.
- (c) If, after the scheduled meeting and after consideration of all the available information including any information provided at the meeting by the permit holder or lessee, the community development director makes a finding based on substantial evidence that a material violation of this article or another provision of this Code did in fact take

place as alleged, the community development director may revoke or temporarily suspend the permit or lease or deny its renewal; the determination of whether to so suspend, revoke or deny renewal of a sidewalk cafe permit agreement or lease agreement shall be in the discretion of the community development director and shall be dependent upon the circumstances surrounding the violation and its severity. The decision to suspend, revoke or deny renewal of a permit agreement or lease agreement shall be in writing and shall identify the basis for such action. The decision shall be promptly served in the same manner as required for the service of the notice required under subsection (b), and shall not be effective until ten days after the date of the decision. The decision shall also give notice that it may be appealed to an administrative hearing officer by filing a notice of appeal with the city clerk within ten business days of the date of the decision.

- (d) The decision of the community development director to suspend, revoke or deny renewal of a sidewalk cafe permit agreement or lease agreement pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.

**Sec. 102-578. Denial, revocation or non-renewal for public purpose.**

- (a) If an application for a sidewalk cafe lease or permit is denied by the community development director, in whole or in part for the reason that the proposed site of the sidewalk cafe is needed for a public purpose, the decision may be appealed to the city council by filing a notice of appeal with the city clerk within ten business days of the date of the decision. If such an appeal is timely filed, the community development director shall present the matter to the city council for consideration at a public hearing.
- (b) If the community development director determines, with the concurrence of the city manager, that a sidewalk cafe permit agreement or lease agreement should be revoked because the city property occupied by a sidewalk cafe is needed for a public purpose, the community development director shall present the matter to the city council for consideration at a public hearing.
- (c) Notice of the public hearing required by this section, and of the city council's intent to consider the denial or revocation of the sidewalk cafe permit agreement or lease agreement shall be served upon the permit holder or lessee by personal service or by service upon a cashier for the business at the leased or permitted premises, or by regular mail addressed to the permit holder or the lessee at the business address shown on the application a minimum of five business days prior to the date set for the public hearing.
- (d) If upon the close of the public hearing the city council makes a finding that the property occupied by the sidewalk cafe is needed for a public purpose the City Council may revoke the permit or lease or deny its renewal effective upon a specified

date, which in the absence of an emergency shall be not less than forty-five days after the date of the hearing.

**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:

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- (13) The use of a sidewalk or other city-owned property for a sidewalk cafe operated pursuant to a sidewalk cafe permit 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. 13-0165), passed by the City Council of said City at a meeting held January 28, 2013 signed by the Mayor on January 28, 2013 and published as provided by law in the Business Record on February 15, 2013. Authorized by Publication Order No. 8218.

Diane Rauh, City Clerk