SIDEWALK CAFÉ POLICY

(adopted Res. No. 20-30)

In addition to the policy set forth below, sidewalk cafes are governed by Section 10-3-3 of the City Code, which is set forth below at the end of the policy.

Location

1. Sidewalk cafes may be located in the public right of way only in the CB-2, CB-5 and CB-10 zones (the downtown and the commercial areas directly north and south of the downtown).
2. In City Plaza (a/k/a, the ped mall), cafes may be located in either zone 1 or zone 2 if in conjunction with zone 1. Zone 1 is the area within ten feet (10') of the buildings. Zone 3 is the emergency/service lane through the middle of City Plaza. Zone 2 is the remaining area. For the specific definitions of the zones in City Plaza, see Section 10-5-1 of the City Code.

Easement Agreement

1. The agreement shall be between the City and the café owner with the approval of the building owner, if different than the café owner.
2. The agreement shall provide that no property right is conferred and that it may be terminated if the City determines that the right of way is needed.
3. The agreement shall include provisions for insurance, indemnification, fencing, maintenance, including vegetation and the subsurface if applicable, and any other reasonable provision as determined by the City Manager, or designee.
4. The agreement shall include a schematic diagram that shows that the café, and platform if applicable, comply with this policy and the City Code. Except for cafes on City Plaza, the design shall include all existing streetscape amenities and utility features (such as valves and manholes) within eight feet (8') of the proposed café.
5. Except for cafes located on the street, the agreement shall be issued from February 1 through January 31. The initial agreement may be less than the one year, but shall expire on January 31.
6. The agreement shall be recorded at the café owner's expense.

Operation of Sidewalk Cafes

1. Advertising shall not be permitted in the sidewalk cafe area except for the name of the establishment on chairs, tables, umbrellas or other amenities, as approved by the City.
2. No blockage of building entrances or exits is permitted in a sidewalk cafe area.
3. Additional restroom capacity may be required to comply with local building and housing codes.
4. Occupancy limits are determined as set forth in the City building code.
5. No additional parking is required for the operation of a sidewalk cafe.
6. Sidewalk cafes are subject to annual inspections and may be inspected at any other time at the City's discretion.
7. The sidewalk café owner is responsible for trash removal and shall maintain the area and surrounding six feet (6') in a clean and litter free manner during all hours of operation.
8. All sidewalk cafes must meet the accessibility standards of City, State, and federal law.

9. All outdoor heating units must be approved by the Fire Department.

Usable Sidewalk Cafe Area

1. In the CB-10 zone with the exception of City Plaza, a sidewalk cafe area may not extend onto the sidewalk in a manner that will not allow a minimum of eight feet (8') of unobstructed walkway on the side of the cafe that is parallel to the building. The eight-foot (8') unobstructed walkway does not apply to cafes located on the street. Cafes located on Washington Street, between Clinton Street and Linn Street, must be detached from the building face and there must be a minimum of eight feet (8') of unobstructed walkway between the building face and the side of the café.
2. In City Plaza, there must be a minimum of six feet (6') of unobstructed walkway between the side of the café and an elevated planter if the café abuts the building. If the café does not abut the building, the café may abut a planter if there is a minimum of six feet (6') of unobstructed walkway between the café and the building face and six feet (6') of walkway along any other side of the café opposite of the planter.
3. In the CB-2 and CB-5 zones, the minimum of eight feet (8') of unobstructed sidewalk is not required if the existing sidewalk is less than eight feet (8') in width. If the sidewalk is less than eight feet (8') in width, a sidewalk cafe may not extend into or encompass in any manner the existing sidewalk and may not impede pedestrian traffic.
4. A sidewalk cafe area may not be located in the street corner area defined by building line extended to the street and no closer than ten feet (10') from an alley. However, a cafe may be located between two feet (2') and ten feet (10') from an alley if the fencing located within ten feet (10') is a type that is less than twenty percent (20%) solid.
5. A sidewalk café may not extend beyond the building line extended, except for those in a planter.
6. A sidewalk café serving alcohol shall be contiguous with a side of the building wherein the establishment is located. The contiguous requirement may be satisfied by a five foot (5') wide pathway connecting the building to the café. The pathway area shall be under the control of the establishment and is subject to the annual fee.
7. A café on the sidewalk that does not abut the building must be located a minimum of two feet (2') from the curb as measured by the City, except for unique circumstances (such as being adjacent to a street café) as determined solely by the City Manager or designee.

Public Amenities and Utilities

1. Except as provided herein, a sidewalk cafe shall not utilize or encompass any public amenities, including, but not limited to, benches, seats, tables, trash receptacles, public art, bike racks, water spigots, kiosks, posting pillars, and pergolas. The City Manager or designee may approve the utilization, encompassing, or relocation of a public amenity on the condition that the cafe owner pay all associated costs.
2. A sidewalk cafe may encompass trees, tree rings, light poles, water valves, manholes, and stormwater intakes but shall not interfere with their care, maintenance or operation. Access shall be available to the City for their care and maintenance.
3. Amenities, including trees, tree rings and light poles, shall be considered obstructions for purposes of the requirements of the eight foot (8') unobstructed walkway.
4. The amenities used in the sidewalk cafe area shall be maintained in good condition.
5. Upon payment of the electricity fee, the café owner may use the City's electrical outlet but only for lights.

Fencing (For Cafes Not on the Street)

1. Except during the term of the initial easement agreement and from December 1 to February 28 thereafter and except as provided herein for cafes located on City Plaza and on Washington St., the area for a sidewalk cafe shall be delineated by anchored fencing. During the initial easement agreement and from December 1 to February 28, said area may be delineated by ropes or some other suitable method which shall be detectable by pedestrians who are visually impaired.
2. Fencing shall be constructed of a durable material, such as steel, aluminum, or wrought iron. Wood fencing shall not be allowed. The City shall approve the design.
3. If stored outdoors, tables, chairs, and other items shall be secured within the approved fencing at the end of each day's operation so that they are unusable and shall not block or obstruct emergency exits. If ropes or some other suitable method is used, tables, chairs and other items shall be removed at the end of the day's operation, and the sidewalk cafe area shall be restored to its normal condition as a pedestrian way.
4. The café owner shall be responsible for any damages to the public right of way caused by the placement of any anchored fencing.
5. Planters with flowers and/or other vegetation are allowed as an alternative to temporary and fencing to delineate the sidewalk cafe. The design of the planters shall be approved by the City Manager, or designee, subject to the following limitations:
   a. The planters shall, at the cafe owner's option, be either fastened to each other or removed from the sidewalk or City Plaza at the end of the day's operation along with the tables, chairs, and other items.
   b. The planters shall not be less than twenty-seven inches (27") or more than thirty-six inches (36") in height excluding plantings.
   c. The planters shall be either metal or have a metal frame.
6. Anchored fencing on a concrete platform or within a planter may remain year around.
7. Notwithstanding any other provision herein, anchored fencing is prohibited in City Plaza and on Washington Street, from Clinton Street to Linn Street. All fencing in those locations must be approved by the City Manager, or designee. All 4 (four) sides of the approved fence must be connected to one another to prevent movement of the fencing and said connection must be approved by the City Engineer or designee.

Platforms (For Cafes Not on the Street)

1. Sidewalk cafes may be located on a platform on top of a public sidewalk if the City Manager or designee determines there is excessive slope in the sidewalk and approves the design and if suitable access is provided for persons with disabilities.

2. Sidewalk cafes may be located on a concrete platform in the right of way that is not a public sidewalk if the City Manager or designee approves the concrete design and if suitable access is provided for persons with disabilities. Fencing shall not be more than three feet (3') in height, measured from the plane on which the chair sits to the top of the railing, excluding finials.

Planters

1. A sidewalk cafe may encompass or utilize an elevated planter if the proposed cafe meets the following criteria, as determined solely by the City:

a. It does not interfere with pedestrian movement.
b. It does not adversely affect drainage.
c. It does not adversely affect public or city utilities.
d. It does not adversely affect trees, shrubs or other plantings.
e. It enhances the appearance of the surrounding area, and if in City Plaza, it enhances the use of City Plaza.
f. It does not interfere with the functionality of any other existing sidewalk cafe.
g. It is not otherwise contrary to public interest.

2. If utilizing two planters, the area between the planters shall be included in the sidewalk cafe area but need not be delineated as such unless tables and chairs are present.

3. With the consent of the adjacent property owner and first floor tenants, if any, the café may extend beyond the building line extended if the distance between the planter and the building line extended is less than ten feet (10'). The café may extend beyond additional building lines extended with the consent of those property owners and first floor tenants, if any.

4. The cafe owner shall pay all costs associated with the cafe including, but not limited to, the cost to move water mains and water service lines, to remove and plant vegetation, to move electrical outlets, and to cut and restore the limestone.

5. The City may require the café owner to add plantings within the café area at the café owner's cost.

6. There are a limited number of planters, and cafes in planters will entail a substantial financial investment. In order to address these two opposing concerns, a priority system and a lottery will be used. If a café owner enters into an easement agreement with the City, said café owner will have priority over subsequent applicants for a café in the planter for the following two café seasons assuming that the City continues to authorize cafes in planters. Café owners need to obtain the consent of adjacent property owner(s) and first floor tenant(s) only before entering the easement agreement for the first of the three-year, priority period. The priority is to the individual business owner of said cafe and cannot be assigned or sold to another café owner. The lottery for planters will be conducted in the same manner as the lottery for cafes in the street.

Cafes on the Street

1. An establishment cannot operate a café in the street if there is sufficient room on the sidewalk for a café with an area of at least one-hundred twenty square feet (120 sq. ft.).

2. There shall be a minimum four feet (4') buffer on either end of the café for safety reasons. These buffers shall be established and maintained by the City and may be used for moped parking and/or bicycle parking. The buffer is subject to the annual fee. As used in this policy, the term sidewalk café area does not include the 4-foot buffer.

3. The sidewalk café area may not include the portion of the parking space beyond the building line extended. The 4-foot buffer may be located beyond the building line extended.

4. Cafes, including the 4-foot buffer, in each block face cannot utilize more than thirty percent (30%) of the total parking spaces in that block face.

5. Cafes cannot be located in loading zones.

6. Cafes cannot be set up before April 1 and shall be removed no later than the Tuesday following the last University of Iowa home football game. Cafes may have to be removed

temporarily at the café owner's sole expense to accommodate an event on the street permitted by the City (e.g., criterium).

7. The portion of the café located on the street shall be on a platform. The design features of the platform shall be submitted with the application and the design shall be stamped by a professional engineer or architect. The platform shall not impede drainage in the street gutter.

8. The area for a sidewalk cafe shall be delineated by anchored fencing. Fencing shall be constructed of a durable material, such as steel, aluminum, or wrought iron. Wood fencing shall not be allowed. The City shall approve the design.

9. If stored outdoors, tables, chairs, and other items shall be secured within the anchored fencing at the end of each day's operation so that they are unusable.

10. The fee shall be a combination of the following four (4) fees: a) the annual square footage "right of way" fee for the portion of the café located on the sidewalk and the area satisfying the contiguous requirement; b) the annual square footage "platform" fee for portion of the café located on the street and any portion that is be located on the sidewalk; c) the daily fee for each parking space regardless of the amount of the parking space that the café utilizes; and d) bollard fee.

11. There is no guarantee that the City will continue to authorize cafes in the street. The café agreement will include a paragraph in substantial compliance with the following:

    Café owner further acknowledges and agrees that no property right is conferred by this agreement for the use of portions of the public right-of-way, that the City is not empowered to grant permanent or perpetual use of its right-of-way for private purposes, that the City may order said locations and/or uses within the right-of-way to cease and desist if, for any reason, the City determines that said right-of-way is needed for a public use and should be cleared of any and all obstructions, and that the café owner shall not be entitled to any compensation should the City elect to do so.

The "30% limitation" limits the number of establishments that will be allowed to operate a café on the street, and cafes on the street will entail a substantial financial investment. To address these opposing concerns, a priority system and a lottery will be used. The City will provide information on the lottery and the priority system on its website.

Lottery. The logistics and deadlines for the lottery are as follows:

- February 1. In order to be eligible for the lottery, an application with a preliminary (does not have to be drawn by a professional) schematic diagram must be submitted by this date. Applications received after February 1st will be considered on a first come, first serve basis and will be denied if there is no available space.
- February 15. If there are competing applications, staff will notify the applicants by this date whether they have been selected to enter into easement agreements. Competing applications mean when there are applications for more than 30% of the parking spaces within a block face. The City will conduct a lottery to select applicants.
- March 15. The applicant must sign an easement agreement by this date, which is dependent upon staff approval of its schematic diagram (drawn by a professional) and payment of all fees (except the parking space fee that will not be known until the platform is installed). If an applicant does not meet the March 15 deadline, staff will notify the next applicant that it is eligible for a café on the street.
- April 15. The next applicant must sign an easement agreement by this date.

Note: If one of these dates falls on a weekend, the applicable deadline will be the following Monday.

Priority. If a café owner enters into an easement agreement with the City, said café owner will have priority over subsequent applicants for a café within the same block face for the following two calendar years, assuming that the City continues to authorize cafes in the street (see Paragraph 12 above). The priority is to the individual business owner of said cafe and cannot be assigned or sold to another café owner.

Fees

1. Annual fee for sidewalk cafes located directly on the public right-of-way: $5.00 per square foot.
2. Annual fee for sidewalk cafes located on a structure/platform (including concrete platform) placed on the public right-of-way: $10.00 per square foot.
3. Annual fee for the area of the sidewalk cafe utilizing an elevated planter on the public right-of-way: $10.00 per square foot. The annual fee for the portion of a "planter" sidewalk cafe that is not located on the elevated planter: $5.00 per square foot.
4. Annual fee for a sidewalk café located on the street: $5.00 per square foot for the area located on the sidewalk plus $10.00 square foot for the area located on the platform on the street plus daily fee for each parking space as set forth in the City Code (presently, $20.00 per day) for every day the platform is on the street plus bollard fee.
5. Deposit for sidewalk cafes which place anchored fencing in the public right-of-way: $200.00. This deposit shall be refunded if the right-of-way, and planter if applicable, is restored to its prior condition by the sidewalk café owner to the satisfaction of the City.
6. Deposit for sidewalk cafes which place a structure/platform on the public right-of-way, regardless of whether anchored fencing is used: $500.00. This deposit shall be refunded if the structure/platform is removed, and the right-of way is restored to its prior condition by the sidewalk café owner to the satisfaction of the City.
7. Deposit for sidewalk cafes which utilize an elevated planter or placement of a concrete platform in the public right-of-way: $1,000.00. This deposit shall be refunded if the platform or concrete is removed, and the right-of-way is restored to its prior condition by the sidewalk café owner to the satisfaction of the City.
8. If the initial easement agreement is for less than one season, the fees listed in Paragraphs 1-4 above shall be prorated on a quarterly basis.
9. Electricity fee for using electrical outlet for lights for cafes in planters: $45 per year.
10. Bollard Fee: Actual cost of the bollards based on a five (5) year life cycle plus one (1) hour labor at the MWII pay grade to install, maintain, and remove the 4-foot buffer. If the platform is removed temporarily during the year, the labor fee is assessed again when the platform is reinstalled. A minimum of two (2) bollards will be required, and the City shall determine if additional bollards are needed.
11. Recording fee for the easement agreement: Actual fee charged by County Recorder.

City Manager

1. The City Manager is authorized to approve any other provision or require any other restriction regarding the use of the public right of way by a sidewalk café that is not inconsistent with this policy or the City Code.

Section 10-3-3 of the City Code

A. Sidewalk cafes are permitted in the public right of way only in the CB-2, CB-5 and CB-10 zones (the downtown and the commercial areas directly north and south of the downtown).

B. No person shall operate a sidewalk café without executing an easement agreement.

C. Each sidewalk café applicant shall file an application for an easement agreement with the Public Works Department, on forms provided by the City.

D. The City Manager, or designee, shall either grant or deny the application within thirty (30) days of the application being filed. If the application is granted, the City Manager, or designee, is authorized to enter into a public right of way easement agreement. If the application is denied, the applicant may appeal to the City Council by filing a written appeal with the City Council, and the appeals process shall be the same as provided for mobile vendors in this chapter. The City retains the right to limit the number of sidewalk cafes.

E. After execution of an easement agreement, the City Manager, or designee, shall retain the right to terminate the easement agreement but only after written notice of violation has been given and the time to cure the violation has expired. Grounds for termination of the easement agreement shall include, but not be limited to, repeated violations of the state and liquor control laws, violations of the easement agreement, and creating a safety hazard, health hazard and/or public nuisance under state or local law. Additionally, the City Manager, or designee, retains the right to terminate the easement agreement and direct removal of sidewalk cafe operations if there is a substantial and reasonable need for use of the public right of way for a valid public purpose. The cafe owner has the right to appeal a decision to terminate the agreement to the City Council. The appeals process shall be the same as provided for mobile vendors in this chapter.

F. The easement agreement, at a minimum, shall require the café operator to provide a certificate of insurance satisfactory to the City, and shall agree to hold the City harmless against any and all liability arising from or relating to the operation of the sidewalk cafe or the location of the cafe on the public right of way including, but not limited to, all claims arising from occurrences or accidents within the sidewalk cafe area, including the walkway through a café.

G. Sidewalk cafes shall operate only between the hours of seven o'clock (7:00) A.M. and twelve o'clock (12:00) midnight.

H. Food and beverages must be available for service to patrons in a sidewalk cafe during all hours of operation. Sidewalk cafes shall not operate when the restaurant kitchen is closed.

I. A sidewalk cafe serving alcoholic beverages shall have an employee monitoring the area at all times during the hours alcohol is consumed and shall dispense any alcoholic beverage under state and local law

J. Amplified sound equipment shall not be permitted.

K. The operation of any sidewalk cafe shall be in conformity with all applicable federal, state, and local laws and regulations.

M. All fees for the operation of a sidewalk café shall be set by resolution.

N. The City Manager is authorized to establish administrative rules not inconsistent with any ordinance or policy adopted by the City Council. A copy of the policy and rules shall be on file with the City Clerk and available of the City website.