

06/17/98
07/09/98
07/14/98

**69-0-98
AN ORDINANCE**

**Amending Section 7-2-6(D) of the
Streets, Sidewalks, and Public Ways
Ordinance - Regarding Sidewalk Cafes**

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Title 7, Chapter 2 of the Evanston City Code of 1979, as amended, is hereby further amended by deleting existing section 7-2-6(D) and substituting therefor:

- (D) Sidewalk Cafes:
1. Definitions:

BAKERY: An establishment for any process of mixing, compounding and baking any bread, biscuits, crackers, rolls, cake, pies, or any food products of which flour or meal is a principal ingredient, for sale at retail or wholesale.

ICE CREAM STORE: An establishment selling primarily ice cream, soda water, frozen yogurt and soft drinks.

OTHER LICENSED FOOD SERVICE ESTABLISHMENT OR OTHER LICENSED RETAIL FOOD STORE: An establishment licensed by the City of Evanston as a food service establishment or as a retail food store under Title 8, "Health and Sanitation" of the City Code which is not a bakery, an ice cream store, a Restaurant Type I, or a Restaurant Type II as defined within this Section 1.

RESTAURANT TYPE I: An establishment in which the principal use is the service of prepared food and beverages for consumption on the premises. All service of prepared food and beverages for consumption on the premises shall require customers to order at a table, booth or dining counter with service by a waiter or waitress at said table, booth or dining counter and shall also require the use of reusable (non-disposable) flatware and dishware. Drive-through facilities are prohibited.

RESTAURANT TYPE II: An establishment in which the principal use is the service of prepared food and/or beverages for consumption on and/or off the premises and that is not a "Restaurant Type 1," as defined herein. This definition shall not include establishments wherein incidental prepared food and beverage service is accessory to a bakery, food establishment, convenience store, food store establishment, meat market, or similar

principal use nor shall it included cafeterias that are accessory to hospitals, colleges, universities, schools or other similar principal uses.

SIDEWALK CAFE A dining area located partially or wholly on a public sidewalk or parkway.

2. Permits:

- a. Type I Restaurants, Bakeries, Ice Cream Stores more than 200 feet from a residentially zoned district:

Permits to rent sidewalk space for a sidewalk cafe shall only may be granted to the licensed operator of restaurants, bakeries, ice cream stores, as defined in subsection 1 above when these uses are more than 200 feet from a residentially zoned district. Sidewalk cafes are not permitted at restaurants, bakeries or ice cream stores or other licensed food service establishments or other licensed retail food stores located in a residential district. The City Council may authorize sidewalk cafes appurtenant to a type II restaurant, and appurtenant to any restaurant, bakery, ice cream store or other licensed food service establishment or other licensed retail food store which is within 200 feet of a residentially zoned district and is not itself within a Residential District subject to the procedures, standards, and regulations contained within section 7-2-6(D)2b and 7-2-6(D)6. The 200 feet shall be measured from the lot line of the parcel devoted to said sidewalk cafe to the Residential zoning district boundary, inclusive of right of way.

- b. Type II Restaurants other licensed food service establishments or other licensed retail food stores, and any licensed food service establishment or licensed retail food store within 200 feet of a residentially zoned district: Sidewalk cafe permits for Type II Restaurants other licensed food service establishments or other licensed retail food stores, and any licensed food service establishment or licensed retail food store within 200 feet from a residentially zoned district, as defined in subsection 1 above, also shall require the approval of the City Council. The Site Plan and Appearance Review Committee shall review all applications for sidewalk cafes for Type II Restaurants, other licensed food service establishments or other licensed retail food stores, and any licensed food service establishment or licensed retail food store within 200 feet of a residentially zoned district and report to the City Council upon each application with respect to the standards set forth below. The report is to include written findings of fact with respect to each standard and a recommendation as to whether the permit should be granted. No less than 120 hours prior to review and consideration by the City Council any licensed food service establishment or licensed retail food

store within 200 feet of a residentially zoned district must give notice of the review and consideration by the City Council by posting a sign on the property to which the proposed sidewalk cafe is to be appurtenant. Further, no less than 96 hours prior to review and consideration by the City Council any licensed food service establishment or licensed retail food store within 200 feet of a residentially zoned district must give notice of the review and consideration by the City Council by making a good faith effort to distribute flyers containing notice of the review and consideration by the City Council to all households, residents, and land users within 250 feet of the subject property. The posted notice and the flyered notice minimally shall contain the name and telephone number of the business for which the applicant is applying for the sidewalk cafe permit, the location of the subject property, the matter under consideration, and the date, time, and location of the review and consideration by the City Council and by the standing committee of the City Council.

c. Permit Required:

No licensed operator of a restaurant, bakery ice cream store, or other licensed food service establishment or other licensed retail food store shall erect, place or maintain in or upon any public sidewalk or parking contiguous or adjacent to said licensed restaurant, bakery, ice cream store, or other licensed food service establishment or other licensed retail food store, tables, benches or chairs for the purpose of serving to customers thereon, food and/or beverages for consumption at such sidewalk tables, benches or chairs unless a permit for the same first shall have been first obtained from the City Manager in the instance of a Type I Restaurant, bakery or ice cream store when the use is more than 200 feet from a residentially zoned district, or with approval of City Council in the instance of a Type II Restaurant, other licensed food service establishment or other licensed retail food store, or any licensed food service establishment or licensed retail food store within 200 feet of a residentially zoned district.

d. Term of Permit:

A licensed restaurant, bakery or ice cream store operator or other licensed food service establishment or other licensed retail food store operator annually may apply for and obtain a sidewalk cafe permit. The sidewalk cafe permit shall be effective only for the period April 1 through November 1 of the calendar year for which the City has issued it.

e. Exception for existing sidewalk cafes appurtenant to type I restaurants:

The requirements, procedures and standards contained herein notwithstanding, the City Manager may issue a sidewalk cafe permit to any licensed operator of a Type I Restaurant which is within 200 feet of a residentially zoned district as if said Type 1 Restaurant was more than 200 feet from a residentially zoned district if the City had issued a sidewalk cafe

permit for said Type 1 Restaurant in the immediately prior year and if that sidewalk cafe permit was not revoked or suspended.

3. Permit Application:

At the time of making application for a permit, the applicant shall furnish the following information to the City Manager or his designee:

- a. Name and mailing address of the applicant and the proposed sidewalk cafe;
- b. A detailed drawing to scale of the proposed site indicating the following: the existing facade; the points of ingress and egress; and the proposed location of the tables, chairs, serving equipment, planters, awnings, lighting, delimiting ropes or chains and other facilities to be included in the cafe operation. The detailed scale drawing must indicate the location of the existing public improvements including the following: fire hydrants, parking meters, street lights, traffic signals, street signs, bus shelters, trees, tree grates, planting boxes and/or planting areas, and any public or private obstruction. A plat of survey may be required.
- c. A statement of use as Type I or Type II Restaurant, ice cream store bakery, or other licensed food service establishment or other licensed retail food store of the principal use.
- d. A menu of the proposed service. Any restaurant which is prohibited by this subsection 7-2-6(D) from serving alcoholic beverages must provide evidence that the menu will so indicate.
- e. A hold harmless statement in a form so specified by the City.
- f. A certificate of insurance covering the period of the outdoor operations, including coverage of comprehensive general liability insurance and other appropriate coverage for these types of business activities in the amount of \$1,000,000.00 per occurrence and \$500,000.00 per person. The City is to be named as an additional insured on the face of the certificate with an insurance company with a B+ rating or better. Any changes or cancellations shall require that the City be notified in writing at least 30 days prior to the effective date of the change or cancellation.
- g. A copy of a valid business license or liquor license (if applicable) issued by the City.
- h. An acknowledgement that the applicant has received, reviewed, and understood the regulations pertaining to sidewalk cafes.
- i. An annual permit fee in the amount of \$100.00 plus \$1.00 per square foot of the public right-of-way to be occupied. In instances in which any licensed food service establishment or licensed retail food store has used the public right-of-way for a sidewalk cafe without the benefit of a permit issued by the City for such usage the sidewalk cafe annual permit fee shall be increased by an additional \$100 plus \$1.00 per square foot of the public right-of-way to be occupied.

4. Unobstructed Passage: At all times the operator of any licensed food service establishment or licensed retail food store must:
 - a. Maintain a clear distance of a minimum of 5 unobstructed feet in width, measured from the sidewalk curb and from any public improvements within the right of way including but not limited to, parking meters, signs, and planters to the ropes or chains delimiting the sidewalk cafe area as indicated on the approved permit;
 - b. Not interfere with the passage of pedestrians, vehicle flow, or access to buildings;
 - c. Not place sidewalk tables, benches, or chairs in a location that interferes with the operation of fire hydrants, pedestrian crosswalk, intersections, bus stop or taxi stands or in a location that is harmful to trees or other plantings;
 - d. Not utilize any of the required or nonrequired parking space area for sidewalk tables, benches, chairs; or other furniture and materials associated with the sidewalk cafe.

5. Rules and Regulations for all Sidewalk Cafes:
 - a. Licensed Type I Restaurants, possessing an alcoholic beverage license of any classification and located within the "core area" as defined in Section 3-5-1 of this Code, may sell alcoholic liquor on sidewalk cafe premises. Such sale of alcoholic liquor shall be for consumption on the premises only with the consumption of a meal. This provision must be clearly stated on sidewalk-cafe menus.

Licensed restaurants, possessing an alcoholic beverage license of any classification, but located outside the "core area" as defined in section 3-5-1 of this Code, and all Type II Restaurants, are prohibited from serving alcoholic liquor on the sidewalk cafe premises or allowing any patron to consume or have in his or her possession any alcoholic liquor on said cafe premises. Licensed restaurants outside the core area which serve alcoholic liquor in the principal establishment and Type II Restaurants which serve alcoholic liquor in the principal establishment must clearly state on the menu for outdoor service that the sale and/or consumption of alcoholic liquor is prohibited.
 - b. At all times, including while being stored, prepared, displayed, served or transported to the table, food shall be protected from potential contamination by being covered and/or refrigerated if necessary.
 - c. Reusable, nondisposable flatware, dishware and beverage containers, are required for use in association with all sidewalk cafes. No food or beverage, including water, shall be served in, on, or with paper, plastic, or polystyrene plastic dishes or utensils, nor shall any food or beverage be served to the customer wrapped or packaged in foil, paper, plastic, or polystyrene plastic. The use of nondisposable beverage containers may be

- waived by the City Council upon a showing of good cause.
- d. When associated with Type I Restaurants, food or beverages consumed at sidewalk tables, benches, or chairs must be served by a waiter or waitress of the restaurant at said tables, benches, or chairs. When associated with Type 2 Restaurants, bakeries, ice cream stores or any other licensed food service establishment or other licensed retail food store, a sidewalk cafe shall provide bus service during all hours of operation.
 - e. The operator of any licensed food service establishment or licensed retail food store must maintain the exterior of the premises, including the sidewalk cafe area, in accordance with applicable regulations of the Evanston Health Department and Public Works Department. This duty to maintain extends to the removal of all litter, regardless of its source.
 - f. Sidewalk tables, benches, or chairs may not be attached by any means to the public sidewalk or any other public property.
 - g. Sidewalk tables, benches, or chairs shall be stored inside the restaurant during off-business hours.
 - h. A sidewalk cafe shall not be open for business when the interior aspect of the business is not open for business.
 - i. No animals, including pets, except for seeing-eye dogs, shall be allowed in the areas utilized for sidewalk tables, benches or chairs.
 - j. During all sidewalk cafe business hours, the permittee must delimit the sidewalk cafe area as indicated on the approved permit by surrounding it with ropes and chains.
6. Standards for Approval of a Permit for a Sidewalk Cafe for a Type II Restaurant, or other licensed food service establishment or other licensed retail food store, or Type I Restaurant which is within 200 feet of a residentially zoned district: The Site Plan and Appearance Review Board will review all applications for sidewalk cafes for Type II Restaurants, or other licensed food service establishments or other licensed retail food stores, or any licensed food service establishment or licensed retail food store which is within 200 feet of a residentially zoned district and will report to the City Council upon each application with respect to the standards set forth below. The City Council after receiving the report of the Site Plan and Appearance Review Board, may refer the application back to the Site Plan and Appearance Review Board for additional review, or, by motion, may approve, approve with conditions, or disapprove, an application for a permit for a Type II Restaurant, or other licensed food service establishment or other licensed retail food store, or any licensed food service establishment or licensed retail food store which is within 200 feet of a residentially zoned district, upon findings of fact with respect to each of the standards set forth below:
- a. The proposed sidewalk cafe will not cause a negative cumulative effect,

- when its effect is considered in conjunction with the cumulative effect of other sidewalk cafes in the immediate neighborhood.
- b. The proposed sidewalk cafe will not cause undue pedestrian or vehicular traffic congestion.
 - c. The sidewalk cafe will not have a substantial adverse impact on the use, enjoyment or property values of adjoining properties.
 - d. The proposed sidewalk cafe will comply with all the rules and regulations contained herein, except that the City Council may modify, or waive the requirements in subsection 7-2-6(D)5c of this Section, relative to nondisposable beverage service containers.
 - e. The proposed sidewalk cafe is not likely to have an adverse effect upon the public health, welfare, or safety.

Notwithstanding an affirmative finding on any or all of the standards in subsection 7-2-6(D)6 above, the City Council may deny a permit for a sidewalk cafe for a Type II Restaurant, or other licensed food service establishment or other licensed retail food store, or any licensed food service establishment or licensed retail food store which is within 200 feet of a residentially zoned district upon a finding that such denial is in the public interest.

7. **Revocation and Suspension:** The City Manager may revoke or suspend a permit for any sidewalk cafe at any time upon a determination that the requirements applicable thereto are not met. Unless the public health, welfare, or safety require more immediate action, revocation and suspension are effective 48 hours after written notice is delivered to the restaurant, bakery, ice cream store or other licensed food service establishment or other licensed retail food store. No hearing is provided. A licensed restaurant, bakery, ice cream store or other licensed food service establishment or other licensed retail food store operator whose sidewalk cafe permit is revoked is not eligible to reapply for a permit during the calendar year of revocation. The City Manager may impose conditions on reinstatement of a suspended permit or upon the grant of a permit to a licensed food service establishment or retail food store operator whose sidewalk cafe permit has been revoked within the previous two calendar years.
8. **Legal Effect:** In the event of a conflict between the regulations in the Zoning Ordinance and the regulations contained herein, the regulations in this Chapter shall be controlling with respect to sidewalk cafes.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced June 22, 1998

Adopted: July 13, 1998

Approved: July 17, 1998

Lorraine A. Norton
Mayor

ATTEST:

Mary D. Morris
City Clerk

Approved as to form:

[Signature]
Corporation Counsel