

38-O-15

AN ORDINANCE

Amending City Code Section 7-2-6(D), "Sidewalk Cafes," Allowing the Sale of Wine at Wine Shop (Enoteca) Sidewalk Cafes

SECTION 1: Title 7, Chapter 2, Section 6(D) of the Evanston City Code of 2012, as amended (the "City Code"), is hereby further amended to read as follows:

(D) Sidewalk Cafes.

1. Definitions.

BAKERY.	An establishment for any process of mixing, compounding and baking any bread, biscuits, crackers, rolls, cakes, pies, or any food products of which flour or meal is a principal ingredient, for sale at retail or at wholesale.
ENOTECA.	A wine shop classified as a retail goods establishment holding a valid City of Evanston Class K liquor license.
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 of this Code, which is not a "bakery," an "ice cream store," a "restaurant type 1," or a "restaurant type 2," as defined in this Section.
RESTAURANT TYPE 1.	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 also shall require the use of reusable (nondisposable) flatware and dishware. Drive-through facilities are prohibited.
RESTAURANT	An establishment in which the principal use is the

TYPE 2.	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 in this Section. 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 include 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 1 Restaurants (Not Selling Alcoholic Liquor On The Sidewalk Cafe Premises), Bakeries, Or Ice Cream Stores More Than Two Hundred Feet From A Residentially Zoned District.* Permits to rent sidewalk space for a sidewalk cafe shall only be granted to the licensed operator of restaurants, bakeries, or ice cream stores, as defined in Section 7-2-6(D)(1) when these uses are more than two hundred feet (200') 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 2 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 two hundred feet (200') 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)(2)(b) and Section 7-2-6(D)(6). The two hundred feet (200') 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 2 Restaurants, Other Licensed Food Service Establishments Or Other Licensed Retail Food Stores, And Any Licensed Food Service Establishment Or Licensed Retail Food Store Within Two Hundred Feet Of A Residentially Zoned District Or Type 1 Restaurant With An Alcoholic Liquor License Outside The Core Area And Desirous Of Selling Alcoholic Liquor On The Sidewalk Cafe Premises.* Sidewalk cafe permits for type 2 restaurants, other licensed food service establishments or other licensed retail food stores, and any licensed food service establishment or licensed retail food store within two hundred feet (200') from a residentially

zoned district, or type 1 restaurants with an alcoholic liquor license outside the "core area" as defined in Section 3-5-1 of this Code and desirous of selling alcoholic liquor on the sidewalk cafe premises as defined in Section 7-2-6(D)(1), also shall require the approval of the City Council. The Public Works Department shall review all applications for sidewalk cafes for type 2 restaurants, other licensed food service establishments or other licensed retail food stores, or type 1 restaurant with a liquor license outside of the "core area" desirous of selling alcoholic liquor on the sidewalk cafe premises and any licensed food service establishment or licensed retail food store within two hundred feet (200') 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. Further, no less than ten (10) business days prior to review and consideration by the City Council, any type 2 restaurants, other licensed food service establishments or other licensed retail food stores, and any licensed food service establishment or licensed retail food store within two hundred feet (200') from a residentially zoned district, or type 1 restaurant with an alcoholic liquor license outside the "core area" desirous of selling alcoholic liquor on the sidewalk cafe premises 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 two hundred fifty feet (250') of the subject property, and must post a sign notifying of same on the premises appurtenant to the sidewalk cafe. 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 Administration and Public Works Committee of the City Council.

- c. *Enoteca*. An enoteca requesting a sidewalk café permit requires approval by the Administration and Public Works Committee and the City Council. The process is as follows:
 - i. The Public Works Department shall review a sidewalk café application submitted by an enoteca.
 - ii. Public Works shall submit its recommendation to the Administration and Public Works Committee and City Council on each application with respect to the standards set forth in Section 7-2-6-(D)(6). The report must include written findings of fact with respect to each standard and a recommendation as to whether the permit should be granted.

iii. Any enoteca seeking to sell wine on the sidewalk at the premises must provide written notice to all property owners within two hundred fifty feet (250') and post notice of the same on the premises applying for the permit not less than ten (10) business days prior to review and consideration by the City Council. The notices shall contain the name and telephone number of the enoteca 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 Administration and Public Works Committee of the City Council.

iv. The City Council will approve or deny the sidewalk café permit request.

- d. *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 shall have been first obtained from the City Manager or his/her designee in the instance of a type 1 restaurant, bakery or ice cream store, when the use is more than two hundred feet (200') from a residentially zoned district, or with approval of City Council in the instance of a type 2 restaurant, other licensed food service establishment or other licensed retail food store, or any licensed food service establishment or licensed retail food store within two hundred feet (200') of a residentially zoned district or type 1 restaurant with an alcoholic liquor license outside the "core area", or an enoteca desirous of selling alcoholic liquor on the sidewalk cafe premises.
- e.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 or enoteca 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.
- f.e. *Exception; Renewal.* If a sidewalk cafe permit was issued for the prior calendar year, the approval for a sidewalk cafe permit shall be obtained from the City Manager or his/her designee, provided, the sidewalk cafe permit previously issued was not revoked or suspended, and the sidewalk cafe received no inspection citation(s) from property standards or the health department for said prior calendar year. The renewal application must satisfy the requirements set forth in Section 7-2-6(D)(3).

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/her 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, streetlights, traffic signals, street signs, bus shelters, trees, tree grates, planting boxes and/or planting areas, and any other public or private obstruction. A plat of survey is required.
 - c. A statement of use as type 1 or type 2 restaurant, ice cream store, bakery, or other licensed food service establishment or other licensed retail food store of the principal use or enoteca.
 - d. A menu of the proposed service. Any restaurant which is prohibited by Section 7-2-6(D) from serving alcoholic beverages must provide evidence that the menu will so indicate.
 - e. An indemnification and hold harmless statement in a form approved 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 one million dollars (\$1,000,000.00) per occurrence and five hundred thousand dollars (\$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 thirty (30) days prior to the effective date of the change or cancellation. The certificate of insurance shall be subject to final approval by the City and the applicant shall make whatever amendments to said certificate if requested to do so by the City.
 - g. A copy of a valid business license and liquor license (if applicable) issued by the City.
 - h. An acknowledgment that the applicant has received, reviewed, and understood the regulations pertaining to sidewalk cafes.
 - i. An annual permit fee in the amount of two hundred dollars (\$200.00) plus one dollar (\$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 two hundred dollars (\$200.00) plus one dollar (\$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 shall:
 - a. Maintain a clear distance of a minimum of six (6) 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 crosswalks, intersections, bus stops, 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.
 - (1) Licensed type 1 restaurants, possessing an alcoholic liquor 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.
 - (2) Licensed restaurants, possessing an alcoholic liquor license of any classification, but located outside the "core area" as defined in Section 3-5-1 of this Code, unless otherwise permitted in Section 7-2-6(D)(5)(a)(3), and all type 2 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, unless otherwise permitted in Section 7-2-6(D)(5)(a)(3), and type 2 restaurants which serve alcoholic liquor in the principal establishment shall clearly state on the

- menu for outdoor service that the sale and/or consumption of alcoholic liquor is prohibited.
- (3) Licensed type 1 restaurants, possessing an alcoholic beverage license of any classification, but located outside the "core area," may request a sidewalk cafe permit which allows the sale of alcoholic liquor on sidewalk cafe premises subject to the standards and procedures of Section 7-2-6(D)(6) and in compliance with all other applicable provisions of this Code.
 - (4) An enoteca possessing a Class K liquor license may sell wine within the boundaries of the sidewalk cafe premises.
- 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 single use 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 prohibition on the use of single use dishes, utensils, beverage containers or foil, paper, plastic, or plastic wrapping or packaging may be waived by the City Council upon a showing of good cause. Such good cause includes, but is not limited to, provisions of table bus service, a litter control and disposal plan, or equivalents, sufficient to obviate any adverse off site effects of the grant of the waiver.
 - d. When associated with type 1 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. When associated with enotecas, food or beverages consumed at sidewalk tables, benches, or chairs must be served by a waiter or waitress of the enoteca at said tables, benches, or chairs.
 - e. The operator of any licensed food service establishment or licensed retail food store or enoteca 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 may be stored on the City sidewalk, in an area approved by the City, upon the payment of a two hundred dollar (\$200.00) fee.
 - h. A sidewalk cafe shall not be open for business when the interior aspect of the business is not open for business.
 - i. The outdoor seating area shall be accessible to the disabled, and the licensee shall at all times comply with all applicable federal, state, and City laws, ordinances, and regulations concerning accessibility and nondiscrimination in the providing of services.
 - j. No animals, except those assisting the disabled, shall be allowed in the outdoor restaurant seating area.
 - k. Except for an enoteca business, alcohol will only be served at sidewalk cafes in conjunction with a full meal. The sidewalk cafe shall not function as a "bar," as that term is defined in Section 3-5-1, the City's liquor control regulations, of this Code.
 - l. Alcohol will not be served at sidewalk cafes after nine thirty o'clock (9:30) P.M. on weekdays and after ten thirty o'clock (10:30) P.M. on weekends.
 - m. Any violation of the City's liquor control regulations at the sidewalk cafe premises may result in the revocation of the liquor license for the entire licensed premises in accordance with the provisions of Title 3, Chapter 5 of this Code.
 - n. Revocation or suspension of a sidewalk cafe permit by the City Manager or his/her designee pursuant to Section 7-2-6(D)(7) prohibits service of alcoholic liquor on the sidewalk cafe premises for the duration of the revocation or suspension.
6. *Standards And Procedures For Approval Of A Permit For A Sidewalk Cafe For A Type 2 Restaurant, Other Licensed Food Service Establishment, Other Licensed Retail Food Store, Type 1 Restaurant Within Two Hundred Feet Of A Residentially Zoned District, Or A Type 1 Restaurant With An Alcoholic Liquor License Outside The Core Area And Desirous Of Selling Alcoholic Liquor On The Sidewalk Cafe Premises Or an Enoteca.* The Public Works Department will review all applications for sidewalk cafes for type 2 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 two hundred feet (200') of a residentially zoned district, or type 1 restaurant with a liquor license outside of the "core area" and desirous of selling alcoholic liquor or an enoteca that wants to sell wine on the sidewalk cafe premises 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 Public Works Department, may refer the application back to the Public Works Department for additional review, or, by motion, may approve, approve with conditions, or disapprove, an application for a permit for a type 2 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 two hundred feet (200') of a residentially zoned district, or type 1 restaurant with a liquor license outside of the "core area" and desirous of selling alcoholic liquor or an enoteca that wants to sell wine on the sidewalk cafe premises, 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 Section 7-2-6(D)(5)(c). Sidewalk cafes serving alcoholic liquor must comply with the City's liquor control regulations.
- e. For sidewalk cafes licensed in the previous year, any failure to comply with the provisions of Section 7-2-6(D) or with the City's liquor control regulations during that year are not likely to have an adverse effect upon the public health, welfare, or safety in the year for which permission is sought to serve alcoholic liquor at the sidewalk cafe.
- f. The proposed sidewalk cafe is not likely to have an adverse effect upon the public health, welfare, or safety.
- g. For type 1 restaurants outside the core area not located within one block of a parking lot with spaces available during hours of operation of the sidewalk cafe in numbers to accommodate one vehicle for each table in the sidewalk cafe, the applicant seeking permission to sell alcoholic beverages at a sidewalk cafe must provide and maintain valet parking service utilizing a dedicated off street parking facility. Each such restaurant must actively encourage its customers to park in the garage, not on the street.
- h. All permitted sidewalk café staff serving alcohol to sidewalk café patrons shall acknowledge and abide by all City and State BASSET requirements.

Notwithstanding an affirmative finding on any or all of the standards in Section 7-2-6(D)(6), the City Council may deny a permit for a sidewalk cafe for a type 2 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 two hundred feet (200') of a residentially zoned district, or

may deny permission to sell alcoholic beverages on the sidewalk cafe premises of a type 1 restaurant with an alcoholic liquor license outside of the "core area" or an enoteca upon a finding that such denial is in the public interest.

7. *Revocation And Suspension.* The City Manager or his/her designee 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 requires more immediate action, revocation and suspension are effective forty eight (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 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 or his/her designee may impose conditions on reinstatement of a suspended permit or upon the grant of a permit to a licensed food service establishment, retail food store operator, or enoteca whose sidewalk cafe permit has been revoked within the previous two (2) 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: If any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

SECTION 5: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: April 13, 2015

Approved:

Adopted: April 27, 2015

April 29, 2015

Elizabeth B. Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene
Rodney Greene, City Clerk (NB)

W. Grant Farrar
W. Grant Farrar, Corporation Counsel