

11/29/2018
1/24/2018

162-O-18

AN ORDINANCE

**Amending Portions of City Code Section 7-2-6(D), "Sidewalk Cafes"
Update the Sidewalk Café Application Process and Increase Sidewalk
Café Permit Fees**

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

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

2. Permits.

- a. *Type 1 Restaurants (Not Selling Alcoholic Liquor on the Sidewalk Cafe Premises), Bakeries, or Ice Cream Stores More than Two Hundred (200) 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 (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 Design & Project Review Committee 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 (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)(6). The two hundred (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 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 (200) 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 (200) feet from a residentially zoned district shall require approval of the Design & Project Review Committee. Type 1 restaurants with an alcoholic liquor license outside the "core area" as defined in Section 3-4-1 of this Code and desirous of selling alcoholic liquor on the sidewalk cafe premises as defined in Section 7-2-6(D)(1), shall require the approval of the City Council.

- c. *Enoteca and Class K Liquor Licensees.* An enoteca or Class K liquor licensee requesting a sidewalk café permit requires approval by the Design & Project Review Committee with respect to the standards set forth in Section 7-2-6-(D)(6).
An enoteca or Class K liquor licensee seeking to sell wine on the sidewalk at the premises shall require the approval of the City Council
- 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 Design & Project Review Committee in the instance of a type 1 restaurant, bakery or ice cream store, when the use is more than two hundred (200) feet from a residentially zoned district, enoteca/Class K liquor licensee, 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 (200) feet of a residentially zoned district. A type 1 restaurant with an alcoholic liquor license outside the "core area", enoteca/Class K liquor licensee desirous of selling alcoholic liquor on the sidewalk cafe premises must first obtain an alcohol license from the City Council.
- e. *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 or Class K liquor licensee 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. No licensed operator shall assign or transfer a sidewalk café permit.
- f. *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).

SECTION 2: City Code Subsection 7-2-6(D)(3) of the Evanston City Code

of 2012, as amended, is hereby further amended to read as follows:

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, landscaping, 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 or Class K liquor licensee.
 - 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 three hundred dollars (\$300.00) for type 1 restaurants and type 2 restaurants or two-hundred and fifty dollars (\$250.00) for all other businesses. A three dollar (\$3.00) per square foot of

the public right-of-way to be occupied shall be paid by type 1 restaurants and type 2 restaurants or two dollar (\$2.00) per square foot of the public right-of-way to be occupied shall be paid by all other businesses. 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.

SECTION 3: City Code Subsection 7-2-6(D)(5) of the Evanston City Code of 2012, as amended, is hereby further amended to read as follows:

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 3-4-1 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 3-4-1 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 sell wine within the boundaries of the sidewalk cafe premises.
 - (5) A Class K liquor licensee may sell beer, wine, or liquor within the boundaries of the sidewalk café 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 Design & Project Review Committee or 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 or Class K liquor licensees, food or beverages consumed at sidewalk tables, benches, or chairs must be served by a waiter or waitress of the enoteca or Class K liquor licensees at said tables, benches, or chairs.
- e. The operator of any licensed food service establishment or licensed retail food store or enoteca or Class K liquor licensees 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 three hundred dollar (\$300.00) fee for type 2 restaurants or a two-hundred and fifty (\$250.00) for all other types of businesses.
- 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 or Class K liquor license establishment, 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 3-4-1, the City's liquor control regulations, of this Code.
- l. Alcohol will not be served at sidewalk cafes after 9:30 p.m. on weekdays and after 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.
- o. No amplified music, whether live or recorded, is allowed on sidewalk café premises.
- p. The sidewalk café permit and approved plan shall be conspicuously displayed on the exterior wall or window of the main entrance of the licensed retail food establishment during all hours of operation. The boundaries of the Sidewalk Café, including the physical boundary separating the permitted outdoor seating from the remainder of the public way, shall reflect the approved plan and shall not be modified or altered unless approved by the Design & Project Review Committee or City Council.

SECTION 4: City Code Subsection 7-2-6(D)(6) of the Evanston City Code

of 2012, as amended, is hereby further amended to read as follows:

- 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 or a Class K Liquor Licensee.*

The Design & Project Review Committee, by motion, may approve, approve with conditions, or disapprove, an application for a permit 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 (200) feet of a residentially zoned district, or enoteca/Class K liquor licensee upon finding of facts with respect to 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 Design & Project Review Committee or 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 (1) block of a parking lot with spaces available during hours of operation of the sidewalk cafe in numbers to accommodate one (1) 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.

Type 1 restaurants with an alcoholic liquor license outside the core area and desirous of selling alcoholic liquor on sidewalk café premises or enotecas/Class K liquor licensees that wants to sell wine on the sidewalk at the premises shall require the approval of the City Council. The City Council, by motion, may approve, approve with conditions, or disapprove, an application for a permit upon findings of fact with respect to any of the above standards.

Notwithstanding an affirmative finding on any or all of the standards in Section 7-2-6(D)(6), the Design & Project Review Committee 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 enoteca/Class

K liquor licensee, or any licensed food service establishment or licensed retail food store which is within two hundred (200) feet of a residentially zoned district. The City Council 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/Class K liquor licensee upon a finding that such denial is in the public interest.

- i. Appeals. An appeal of any decision of the Design and Project Review Committee in connection with the standards set forth in this section may be made to the City Council within fourteen (14) days after its transmittal to that party by filing a written notice of final appeal with the City Council. Upon receipt of the written notice of final appeal, the City Council will review the relevant evidence, documents, or information and may receive and consider new evidence. Within thirty (30) days after receipt of the written notice of final appeal, the City Council will render a written decision at a regularly scheduled meeting. Such decision may reverse, affirm, or modify, in whole or in part, the action appealed from and may include such order or determination as, in the opinion of the City Council, is proper to be made in the circumstances. If no regularly scheduled meeting occurs within thirty (30) days of receipt of the notice of final appeal, the City Council will render its written decision at the next regularly scheduled meeting thereafter. The written decision of the City Council will be final.

SECTION 5: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: 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.

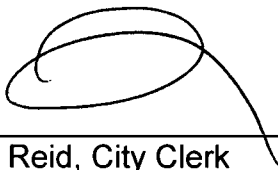
SECTION 7: Ordinance 162-O-18 shall be in full force and effect after its passage and approval.

SECTION 8: 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: January 14, 2019

Adopted: January 23, 2019

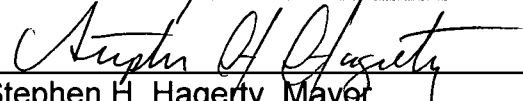
Attest:



Devon Reid, City Clerk

Approved:

February 16, 2019



Stephen H. Hagerty, Mayor

Approved as to form:



Michelle L. Masoncup, Corporation Counsel