

ORDINANCE NO. 5747

AN ORDINANCE AMENDING THE CITY OF WATERLOO CODE OF
ORDINANCES BY ESTABLISHING A NEW ARTICLE G,
SIDEWALK CAFÉ, OF CHAPTER 4, BUSINESSES RELATING TO
SALES, OF TITLE 3, BUSINESS AND LICENSE REGULATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WATERLOO, IOWA AS FOLLOWS:

Section 1. That the City of Waterloo Code of Ordinances is hereby amended by establishing a new Article G, Sidewalk Café, of Chapter 4, Businesses Relating to Sales, of Title 3, Business and License Regulations, as follows:

TITLE 3 – BUSINESS AND LICENSE REGULATIONS
CHAPTER 4 – BUSINESSES RELATING TO SALES
ARTICLE G – SIDEWALK CAFÉ

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3-4G-1: DEFINITIONS:

A. Central Business District: The Central Business District shall include all properties in downtown Waterloo as described in Section 2-2-1 of this Code.

B. Design Review: Materials used to define the perimeter of a sidewalk café in the Central Business District shall be subject to the approval of the Engineering Department and the Main Street Waterloo Redevelopment Authority, in accordance with Section 2-2-3 of this Code.

C. Establishment: A brick-and-mortar building located in the Central Business District selling food to customers and is required by the State of Iowa to hold a food establishment license, or a bar operating from a brick-and-mortar building in the Central Business District and is required by the State of Iowa to have a liquor license.

D. Operator: The owner and/or employees of the establishment responsible for operating, maintaining, and serving customers of the sidewalk café.

E. Sidewalk Café: Any group of tables and/or chairs, and its authorized decorative and accessory devices and barriers, situated and maintained upon the public sidewalk for use in connection with operating an establishment. The sidewalk café shall be attached and adjacent to the establishment. Sidewalk cafes shall be constructed, maintained, and removed at the sole cost and expense of the permittee.

F. Permittee: Any individual, person, firm, corporation, partnership, or public entity and their agents and employees, which have been issued a permit under this Article.

3-4G-2: PURPOSE:

This Article shall set forth regulations for any establishment operating a sidewalk café in the Central Business District.

3-4G-3: RIGHT TO LIMIT:

The city council shall, by resolution, have the right to limit the number of sidewalk cafes allowed in the Central Business District. An establishment may apply for a sidewalk café permit and a parklet permit. The city reserves the right to limit or prohibit such combination for the purpose of preserving public health and safety.

3-4G-4: PERMIT REQUIRED:

A. It shall be unlawful for any person to erect or operate a sidewalk café within the city without first obtaining a permit from the city, and any other state or county permits, certifications, and licenses that may be required to operate an establishment on a sidewalk café. A sidewalk café, permitted and operated in accordance with this Article shall not be considered an obstruction of the public right-of-way.

B. A permit for a sidewalk café shall be issued only to the permittee who shall include, jointly and severally, (i) the operator of the establishment and (ii) the fee simple owner of the real property upon which the establishment is located.

3-4G-5: WHERE AND WHEN PERMISSIBLE:

A sidewalk cafe regulated under this Article shall be permitted as follows:

1. Is located in the Central Business District.
2. Attached and adjacent to the establishment. If not attached and adjacent to the establishment, the perimeter of the café shall be within five (5) feet of the façade of the establishment.
3. Where the sidewalk cafe's operation is primary to and a part of the operation of its adjacent establishment.
4. Provided the area in which the sidewalk café is located extends no farther along the sidewalk's length than the actual sidewalk frontage of the establishment. The sidewalk café may extend into the frontage of a neighboring establishment with written permission from the neighboring deed holder and lessee of such deed holder. Such permission must be obtained annually and provided to the city at the time of filing an application.

3-4G-6: APPLICATION FOR PERMIT:

A. Contents of Application: Applicants for a permit under this Article shall complete and submit to the city clerk an application, fees, and supporting documentation, all of which shall include but not be limited to the following information:

1. The name, phone number, and email address of the applicant.
2. The name, address, phone number, and email address of the establishment.
3. Proof of valid food service license(s) from the state and/or county health departments if selling/handling food and/or beverages for human consumption. License number of current liquor license.
4. Certificates of insurance and indemnification agreement as required in Section 3-4G-9 of this Article.
5. A drawing showing the layout and dimensions of the proposed sidewalk café area, including size and number of tables, seating, umbrellas, location of entries to the sidewalk café. The drawing must also show the location of trees, sidewalk benches, trash receptacles,

landscaping, utility boxes, fire hydrants, poles, and other sidewalk obstructions, either existing or proposed, near the sidewalk café area.

6. Photographs, drawings, or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects relating to the sidewalk café.

7. A plan for the maintenance and cleaning of the sidewalk café including the disposal of any trash or debris generated from the operation and use of the sidewalk café by patrons of the permittee.

8. A non-refundable application fee of fifty dollars (\$50.00).

B. Filing: No application shall be accepted for filing and processing unless it conforms to the requirements of this Article. This includes a complete and true application, all of the required materials and information prescribed, and the appropriate application fee. If an applicant submits a complete application for a sidewalk café and parklet to the city clerk, that conforms to the requirements of this section, the non-refundable application fee for such applications filed simultaneously shall be fifty dollars (\$50.00).

C. Filing – New Application: An establishment filing an application for the first time may do so at any time during the year. Fees for such applications and permits shall not be prorated. The city clerk may charge an applicant a twenty-dollar (\$20.00) fee for filing an incomplete application.

D. Filing – Renewal Applications and Timely Filing: A renewal application must be filed with the city clerk's office no later than February 1st of each year. The city reserves the right to reject any application not filed in a timely manner. The city clerk may charge an applicant a twenty-dollar (\$20.00) fee for filing an incomplete application or for failing to timely file the application.

E. Application Review: Upon receipt of the complete application as required by this Article, the city clerk shall forward the application to the Fire Department, Building Department, Planning and Zoning Department, Engineering Department, and Police Department for review and approval or denial. If the applicant does not hold a liquor license, the police department is not required to review the application. Following approval by city departments, the city clerk shall forward the application to the Main Street Design Review Board for review and approval or denial.

F. Approval or denial of a sidewalk café application shall be at the discretion of the city clerk. Such discretion shall be exercised with due regard to public health, safety, and welfare considerations. City departments may impose additional requirements in particular situations when it is deemed to be necessary to ensure compliance with city ordinances public health, safety, or welfare.

3-4G-7: ISSUANCE OF PERMIT:

A. If the city clerk finds the application is complete, fully executed, and made in conformance with Section 3-4G-6 of this Article, the application fee and all outstanding fees owed to the city are paid, and upon approval by all parties listed in Section 3-4G-6(E) of this Article, the city clerk shall inform the applicant that a permit may be issued subject to payment of a non-refundable permit fee. Permit fees for sidewalk cafes with a liquor license shall be one hundred dollars (\$100.00). Sidewalk cafes without a liquor license shall receive a permit at no cost. At such time the applicant is issued a liquor license, if such issuance occurs during the permit period, a permit fee of one hundred dollars (\$100.00) shall be charged. The fees listed in this section shall become effective on January 1, 2025.

B. Term of Permit: A permit shall be valid from April 1 through November 1.

C. Only responsible businesses will be allowed to renew. The city will determine if the business responsibly managed its sidewalk cafe by the previous year's performance, calls for service, and compliance with city codes.

3-4G-8: TRANSFERABILITY OF PERMIT:

A permit issued under the provisions of this Article is not transferable in any situation to any person and is only applicable to the person filing the application.

3-4G-9: INSURANCE:

A. All permittees shall provide proof of and maintain current commercial general liability insurance having a minimum combined single limit of one million dollars (\$1,000,000.00), and Workers' Compensation coverage of no less than the statutory requirement. A certificate of insurance shall be delivered to the city clerk prior to the issuance of a permit. The certificate of insurance shall list the City of Waterloo and its elected and appointed officials, officers, employees, and agents as named additional insureds on a primary and non-contributory basis, including a waiver of subrogation in favor of city, against any liabilities that may arise in connection with the operation of the sidewalk café.

B. Apart from and separate from any insurance required under this section, the permittee shall agree in writing to indemnify, defend, and hold the City of Waterloo and its assignees and employees harmless from all losses, damages, injuries, claims, demands, and expenses in a manner resulting from or arising out of the permitted operation of the sidewalk café.

C. Permittees holding a liquor license shall be required to provide proof of dram shop insurance covering the permitted sidewalk cafe area.

3-4G-10: LITTER:

The permittee shall be responsible for keeping the sidewalk cafe area free of trash or litter and collecting and removing daily all garbage, litter, and other debris in its immediate vicinity.

3-4G-11: RESTRICTIONS ON SMOKING AND ALCOHOLIC BEVERAGES:

Operators shall enforce the following prohibitions or restrictions:

1. Smoking tobacco or using an electronic smoking device at a sidewalk café may be permitted in accordance with the Iowa Smoke-Free Air Act.

2. Alcoholic beverages may be served at sidewalk cafes pursuant to a valid liquor control license, and in accordance with state and local alcoholic beverage control laws, provided the following requirements are met:

- a. Patron entrance to and egress from the sidewalk café shall be controlled by operators of the establishment, who shall monitor the sidewalk café during times alcoholic beverages are being sold or consumed, and

- b. No alcoholic beverages may be sold or served to patrons later than 2:00 a.m. No person shall consume alcoholic beverages on the sidewalk café after 2:00 a.m., and

- c. No person shall be permitted to consume any alcoholic beverages with the sidewalk café that were not purchased on the premises, and

- d. Operators shall ensure that no person loiters in the clear path of pedestrian travel. Patrons may be in possession of an alcoholic beverage in the clear path of pedestrian travel only for the purpose of moving to the sidewalk café from the establishment or vice versa.

3-4G-12: SIDEWALK CAFÉ REGULATIONS FOR OPERATION AND CONSTRUCTION:

A. City departments listed in Section 3-4G-6(E) shall have the authority to develop policies and standard requirements for sidewalk café design and construction in addition to regulations listed in this Section or this Code, which shall be subject to approval by city council resolution.

B. The following regulations for operation and construction shall apply to all sidewalk cafes:

1. Date and Time of Operation: A sidewalk café may only operate from April 1 to November 1. Sidewalk cafes shall not operate or allow patrons to congregate in the

sidewalk café between the hours of 2:00 a.m. and 6:00 a.m. daily. If a sidewalk café is not in operation for the entire permit period, the annual permit fee shall not be prorated or refunded.

2. Location: All sidewalk cafes may be located on public right-of-way in the Central Business District. Such area must be immediately adjacent and attached to the establishment of which it is a part and provide a minimum of (5) feet of public right-of-way available for pedestrian traffic.
3. Perimeter: Sidewalk Cafes shall be aesthetically separated on three sides. This separation does not need to be of solid material but must provide an aesthetically pleasing separation from surrounding uses as determined by the city and Main Street Design Review Board. No portion of any object placed within the sidewalk cafe boundary shall extend onto the adjacent pedestrian sidewalk, without first obtaining approval from the city.
4. Accessibility: The permittee shall have a continuing obligation of compliance with the Americans with Disabilities Act, as the same may be amended from time to time. Sidewalk cafes shall be accessible from the permitted premises to which it is attached and shall not obstruct pedestrian accessibility on the public sidewalk around the sidewalk café.
5. Occupancy: Sidewalk café occupancy shall be determined by the fire marshal, in accordance with the International Fire Code.
6. Lighting: A Sidewalk Café shall be adequately lighted by use of non-obtrusive lighting, which shall not be directed toward any residential use or the public street. Electrical extension cords shall be safely secured in a manner that mitigates tripping or other hazards.
7. Amplified Sound Equipment: Amplified sound equipment may be permitted in accordance with the city noise ordinance.
8. Inspections: The city may inspect sidewalk cafes at least once per year outside of the application process at the same time inspection of the adjacent permitted establishment occurs. The city may, at its discretion, inspect a sidewalk café at any other time as deemed necessary to ensure compliance with city ordinances. Sidewalk Cafes shall comply with appropriate building, housing, and fire codes and with all other applicable state and city statutes.
9. Design Changes: Any change to the perimeter of the sidewalk café during the duration of the permit is subject to the approval of city departments and Main Street Design Review Board.
10. Damage to Public Property: Permittee shall be required to replace or mitigate entirely at permittee's expense, any damage to the public right-of-way, including existing trees, plantings, etc., resulting from construction, installation, placement, operation, maintenance or removal of the sidewalk cafe. If the permittee fails to make such repairs when directed by the city, the city may make the repairs and the cost thereof shall be assessed against the adjacent property.
11. Maintenance: Tables, chairs, umbrellas, and any objects accessory to the sidewalk café shall be maintained in a clean and attractive appearance, shall be in good state of repair at all times, and shall be maintained in accordance with the approved maintenance plan. The sidewalk café shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day in compliance with the approved maintenance plan.
12. Table, Chair, and Umbrella Materials: Awnings, umbrellas, and other decorative material accessory to the sidewalk café shall be fire retardant, pressure treated, or manufactured of fire resistive material. Tables, seating, umbrellas, and any other items accessory to the sidewalk cafe shall be of a quality design and lasting materials, and workmanship both to

ensure the safety and convenience of the users and to be compatible with the uses in the immediate vicinity of the sidewalk café.

13. Any sidewalk café with a permanent fence installed prior to the effective date of this section that does not conform to the requirements of this Article shall be permitted to remain in place. If the permanent fencing of the sidewalk café is removed, any such replacement shall comply with this Article.

3-4G-13: APPEAL:

A decision by the city clerk to deny, suspend, or revoke a permit shall be issued by written notice delivered by regular mail or electronic mail. A person may appeal a decision of the city clerk to deny, suspend, or revoke a permit by filing a written appeal to the office of the city clerk within fourteen (14) days of the date of the decision. An administrative fee of fifty dollars (\$50.00) shall be paid at the time the appeal is filed. Failure to timely file the appeal and pay the administrative fee shall constitute a waiver of the right to a hearing, and the decision shall thereupon become final. If the written appeal and administrative fee are filed in conformance with this section, a hearing shall be scheduled and conducted pursuant to 3-4G-14(B).

3-4G-14: DENIAL, SUSPENSION, OR REVOCATION OF PERMIT:

A. Any permit applied for or issued under the provisions of this Article may be denied, suspended, or revoked by the city clerk as follows:

1. Violation of any provision of this Article, any other section of this Code, or otherwise conducting business in an unlawful manner.
2. Fraud, misrepresentation, or false statements made in securing a permit and made in the course of the applicant's business.
3. Failure to cooperate with reasonable requests of any official of the city.
4. Failure of any permittee to maintain the appropriate insurance, or county, state, and federal licenses and permits, during the term of the permit.
5. Failure to pay on time any fee owed to the city.
6. Creating a public safety nuisance pursuant to Title 5, Chapter 5 of this code.
7. Failing to pass an inspection or remedy inspection violations in a timely manner.

B. Once a timely written appeal and administrative fee have been received at the office of the city clerk, the city clerk shall cause a notice to be sent by ordinary mail to the applicant or permittee at the address noted in the application. Said notice shall state that a hearing has been set before the city council not more than thirty (30) days from the date of the notice. The notice shall include the reason and grounds for the hearing, the date and time of the hearing, and the place where the hearing will be conducted. Upon such hearing, if the city council determines grounds do exist, it may uphold suspending revoking, or denying a permit.

C. Suspension: A suspension shall be for a minimum period of fourteen (14) calendar days. The suspension shall commence either after the appeal period has expired or the day immediately following the date of the hearing before the city council, at which time the permittee shall immediately cease operation on the sidewalk cafe. During the suspension, the permittee shall not conduct any business on the sidewalk cafe.

D. Revocation: The revocation shall commence either after the appeal period has expired or the day immediately following the date of the hearing before the city council, at which time the permittee shall immediately cease operation on the sidewalk cafe. If the permittee files an appeal, such sidewalk café may remain in operation through the appeal process. If the permittee loses the appeal, the permittee shall at its own expense, remove the sidewalk café within five (5) calendar days of the date of the denial of the appeal. In the event such permit is revoked, no sidewalk cafe permit shall be issued to the permittee for one (1) subsequent sidewalk café season following the revocation.

E. Liquor License: In the event of revocation, the city clerk shall notify the Iowa Alcoholic Beverages Division. The permit holder may appeal the revocation to the Iowa Alcoholic Beverages Division Hearing Board, pursuant to Section 123.32, Code of Iowa, or any other applicable code section. Revocation or suspension of authorization by the city of operation of a sidewalk café shall not affect the licensing of the principal establishment unless separate action to suspend or revoke that license or permit is also initiated by the City Council.

3-4G-15: REMOVAL OF SIDEWALK CAFÉ:

The city reserves the right to require a sidewalk café to temporarily suspend or cease operation or remove the sidewalk café for an emergency or any other reason so that the city may access public right of way. The cost to remove and clean up a sidewalk café shall be at the permittee’s expense. In the event that city infrastructure causes damage to the sidewalk café, the city shall not be liable for such damage. Sidewalk cafes shall be removed within five (5) business days of the expiration of the permit. If the permittee fails to remove the sidewalk café when directed by the city or within fourteen (14) days after the expiration of the permit, the city may remove the sidewalk café and the cost thereof shall be assessed against the adjacent property.

3-4G-16: PENALTY:

Any person or establishment that violates any of the provisions of this Article shall be guilty of a municipal infraction and fined as provided in subsection 1-3-2 of this Code.

3-4G-17: SEVERABILITY:

If any provision or clause of this Article or its application to any person or establishment in any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Article, which can be given effect without the invalid provision, or application, and to this end, the provisions of this Article shall be severable.

INTRODUCED:	January 16, 2024
PASSED 1st CONSIDERATION:	January 16, 2024
PASSED 2 nd CONSIDERATION:	January 16, 2024
PASSED 3 rd CONSIDERATION:	January 16, 2024

PASSED AND ADOPTED this 16th day of January 2024.

Quentin Hart

Quentin Hart, Mayor



ATTEST:

Kelley Felchle

Kelley Felchle, City Clerk



SEAL

