

To: Safety and Licensing Committee

From: Appleton Downtown Inc.

Subject: Amendment request to current Municipal Code Chapter 9, Division 4: 9-261

On behalf of the members we represent, Appleton Downtown Inc. respectfully submits the following request to remove restriction number 4: *the sidewalk café must be enclosed with a freestanding decorative barrier* and 8: *an employee must be present between 4:00p.m. and 9:30 p.m. Monday through Friday and between 11:00 a.m. and 9:30 p.m. on Saturday and Sunday* from Municipal Code Chapter 9, Division 4: 9-261

Municipal Code Chapter 9, Division 4: 9-261 Restrictions on use of permit include for following:

- (b) If a permit holder is going to serve alcoholic beverages within the parameters of the sidewalk café, the permit holder shall also be subject to the following:
 - (1) The permit holder must hold a Class B license.
 - (2) The description for the premise on the Class B license must include the parameters of the sidewalk café.
 - (3) The permit holder must obtain a Special Use Permit.
 - (4) The sidewalk café must be enclosed with a freestanding decorative barrier.
 - (5) The permit holder can begin serving alcoholic beverages in the sidewalk café at 4:00 p.m. Monday through Friday and 11:00 a.m. on Saturday and Sunday. All alcoholic beverages must be removed from the sidewalk café by 9:30 p.m.
 - (6) A licensed operator working for the permit holder must serve the alcoholic beverages in the sidewalk café.
 - (7) Customers are not allowed to carry alcoholic beverages outside the sidewalk café.
 - (8) An employee must be present between 4:00 p.m. and 9:30 p.m. Monday through Friday and between 11:00 a.m. and 9:30 p.m. on Saturday and Sunday.

Whereas:

Outdoor dining is an amenity that brings vibrancy and energy to the Downtown central business district and is embraced by our community as an attractive element of the downtown experience.

Outdoor dining encourages a safe and attractive walkable district that adds to the creative placemaking of the downtown.

There have been no reported incidents that we are aware of regarding inappropriate passing of alcohol from an outdoor table.

Outdoor alcohol service can be adequately monitored by table servers throughout the dining experience.

The current restrictions create a financial barrier to the continuation of the outdoor licensed café areas. We have seen a decline in licensed establishments utilizing the outdoor cafés

because of the added financial cost they incur. Their customers expect the opportunity to drink their beverage of choice when ordering food and if they decide to sit outdoors the establishment must now dedicate an employee to sit outside and watch them consume their beverage and meal. By eliminating the requirement of having a monitor we extend the opportunity to further enhance the district and sustainability of downtown businesses.

We further request that the requirement for a barricade around the perimeter of the café also be eliminated. In most cases the border used provides minimal security and further clutters the café area.

Sample of economic impact with a monitor.

We offer the following example of how a paid employee requirement impacts profitability for a business with four outdoor tables.

6 hours labor per day x \$9.00 = \$54.00.

They would have to do \$540.00 in sales in order to net \$54.00 in profit in order to pay the employee.

That is an average of \$135 per table in 5.5 hours or \$24.55 in sales per hour at each table. Many times only one or two of the tables are in use at a time.

It would be almost impossible to reach \$540 in order to break even. Weekends have similar results, just with higher sales numbers to reach.

DIVISION 4. SIDEWALK CAFES

9-256. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amenity Strip shall mean the area between the curb and the defined pedestrian right-of-way along College Avenue between Richmond Street and Drew Street. On all other streets, amenity strip shall mean a minimum four- (4-) foot width between the curb and an eight- (8-) foot pedestrian right-of-way.

Sidewalk Café shall mean any group of tables and chairs maintained upon the amenity strip for use directly in front of an establishment with a valid food and drink permit.

(Ord 51-05, §1, 5-24-05; Ord 114-06, §1, 9-26-06) 9-257. Permit required.

No merchant shall have a sidewalk café within the City without first obtaining a Street Occupancy Permit from the Department of Public works.

(Ord 51-05, §1, 5-24-05)

9-258. Application for permit; permit fees.

In order to obtain a Street Occupancy Permit required under this division, a written request shall be made to the Department of Public Works and shall contain such information which the Department may prescribe and require and shall be accompanied by payment of the applicable fee.

(Ord 51-05, §1, 5-24-05)

9-259. Granting; transfer.

Upon approval of the written request by the Common Council, the Department of Public Works shall issue the Street Occupancy Permit. Each permit shall be numbered in the order in which it is issued and shall contain the approval date, the location, and the name of the permit holder. No permit shall be transferable either to the permit holder or the location.

(Ord 51-05, §1, -24-05)

9-260. Appeal of denial.

If the investigating authority denies a written request for a Street Occupancy Permit under this division, the Department of Public Works shall forthwith notify the requestor by certified mail, return receipt requested, of the denial and the reason therefore. The notice shall indicate the date and time of the review of the denial by the LICENSES, PERMITS AND BUSINESS REGULATIONS Supp. #81

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Municipal Services Committee and the right of the requestor to appear before the Committee. The Municipal Services Committee shall hear any person for or against the granting of the permit and shall report its recommendation to the Common Council, which shall grant or deny the permit.

(Ord 51-05, §1, 5-24-05)

9-261. Restrictions on use of permit.

Street Occupancy Permits issued under this division shall not be valid on the following special event days: Flag Day Parade, License to Cruise, Oktoberfest, Christmas Parade and any day that planned/permitted special event would close the street in front of the sidewalk café for normal use or traffic.

(Ord 51-05, §1, 5-24-05)

9-262. Conduct of business generally.

(a) A permit holder under this division shall be subject to the following:

(1) The parameters of the sidewalk café shall be limited to the area of the amenity strip located immediately in front of the establishment and shall not extend beyond the width of the establishment's property line.

(2) No sidewalk café may obstruct the defined pedestrian right-of-way adjacent to the amenity strip.

(3) A permit holder shall keep the parameters of the sidewalk café and the surrounding area in a clean and sanitary condition.

(4) All food, beverages or other items shall only be served within the sidewalk café by employees of the permit holder and only to patrons who are seated at a table within the sidewalk café.

This section shall not apply to establishments that solely offer over the counter service and are not licensed to sell alcoholic beverages.

(5) During the sidewalk café's operating hours, patrons being served within the sidewalk café shall count towards the premise's established capacity.

(6) A minimum width of twelve (12) feet between the back of curb and the building face must exist; with a minimum of eight (8) feet available for pedestrian traffic and four (4) feet available for tables and chairs.

(7) The sidewalk café must be adjacent to the street with marked on-street parking stalls to provide a physical barrier between vehicular traffic and the café.

(b) If a permit holder is going to serve alcoholic beverages within the parameters of the sidewalk café, the permit holder shall also be subject to the following:

(1) The permit holder must hold a Class B license.

(2) The description for the premise on the Class B license must include the parameters of the sidewalk café.

(3) The permit holder must obtain a Special Use Permit.

(4) The sidewalk café must be enclosed with a freestanding decorative barrier.

(5) The permit holder can begin serving alcoholic beverages in the sidewalk café at 4:00 p.m.

Monday through Friday and 11:00 a.m. on

Saturday and Sunday. All alcoholic beverages must be removed from the sidewalk café by 9:30 p.m.

(6) A licensed operator working for the permit holder must serve the alcoholic beverages in the sidewalk café.

(7) Customers are not allowed to carry alcoholic beverages outside the sidewalk café.

(8) An employee must be present between 4:00 p.m. and 9:30 p.m. Monday through Friday and between 11:00 a.m. and 9:30 p.m. on Saturday and Sunday.

(c) The Chief of Police or designee may close a sidewalk café at any time the health, safety, welfare or good order of the City is threatened.

(Ord 51-05, §1, 5-24-05; Ord 115-06, §1, 9-26-06; Ord 138-09, §1, 8-11-09)