



MANAGER'S MEMO ITEM

ITEM: Ordinance Amending the Sidewalk Café Fees

WORKSHOP DATE: May 18, 2005

PREPARED BY: Enza Petrarca, Village Attorney

PURPOSE: To amend the sidewalk café fees

BACKGROUND:

As directed by Council, Staff has revised the sidewalk café ordinance to reduce the fees. The proposed ordinance states that an applicant shall be required to pay a license fee in the amount of one dollar (\$1.00) per square foot of the public right of way to be occupied, but shall not exceed five hundred dollars (\$500.00).

ATTACHMENTS:

1. Ordinance Amending the Sidewalk Café Fees

STAFF RECOMMENDATION:

Staff recommends that the Council adopt the proposed ordinance at the June 7, 2005 Council Meeting.

REQUESTED COURSE OF ACTION:

That the Village Council adopt the proposed ordinance at the June 7, 2005 Council Meeting.

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ORDINANCE NO. _____

AN ORDINANCE AMENDING FEES FOR A SIDEWALK CAFE

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by **shading**/underline; deletions by ~~strikeout~~):

Section 1. That Section 19.49. is hereby amended to read as follows:

19.49. Sidewalk Cafes.

(a) No person shall operate or maintain a sidewalk cafe on property occupied, maintained or controlled by the Village without first having obtained a license therefor or subject to the conditions contained herein, a license agreement and any other such terms and conditions as the Village may direct. Applications for a sidewalk cafe shall be made on forms provided by the Village by the owner or lessee of the property on which such sidewalk cafe is to be operated or maintained. No sidewalk cafe license shall be issued unless the Village Manager has given notice to the Village Council at least seventy-two (72) hours prior to a regularly scheduled Village Council meeting. At such meeting the Village Council may, in its discretion, direct the Village Manager to deny the sidewalk cafe license to the applicant therefor, or impose any additional conditions or restrictions as it deems appropriate. For purpose of this section, the following terms are defined:

1. "Sidewalk Cafe" means a dining area situated upon public property, including a sidewalk, and operated as an integral part of an adjacent restaurant where food and beverages are sold or served for consumption on premises.
2. "Concentrated Central Business District" means that area so described in the Downers Grove Zoning Ordinance.
3. "Restaurant" means an establishment where food or beverages are sold or served and which includes table seating within such establishment for consumption on premises. Such business may also include "take out" sales in addition to sales for on-site consumption.

(b) The decision to grant or deny an application under this section shall be within the sole discretion of the Village Council. Because each application will involve different property and issues, the Village Council is expected to consider a number of factors, including but not limited to the following:

- (1) The location and area surrounding the proposed sidewalk cafe.
- (2) Any safety concerns.
- (3) The impact on surrounding properties, uses and occupants.
- (4) The impact on pedestrian and vehicular traffic.
- (5) The nature of the property and whether a sidewalk cafe is appropriate within this area.
- (6) The operation of the proposed sidewalk cafe.
- (7) The past operation of the licensee within the Village.
- (8) Whether alcoholic liquor will be served within the sidewalk cafe.

(c) A sidewalk cafe shall be subject to such conditions and restrictions as may be directed by the Village Council to protect the public health, safety or welfare, including but not limited to the following:

- (1) The applicant's restaurant shall be located within the Concentrated Central Business District and in a building immediately adjacent to the public area designated in the license application.
- (2) Fencing or a removable barrier may be required.
- (3) Sidewalk cafes shall only be open to the public during the normal business hours of the adjacent restaurant, or such hours as the Village may direct. Operation of the cafe shall be limited to April 1st through October 31st. Appurtenances and/or portable fencing shall be removed from the public property when the sidewalk cafe is not in use or operation.

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(4) Entertainment and electronically amplified or reproduced music or sound may be prohibited or restricted as the Village Council may direct. Live entertainment is expressly prohibited in the Sidewalk cafe.

(5) The sidewalk cafe shall be established and operated in a safe and reasonable manner with due regard for the health and safety of persons and property. In no event shall the sidewalk cafe obstruct vehicular or pedestrian traffic in an unsafe or unreasonable manner.

(6) The sidewalk cafe shall be established and operated in a clean, well maintained and sanitary manner. In particular, but without limitation, the licensee shall promptly and properly collect and dispose of all litter, trash and other waste materials associated with the sidewalk cafe, including materials in the adjacent public right of way originating from the sidewalk cafe. The Village shall have the right to remove or cause the removal of any debris, and otherwise maintain the public property of the sidewalk cafe, in the event the licensee fails to promptly and properly clean and maintain such area. In such event, the licensee shall promptly reimburse the Village in taking such action. The Village reserves all rights to collect the costs associated with such clean-up, including the right to draw upon the letter of credit. If the costs exceed the letter of credit, the Village shall reserve the right to file a lien against the property.

(7) Except as expressly authorized in the license agreement, no cooking or food preparation shall be permitted in a sidewalk cafe.

(8) Except as expressly authorized in the license agreement, all tables, chairs, furnishings, equipment and other items of personal property shall be removed from the public right of way at the close of business each day.

(9) Except as expressly authorized in the license agreement, where a structure or other facility, such as deck, is permitted as part of the sidewalk cafe, it shall be removed, and the right of way restored, within 30 days following expiration or termination of the license agreement.

(10) The applicant shall provide the Village with a letter of credit, in amounts and on upon terms as may be directed by the Village Manager. The letter of credit shall be maintained by the licensee throughout the term of the license and such other period of time during which licensee operates or is engaged in the removal of its facilities. Such letter of credit shall be retained until an inspection is completed upon the public property to ensure that there has been no damage to it as a result of the use thereof. Applicant shall be responsible for any and all fees associated with said inspections.

(11) To the fullest extent permitted by law, the applicant shall defend, indemnify and hold harmless the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees, for any and all claims for damages against arising out of injuries which may be incurred as a result of the use of the right of way by the licensee.

(12) Applicant shall maintain throughout the term of the license, general comprehensive liability insurance; hazard insurance, including comprehensive form, premises-operations, explosions and collapse hazard, underground hazard and products completed hazard; liquor liability insurance, commonly known as dram shop, if applicable; automobile liability insurance; and workers compensation insurance-all naming as additional insured the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees, in such minimum amounts as may be set by the Village Manager. The insurance required by this section shall be maintained by the licensee throughout the term of the license and such other period of time during which applicant operates or is engaged in the removal of its facilities.

(13) The applicant shall be required to enter into a written license agreement with the Village, in such form as may be approved by the Village Council, incorporating applicable conditions and restrictions.

(14) The applicant shall not be permitted to sell or serve alcoholic liquor at the sidewalk cafe except in conformance with an appropriate liquor license issued pursuant to Chapter 3 of the Downers Grove Municipal Code. Alcohol shall be served at sidewalk cafes only in conjunction with meal service. The cafe shall not function or shall not otherwise be advertised as a "beer garden". All alcoholic liquor shall be provided from the interior bar or service area. No portable bars or service counters shall be permitted in the sidewalk cafe.

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(15) Applicant shall be required to pay a license fee in the amount of one dollar (\$1.00) per square foot of the public right of way to be occupied, but shall not exceed five hundred dollars (\$500.00).

(16) Applicant shall not interfere with pedestrian or vehicular traffic, or reduce the open, unobstructed portion of the public sidewalk to less than five (5) feet.

(d) Any person seeking approval of a sidewalk cafe shall submit to the Village Manager a written application for a license to conduct a sidewalk cafe in a form provided by the Village and the required application fee as provided in paragraph e, below . Such application shall include such information as the Manager may direct, including but not limited to, the following:

(1) The name, address and telephone number of the applicant and of the adjacent restaurant and its manager.

(2) An overall site plan showing the proposed location and dimension of the sidewalk cafe in relation to the adjacent street and sidewalk including that part of the sidewalk to remain outside of the cafe. This shall include a detailed description and site plan regarding any proposed improvements within the public right of way.

(3) A floor plan specifying the location of ingress, egress, tables, decorations, furnishings, equipment, removable perimeter barriers, the total square footage to be occupied by the sidewalk cafe and the maximum seating capacity.

(4) An operations plan specifying the proposed dates, days and hours of operation of the adjacent restaurant, the number of wait staff, security staff and maintenance personnel and a proposed menu, including alcoholic beverages, if applicable.

(5) A statement regarding whether the applicant will be serving alcoholic liquor at the sidewalk cafe as well as information regarding the current or proposed liquor license status of the applicant.

(6) A proposed license agreement on forms provided by the Village Manager.

(7) Such other information as the Manager may direct.

(e) An application fee shall be included in the initial submission of the application in order for the application to be considered. The application fee shall be as follows:

(1) Application fee \$150.00

(f) In order to protect the public health, safety and welfare, the Sidewalk cafe shall be inspected prior to opening the cafe and at the conclusion of the license agreement. Licensee shall be responsible for any and all fees associated with said inspections.

(g) In order to allow staff review and provide adequate time for consideration, applications and all required submittals must be furnished to the Village Manager one (1) month prior to the requested opening of the cafe. Late applications may result in a delayed opening.

(h) The Village Manager shall review the completed application and transmit it to the Village Council along with such recommendations as the Manager may have regarding whether the application should be approved and, if so, upon what conditions.

(i) A license issued pursuant to this Section shall not be transferable or assignable and shall not confer any property rights in the underlying right of way.

(j) Any license granted under this Section shall be subject to the absolute and primary right of the Village to protect the public health safety and welfare. In the event of an emergency, or to prevent or protect against an immediate threat to the public health safety and welfare, the Village Manager may order the immediately cessation of business, and removal of any or all equipment and facilities from public right of way. In addition, the Village Manager may suspend or revoke any license issued under this Section in the event it is determined that the licensee has failed or refused to truthfully complete the application, or if the licensee has failed or refused to comply with the regulations of this Section, the license agreement or with other applicable law.

(k) The Village Manager may delegate any duty or power set forth in this section, including but not limited to, the conduct of the informal hearing and issuance of any final order, to such person as the Village Manager may designate.

(l) The Village shall have the right to remove or cause the removal of any equipment, structure or

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other facility of the applicant, and/or restoration of the right of way, in the event such items are not promptly and properly removed by the licensee and/or the right of way restored, pursuant to this Section, the license agreement or a lawful order of the Village Manager. In such event, the Village, at its discretion, may store, sell or otherwise dispose of such items as it deems appropriate. The applicant shall promptly reimburse the Village for all expenses in removing storage or disposal of such items and restoring the right of way. The Village reserves all rights to collect the costs associated with such actions, including the right to draw upon the letter of credit. If the costs exceed the letter of credit, the Village shall reserve the right to file a lien against the property.

(m) In the event that a Sidewalk Cafe interferes with a public event planned on the public right-of-way, the public event shall take precedence. The Village will endeavor to notify the applicant thirty (30) days in advance of the scheduled event that will require the closure of the sidewalk cafe and the use of the public right-of-way.

Section 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____
Village Clerk