



# Office of the City Clerk

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## Legislation Details (With Text)

**File #:** SO2015-5379

**Type:** Ordinance **Status:** Passed

**File created:** 7/29/2015 **In control:** City Council

**Final action:** 1/13/2016

**Title:** Amendment of Municipal Code Chapter 10-28 by adding new Article XIV entitled "Pilot Program Establishing Curbside Cafes"

**Sponsors:** Tunney, Thomas, Smith, Michele

**Indexes:** Ch. 3 Business & Commercial Districts, Ch. 4 Downtown Districts, Ch. 5 Manufacturing Districts, Ch. 6 Special Purpose Districts, Ch. 9 Use Regulations, Ch. 17 Terminology & Measurements, Land Use & Zoning-Tables & Index, Ch. 28 Structures On & Under Public Ways

**Attachments:** 1. O2015-5379.pdf, 2. SO2015-5379.pdf

Date	Ver.	Action By	Action	Result
1/13/2016	1	City Council	Passed as Substitute	Pass
1/12/2016	1	Committee on Pedestrian and Traffic Safety	Recommended to Pass	
1/12/2016	1	Committee on License and Consumer Protection	Substituted in Committee	Pass
7/29/2015	1	City Council	Referred	

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### SUBSTITUTE ORDINANCE

#### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Chapter 10-28 of the Municipal Code of Chicago is hereby amended by adding a new Article XIV, section 10-28-1000 through and including section 10-28-1160, as follows:

#### ARTICLE XIV PILOT PROGRAM-CURBSIDE CAFES.

##### 10-28-1000 Pilot program.

A curbside cafe permit pilot program is hereby established. The program shall run from January 1, 2016 to December 31, 2017.

##### 10-28-1010 Definitions.

Wherever used in this Article, the following definitions apply:

"Alcoholic beverages," "Commissioner," "Department" and "Food" have the meaning ascribed to those terms in section 10-28-800.

"Curbside cafe" means that portion of an immobile retail food establishment operating, pursuant to a permit, in a section of the traffic lane closest to the curb that is normally used for parking.

"Immobile retail food establishment" means a retail food establishment issued a retail food license for a fixed location inside a building.

"Permittee" means a person who has been issued a curbside cafe permit.

**10-28-1020 Permit required for curbside cafe.**

No person shall operate a curbside cafe without first obtaining a permit under this Article. A curbside cafe permit shall be valid from May 1<sup>st</sup> to and including September 30<sup>th</sup> of the year of its issuance. The fee for the permit shall be \$600.00. In addition to the permit fee, the permittee shall pay an amount equal to any anticipated lost parking meter revenue for any parking space used for the operation of the curbside cafe.

**10-28-1030 Permit application and approval procedure.**

An application for a curbside cafe permit shall be submitted to the commissioner in a form and format prescribed by the commissioner. The application shall be filed in the same year in which the permit will be issued. The applicant shall include:

a) Proof that the applicant holds a valid retail food establishment license for an immobile retail food establishment.

b) Proof of insurance as required by this Article.

c) A detailed plan for the curbside cafe, complying with applicable regulations and demonstrating that the curbside cafe shall not unreasonably interfere with: (1) adequate pedestrian or vehicular flow, (2) pedestrian and vehicular safety; or (3) the aesthetic quality of

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the surrounding area. The plan shall also clearly show the location of any fire hydrant, protected bicycle lane, intersection, bus stop, and loading zone, and indicate the distance of such items from the proposed location of the curbside cafe.

d) Applications shall be processed on a first-in-time basis. If two or more applications are filed at the same time for a location on the same side of a block and both applications meet the requirements of this Article for approval, the commissioner shall conduct a lottery to determine which application to approve.

e) Any other pertinent information reasonably required by the commissioner.

**10-28-1040 Insurance required.**

Each applicant shall furnish proof of insurance evidencing commercial general liability insurance with limits of not less than \$500,000.00 per occurrence, \$1,000,000.00 in the aggregate combined single limit, for bodily injury, personal injury and property damage liability. The insurance shall provide for 30 days prior written notice to be given to the commissioner if coverage is substantially changed, canceled or non-renewed.

The city shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operations of a curbside cafe; and the permittee shall indemnify, defend and hold the city harmless from any loss that results directly or indirectly from the permit issuance.

If alcoholic beverages will be served at the curbside cafe, the applicant shall provide proof of liquor liability (dramshop) insurance for the curbside cafe as required by section 4-60-040(c)(2) of this code.

Each permittee shall maintain the insurance coverage required under this section for the duration of the permit. The proof of insurance shall be presented to the commissioner prior to the issuance of a permit. Failure of the permittee to maintain the insurance shall result in the revocation of the curbside cafe permit.

**10-28-1050 Review of application.**

(a) (1) The commissioner shall send a copy of the application to commissioner of transportation. Within five business days of receipt of the application from the commissioner, the commissioner of transportation shall review the application to determine whether the location of the curbside cafe will unduly interfere with pedestrian or vehicular traffic or parking within the area. If the commissioner of transportation determines that the location of the curbside cafe will unduly interfere with either pedestrian or vehicular traffic or parking within the area, the commissioner shall deny the application pursuant to subsection (c).

(2) The commissioner shall notify the alderman of the affected ward of the application and solicit a recommendation based on the alderman's analysis of any relevant factors set forth in this Article. The alderman shall have 10 business days after such notice is sent to respond in writing with his specific recommendation, if any.

b) If the commissioner finds that the applicant meets the requirements of this Article and the regulations promulgated hereunder, the commissioner shall approve the application.

c) If the commissioner finds that the applicant fails to meet the requirements of this Article or the regulations promulgated hereunder, the commissioner shall deny the application.

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The commissioner shall notify the unsuccessful applicant in writing of the denial and the reasons therefor within ten business days after the denial.

**10-28-1060 Compliance with plan and other components of application.**

a) Each curbside cafe shall comply in all respects with the specifications set out in the plan submitted to the commissioner, and with the other components of the application.

b) In the event that the application, including the plan, becomes inaccurate or incomplete in any respect as a result of circumstances or events outside the control of the permittee, the permittee shall notify the commissioner within three business days of such circumstances or events.

c) Before taking any action that would result in the application, including the plan, becoming inaccurate or incomplete in any respect, the permittee shall seek the prior approval of the commissioner.

d) Upon being notified of an actual or contemplated change pursuant to this section, the commissioner, in consultation with the commissioner of transportation, shall review the change to determine if such change is insubstantial or substantial, using the same criteria as relevant to the commissioner's consideration of an initial application. If such change is insubstantial and if the application, as so changed, meets the criteria for an initial application, the commissioner shall approve the change. If such change is insubstantial and if the application, as so changed, does not meet the criteria for an initial application, the commissioner shall disapprove the change. If such change is substantial, a new permit application shall be required.

**10-28-1070 Permit - Assignment or transfer prohibited.**

No permittee shall assign or transfer a curbside cafe permit.

**10-28-1080 Restrictions on issuance of a permit.**

a) Only one curbside cafe permit shall be issued for a location on the same side of a block.

b) A curbside cafe is only permitted on a pedestrian street designated pursuant to section 17-3-0503-D that has a sidewalk with less than 8 feet of width in front of the immobile retail food establishment.

c) The length of the curbside cafe shall not exceed the length of the immobile retail food establishment adjacent to the sidewalk, or 40 feet, whichever is less.

d) The permitted outdoor seating area of curbside cafe must be located in the traffic lane by the curb that is immediately in front of the immobile retail food establishment.

e) A curbside cafe is prohibited:

- 1) in a protected bicycle lane;
- 2) within 30 feet from a stop sign;
- 3) within 30 feet of a controlled intersection and 20 feet from all other intersections;
- (4) within 15 feet from a bus stop, loading zone, or fire hydrant; or
- (5) within 1,200 feet from Wrigley Field.

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(f) The location of the curbside cafe shall not unduly interfere with pedestrian or vehicular traffic or parking in the area.

g) No curbside cafe permit shall be issued for any location: (1) within the central business district, as that term is defined in section 9-4-010; or (2) where a sidewalk cafe permit has been issued to the applicant.

h) No curbside cafe shall extend into the street beyond the parking lane.

#### **10-28-1090 Operational conditions.**

a) Curbside cafes shall not operate between the hours of 10 p.m. and 8 a.m., Sunday through Thursday, or between the hours of 11 p.m. and 8 a.m., Friday and Saturdays.

b) A permittee shall not permit any music, whether live or recorded, or other amplified sound to be played at the curbside cafe, other than through headphones.

c) The permittee shall: (1) install and maintain a physical boundary separating the permitted outdoor seating area from the remainder of the traffic lanes; and (2) construct the curbside cafe to make its floor height the same height as the sidewalk in order to avoid a tripping hazard. The construction, configuration and other characteristics of the curbside cafe floor and physical boundary, including landscaping, shall be set forth by regulation.

d) The permitted outdoor seating area of the curbside cafes shall be for the exclusive use of the immobile retail food establishment stated on the application. Sharing or other joint use of a curbside cafe location by more than one retail food establishment shall not be permitted.

e) Only the service of food and alcoholic beverages at curbside cafes are authorized by this Article.

#### **10-28-1100 Alcoholic beverage service - Requirements.**

If alcoholic beverages are served at the curbside cafe, the permittee must have a valid liquor license. Alcoholic beverages supplied by the customer or by any person other than the permittee will not be allowed at curbside cafes.

#### **10-28-1110 Compliance with code and regulations required.**

A permittee and his employees shall be subject to and comply with all applicable laws, regulations and other requirements and standards for retail food establishments and the sale of alcoholic beverages.

**10-28-1120 Promulgation of regulations; force and effect.**

The commissioner is authorized to promulgate regulations to carry out the purposes of this Article, including without limitation regulations governing:

a) The location, arrangement and design of curbside cafes to ensure the flow of pedestrian and vehicular traffic, the safety of pedestrians and vehicular traffic, and the access to bus stops, loading zones and fire hydrants;

b) The size, design and other specifications for tables and serving equipment to be used by a permittee, and the design of enclosures or partial enclosures;

c) The types of food and beverages that may be served at curbside cafes;

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d) The time periods during which an application can be made for a curbside cafe permit;

e) Landscaping and other aesthetic components of the curbside cafe; and

f) Any other matter pertaining to this Article.

In promulgating the rules regarding the location, arrangement and design of any curbside cafe, the commissioner shall consult with the commissioner of transportation.

**10-28-1130 Enforcement.**

a) The commissioner is authorized to take such action as necessary to enforce the provisions of this Article, including conducting on-site inspections of curbside cafes.

b) Upon request by the commissioner, a permittee shall provide for inspection any document required by this Article, including the curbside cafe permit, the plan for the curbside cafe, and proof of insurance.

c) Any curbside cafe for which a permit is required by this Article, and which has failed to obtain such permit, may be closed by the commissioner until such permit is procured. Upon being notified of closure, all curbside cafe activity must cease, and all obstructions in the public way, including boundaries, tables and chairs, must be removed.

d) Any curbside cafe for which a permit is in effect under this Article may be temporarily closed by the commissioner, if the cafe has been issued notices of violation on three different days during the permit period, each of which pertains to a significant breach of public safety. Non-limiting examples include: (1) cafe encroachment on the public way beyond plan specifications, (2) a missing or incomplete barrier, or (3) signs, serving tray stands or other objects in the public way. Upon being subjected to a temporary closure, the permittee may provide to the commissioner evidence that the objectionable conditions have been fully remedied. Such temporary closure shall remain in effect until the commissioner is satisfied that the violations have been properly remedied and will not reoccur.

**10-28-1140 Violation - Penalties.**

a) Any person who violates any of the provisions of this Article or regulations promulgated hereunder shall be subject to a fine of not less than \$200.00 nor more than \$500.00 for each offense and each day such a violation continues shall be deemed a separate and distinct offense.

b) In addition to any other fine or penalty provided, and any person who knowingly interferes with or impedes the commissioner in the enforcement of this Article may be subject to incarceration for a term not to exceed six months.

c) Any curbside cafe in operation without a valid permit or subject to section 10-28-1130(d) is subject to removal from the public way by the commissioner. The provisions of Section 10-28-010(i) of the code shall apply to the removal of any portion of a curbside cafe, from the public way, whether for unpermitted operation or for obstruction of public way; provided, however, that the amount of the fine for a violation shall be as set forth in this section.

**10-28-1150 Violation - Permit revocation.**

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In addition to fines and other penalties as provided for herein, three or more violations of any provision of this Article or regulations promulgated hereunder within a permit period shall subject the permittee to revocation of the curbside cafe permit by the commissioner.

**10-28-1160 Sunset.**

This ordinance shall expire on December 31, 2017.

SECTION 2. This ordinance takes effect on January 1, 2016.

Thomas M. Tunney Alderman, 44<sup>th</sup>  
Ward

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**02015-5379**

Chicago, January 13, 2016

To the President and Members of the City Council:

Your Committee on License and Consumer Protection, having under consideration a substitute ordinance introduced by Aldermen Tunney and Smith (which was referred on July 29, 2015), amending Chapter 10-28 of the Municipal Code of Chicago establishing a Pilot Program for Curbside Cafes, begs leave to recommend that Your Honorable Body pass the substitute ordinance which is transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the committee on January 12, 2016.

CHAIRMAN, COMMITTEE ON LICENSE AND CONSUMER PROTECTION

Respectfully submitted,