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2/9/2011	1	City Council	Referred	

OFFICE OF THE MAYOR

CITY OF CHICAGO
RICHARD M. DALEY
MAYOR

February 9, 2011

TO THE HONORABLE, THE CITY COUNCIL OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Business Affairs and Consumer Protection, I transmit herewith an ordinance amending Chapter 10-28 of the Municipal Code regarding sidewalk cafes.

Your favorable consideration of this ordinance will be appreciated.

ORDINANCE

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

SECTION I. Chapter 10-28 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and by inserting the language underscored, as follows:

10-28-800 Definitions.

Wherever used in this article, unless the context clearly indicates otherwise:

(A) "Alcoholic beverages" means and includes alcohol, spirits, wine and beer.

(B) "Commissioner" means the commissioner of business affairs and consumer protection."

(C) "Department" means the department of business affairs and consumer protection of the City of Chicago.

(D) "Food" means any raw, cooked or processed edible substance or ingredient, used or intended for use in whole or in part for human consumption, and shall include nonalcoholic beverages allowed to be sold in accordance with this article, but shall not include alcoholic beverages.

(E) "Indoor retail market" means any building under common ownership or management containing a group of commercial establishments which offer a variety of retail, restaurant or service uses and in which at least two of the establishments hold a valid retail food establishment license.

(F) "Person" has the meaning ascribed to the term in Section 1-4-090(e) of the code.

(F) (G) "Sidewalk cafe" means a portion of an immobile retail food establishment or an indoor retail market located on a public right-of-way, whether directly adjacent to, or in close proximity to, the retail food establishment or the indoor retail market.

10-28-805 Permit required for sidewalk cafe.

A permit, which shall be known as a sidewalk cafe permit, shall be required to operate a sidewalk cafe. A sidewalk cafe permit shall be valid from March 1 st to and including December 1 st of the year of its issuance. The fee for a sidewalk cafe permit shall be determined by the ~~director~~ commissioner, taking into account land values, and shall be set forth by regulation.

10-28-810 Permit application and approval procedure.

Application for a sidewalk cafe permit shall be submitted to the ~~director~~ commissioner, who shall make available forms for this purpose. The applicant shall provide such information on the application as the ~~director~~ commissioner may require by regulation, including:

(A) Proof that the applicant holds a valid retail food establishment license issued to the establishment that will provide food for the sidewalk cafe, or that the applicant is the owner or manager of an indoor retail market. The owner or manager of the indoor retail market is not required to obtain a retail food establishment license.

(B) A proof of insurance as required by this article.

(C) A plan for the sidewalk cafe, complying with applicable, regulations, and demonstrating that the sidewalk cafe shall not unreasonably interfere with: (1) adequate pedestrian flow, (2) access to building entrances; (3) pedestrian and traffic safety; and (4) the aesthetic quality of the surrounding area.

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10-28-815 Insurance required.

Each applicant for a sidewalk cafe permit shall furnish a certificate 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 City of Chicago if coverage is substantially changed, canceled or non-renewed.

The City of Chicago shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operations of a sidewalk cafe; and the permittee shall indemnify, defend and hold the city harmless from any loss that results directly or indirectly from the permit issuance. In addition, if alcoholic beverages will be served at the sidewalk cafe, the applicant shall provide proof of liquor liability (dramshop) insurance for the sidewalk cafe, ~~of such type and in such amounts as required by the in~~ section 4-60-040(c)(2) of this code; provided, however, if alcoholic beverages will be served at a sidewalk cafe operated by an indoor retail market, the owner or manager of the indoor retail market shall provide proof that each retail food establishment serving alcoholic beverages at the sidewalk cafe has obtained liquor liability (dramshop) insurance for the sidewalk cafe as required in section 4-60-040(c)(2) of this code.

Each sidewalk cafe permittee shall maintain the insurance coverage required under this section ~~during the period~~ for the duration of the sidewalk cafe permit. The certificate(s) of insurance shall be presented to the ~~director~~ commissioner prior to the issuance of a permit under this article. Failure of the permittee to maintain the insurance required by this section shall result in the revocation of the sidewalk cafe permit.

10-28-820 Review of application.

The department shall review a submitted application for compliance with this article and regulations.

(A) If the ~~director~~ commissioner finds that the applicant meets the requirements of this article and the regulations promulgated hereunder, the ~~director~~ commissioner shall provide the application to the alderman of the affected ward, together with a recommendation for introduction of an ordinance approving the application. Such approval shall not be unreasonably withheld. Upon passage and publication of an ordinance approving the application, the ~~director~~ commissioner shall issue the sidewalk cafe permit to the applicant.

(B) If the ~~director~~ commissioner finds that the applicant fails to meet the requirements of this article or the regulations promulgated hereunder, or if approval by ordinance is withheld, the ~~director~~ commissioner shall deny the application. The ~~director~~ commissioner shall notify the unsuccessful applicant in writing of the denial and the reasons therefor within ten business days after the denial.

10-28-825 Compliance with plan and other components of application.

(A) Each sidewalk cafe shall comply in all respects with the specifications set out in the plan submitted to the ~~director~~ 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 ~~director~~ 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 ~~director~~ commissioner.

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(D) Upon being notified of an actual or contemplated change pursuant to either subsection (B) or (C) of this section, the ~~director~~ commissioner shall review the change to determine if such change is insubstantial or substantial, using the same criteria as relevant to the ~~director~~ 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 ~~director~~ 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 ~~director~~ commissioner shall disapprove the change. If such change is substantial, a new permit application shall be required.

10-28-835 Permit for one retail food establishment only.

A sidewalk cafe shall be for the exclusive use of the licensed retail food establishment stated on the application. Sharing or other joint use of a sidewalk cafe location by more than one retail food establishment shall not be permitted. The foregoing prohibition shall not apply to an owner or manger of an indoor retail market, who is allowed to operate a sidewalk cafe which can be shared by multiple retail food establishments which occupy space within the indoor retail market.

10-28-845 Operational conditions.

(A) Sidewalk cafes permitted under this article shall not operate earlier than 8:00 a.m. nor later than 12:00 midnight.

(B) Sidewalk cafes permitted under this article shall not play music, whether live or recorded, nor allow music to be played at the sidewalk cafe, other than through headphones.

(C) The operator of a sidewalk cafe shall install and maintain a physical boundary separating the permitted outdoor seating from the remainder of the public way. The operator shall leave six feet of public way unobstructed for pedestrian passage; the ~~director~~ commissioner may alter this requirement by regulation in a situation where adherence to the requirement would make operation of a sidewalk cafe impossible and reduction of the unobstructed portion of the public way would not compromise pedestrian safety. The construction, configuration and other characteristics of the boundary, including landscaping, shall be set forth by regulation.

10-28-850 Alcoholic beverage service - Requirements.

If alcoholic beverages are served at the sidewalk cafe, the operator must be validly licensed under the this code for such sales; provided, however, an owner or manager of an indoor retail market operating a sidewalk cafe is not required to be licensed for the sale of alcoholic beverages. If alcoholic beverages are served at a sidewalk cafe operated by an indoor retail market, (i) the retail food establishment selling the alcoholic beverages must be validly licensed under this code for such sales; (ii) the retail food establishment serving the alcoholic beverage must maintain its liquor liability (dramshop) insurance when serving the alcoholic beverages; and (iii) the alcoholic beverages must be served in plastic cups which shall clearly identify the retail food establishment from which each alcoholic beverage was purchased. Alcoholic beverages supplied by the customer or by any person other than the permittee will not be allowed at sidewalk cafes.

10-28-855 Compliance with code and rules and regulations required.

All holders of a sidewalk cafe permit, retail food establishments selling food or alcoholic beverages in a sidewalk cafe operated by an owner or manager of an indoor retail market, and their employees shall be subject to and comply with all applicable requirements and standards for retail food establishments contained in the code, as amended, and the rules and regulations promulgated thereunder, and all laws, rules and regulations pertaining to the sale of alcoholic beverages.

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10-28-860 Promulgation of regulations; force and effect.

(A) The ~~director~~ commissioner is authorized to promulgate regulations to carry out the purposes of this article, including without limitation regulations governing:

(1) The location, arrangement and design of sidewalk cafes to ensure the flow of pedestrian traffic, the safety of pedestrians and auto traffic, the access to buildings and transportation facilities, the prevention of an excessive number of cafes, and the best service to the public;

(2) The size, design and other specifications for tables and serving equipment to be used by operators, and the design of enclosures or partial enclosures;

(3) The types of food and beverages that may be served at sidewalk cafes;
(4) The time periods during which application can be made for a sidewalk cafe permit;

(5) Landscaping and other aesthetic components of the sidewalk cafe; and

(6) Any other matter pertaining to this article.

(B) A permittee shall comply with the regulations promulgated pursuant to this article, which shall have the force and effect of law.

10-28-865 Hearings.

The ~~director~~ commissioner may hold formal and informal hearings prior to the promulgation of rules and regulations as the ~~director~~ commissioner deems necessary. All such hearings shall be open to the public.

10-28-870 Enforcement.

(A) The ~~director~~ commissioner or his designee is authorized to take such action as necessary to enforce the provisions of this article, including conducting on-site inspections of sidewalk cafes associated retail food establishments to determine compliance with the permitting and other requirements of this article and regulations promulgated hereunder.

(B) Upon request by the ~~director~~ commissioner or his designee, the operator of a sidewalk cafe shall provide for inspection the documents required by this article to operate a sidewalk cafe, including the sidewalk cafe? permit, the plan for the sidewalk cafe, and proof of insurance.

(C) Any sidewalk cafe for which a permit is required by this article, and which has failed to obtains such permit, may be closed by the ~~director~~ commissioner or his designee until such permit is procured. Upon being notified of closure, all sidewalk cafe activity must cease, and all obstructions in the public way, including boundaries, tables and chairs, must be removed.

10-28-875 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 the above fine, aftd any person who knowingly interferes with or impedes the ~~director of reve nue or revenue investigator~~ commissioner or his designee in the enforcement of this article shall be subject to arrest by a duly authorized peace officer of the department and imprisonment for a term not to exceed six months under the procedures set forth in Section 1-2-1.1 of the Illinois Municipal Code and under the provisions of the Illinois Code of Criminal Procedure,

(C) Any sidewalk cafe in operation without a valid sidewalk cafe permit is subject to

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removal from the public way by the ~~director~~ commissioner or his designee. The provisions of Section ~~40-28-020~~ 10-28-10(0 of the code shall apply to the removal of any portion of a sidewalk 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.

10-28-880 Violation - Permit revocation.

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 sidewalk cafe permit by the ~~director~~ commissioner.

SECTION II. This ordinance shall take effect upon its passage and approval.

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