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## APPLICATION FOR SIDEWALK CAFÉ and/or MERCHANDISE DISPLAY PERMITS

### **Introduction:**

City of Delavan allows Sidewalk Café/Merchandise Displays within the Business Central Zoning District. Businesses within this district are eligible to apply for permits that will allow for serving of food and displaying of merchandise on city sidewalks. The objective of this program is to create a unique environment for relaxation, social interaction, and food consumptions. The season begins on April 1st, and ends on October 31st of every year. Annual renewal of the permit is required.

### **Application Checklist:**

Certificate of Insurance covering public liability at an amount not less than \$1,000,000 and naming the City of Delavan as an additional insured against liability resulting from the uses permitted.

Plan(s) shall be submitted on 8 ½" X 11" paper(s), and clearly depicts the dimensions of the existing sidewalk area (including location of memorial brick area if applicable) and adjacent private property, the proposed location of the sidewalk café or display area, location of doorways, trees, sidewalk benches, trash receptacles, light poles and other sidewalk obstructions. Also include specific elements that are to be located within the designated café and or display area including, but not limited to, racks, tables, chairs, planters, and umbrellas.

Photographs, drawings, or manufacturer's brochures fully describing the appearance and dimensions of all proposed items that will be used outdoors on sidewalks for café or merchandise. These will be used, to confirm that, items meet the standards of the Business and Institutional Furniture Manufacturers Association.

Copy of valid restaurant license issued by the State of Wisconsin. (only to be eligible for a sidewalk café permit 51% of establishments gross receipts must be generated from food and other retail sales, excluding the sales of alcohol and alcoholic beverages)

Written request for alcohol license. Permittee may sell and serve alcohol beverages outdoors if a valid and appropriate license description includes an outdoor sidewalk café.

### **Basic Information**

Please check the appropriate permit you are applying for:

- Sidewalk Café Permit with Alcohol
- Sidewalk Café Permit without Alcohol

Merchandise Display Permit

Do food sales generate more than 50% of businesses gross receipts? Yes  No

**Applicants Information:**

Applicant Name: \_\_\_\_\_

Applicant Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Business Name: \_\_\_\_\_

Business Address (Café/Display Area Location): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Contact number: \_\_\_\_\_ E-mail: \_\_\_\_\_

**Acceptance of Sidewalk Café/Display Permit Terms**

I, \_\_\_\_\_ representing \_\_\_\_\_  
(FULL NAME) (ESTABLISHMENT)

as its \_\_\_\_\_ understand and accept the terms and conditions relative to  
(TITLE)

the issuance of the Sidewalk Café and Merchandise Display permit, and by signing below, I acknowledge that I must adhere to the City of Delavan Municipal Code 6-2-6 (Chapter 7-13, Sidewalk Cafés and Merchandise Display Permits), the Rules and Regulations. I understand that failure to adhere to all conditions imposed in the permit may result in revocation of the permit.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

***For Office Use Only***

Date Filed: \_\_\_\_\_

**Department Recommendation**

Public Works Signature: \_\_\_\_\_ Approve Deny

Police Department Signature: \_\_\_\_\_ Approve Deny

Fire Department Signature: \_\_\_\_\_ Approve Deny

Buildings and Zoning Administrator \_\_\_\_\_ Approve Deny

The City Clerk Here by: \_\_\_\_\_ Approves Denies

Permit Issue Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_ Permit Number: \_\_\_\_\_

Conditions: \_\_\_\_\_

**ORDINANCE #**

**AN ORDINANCE AMENDING TITLE 6 CHAPTER 2, STREETS AND SIDEWALKS AND  
CREATING IN TITLE 7, CHAPTER 13, SIDEWALK CAFÉS  
AND MERCHANDISE DISPLAY PERMITS IN THE  
CITY OF DELAVAN MUNICIPAL CODE**

The Common Council of the City of Delavan, Wisconsin, does hereby ordain as follows:

1. That Section 6-2-5(b)(6) Obstructions and Encroachments, Exceptions in Title 6, Public Works, Chapter 2 Streets and Sidewalks, Section 6-2-5, Obstructions and Encroachments, of the Delavan Municipal Code is amended to read as follows:  
  
(6) Obstructions authorized by permit pursuant to Section 6-2-6 and/or Chapter 7-13 of this Code.
2. That Chapter 7-13, Sidewalk Cafe and Merchandise Display Permit is hereby established as follows:

**CHAPTER 13  
Sidewalk Café and Merchandise Display Permits**

- 7-13-01 – Purpose
- 7-13-02 – Definitions
- 7-13-03 – Eligibility Criteria
- 7-13-04 – Permit application and review process and fees
- 1-13-05 – Sidewalk Café and Merchandise Display standards
- 1-13-06 – Alcohol licensing and service of alcohol beverages
- 1-13-07 – Liability and insurance
- 1-13-08 – Revocation or suspension
- 1-13-09 – Appeal
- 1-13-10 – Penalty

7-13-01 – Purpose

The Business Central Zoning District (“District”) is a unique area that is designed to encourage pedestrian traffic and interaction. In order to further encourage the revitalization of this unique District through the development of social and economic activity, the Common Council finds and determines:

- a. That there exists a need for outdoor eating facilities and merchandise display areas within this District to provide a unique environment for relaxation, social interaction, and food consumption.
- b. That sidewalk cafés and merchandise display areas will enhance the use of the available public rights-of-way, will complement restaurants and retail establishments operating from fixed premises, and will promote economic activity in the area.
- c. That the existence of sidewalk cafés and merchandise display areas encourages additional pedestrian traffic but their presence may impede the free and safe flow of pedestrians. Therefore, a need exists for regulations and standards for the existence and operation of sidewalk cafés and merchandise display areas to ensure a safe environment.

- d. That the establishment of permit conditions and safety standards for sidewalk cafés and merchandise display areas is necessary to protect and promote public health, safety, and welfare.

#### 7-13-02 – Definitions

- a. Restaurant shall mean an establishment defined in Sec. 254.61(5) Wis. Stats. and whose food and other retail sales excluding the sale of alcoholic and alcoholic beverages are greater than fifty percent (50%) of its gross receipts.
- b. Sidewalk Café shall mean an expansion of a restaurant creating an outdoor dining facility on part of the public right-of-way that immediately adjoins the licensed restaurant premises for the sole purpose of consuming food or beverages prepared
- c. Area shall mean an expansion of a retail store operation on part of the public right-of-way that immediately adjoins the store for which an occupancy use permit has been issued for the sole purpose of creating an outdoor display area for the store adjacent thereto.
- d. Racks shall mean holders or containers used to display/hold merchandise as well any other merchandise that may be displayed in the designated area.

#### 7-13-03 – Eligibility Criteria

- a. The business must be a Restaurant and/or retail store, must be located in the Business Central Zoning District and must occupy first floor space that has direct access to a public sidewalk having a width of not less than eight feet (8'). Only the eligible business to which the permit is issued shall be authorized to operate and use the space as a Sidewalk Café and/or Merchandise Display Area.

#### 7-13-03 – Permit application and review process and fees

- a. Application for a permit to operate a sidewalk café or outdoor merchandise display area shall be submitted to the Building and Zoning Division of the Public Works Department and shall include the following information:
  - 1. Completed City application form.
  - 2. A layout, drawn to scale, which accurately depicts the dimensions of the existing sidewalk area (including location of memorial brick area if applicable) and adjacent private property, the proposed location of the sidewalk café or merchandise display area, location of doorways, trees, sidewalk benches, planters, trash receptacles, light poles and other sidewalk obstructions. Also include specific elements that are to be located within the designated café and/or display area including, but not limited to, display racks, tables, chairs, planters, and umbrellas. This layout shall be submitted on eight and one-half-inch by eleven-inch paper, suitable for reproduction.
  - 3. Photographs, drawings, or manufacturer's brochures fully describing the appearance and dimensions of all proposed racks, tables, chairs, umbrellas, barriers and other objective relating to the sidewalk café or merchandise display area.
- b. The application and site plan shall be reviewed for approval by the Building and Zoning Division of the Public Works Department, the Fire Department and the Police Department.

Subject to these approvals, the Building and Zoning Official may approve, approve with conditions and/or restrictions, or deny a permit where necessary to protect the public health, safety or welfare, to prevent a nuisance from developing or continuing, or due to violation of this section, the city code of ordinances, or applicable state or federal law. Final approval of a permit is subject to and its issuance is contingent on the submittal of evidence of public liability insurance coverage in an amount not less than \$1,000,000 and naming the City of Delavan as an additional insured.

- c. Each permit shall be effective for a seven month period commencing April 1 and ending October 31 of each year.
- d. The permit may be transferred to a new owner only for the location and area listed in the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued. A new certificate of insurance naming the City of Delavan as an additional insured must be filed with the city before the permit is transferred.
- e. There shall be no application, renewal or permit fee for sidewalk café and/or merchandise display permits.

#### 7-13-04 – Sidewalk Café and Merchandise Display standards

The following standards, criteria, conditions, and restrictions shall apply to all sidewalk cafes and merchandise display areas except as otherwise noted. Additionally the Building and Zoning Official may impose additional conditions and restrictions to protect and promote the public health, safety, or welfare, to prevent a nuisance from developing or continuing, and to comply with this section, the City of Delavan code of ordinances, and all applicable state and federal laws.

- a. Sidewalk cafes and merchandise display areas are restricted to the public right-of-way immediately adjacent to the restaurant or retail store to which the permit is issued and may only be operated by the restaurant or retail store to which the permit is issued.
- b. Use of the sidewalk/public right-of-way for this purpose is limited to a seven month period commencing April 1 and ending October 31 of each year. Sidewalk cafes and merchandise display areas shall only be permitted incidental to the operation of a restaurant or retail store located in a building contiguous to the sidewalk and as such hours of operation shall not extend beyond the hours of operation of the respective restaurant or retail store. Additionally sidewalk cafes and merchandise display areas shall not operate after 10:00 p.m. or before 7:00 a.m. The permit may be revoked at any time for any reason in the sole discretion of the City.
- c. Display racks, tables, chairs, umbrellas or other fixtures located in the area designated for the café or merchandise display:
  - 1. Shall not be placed within two (2) feet of the curb of the street as measured by the closest edge of the table or seat with an occupant seated therein to the street.
  - 2. Shall not be placed within five (5) feet of fire hydrants, alleys, or bike racks. Shall not be placed within five (5) feet of a pedestrian crosswalk or corner curb cut.
  - 3. Shall not block designated ingress, egress or fire exits from or to the restaurant, retail store or any other structure.

4. Shall be readily removable and shall not be physically attached, chained or in any manner affixed to any structure, tree, signpost, light pole, or other fixture, curb, or sidewalk.
  5. In order to not impede the watering of the flowers in the downtown flower baskets, shall be relocated by 6:00 p.m. to allow for a five (5) foot distance from the basket, measured as if the basket was located on the sidewalk.
  6. Shall be removed when the merchandise display area is not in operation or in the case of the sidewalk café when the café is not regularly being used and during the period of (November 1 through March 31) that is not covered under the permit and during which time sidewalk cafes and merchandise display areas are not allowed.
  7. Shall be maintained in a clean, sanitary and safe manner.
- d. Sidewalk cafes and merchandise display areas shall be located in such a manner that provides for and maintains at all times a clear and unobstructed, continuous ADA compliant pedestrian path with a minimum width of not less than five (5) feet. For the purposes of the minimum clear path, traffic signs, trees, light poles and all similar obstacles shall be considered obstructions.
  - e. The sidewalk cafe and/or merchandise display area, along with the sidewalk and roadway immediately adjacent to it, shall be maintained in a neat and orderly manner at all times. Debris shall be removed as required during the day and again at the close of each business day.
  - f. Plant tubs may be located in the sidewalk café/merchandise display area with the approval of the Building and Zoning Official. Plant tubs shall be maintained in a safe, neat, clean, and presentable manner.
  - g. Tables and Chairs shall be “Commercial Grade” with Chairs being constructed to accommodate a weight of at least 250 pounds. Umbrellas and other decorative material shall be made of treated wood, canvas, cloth or similar material that is manufactured to be fire-resistant. No portion of an umbrella shall be less than six (6) feet eight (8) inches above the sidewalk.
  - h. Signs to be used in the sidewalk café/merchandise display area shall be in accordance with the City Sign Ordinance. However, the Building and Zoning Official may allow temporary easel signs.
  - i. No amplified entertainment shall be allowed in the sidewalk café/merchandise display area unless authorized by the Building and Zoning Official as part of a special event.
  - j. A copy of the site plan, as approved in conjunction with the current sidewalk café/merchandise display area permit, shall be maintained on the permittee’s premise and shall be available for inspection by city personnel at all times.
  - k. The sidewalk café/merchandise display area permit covers only the public right-of-way described in the permit. Racks, tables and chairs on private property will be governed by other applicable regulations.
  - l. The use of a portion of the public right-of-way as a sidewalk café/merchandise display area shall not be an exclusive use. All public improvements, or any public initiated maintenance procedures, shall take precedence over said use of the public right-of-way at all times. The City Administrator, Chief of Police, Director of Public Works or their designee may temporarily order the removal of the sidewalk café/merchandise display area for special events including, but not limited to, parades, sponsored runs or walks, or for public health and safety reasons.

- m. The area encompassing the sidewalk café shall be roped off or otherwise enclosed by a freestanding barrier on all dates and at all times while in use. Acceptable materials for the barrier include, but are not limited to, attractive fence segments, flowers/plants, bollards, artwork and decorative menu boards, subject to the approval of the City of Delavan Building and Zoning Department. Barrier elements shall be connected in such a manner that creates an appearance that the sidewalk café is located within an enclosed area. The barrier element should be designed to allow for it to be closed off from the public when not in use.
- n. The City, its officers and employees shall not be responsible for sidewalk café/merchandise display area fixtures that are relocated or damaged.

#### 7-13-05 – Alcohol licensing and service of alcohol beverages

- a. A permittee may sell and serve alcohol beverages in an outdoor sidewalk café only if the permittee complies with all the requirements for obtaining an alcohol beverage license, and the sidewalk café is listed on the alcohol beverage license application as being a part of the licensed premises.
- b. Alcohol may be served at sidewalk cafes under the following conditions:
  - 1. The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
  - 2. The retail alcohol beverage license premises description includes the sidewalk café in the description of the licensed premises as an extended area.
  - 3. The retail alcohol beverage license permits the sale of the type of alcohol beverages to be served in the sidewalk café.
  - 4. Alcohol beverages are sold and served by the licensee or the licensee's employees in compliance with the alcohol beverage laws, ordinance and regulations.
  - 5. Alcohol beverages may only be served at the sidewalk café during those times that the café is authorized to be opened and any to the extent that during those times food service is available through the licensed establishment.
  - 6. The permittee shall be responsible for policing the sidewalk café area to prevent underage persons from entering or remaining in the sidewalk café, except when underage persons are allowed to be present on the licensed premises under applicable laws.
  - 7. The permittee shall deliver all alcohol beverages to the table and shall not allow patrons of the sidewalk café to bring alcohol beverages into the sidewalk café from another location within or outside of the restaurant, nor to allow patrons while in the sidewalk café area to walk around while carrying open containers of alcohol, nor to allow patrons to carry open containers of alcohol beverages served in the sidewalk café outside the sidewalk café area.
  - 8. The bar from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk café area.
  - 9. At times of closing or during times when consumption of alcohol beverages is prohibited, permittee shall remove from the sidewalk café area all containers use for or containing alcohol beverages. No container of alcohol beverages shall be present in the sidewalk café area between 10:00 p.m. and 7:00 a.m.
  - 10. Signage shall be displayed indicating that alcohol beverages may not be carried outside of the enclosed seating area.

7-13-06 – Liability and insurance

- a. No permit shall be issued pursuant to this exception, unless the applicant furnishes to the City Clerk evidence of public liability insurance naming the City as a party insured insuring the City against liability resulting from the uses permitted herein. The coverage shall be in an amount not less than \$1,000,000.00.

7-13-07 – Revocation or suspension

- a. The permit issued hereunder is a privilege and not a right. The permit may be revoked at any time for any reason in the sole discretion of the City. A restaurant or retail store shall not permit racks, tables and chairs to be placed on the sidewalk without a permit. A permit is only valid between April 1 and October 31 of each year.

7-13-08 – A revocation, suspension, or denial of a permit may be appealed by the permittee to the General Operations Committee (GOC). If the Building and Zoning

**Official's decision is appealed, the GOC shall hold a hearing and either grant, grant with conditions, or deny the permit. The permit holder of applicant shall be notified of the GOC appeal meeting and shall have the right to be heard prior to a decision.**

**7-13-09 – Any person, firm or corporation who violates the provisions of this Chapter of the Code shall, in addition to possible revocation or suspension of the permit, be subject to a penalty as provided in Section 1-1-7 of this Code of Ordinances.**

Adopted, passed, and approved by the Common Council of the City of Delavan, Walworth County, Wisconsin, this 12<sup>th</sup> day of March, 2013.

  
Mel Nieuwenhuis, Mayor

Attest:  
  
Susan Kitzman, City Clerk

Adoption: 3-12-13  
Published: 3-21-13