

Chapter 5-06

SIDEWALK CAFE REGULATIONS

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Section 5-06-01 DEFINITIONS

As used in this Chapter the following words and phrases shall have the following meaning when not inconsistent with the context. Words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

- A. Alcoholic Beverage: Any beverage as defined in Title 5, Chapter 5, of this Code.
- B. Ada County Highway District (ACHD): The district has jurisdiction over public sidewalks in Ada County, Idaho.
- C. Beverage: Any alcoholic or non-alcoholic liquid sold at retail or intended for human consumption on the premises.
- D. Building Department Director: The Building Department Director of the City.
- E. City: The City of Boise, Idaho.
- F. City Council: The City Council of the City.
- G. Clerk: The City Clerk of the City.
- H. Fire Chief: The Chief of Fire Department for the City or his/her designated agent.
- I. Food: Any non-liquid consumable sold at retail or intended for human consumption on the

premises.

- J. Hours of Operation: The allowed hours of operation of a Sidewalk Cafe serving alcohol shall be from 10:00 a.m. until 2:00 a.m. All service and consumption of alcoholic beverages shall discontinue at 2:00 a.m. The hours of operation of a Sidewalk Cafe not serving alcoholic beverages shall be unrestricted by this ordinance.
- K. License: A license issued by the Clerk to a qualified person, under which it shall be lawful for the licensee to sell and dispense alcoholic beverages, as provided by this Code.
- L. Licensee: The person to whom a license is issued under the provisions of this ordinance and who holds a valid Idaho alcoholic beverage license issued by the Department of Law Enforcement, Ada County, and the City.
- M. Permit: A sidewalk permit issued, in accordance with Title 5, Chapter 6, of this Code.
- N. Person: An individual, firm, co-partnership, association, corporation, or any group or combination acting as a unit.
- O. Place of Business: The place where business is carried on by the owners or agents of owners and under the control of those owners or agents.
- P. Police Chief: The Chief of Police for the City or his/her designated agent.
- Q. Police Department: The City Police Department.
- R. Premises: The business place in which the sale of any food and/or beverage is authorized under this Code and pursuant to Idaho statute.
- S. Retailer: Any person engaged in the sale or distribution of food and/or beverages to the consumer, with the exception of keg beer sold by Idaho State licensed wholesalers and portable vendors of food and/or non-alcoholic beverages not intended for consumption at the place of sale.
- T. Sidewalk: That portion of a public right of way which is between the curb lines and the adjacent property lines which is improved and designed for and is ordinarily used for pedestrian travel.
- U. Sidewalk Café: An outdoor dining or sitting area of a retailer, contiguous to the retailer's premises, which is located in whole or in part on a sidewalk and containing removable tables, chairs, barriers, planters, or related appurtenances.
- V. Special Use Permit: A permit that allows an establishment which meets all the requirements except the required egress and ingress from their building to operate a Sidewalk Cafe based upon agreement to meet and maintain specified additional conditions for monitoring ingress and egress of pedestrian traffic.
- W. State: The State of Idaho.
- X. All other words and phrases used in this Chapter, the definition of which is not herein given, shall be given their ordinary and commonly understood and accepted meaning.

(Ord. 6537, Amended, 02/06/2007; 6483, Amended, 06/27/2006; 5468, Added, 07/20/1993)

Section 5-06-02 PURPOSE

In order to provide for the revitalization of the downtown and other areas of City, including the development of social and economic activity, the City Council finds and determines that sidewalk cafes will permit enhanced use of the public space available, will provide a complement to the businesses operating from fixed premises, and will promote economic activity in the area.

(5468, Added, 07/20/1993)

Section 5-06-03 PERMIT

It shall be unlawful for any person or licensee to sell, keep for sale, or dispense any food and/or beverage, or to allow consumption of food and/or beverage at a sidewalk café without first obtaining a permit as required by this Chapter. Further, it shall be unlawful for any person to sell, keep for sale, or dispense any food and/or beverage, or allow consumption of any food and/or beverage at a sidewalk café except in accordance with a permit issued under this Chapter.

(5468, Added, 07/20/1993)

Section 5-06-04 APPLICATIONS

A. Any person holding an Idaho retail liquor license, retail beer or wine license, and/or eating and drinking license may obtain an application to operate a sidewalk café from the Clerk's office. The application must be executed by the applicant and filed with the Clerk not less than thirty (30) days prior to the date the applicant intends to begin operating a sidewalk café. Failure to complete the required portions of the application may result in a denial of the application.

1. Where an application is filed less than thirty (30) days prior to the operation of a sidewalk café, the applicant may execute a waiver of procedural appeal rights in order to allow for the consideration of the granting of a sidewalk café permit. A waiver of procedural appeal rights is not a guarantee or promise that the permit can or shall be processed or granted. The filing fee is not refundable in any case.

2. The applicant shall file with the Clerk an application, in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises (in existence or to be constructed in accordance with plans and specifications contained in the application and approved by the City) where the food and/or beverages are to be sold. The application shall be verified by the affidavit of the person making the same before a notary and shall be accompanied with the permit fee herein required. In addition to setting forth the qualifications required by other provisions of this Chapter, the application must contain:

- a. The name, address and phone number of the applicant;
- b. The identity of the retailer, the street address, and names of any managers, or agents.
- c. A detailed diagram or description of the premises for which a permit is sought, its location. A description of the design, including a detailed scale drawing of the sidewalk cafe, its portable barriers (if alcohol is to be consumed) and the

placement of tables, chairs, planters, canopies, umbrellas, etc.

- d. Dates and hours requested during which the permit is to be effective.
- e. An executed indemnification agreement in favor of the City and ACHD.
- f. If the sidewalk area sought to be permitted is not owned by the applicant or the Ada County Highway District (ACHD), then a certified copy of a document showing that the owner of the sidewalk area consents to the sale of food and/or beverages on such sidewalk(s).
- g. If during the period of any permit issued hereunder any change shall take place in any of the requirements of this Section, the permittee shall forthwith make a notarized report of such change to the Clerk.
- h. If the applicant contemplates the consumption of alcoholic beverages along with food on the area to be permitted and for the time for which the application is made, the application shall be accompanied with:
 - (1) A copy of the alcohol beverage license issued by the Director of the Department of Law Enforcement of the State for the premises and for the time for which the application is made, which license shall be returned to the applicant after examination by the Clerk,
 - (2) A copy of the alcohol beverage license issued by the Board of Ada County Commissioners for the premises and for the time for which the application is made, which license shall be returned to the applicant after examination by the Clerk, and
 - (3) A valid City Eating and Drinking license.
 - (4) A sample of a sign which shall be placed at all exits. This sign will be no smaller than 9 (nine) inches x 12 (twelve) inches and displayed at a height of 5 (five) feet. It shall read, "It is unlawful to consume alcoholic beverages not purchased at (premise name) or to remove same from the boundaries of this sidewalk cafe."
 - (5) A signed Special Use Agreement if the public access is not through a retailer's premise.
- i. If the applicant contemplates the consumption of food and/or non-alcoholic beverage on the area to be permitted, the application shall be accompanied with:
 - (1) The permit issued by Central District Health Department for the premises and for the time for which the application is made, which permit shall be returned to the applicant after examination by the Clerk, and
 - (2) A valid City Eating and Drinking license.
- h. The applicant shall be required to maintain in full force and effect comprehensive

general liability insurance with liability limits of not less than Five Hundred Thousand Dollars (\$500,000.00) for the term of the sidewalk café permit applied for. The insurance policy shall name the City and ACHD as "additional named insured" and a copy of the insurance binder shall be filed with the Clerk prior to the issuance of the said permit.

(5468, Added, 07/20/1993)

Section 5-06-05 PERMIT DETERMINATION BY CLERK

- A. The City Council has determined that the Clerk or the Clerk's designee shall be delegated the authority to process, grant or deny all sidewalk café applications.
- B. Whenever the Clerk shall deny any application the Clerk shall specify in writing:
 - 1. The statutes, ordinances and standards used in evaluating the application;
 - 2. The reasons for denial; and
 - 3. The actions, if any, that the applicant could take to obtain the license, transfer or renewal thereof.
- C. The Clerk shall issue a permit to the applicant, which permit or permits shall at all times be prominently displayed in the place of business of the permittee and shall be issued only for the particular areas therein described.
- D. APPLICATIONS REVIEWED:
 - 1. The Clerk shall review the application for a sidewalk café permit for completeness and forward said application to the Police Chief, Fire Chief, Building Director, ACHD, and Department of Planning and Development Services (PDS) for their recommendation:
 - 2. Recommendation of the Police Chief, Fire Chief, Building Director, ACHD, and (PDS):
 - a. The Police Chief, Fire Chief, Building Director, ACHD and (PDS) shall make a recommendation to the Clerk to approve or deny the application.
 - (1) The City Clerk or the Clerk's designee shall run a background check on the applicant and verify compliance with the provisions set forth herein. These findings are to weigh in the Clerk's consideration for approval or denial of the sidewalk cafe permit.
 - (2) The Police Chief, Fire Chief, Building Director, and (PDS) may recommend approval of the sidewalk cafe permit to promote and carry out the interests of the City.
 - b. The Police Chief may recommend conditions, terms, or a reduction in the number of requested dates or times as determined reasonable to carry out the policies of the City, which include protection of the health, safety and welfare of the public, or to prevent an unlawful disturbance or nuisance. Such conditions may include,

posting of appropriate signs, and hiring at applicant's expense additional licensed bonded security personnel. Any such conditions must be attached and displayed as a part of the sidewalk cafe permit or special use permit.

- c. Where the Police Chief determines that due to the anticipated number of participants, location of the sidewalk café, pedestrian or vehicular traffic, occurrence of special events; ingress or egress of customers, or presence of minors requires additional physical configuration or limitation of the premises for enforcement purposes, the Chief may recommend that the sidewalk café be maintained in a specified manner as a condition of the permit.
- d. Where the Fire Chief determines that the proposed size, configuration or number of participants of the side walk café will impede access of emergency vehicles and/or personnel to the area, the Chief may recommend that the sidewalk café and its specifications be maintained in a specified manner as a condition of the sidewalk cafe permit or special use permit.

E. ISSUANCE OR DENIAL OF APPLICATION.

- 1. The Clerk shall issue a permit for a sidewalk café if all of the following criteria are met and shall deny the application for a permit if any of the following criteria are not met:
 - a. The applicant is qualified;
 - b. The Police Chief and Fire Chief recommends issuance of a permit either absolutely or conditionally;
 - c. The (PDS) designee recommends issuance of a conditional use permit either absolutely or conditionally;
 - d. The Building Department issues a Occupancy Permit for the sidewalk cafe or determines such permit is required;
 - e. ACHD's approval as to minimum clear space required for pedestrian traffic as specified in Section 5-6-4A2g and h (1) and (2).
 - f. An applicant proposing to offer food and/or non-alcoholic beverages
 - (a) abuts or is contiguous to the food establishment in which food preparation, sanitation and related services are performed, and
 - (b) complies with Section 5-6-4A2g and h (1) and (2).
 - g. An applicant proposing to offer alcoholic beverages:
 - (a) abuts or is contiguous to the on-premise retailer in which the beverage is prepared for consumption, sanitation and related services are performed,
 - (b) the boundaries of the sidewalk café are proposed to be identified by the placement of one or more continuous physical barriers with a minimum

height of three (3) feet and that meet specified criteria, access of the public to and from the area in which alcoholic beverages are consumed is through the retail establishment abutting or contiguous to the sidewalk café, unless by Special Use Agreement to allow ingress and egress from the designed sidewalk cafe area, and

- (c) the proposed placement and description of signs is satisfactory to the Police Chief;
- h. The detailed diagram or description of the premises accompanying the application reflects:
 - (a) that none of the sidewalk café's furnishings, tables, chairs or barriers are closer than eight (8) feet from the curb. If no curb, the edge of the pavement, where street trees or parking meters are installed; and,
 - (b) an unimpeded pedestrian corridor no less than five (5) feet at its narrowest width continuing in a linear direction more or less parallel to the right of way the full length of the sidewalk past the sidewalk café.

(6724, Amended, 07/07/2009; 5468, Added, 07/20/1993)

Section 5-06-06 QUALIFICATIONS

If applicant is proposing to offer alcoholic beverages, all of the qualifications must be met as specified in Boise City Code Section 5-05-05.

(5468, Added, 07/20/1993)

Section 5-06-07 CONTINUANCE OF QUALIFICATIONS

A person to whom a sidewalk café permit is issued must continue throughout the permit period to have all of the qualifications and none of the disqualifications provided in this Chapter.

(5468, Added, 07/20/1993)

Section 5-06-08 PAYMENT OF PERMIT FEE

Each application for a sidewalk cafe shall be accompanied by the required non-refundable permit fees in an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule along with:

- A. Any fee imposed by CPD for review for a zoning certificate.
- B. Any fee imposed by Building Department for occupancy permit.

(6419, Amended, 09/20/2005; 5468, Added, 07/20/1993)

Section 5-06-09 EXPIRATION OF SIDEWALK CAFÉ PERMIT

All permits for the operation of sidewalk café within the City shall terminate at midnight on December 31 of the year in which such permit is issued, unless application for renewal has been made. If application for renewal has been made, the current permit shall remain in force until the Clerk has acted on the application for renewal and has given notice of the action taken.

(5468, Added, 07/20/1993)

Section 5-06-10 RENEWAL

Renewal of a permit shall be on forms prescribed and furnished by the Clerk. Renewal forms shall be submitted thirty (30) days prior to the expiration of the current permit. The required permit fee of fifty (50) dollars and an affidavit verifying that the information contained in the original application is unchanged or reflecting any changes must accompany a renewal form.

(5468, Added, 07/20/1993)

Section 5-06-11 PERMIT; TRANSFER

A permit may be transferred only to the successor in interest to any licenses or permits issued to the permittee, but the transferee, including any executor, administrator, or trustee in bankruptcy of the estate of the retailer shall not be authorized to operate a sidewalk café until the transferee shall have filed under oath an application therefore containing the same information required in an application for a permit, and if the transferee possesses the qualifications and none of the disqualifications of an applicant as provided in this Chapter, the Clerk shall approve such transfer and shall amend the license to reflect the transfer.

A. No fee shall be collected for transfer of a permit in the following events:

1. The transfer of a permit between husband and wife in the event of a property division; or
2. The transfer of a permit to a receiver, trustee in bankruptcy or similar person or officer; or
3. The transfer of a permit to the heirs or personal representative of the estate in the event of the death of the permittee; or
4. The transfer of a permit arising out of the dissolution of a partnership where the permit is transferred to one or more of the partners; or
5. The transfer of a permit within a family to members within the second degree of consanguinity.

B. The fee for transferring a sidewalk café permit shall be in an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule.

(6419, Amended, 09/20/2005; 5468, Added, 07/20/1993)

Section 5-06-12 DISPLAY OF PERMIT

The applicant or the applicant's designee is required to carry, display or post the original sidewalk café permit with any conditions that have been imposed upon recommendation by the Police and Fire Chief on the premises which abuts or is contiguous to the sidewalk café.

(5468, Added, 07/20/1993)

Section 5-06-13 TERMINATION OF SIDEWALK CAFÉ PERMIT

The City Clerk may issue a temporary suspension of the permit for up to ten (10) days or shall

revoke a permit issued under this Chapter when:

- A. Subsequent to the issuance of the permit, it is determined that the applicant did not meet the requirements set forth in this Chapter;
- B. There are grounds for revocation provided in Boise City Code Title 5, Chapter 2.
(5468, Added, 07/20/1993)

Section 5-06-14 PROCEDURE FOR DENIAL, TERMINATION AND APPEAL

Except as otherwise provided in this Section, the procedures for denial, termination and appeal at Title 5, Chapter 2, shall be followed.

- A. Where there exists a clear endangerment to the health, safety and welfare of the public resulting from the use of the permit, or where the applicant or agent(s) of the applicant fail to perform in conformance with the conditions and terms set forth on the permit. The Police Chief, Fire Chief, City Clerk, or designated representative(s) may revoke the sidewalk café permit issued under the provisions of this Chapter by immediately demanding and seizing the permit from the applicant or co-applicant.
- B. Applicant as a condition of permit accepts that sidewalk cafe permit can be seized, and shall surrender upon demand by the Police Chief, Fire Chief, City Clerk, or designated representative(s).
(5468, Added, 07/20/1993)

Section 5-06-15 POLICE AND LICENSE ENFORCEMENT OFFICERS; ACCESS TO PREMISES

All police officers of the City shall have the right at any time to enter in and upon any such licensed premises, and it shall be unlawful to refuse any officer of the police force, City Clerk and/or License Enforcement Officers of the City admittance to or access to such premises for the purpose of police control, regulation and inspection of such premises.
(5468, Added, 07/20/1993)

Section 5-06-16 ADDITIONAL VIOLATIONS

- A. Any person failing to obtain, display or surrender a sidewalk café permit as provided in this Chapter shall be guilty of an infraction for a first time offense.
- B. Any person holding a sidewalk café permit, or any person employed or acting on the behalf of the person holding a sidewalk café permit, who wilfully endangers the health, safety, public welfare by permitting, allowing, or failing to correct, conduct in violation of the conditions or terms of a sidewalk café permit is guilty of an infraction for a first time offense.
- C. Any person under the age of twenty-one (21) years of age buying, possessing, or consuming alcoholic beverages at a sidewalk café shall be guilty of a misdemeanor. Provided, however, it is lawful for persons who are nineteen (19) years of age or older to sell, serve, possess or dispense liquor, beer or wine in the course of their employment in any place defined in section 23-942, Idaho Code, or in any other place where liquor, beer or wine are lawfully present, so long as such

place is the place of employment for such person under twenty-one (21) years of age.

- D. Any person procuring or serving an alcoholic beverage to another person under the age of twenty-one (21) at a sidewalk café is guilty of a misdemeanor.
- E. The applicant or any person employed by or acting on behalf of the applicant who serves another alcoholic beverage has the duty to routinely check valid driver's licenses, state identification cards, and military identification cards to verify the age of those served alcoholic beverages. Any person who fails to check appropriate identification which subsequently results in the serving of an alcoholic beverage to a person under twenty-one (21) years of age shall be guilty of an infraction for a first time offense.
- F. Any person who fails to post a sign that meets the following requirements at all exits is guilty of an infraction for a first time offense. This sign shall be no smaller than nine (9) inches by twelve (12) inches and displayed at a height of five (5) feet. It shall read, "it is unlawful to consume alcoholic beverages not purchased at (premise name) or to remove same from the boundaries of this sidewalk cafe."
- G. The applicant fails to remove all furnishings related to the sidewalk café from the sidewalk when not used for more than one hundred twenty (120) hours is guilty of an infraction for a first time offense.
- H. The applicant fails to collect or deposit trash or debris that has accumulated within twenty (20) feet of any Sidewalk Cafe is guilty of an infraction for a first time offense.
- I. Any person holding the sidewalk cafe permit and/or agent, employee, servant, or other person on behalf of the person holding the sidewalk cafe permit who fails to maintain an unimpeded pedestrian corridor as described in Section 5-6-5G1h(b) is guilty of an infraction for a first time offense.
- J. Dirty dishes, glasses, flatware and all debris shall be removed within twenty (20) minutes of a patron leaving the sidewalk café. An applicant who fails to comply with this provision is guilty of an infraction.
- K. Beer bottles or other bottles that contain or did contain an alcoholic beverage are prohibited after 12:00 midnight. This prohibition does not apply to 750 ml. wine or champagne bottles. An applicant who fails to comply with this provision is guilty of an infraction.
- L. No taps, kegs, coolers, or other alcoholic beverage storage devices are allowed on the sidewalk. An applicant who fails to comply with this provision is guilty of an infraction.
- M. A violation of any of the provisions of this Section by any agent, employee, servant, or other person on behalf of the person holding the sidewalk cafe permit, shall be presumed a violation by the person holding the sidewalk café permit.

(Ord. 6537, Amended, 02/06/2007; 6191, Amended, 10/08/2002; 5468, Added, 07/20/1993)

Section 5-06-17 PENALTY

- A. Any peace officer, the City Licensing Officer, or the City Licensing Enforcement Officer shall have the authority to enforce this Chapter. Any person violating the provisions of this Chapter

declared an infraction shall be assessed a fixed penalty of One Hundred Dollars (\$100.00) excluding court costs and fees. An infraction is a civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding one hundred dollars (\$100) and for which no period of incarceration may be imposed. There is no right to a trial by jury of a citation or complaint for an infraction and such trials shall be held before the court without a jury. A second and any subsequent conviction for the same violation of the provisions of this chapter within five years shall constitute a misdemeanor, punishable by a fine not exceeding three hundred dollars (\$300), or by imprisonment in the county jail not exceeding six (6) months, or both.

- B. Any person violating any of the provisions of this Chapter declared a misdemeanor shall be deemed guilty of a misdemeanor and upon conviction thereof can be fined in an amount not exceeding three hundred dollars (\$300), or be imprisoned for a period not exceeding six (6) months or be both so fined and imprisoned.
- C. Any licensee violating any of the provision of this Chapter shall, in addition to the penalties prescribed by law as a punishment for an infraction or a misdemeanor, be subject to a temporary suspension of the license violated for period not to exceed ten (10) days. Such temporary suspension shall be effective ten (10) days from the date of written notice to the licensee or the operator of the licensed Sidewalk Cafe. A violator may be served with notice of temporary suspension pursuant to this Chapter even though no infraction or misdemeanor charge is filed. Any operation of a Sidewalk Cafe during the period of such temporary suspension shall be deemed a separate offense for each day. Any licensee provided such suspension may appeal before the Boise City Council. In the event that a suspension is appealed, said suspension shall be automatically stayed pending the appeal.

(Manual, Amended, 10/10/2002; 6191, Amended, 10/08/2002; 5468, Added, 07/20/1993)

Section 5-06-18 SEPARABILITY

If any clause, sentence, paragraph, section, or any part of this act, shall be declared and adjudged to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect, invalidate, or nullify the remainder of this section.

(5468, Added, 07/20/1993)