

## **ORDINANCE NO. 2341**

### **AN ORDINANCE CREATING CITY OF CUDAHY MUNICIPAL CODE SECTION 12.15 PROVIDING FOR THE LICENSING OF SIDEWALK CAFÉS IN THE CITY OF CUDAHY AND UPDATING PERIPHERY ORDINANCES TO REFLECT THIS CHANGE**

**WHEREAS**, the City of Cudahy Common Council wants to encourage sidewalk cafés within the City in order to promote a friendly, open atmosphere within the City limits, and,

**WHEREAS**, sidewalk cafés assist restaurant businesses in providing additional services to their customers and creates an atmosphere of cordiality within the City, and,

**WHEREAS**, the citizens of Cudahy require an orderly process by which the City screens and monitors sidewalk cafés within City limits, and,

**NOW, THEREFORE**, the City of Cudahy, Wisconsin, Common Council does hereby ordain the following:

**Section 1.** Section **8.015(4)** of the City of Cudahy Municipal Code is hereby created:

(4) Sidewalk cafés may be permitted encroachments on sidewalks within the right-of-way, provided a license has been granted to such establishments in accordance with Section 12.15 Sidewalk Café Regulations.

**Section 2.** Section **12.15** of City of Cudahy Municipal Code is hereby created to read as follows:

#### **12.15 SIDEWALK CAFÉ REGULATIONS.**

(1) **DEFINITION:** A sidewalk café shall mean that portion of a restaurant that is immediately adjacent to and extends onto a public sidewalk as a licensed encroachment of that sidewalk for the purpose of providing food or beverages or both to patrons of the restaurant.

(2) **REGULATIONS:**

(a) No portion of any licensed sidewalk café may encroach on sidewalk adjacent to any property other than the property that is licensed under this Section.

(b) No sidewalk café shall be open for business between the hours of 12:00 midnight and 8:00 a.m.

(c) No alcohol or fermented malt beverages or food may be served after 10:00 p.m. in the sidewalk café.

(d) No alcohol or fermented malt beverages may be served at any time if the restaurant subject of the sidewalk café license does not hold an appropriate class of liquor license that would entitle such service within the restaurant.

(e) No alcohol or fermented malt beverages may be served at any time if the restaurant has not received Council approval for the enlargement of its premises under its liquor license that includes the area of the public sidewalk where the sidewalk café is located. Further, the liquor license shall be automatically conditioned at the time of such enlargement of the premises with a limitation that the enlargement of the premises to allow for the activity of service or consumption of alcoholic beverages within the sidewalk café area outside the restaurant under such liquor license has no vested rights and may be suspended or revoked or non-renewed by the City Council without cause being shown.

(f) The entire outdoor area utilized for service and consumption of food and beverages shall be visible from the restaurant establishment.

(g) Any public improvements necessary to accommodate the outdoor service area shall be approved by the Director of Economic Development and the Chief Inspector, or their respective designees, and the costs thereof shall be paid by the licensee.

(h) Service of food and alcoholic beverages in all sidewalk cafés shall be limited to persons seated at tables in the licensed sidewalk café area. Food service shall be required to be available at all times when the sidewalk café is open.

(i) The licensee shall use safe, sturdy furniture, furnishings and equipment in the sidewalk café, which enhances the aesthetics of the surrounding area, and shall maintain the same in good repair. All umbrellas shall be anchored in such a way that a sudden burst of wind will not lift them out of their holders or blow them over.

(j) General Restrictions.

1. The licensee shall remove from the sidewalk within thirty (30) minutes after closing of the sidewalk café, all furniture, furnishings, equipment, portable barriers and all visible evidence of the sidewalk café, anytime that the sidewalk café is closed or service is prohibited, or service is not being offered to the public at the sidewalk café.
2. The licensee shall provide at least four (4) feet of unobstructed sidewalk for pedestrian right-of-way through the sidewalk café, and shall not place anything within two (2) feet of the curb or street.
3. The licensee shall comply with all applicable requirements of the Americans with Disabilities Act 42USC §§12101 to 12213.
4. The licensee shall comply with all applicable Federal, State and local laws.
5. No licensee shall obstruct access to a fire hydrant or obstruct one's view of the hydrant from the street.

6. No sidewalk café shall be permitted within five (5) feet of the sides of bus shelters, or bus stops, nor arranged in any manner, which interferes with the use of the bus stops or with ingress or egress from any bus shelter.
7. No person may be served in the sidewalk café area unless seated, and no table shall be preset with utensils, glasses, dishes, condiments or any other amenities until a patron is seated at a table.
8. Sidewalk cafés shall not be less than fifty (50') feet from any residential dwelling, unless the dwelling is the licensee's dwelling. A waiver of this section can be obtained by the Common Council, if the applicant files, with their application, a petition signed by more than 50% of the property owners residing within fifty (50') feet of the boundaries of the café area, indicating they do not object to the sidewalk café. The fifty (50') feet measurement shall be a radial measurement extending fifty (50') feet from any point on the perimeter of the café, including street right-of-way.
9. No portion of the sidewalk café shall be permitted within five (5) feet of a curb-out or a marked crosswalk.
10. No portion of the sidewalk café may be placed on any portion of a public sidewalk beyond the width of the property line of the licensee's property.
11. No portion of a sidewalk café shall be permitted within five (5) feet of any truck, freight, or passenger loading zone, or adjacent to any handicap parking space or loading zone.
12. No person holding a Sidewalk Café License may use any public property, including, but not limited to, light poles, utility poles, flower planters, trees or other amenities, as a point of attachment for anything, including, but not limited to, ropes, posters or signs.
13. All sidewalk cafés shall remain within the approved boundaries of the sidewalk café site as set forth on the approved application.
14. No licensee may construct a barrier, or anything of a similar nature or construction, which would obstruct the clear view of any street or traffic regulatory signs or pathway, including, but not limited to, the pathway from alleyways, driveways or any vehicle traffic path.
15. The licensee shall post a sign clearly visible for its patrons, which lists the rules contained in this section.

### (3) LICENSE ISSUANCE.

(a) No food, and no fermented malt or other alcoholic beverages may be served in a sidewalk café without obtaining a sidewalk café license and without having any applicable liquor licensed premises enlarged to include the sidewalk café area. Strict compliance with this Chapter shall be required in all aspects of any sidewalk café at all times.

(b) Application for a sidewalk café license shall be made to the City Clerk-Treasurer on forms furnished by the City, along with the appropriate fee. The application shall be signed by the applicant and by the applicant's landlord if the applicant is a tenant at the premises where the sidewalk café will be located. Each application shall

include a scaled drawing of the precise location of the proposed sidewalk café operations and that shows the design, type of furniture, furnishings, equipment and barriers proposed fencing or other barrier to separate the sidewalk café from the remainder of the sidewalk that is to remain unencumbered for pedestrian use. If alcoholic beverages are to be served under any liquor license, such barriers shall be required.

(c) The City Clerk shall send a copy of all complete sidewalk café applications and renewal licenses to the Chief of Police or the Chief of Police's designee, the City Engineer or the City Engineer's designee, and the Chief Inspector or the Chief Inspector's designee for a recommendation as to whether the applicant is a proper recipient of a license. The recommendations shall be sent to the Rules, Laws and Licensing Committee for consideration, along with the Director of Economic Development's recommendation, as stated under (3)(e).

(d) Upon receipt of a completed initial application for a Sidewalk Café License or an application for a renewal license involving a change in the type or location of the sidewalk café furniture, furnishings, equipment, barriers or area, the City Clerk shall forward a copy of the application, together with all information required under subsection (3)(a) to the Director of Economic Development or the Director of Economic Development's designee for review.

(e) The Director of Economic Development or designee shall review the design, type of furniture, furnishings, equipment and barriers proposed by the applicant to determine whether any of it detracts from the aesthetics of the area surrounding the proposed sidewalk café; if the proposed café is in compliance with Chapter 16 of the City's Municipal Code and the requirements contained herein; and if the area proposed is suitable for the sidewalk café. The Director of Economic Development or designee shall then make a recommendation to the Rules, Laws and Licensing Committee as to the issuance of the license, based on the criteria set forth above. The City Clerk shall notify the applicant of the date and time of the meeting where the Rules, Laws and Licensing Committee shall review the application, licensee's required documentation and any recommendations from the Director of Economic Development and Chief of Police. The Rules, Laws and Licensing Committee shall make a determination as to their recommendation to grant or deny this license to the Common Council. The applicant shall be notified, in writing, within ten (10) calendar days of said meeting of their decision. If the recommendation is to grant the license, the applicant must produce evidence of adequate liability, property and worker's compensation insurance in full force and effect before operating the sidewalk café. If the Rules, Laws and Licensing Committee recommends denial, the applicant shall receive written notice stating:

1. The reason for denying the license;
2. What action, if any, on behalf of the applicant is necessary in order to obtain approval;
3. The date by which the applicant may appear before the Common Council regarding the license.

(f) No person shall obtain a Sidewalk Café License unless the applicant procures the following policies of insurance from an insurance company licensed to do business in the State of Wisconsin in the amounts and coverages set forth below covering the sidewalk café area:

1. Commercial General Liability. The applicant shall procure a commercial general liability policy with the following minimum standard limits:
  - i. Bodily Injury/Property Damage, per occurrence.....\$1,000,000
  - ii. General Aggregate Limit .....\$1,000,000
  - iii. Products/Completed Operations.....\$1,000,000
  - iv. Personal and Advertising Injury Limit.....\$1,000,000
  - v. Medical Expense Limit – Any One Person.....\$5,000
2. Workers’ Compensation. The licensee shall provide a workers’ compensation policy with the limits prescribed by Wisconsin State Statutes.
3. Certificate of Insurance. The licensee shall provide the City with a certificate of insurance coverage required by this ordinance, which certificate shall be approved by the City Attorney prior to operating the sidewalk café. The certificate shall name the City as a certificate holder and shall provide that the policies of insurance shall not be canceled or altered without thirty (30) days prior written notice to the City.

(g) The licensing period for sidewalk café licenses shall be from July 1 to June 30 of the following year. Prior to expiration of such license, the license holder shall make application and pay the application fee by no later than June 1 to be considered for renewal of the license.

(4) REVOCATION, SUSPENSION OR NON-RENEWAL

(a) Failure to comply with all of the terms and conditions of a sidewalk café license and all requirements of this Chapter may result in the termination of the privilege of serving food, or fermented malt or other alcoholic beverages in a sidewalk café. If a sidewalk café license becomes suspended or revoked or non-renewed by the City Council for such noncompliance, or if the Council determines that such use of the public sidewalk shall cease, even without a showing of cause, then no sidewalk café operations of any kind at that location may continue on the public sidewalk, and no tables or chairs or other encumbrances of the sidewalk may remain. If such items are on the public sidewalk more than seventy-two hours after a license is suspended, revoked, or non-renewed, the City Manager shall order such encumbrance removed immediately, and if such encumbrance remains more than twenty-four hours after issuance of such removal order, the City Manager shall cause the encumbrance to be removed and the cost thereof billed to the license holder. Failure to pay such bill for

costs within 30 days of billing shall result in the costs being placed on the tax roll for the property at which the restaurant conducting the sidewalk café has been located.

(b) The issuance of any license under this Chapter may not be construed to create a vested right for the benefit of liquor licensees. Whether a sidewalk café license is issued or suspended or non-renewed is within the Council's discretion, and no cause must be shown for any adverse action with regard to any sidewalk café license.

(c) The no cause standard on non-issuance, non-renewal, suspension or revocation is deemed reasonable by the Council due to the Council's recognition that the sidewalk is primarily for the pedestrian travel of the public within the entire width at all times, and that the encumbrance permitted through the issuance of a sidewalk café license is a privilege in the streets that the City may require this special privilege to be removed upon 10 days notice by the City and the licensee waives the right to contest in any manner the validity of this section. The notice and hearing requirement of this subsection may not be construed as a recognition of any right on the part of the license holder to such special use of the public sidewalk.

(5) LICENSEE'S RESPONSIBILITY. Licensee shall be responsible for the acts of all employees, patrons and agents of the business. A violation of any provision of this section, any City Ordinance or Wisconsin Statutes Chapter 125, by a patron, agent or employee of the licensee, shall constitute a violation by the licensee.

(6) LIMITATION ON NUMBER OF LICENSES ISSUED. The population of the City of Cudahy shall determine the number of licenses issued. One license may be issued for every one thousand (1,000) persons residing in the City. The population of the City shall be defined by the latest estimate of the Wisconsin Department of Administration.

(7) PENALTY. Any person who violates this section shall be subject to a forfeiture of not less than \$25, nor more than \$500.00. Each day of a violation is a separate offense.

**Section 3.** Section 12.055(1)(c) shall be recreated as follows:

(c) The occasion shall be confined to the premises contiguous with the licensed premises and upon privately owned premises; no extension shall be granted for any use of public streets, walks or other public areas unless permitted to do so in strict compliance with the conditions of the license and the requirements of sec. 12.15 of this Chapter.

**Section 4.** Section 12.01(14.1) of the City of Cudahy Municipal Code is hereby created:

(14.1) SIDEWALK CAFÉS. (See § 12.15) \$250.00.

**Section 5.** All ordinances or parts of ordinance contravening the provisions of this ordinance are hereby repealed.

**Section 6.** If any part or parts of this ordinance are invalid, it shall not invalidate the entire ordinance.

**Section 7.** This Ordinance shall take effect upon passage and publication as provided by law, and the City Clerk shall so amend the Code of Ordinances of the City of Cudahy, and shall indicate the date and number of this amending ordinance therein.

Introduced by the Rules, Laws and Licensing Committee.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**ANTHONY DAY**, Mayor

Attest:

\_\_\_\_\_  
**DENNIS P. BRODERICK**, City Clerk

ADOPTED: \_\_\_\_\_  
APPROVED: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_

Prepared By: **PAUL T. EBERHARDY** City Attorney  
Wis. State Bar No. 1045304