



CITY OF AUBURN HILLS CITY COUNCIL AGENDA

1983

DECEMBER 6, 2010

AGENDA ITEM NO. 9F. COMMUNITY DEVELOPMENT DEPARTMENT

To: Mayor and City Council
From: Peter E. Auger, City Manager, Steven J. Cohen, Community Development Director, and Laurie M. Johnson, Economic Development Coordinator
Submitted: December 1, 2010
Subject: Motion - Approve Revised Sidewalk Café Application and License Agreement for Downtown

INTRODUCTION AND HISTORY

The Community Development Department with City Council approval had originally installed a Sidewalk Café Application and License Agreement in 2003 for the Village Center (now referred to as the Downtown). Revisions to the Sidewalk Café Application and License Agreement were made and approved by City Council in 2006.

A business owner in our Downtown has recently requested the Sidewalk Café Application and License Agreement be revised to include the allowance of year round outdoor seating with heaters allowable during the winter season. The business owner made the case that individuals take their pets for walks throughout the year and it would be nice for them to be able to stop for a hot beverage during the winter months during their walk. Taking into consideration this request, we called together members of the Community Development Department, Department of Public Service, and the Fire Department to discuss and propose revisions to the existing Sidewalk Café Application and License Agreement for Downtown. We have submitted a copy of these documents for your perusal and approval, if you find these documents to be in keeping with your intentions for our Downtown area.

We have updated the Sidewalk Café Application and License Agreement to include the possibility of a full-year sidewalk café if the owner/tenant of an establishment that serves food so chooses and is approved to use their outdoor café year round.

Any heaters in use will need to be approved by the Fire Department. Any establishment serving alcohol will need to follow the laws for serving liquor and will need to work with the Police Department to confirm compliance with those requirements.

STAFF RECOMMENDATION

Staff recommends approval of the proposed changes.

MOTION

“Move to approve the Revised Sidewalk Café Application and License Agreement for Downtown.”

I CONCUR: Thomas A. Tanghi on behalf of _____
PETER E. AUGER, CITY MANAGER



SIDEWALK CAFÉ APPLICATION

PLEASE PRINT CLEARLY OR TYPE ALL REQUIRED INFORMATION

SIDEWALK CAFÉ LOCATION:

ADDRESS: _____

APPLYING FOR SUMMER SEASON WINTER SEASON BOTH

APPLICANT

Name: _____ Signature: _____

Business Name and Address: _____

City: _____ State: _____ Zip Code: _____ Phone Number: _____

PROPERTY OWNER(S)

Name: _____ Signature: _____

Business Name and Address: _____

City: _____ State: _____ Zip Code: _____ Phone Number: _____

APPLICATION CHECKLIST:

TO PROCESS AN APPLICATION FOR A SIDEWALK CAFÉ ON ANY CITY SIDEWALK, THE FOLLOWING INFORMATION, DESCRIBED IN MORE DETAIL ON THE ATTACHED INSTRUCTION SHEET AND LICENSE AGREEMENT, MUST BE SUBMITTED:

- **A PLAN DRAWING MEETING THE ATTACHED SPECIFICATIONS IN THE INSTRUCTIONS AND LICENSE AGREEMENT**
- **A CERTIFICATE OF INSURANCE MEETING THE REQUIREMENTS OUTLINED IN 6. OF THE ATTACHED LICENSE AGREEMENT**
- **APPLICATION FEE (\$75.00 FOR NEW APPLICATIONS, \$25.00 FOR ANY CHANGES, NO CHARGE FOR RENEWAL OF PREVIOUSLY APPROVED APPLICATION IF CONSECUTIVE YEARS).**

Please contact the City of Auburn Hills Community Development Department, 1827 N. Squirrel Road, Auburn Hills, MI 48326

Phone: 248-364-6900 Fax: 248-364-6939

Home Page Address: <http://www.auburnhills.org>

CHECK LIST FOR SIDEWALK CAFÉ PLAN

The detailed Sidewalk Café Plan must, at a minimum, include the following:

1. The plan must cover the entire area between the curb and the building, including the curb line and building wall.
2. The plan must show all existing and proposed obstructions in this area, i.e., trees, tree grates, benches, parking meters, light posts, proposed railing location and seating plan.
3. The seating plan must identify each table and chair.
4. Railings shall have a structural base plate with no anchoring into City brick pavers. See 1. Through 7 on License Agreement for detail on plan and furniture/railings specifications.
5. The building wall shall identify all doors, windows and other openings.
6. The entire plan shall be dimensioned and drawn to an engineer's scale.
7. Furniture for both Season's must be approved by the City of Auburn Hills. Please submit type/specifications with application (see 3. of Sidewalk Café License Agreement).

INFORMATIONAL ITEMS

1. A minimum clearance of five (5) feet shall be maintained between all obstructions and the proposed café railing.
2. The term of the agreement shall be Summer plan - April 15 – November 14 and/or Winter plan November 15 – April 14 of each year. Please see Winter Season Sidewalk Café Regulations on next page. If using both season's you must submit plans for both season's at time of application otherwise there must be a second permit pulled with \$75.00 fee.
3. Annual renewal is required for all sidewalk cafes. All plans must meet ADA requirements.
4. Insurance of \$1,000,000.00 naming City of Auburn Hills as Certificate Holder is required for the time frame of the license (attach certificate). See 6. of Sidewalk Café License Agreement.
5. A Hold Harmless Agreement must be executed as part of the application. See attached.
6. Outside liquor service approval from the State Liquor Control Commission and Auburn Hills Police Department required, if applicable.
7. Incomplete applications will **NOT** be accepted.

All applications must be submitted to the Community Development Department
1827 N. Squirrel Road
Auburn Hills, MI 48326
248.364.6900

Any questions should be directed to the Community Development Department at the above address and/or phone number.

Winter Season Sidewalk Café Regulations

1. Winter Season will be November 15 through April 14 of each year and permit must be renewed each year. Any plan changes from year to year will have a \$25.00 fee to be submitted with application after first year for each season.
2. Furniture will be limited to smaller quantities during winter season for snow removal purposes. Winter Season plan must be submitted with application.
3. Furniture must be removed each night and prior to any snow removal by business owner or business employee/representative. Business owner will be responsible for snow removal charge if City of Auburn Hills Department of Public Service or snow removal contractor contracted by the City must be called back for snow removal.
4. Any winter heating units used for Sidewalk Café must be approved by the City of Auburn Hills Fire Department. Heater specifications must be submitted with application. Also, heaters must be shown on plan submitted with application.
5. City of Auburn Hills or contracted service organization by the City of Auburn Hills will not be held responsible for any damage to furniture or heating units, etc. in Sidewalk Café area.
6. No liquor will be served without proper licensing through the State of Michigan and the City of Auburn Hills Police Department.
7. No smoking allowed in Sidewalk Café area.

LICENSE AGREEMENT

THIS LICENSE, effective April 15, _____ through November 14, _____ for Summer Season Sidewalk Café.

THIS LICENSE, effective November 15, _____ through April 14, _____ for Winter Season Sidewalk Café.

WITNESSETH:

That the City of Auburn Hills, a Michigan Municipal Corporation, 1827 N. Squirrel Road, Auburn Hills, Michigan, hereinafter called the "Licensor", licenses and permits <<1>>, <<Business Name>> hereinafter called the "Licensee", to make an encroachment into the public sidewalk abutting <<2>>, <<City, State, Zip>> more particularly described as:

Business Address: _____, Auburn Hills, MI 48326

Said encroachment shall consist of a serving area for food and drink with a railing, fence and/or other barricades surrounding said sidewalk if liquor is being served in Sidewalk Cafe approved by the City of Auburn Hills Community Development Department. It is hereby understood and agreed that any construction on the public sidewalk shall be of a temporary nature only, and easily removable as hereinafter may be required. No structure of a permanent nature shall be erected on the sidewalk.

This License is granted upon the following conditions, assent to which is signified by the signature/s of the Licensee/s:

1. This License shall be for the terms listed above. The fence and/or other barricades surrounding the sidewalk serving area shall be removed at the end of service each night.
2. The fence and/or other barricades or rail surrounding the sidewalk serving area should be of temporary nature and approved by the City of Auburn Hills.
3. The Licensee shall purchase black/brown or earthtone wrought iron or steel powder-coated furnishings and wrought iron railings approved by the City of Auburn Hills as submitted with application and plan.
4. **The Licensee agrees to repair and/or replace any damage to any portion of the sidewalk or streetscape as a result of the installation, maintenance and/or removal of the café railing system or furniture etc. All costs for such repair or replacement, and all work performed, shall be the responsibility of the Licensee. The City of Auburn Hills shall have the sole discretion to determine when a sidewalk/streetscape is in need of repair or replacement. All required repairs must be complete before the beginning of the next season.**
5. The manner in which the serving area on the sidewalk is encompassed shall be subject to prior approval and inspection by the City of Auburn Hills.
6. The Licensor shall permit and agree to the use of alcohol only as permitted and/or licensed by the Michigan Liquor Control Commission in the area of and during the term of this License.
7. The Licensee shall furnish and do at the Licensee's own cost and expense any and all things herein permitted or that the Licensee is herein bound to do, including but not limited to any upkeep and maintenance of said sidewalk.

The Licensee shall clean the entire area of encroachment and all other adjacent sidewalk

areas by removing debris, trash, sweeping and washing down the area each day. The cleaning shall be conducted as frequently each day and as necessary to prevent debris or trash from being blown or scattered onto other properties. A thorough sweeping and cleaning shall be conducted at the close of business each day. The cleaning shall not be postponed until the beginning of the next business day.

Steam cleaning and/or degreasing agents shall be used to thoroughly clean the area of encroachment and all other affected adjacent sidewalk areas as needed. At a minimum, steam cleaning and/or degreasing agents shall be used within the first five days of each month and upon the expiration of the seasonal license agreement.

Failure to comply with any provision of the Agreement shall result in a fine of \$200, payable to the City of Auburn Hills within 5 days of Notice of Non-compliance. Failure to pay the \$200 fine shall result in immediate termination of this Agreement. A second act of non-compliance within the license period shall result in immediate termination of the License Agreement upon Notice of the Second Act of Non-compliance. The Licensee may petition the City Council for reinstatement of the License Agreement.

8. The Licensee agrees and undertakes to indemnify and save the Licensor harmless from any and all claims, demands and rights of action of every name, nature and description, whether arising under state or Federal statutes, or at common law, for injury or alleged injury to persons whether employees of the Licensor, or agents or employees of the Licensee or to third parties, and for damage or alleged damage to property regardless of to whom it may belong or in whose custody it may be, arising through, on account of, or out of the License herein granted, no matter how caused, whether by the negligence of the Licensor, its agents, employees or otherwise. The Licensee agrees that in case claim is made or suit instituted against the Licensor for such loss, injury or damage, including liability under a Dramshop claim, the Licensee will, upon notice from the Licensor, settle, adjust or defend the same at its sole cost and expense, without expense to the Licensor, and will pay any judgment rendered therein together with Court costs.
9. The City of Auburn Hills shall be added as a named insured to Licensee's general liability insurance policy and shall provide the City with a copy of the Certificate of Insurance therefore prior to the April 15th opening each year. The additional insured on the certificate of insurance **must** read as follows:

“City of Auburn Hills, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers.”

The cancellation notice on the certificate of insurance **must** read as follows:

“Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the Certificate Holder”.

The general liability insurance policy and the Certificate of Insurance must be effective for the duration of the seasonal license from April 15 through October 31 each year. It is the responsibility of the Licensee to provide a Certificate of Insurance for the license period of April 15 through October 31, to the City of Auburn Hills as a condition precedent to the issuance of a License. The Licensee shall carry insurance coverage in the amount of three hundred thousand dollars (\$300,000.00) for liquor, one million dollars (\$1,000,000.00) for general and products liability. Umbrella coverage in the amount of one million dollars (\$1,000,000.00) may also be used if the general liability coverage is less than one million dollars (\$1,000,000.00).

Furthermore, the Licensee agrees to reimburse the Licensor for any deductible costs or claims expenses arising from any claims or suits filed against the City.

10. The Licensee shall immediately cease operation or any use of the encroachment upon receipt of a Notice of Cancellation of insurance. Licensee shall not resume any of the encroachment until presentation of a valid Certificate of Insurance and approval by the Community Development Department to resume use of the encroachment.
11. The Licensee agrees that the Licensor has the right to revoke and terminate this Agreement without just cause or other explanation of any sort being required. The Licensee shall immediately cease operation or any use of the encroachment upon written or oral notice by Licensor (City of Auburn Hills). Upon termination, Licensee shall restore the sidewalk to its original condition.
12. The Licensee understands and acknowledges there are or may be utility easements in this public right-of-way. Licensee agrees that should any additions, repairs or corrections be required to be made to any utility located within said right-of-way, all costs or expenses concomitant with the removal and replacements associated with the encroachment shall be borne by the Licensee. It is further agreed and understood that the Licensor or its agents shall be allowed to make any and all emergency repairs to the utilities located upon or within such easement without being required to give notice to Licensee.
13. That in the event the Licensee sells, leases or relinquishes control of the business and/or property or any portion thereof, Licensee shall immediately notify the Community Development Department and this License Agreement shall immediately terminate.
14. Any Non-Michigan Liquor Control Commission licensed establishment must not allow any consumption of alcohol within their sidewalk café area.
15. The area of the sidewalk café is an extension of the business and the business has the responsibility to insure all laws and health codes, etc. are maintained in this area the same as within the business. No smoking is allowed in this area.
16. That the last call for service of food and drink shall be no later than 1:00 a.m. All patrons must vacate the sidewalk area no later than 1:30 a.m.
17. For any Licensee who serves beer, wine, mixed drinks, or any type of alcoholic beverage, security personnel, staff supervision, or host shall be provided at the sidewalk area during peak operating hours. For any Licensee who serves beer, wine, mixed drinks, or any type of alcoholic beverage, security personnel, staff supervision, or host shall be on duty no later than 6:00 p.m. and shall continue as long as food and drink are being served, or until all patrons have vacated the sidewalk area. Security personnel, staff supervision or host shall be provided for, and conduct themselves consistent with all current Liquor Control Commission Rules and Regulations.
18. By executing/signing this Agreement the License certifies that he/she is in full compliance with license requirements of the State of Michigan for outside sales of alcohol.
19. The Michigan Liquor Control Commission licensed establishment cannot allow a person to leave the café area with any alcoholic beverage nor can they allow someone to bring in their own alcoholic beverage.
20. There shall not be any live music on any sidewalk area without prior approval of the Community Development Department.
21. The license fee each year is seventy five dollars (\$75.00) for a first time applicant, no charge for the renewal of a previously approved license (but must still submit annual application along with all required paper work for both the Summer and Winter Season by March 15th of each year. The license fee shall be payable at the time of application for the License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the execution date written below.

WITNESSES:

Business Owner

Signature

Please print name

Signature

Please print name

(Name)

(Name Printed)

(Title)

CITY OF AUBURN HILLS

Signature

Please print name

Signature

Please print name

Jeffrey Spencer, Building Official

Date Executed: _____

**CITY OF AUBURN HILLS
SIDEWALK CAFE
HOLD HARMLESS AGREEMENT**

As required for approval _____, hereinafter referred to as _____ agrees to indemnify, defend, and save harmless the City of Auburn Hills, its agents, departments and employees from and against any and all claims and liabilities, expenses, fees, fines, suits, actions or judgments of any and every kind and nature arising from or growing out of _____.

Further, _____ also agrees to defend the City of Auburn Hills and its departments and employees from and against any and all claims or actions brought or filed against them with respect to the subject event of this Hold Harmless Agreement and further agrees to pay any and all costs and attorney's fees associated with the defense of any such claims or causes of actions and _____ shall be responsible for any and all damage and/or injury resulting from said event.

In addition, _____ agrees to furnish a certificate of insurance showing proof of the following:

- General Liability Coverage (affording coverage not less than ISO Commercial General Liability coverage form.)
 - Limit of liability in the amount of \$1,000,000.00 combined single limit per occurrence on which certificate the City of Auburn Hills shall be named as additional insured and which certificate shall be submitted with Sidewalk Café Application.
- Michigan Workers Compensation and Employers Liability Insurance issued and maintained with statutorily determined limits of liability.

Witnesses:

(Name of Organization)

By: _____

Dated: _____