

**CITY OF CEDAR FALLS
APPLICATION FOR SIDEWALK CAFÉ ON CITY RIGHT-OF-WAY
(Division 2, Article III, Chapter 23, Cedar Falls Code of Ordinances)**

A sidewalk café means an outdoor area that is temporarily situated on a public sidewalk and which is adjacent to and contiguous with any side of a building in which a restaurant is located and where food and beverages are served for consumption by persons sitting or standing at tables within such area. (Sec. 23-66)

***** CHECKLIST*****

Have you included the following with your application?

- _____ Site plan/diagram showing interior and exterior dimensions, fencing, and provided other required items as outlined in Design Requirements.

- _____ Listing of names and addresses of the owners of each abutting property and of every other property that is within 150 feet of the applicant's premises. Property owners will be notified of your request for a sidewalk café permit.

- _____ Proof of valid liquor license or wine or beer permit covering the establishment.

- _____ Proof of license/permit issued by the state or county health department to serve food for consumption on the premises.

- _____ Copy of food service menu.

- _____ Certificate of insurance establishing insurance coverage, including an endorsement for use of public right-of-way as a sidewalk café in the amounts shown below.
 - (1) Commercial general liability insurance coverage of \$1 million per occurrence for bodily injury and property damage with a \$2 million aggregate.
 - (2) Worker's compensation insurance and employer's liability insurance as required by Chapter 85, Code of Iowa.
 - (3) Dram shop and liquor liability insurance coverage which meet the requirements of the Iowa Code to serve alcoholic beverages.
 - (4) See Cedar Falls Code Section 23-72 for additional insurance requirements.

- _____ Written consent of the owner of the building in which the restaurant is located, if different from the applicant.

- _____ Easement Agreement. Signature of landlord will be required to complete this agreement.

- _____ Signed and notarized Application. Do you meet the restaurant definition?

- _____ Payment for permit, deposit and easement fees. (Wait to submit until square footage is confirmed.)

Have you completed the following?

- _____ Applied with Iowa Alcoholic Beverages Division at www.iowaabd.com for an Outdoor Service endorsement?

- _____ Notified your dram shop insurance provider about this new area?

Applicant should allow 30 days for review, consideration and approval following initial submission. Questions? Please contact the City Clerk's office at 319-273-8600.

APPLICATION

Please indicate whether your establishment meets the criteria for definition of a restaurant.

- Prepares meals on the premises and provides meal service which is open to the public while the kitchen is open. YES ___ NO ___
- Has a food service menu from which customers may order. YES ___ NO ___
- Has an employee whose primary duty is the preparation of food and one whose primary duty is to serve food to customers. YES ___ NO ___
- Has a kitchen separate from the bar that contains such food preparation equipment as a stove, an exhaust fan, griddle, grill or broiler, or a food refrigeration unit with a capacity in excess of twenty (20) cubic feet. YES ___ NO ___
- Is licensed by the Black Hawk County Health Department to serve food and drinks during the hours that the business is open to the public. YES ___ NO ___
- Is a restaurant, café, cafeteria, coffee shop, delicatessen, ice cream shop or other specialty food or beverage shop. YES ___ NO ___

- 1) Name of Applicant: _____
- 2) Doing Business As: _____
- 3) Street Address: _____ Business Phone: _____
- 4) Owner of the building in which the restaurant is located, if different from the applicant:
 Name(s): _____ Address: _____

Sidewalk Cafe Permit Fee:	\$ 50.00
Public Right-of-Way Easement Fee:	
Size of Sidewalk Café: _____ square feet x \$1.00 =	\$ _____
(\$1.00 per square foot of public sidewalk lying within the sidewalk café area)	
Deposit:	\$ 250.00
<i>If the fencing or other items are permanently affixed to public property, the property owner will furnish the City with a cost estimate during the application process that provides a detailed summary of the repairs and costs to repair the items in public property.</i>	
Total Payable to City of Cedar Falls, Iowa	\$ _____

An application which is incomplete or which is not accurate shall be grounds for rejection.

 Applicant Signature

This instrument was acknowledged before me on the ____ day of _____,
 20____, by _____ (title) on behalf of the applicant,
 _____(business name).

My Commission Expires: _____ Notary Public in and for the State of Iowa

DESIGN REQUIREMENTS

- A. Attach diagrams with dimensions** of the existing building's interior and the proposed sidewalk café.

Maximum Occupancy Limit, as established by City officials = _____

Note: Addition of a sidewalk café or outdoor service area does not increase the established occupancy limits for the restaurant.

- (1) Exterior diagram shall specifically show:
 - (a) Café is adjacent to and contiguous with one side of the building it serves, and in which a restaurant is located and operating.
 - (b) Sidewalk café area may not extend beyond the side property lines of such building as extended to the adjacent street.
 - (c) A minimum of five (5) feet of unobstructed public sidewalk between the boundary of the sidewalk café area and the curb line of the public street (free of lampposts, public benches, planters, trees, tree grates, or other public fixtures located within the public sidewalk).
 - (d) The sidewalk café area shall maintain a minimum of a two-foot clearance on each side of any doorway leading from the building onto the public sidewalk.
 - (e) No part of the sidewalk café area should be placed in the street corner area as defined by building lines extended to the street, and no closer than ten (10) feet from an alley.
 - (f) Sidewalk café area shall be divided from the remaining public sidewalk by a barrier at least three feet in height, consisting of fencing or other rigid structure or ropes of a design or type approved by the Director of Municipal Operations & Programs and the Design Committee of the respective district.
 - (g) Sidewalk café elements may consist of tables, chairs, fencing, planters and plants, umbrellas and awnings, and similar fixtures if approved by the City.
 - (h) Sidewalk café may not use or incorporate into its area any public fixtures such as benches, seats, planters, trash receptacles, lampposts, or other publicly-owned structures.
 - (i) Sidewalk café may not block entrances or exits to the adjacent building; the exit from a sidewalk café area shall be through the adjacent building or at the main entrance to the building.
 - (j) Outdoor heaters are allowed only if approved by the City. Check here if applicant desires approval for outdoor heaters: _____.

(2) Applicant must choose one of the following:

___a) all sidewalk café elements will be removed from the public right-of-way within 30 minutes of the closing time of the sidewalk café each night, restoring the sidewalk to its normal condition as a pedestrian walkway;

or

___b) all sidewalk café elements will be orderly secured within 30 minutes of the closing time of the sidewalk cafe each night by means of chains and locks or some other secure means, in such a way that such elements cannot be used to cause damage to persons or property, and does not inhibit or obstruct regular sidewalk maintenance including but not limited to ordinary repair and snow removal.

If the proprietor attaches any sidewalk café elements to approved public property, the proprietor shall be responsible for restoring property to its original condition or condition of suitable agreement with the City, such as seasonal plugs, whenever the elements are removed. Upon completion of the repairs, the City will inspect for compliance.

(3) If the applicant elects to close the sidewalk café during certain times of the year as set forth in this application, the applicant agrees to move all sidewalk café elements inside the building comprising the restaurant during all times of the year that the sidewalk café is not open for business. Applicant shall specify the beginning and ending dates during the calendar year that the sidewalk café will be open: _____

Sidewalk cafes may be installed no earlier than April 1, and all components thereof shall be removed from the public passageway on or before November 15 of each year.

(4) Applicant shall list hours of operation for the sidewalk café, which shall be from no earlier than 7:00 a.m. to no later than 10:30 p.m. daily. Insert hours of operation here:

(5) Provide complete description of sidewalk café amenities and method of delineation of sidewalk café area from remaining public sidewalk. Color photos or illustrations of all sidewalk café elements, type of roping or fencing, including detectable barriers for individuals who are visually impaired, should be included.

(a) The type and design of roping, fencing or other barrier, as approved by Community Main Street or the College Hill Partnership.

(b) Check here if fencing or other café elements are planned to be affixed to public property (*requires approval by the City*): _____.

EASEMENT AGREEMENT

**EASEMENT AGREEMENT FOR TEMPORARY USE OF PUBLIC RIGHT-OF-WAY BETWEEN
THE CITY OF CEDAR FALLS, IOWA, _____, LANDLORD, AND
_____, TENANT, FOR A SIDEWALK CAFÉ ON THE PUBLIC
RIGHT-OF-WAY LOCATED AT _____ STREET, CEDAR FALLS,
IOWA**

This Agreement is made among Landlord, _____, and Tenant, _____ ("Applicant"), and the City of Cedar Falls, Iowa, a municipal corporation.

WHEREAS, the City of Cedar Falls ("City") is the owner of the public right-of-way within the City of Cedar Falls, Iowa; and

WHEREAS, Applicant has applied for temporary use of the public right-of-way as a sidewalk café; and

WHEREAS, Applicant has elected as follows with respect to such sidewalk cafe: **[check either Box (a) or (b); and either Box (c) or (d); and either Box (e) or (f)]**

- (a) Fencing, ropes or other rigid structure not attached to the public sidewalk; or
- (b) Fencing, ropes or other rigid structure attached to the public sidewalk and approved by the Director of Municipal Operations & Programs.
- (c) all sidewalk café elements shall be moved inside the building each night; or
- (d) all sidewalk café elements shall be secured each night.
- (e) Applicant shall operate the sidewalk café area during the period of April 1 to November 15 each year; or
- (f) Applicant shall operate the sidewalk café area during the months of _____ through _____ each year.

WHEREAS, so long as said proposed use is consistent with the conditions set forth in this Agreement, and in Division 2, Article III, of Chapter 23 of the Cedar Falls Code of Ordinances, said use is in the public interest.

WHEREAS, in mutual consideration of the promises herein, Applicant and City agree as follows:

1. Landlord _____ owns certain real estate abutting the public right-of-way located in Cedar Falls, Iowa, at the following street address: _____ Street, Cedar Falls, Iowa; and Landlord has given Applicant/Tenant permission to operate a sidewalk café thereon as herein provided.
2. Applicant/Tenant _____ (hereinafter "Applicant") occupies said real estate abutting the public right-of-way located at said street address, and wishes to use a portion of said right-of-way for location and operation of a sidewalk café, as permitted by City regulations.
3. City and Applicant agree this Agreement shall be binding upon the successors and assigns of the parties hereto, provided that no assignment of this Agreement shall be made without the prior written consent of both parties to be attached hereto as a formal written addendum.

4. Applicant acknowledges and agrees that this Agreement is limited exclusively to the location, use and purposes listed herein for a sidewalk café, that any other uses, locations and purposes are not contemplated herein, and that any expansion of said uses, purposes or locations must be specifically agreed to in writing by the City of Cedar Falls.
5. Applicant further acknowledges and agrees that no property right is conferred by this Agreement for the use of portions of the public right-of-way, that the City is not empowered to grant permanent or perpetual use of its right-of-way for private purposes, that the City may order Applicant's use of the right-of-way to cease and desist if, for any reason, the City determines that said right-of-way is needed for a public use and should be cleared of any and all obstructions, or the City determines, pursuant to any of the provisions of Division 2 of Article III of Chapter 23 of the Cedar Falls Code of Ordinances, that continued use of the public right-of-way for a sidewalk café is not in the public interest or consistent with public safety, health or welfare, and that the Applicant shall not be entitled to any compensation should the City elect to do so.
6. Applicant also agrees to indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses, liabilities or damages, of whatever nature, including payment of reasonable attorney fees, which may arise from the Applicant's use of the public right-of-way arising from this Agreement, or which may be caused in whole or in part by any act or omission of the Applicant including Applicant's agents or employees. Applicant further agrees to provide the City with a certificate of insurance coverage of the sidewalk café as required by Section 23-72 of the Cedar Falls Code of Ordinances.
7. Applicant further agrees to abide by all applicable federal, state, and local laws, and to maintain said sidewalk café in accordance with the approved Site Plan/Diagram. Access and egress routes shall be maintained so that crowd management, security, and emergency services personnel are able to reach any individual without undue hindrance. Applicant shall insure that there are adequate clearances between the various tables, chairs, and other sidewalk café elements such that appropriate ingress and egress routes are maintained for the safe exit of all patrons from the sidewalk café.
8. Applicant is required to submit Schematic Diagrams in connection with the use of approved fencing, ropes or other rigid structures. Applicant shall either move all sidewalk café elements inside the building comprising the restaurant which is adjacent to the sidewalk café by the closing time of the sidewalk café each night, restoring the sidewalk café to its normal condition as a pedestrian walkway, or the applicant must secure all sidewalk café elements by the closing time of the sidewalk café each night, by means of chains and locks or other secure means approved.
9. Requests for revisions or amendments to this Agreement require submittal of proposed revised Side Plans/Schematic Diagrams by Applicant and review by City staff, and formal approval by the City Council.
10. Should Applicant elect to secure sidewalk café elements by means of chains and locks or some other secure means, in lieu of moving such sidewalk café elements inside the building each night, Applicant shall obtain the prior approval of the Director of Municipal Operations & Programs for the means by which such sidewalk café elements shall be secured, so that they are secured in such a way that such sidewalk café elements cannot be used to cause damage to persons or property during the hours the sidewalk café is closed. Further, the Applicant shall obtain prior approval from the City Fire Department, to insure that the securing of such sidewalk café elements does not interfere with ingress or

egress, fixtures associated with fire detection and suppression, utility shut-offs, or the use of mechanical equipment rooms, in or around the building adjacent to which the sidewalk café area is located.

11. City and Applicant hereby understand, acknowledge and agree that the provisions of Division 2, Sidewalk Cafes, Sections 23-66 through 23-75, of Article III, Obstructions, of Chapter 23, Streets and Sidewalks, of the Code of Ordinances of the City of Cedar Falls, Iowa, as the same now exist or as the same be amended and modified from time to time by ordinance amendment of the City Council, are hereby incorporated into, and made a part of, this Easement Agreement, and shall govern the terms, conditions and provisions of this Easement Agreement.
12. In the event of a breach of this Agreement or of the provisions of Division 2, Sidewalk Cafes, of the Cedar Falls Code of Ordinances, the City may, at its sole discretion, elect to give written notice to Applicant to remove all sidewalk café elements and/or other objects from the City's right-of-way. In the event Applicant does not comply within the time period designated in the written notice, the City may elect to remove, or direct removal of, any obstructions from the right-of-way and charge the cost of such removal and temporary storage to the Applicant and/or Landlord. Upon nonpayment of said charges, the removal costs may be certified to the Black Hawk County Assessor as a statutory lien and assessed against the property and collected in the same manner as a property tax, as provided in Section 364.12(2)(e), Code of Iowa.
13. In the event the sidewalk café elements are removed from the area for any reason, the right-of-way area and sidewalk must be restored to its original condition by the Applicant and/or Landlord, under such standards as may be promulgated by the City Engineer or City Director of Municipal Operations & Programs. The Applicant and Landlord shall be responsible for any damages to the sidewalk caused by the operation of the sidewalk café. A deposit of \$250 shall be required prior to the establishment of the sidewalk café, and shall be returned to the Applicant when the sidewalk is restored to its prior condition as determined by the City Engineer or City Director of Municipal Operations & Programs. If the Landlord/Applicant fails to restore the sidewalk to its prior condition or to the standards promulgated by the City Engineer or City Director of Municipal Operations & Programs, the City may do so and apply the deposit to the cost thereof.
14. In consideration for the City's concerns for public safety on the public right-of-way, Applicant specifically acknowledges said safety concerns and agrees to operate the sidewalk café in entire conformity with all of the rules and regulations contained in Division 2, Sidewalk Cafes, of the Cedar Falls Code of Ordinances.
15. This Easement Agreement shall terminate when Applicant's sidewalk café permit terminates, either by reason of expiration of such permit and the non-renewal thereof, or by reason of termination of the permit for noncompliance with the provisions of this Agreement, or of the provisions of Division 2, Sidewalk Cafes, of the Cedar Falls Code of Ordinances.
16. Should any section of this Agreement be found invalid by a court of competent jurisdiction, it is agreed that the remaining portions shall continue in full force and effect as though severable from the invalid portion.

Dated this _____ day of _____, 20_____.

APPLICANT/TENANT

APPLICANT/LANDLORD

(Name of Entity)

(Name of Entity)

By _____
(Name)

By _____
(Name)

(Title)

(Title)

STATE OF IOWA, COUNTY OF BLACK HAWK, ss:

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ (name of person) as _____ (title) of _____,

Applicant/Tenant.

My Commission Expires:

Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF BLACK HAWK, ss:

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ (name of person) as _____ (title) of _____,

Applicant/Landlord.

My Commission Expires:

Notary Public in and for the State of Iowa

CITY OF CEDAR FALLS, IOWA

By _____
James P. Brown, Mayor

ATTEST:

Jacqueline Danielsen, CMC, City Clerk

STATE OF IOWA, COUNTY OF BLACK HAWK, ss:

This instrument was acknowledged before me on this ____ day of _____, 20____, by James P. Brown, Mayor and Jacqueline Danielsen, City Clerk, of the City of Cedar Falls, Iowa.

My Commission Expires:

Notary Public in and for the State of Iowa

Miscellaneous Provisions Applicable to Sidewalk Cafes.

- (1) Be within the public right-of-way.
- (2) Be within an area of the City zoned C-3 Commercial District.
- (3) Be within an area of the public sidewalk where the public right-of-way directly abuts on a private building line.
- (4) Be situated at least 300 feet from the boundary of any residentially-zoned district of the City.
- (5) Stacking of chairs or tables in the sidewalk café area is not permitted, except when tables, chairs or other sidewalk café elements are being secured each night, as provided in Sec. 23-68(h)(2).
- (6) No advertising or signage shall be permitted in the sidewalk café area, other than the name of the establishment printed on chairs, tables, umbrellas or other amenities as approved by the City.
- (7) Applicant is responsible for any damage to the surface of the public sidewalk caused by the sidewalk café and must be repaired to City specifications at the cost of the proprietor.
- (8) Sidewalk café shall be equipped with an inside or outside water source to clean the sidewalk café area daily and must be regularly cleaned and kept free of garbage and trash as provided in Section 23-69(5).
- (9) Applicant must hold a valid liquor license or wine or beer permit covering both the restaurant and the sidewalk café area.
- (10) No bottles, cans or pitchers shall be used to serve beverages.
- (11) No amplified music shall be allowed, and lighting must not reflect onto adjacent properties or residential quarters; and sidewalk café patrons must wear shirts and shoes at all times.
- (12) Exits from the adjacent building shall not be blocked or obstructed by sidewalk café elements.
- (13) The sidewalk café shall be served by restaurant staff at all times of operation and must be monitored by restaurant staff when alcoholic beverages are served.