

ORDINANCE NO. 2578

AN ORDINANCE REPEALING SUBSECTION (d), DEALING WITH PLACEMENT OF BENCHES, TABLES AND/OR CHAIRS, OF SECTION 23-65, DISPLAY OF GOODS ON SIDEWALK, AND ENACTING IN LIEU THEREOF A NEW SUBSECTION (d), DEALING WITH TABLES, CHAIRS AND/OR BENCHES PLACED ON THE PUBLIC SIDEWALK, OF SECTION 23-65, DISPLAY OF GOODS ON SIDEWALK, ALL OF DIVISION 1, IN GENERAL, OF ARTICLE III, OBSTRUCTIONS, OF CHAPTER 23, STREETS AND SIDEWALKS, OF THE CODE OF ORDINANCES OF THE CITY OF CEDAR FALLS, IOWA.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR FALLS, IOWA:

Section 1. Subsection (d) dealing with placement of benches, tables and/or chairs, of Section 23-65, Display of Goods on Sidewalk, of Division 1, In General, of Article III, Obstructions, of Chapter 23, Streets and Sidewalks, of the Code of Ordinances of the City of Cedar Falls, Iowa, is hereby repealed in its entirety, and the following new subsection (d), Tables, Chairs and/or Benches, of Section 23-65, Display of Goods on Sidewalk, is hereby enacted in lieu thereof, as follows:

(d) Tables, Chairs and/or Benches. Any proprietor of an establishment in those areas of the city that are zoned C-3 Commercial District under the Cedar Falls Zoning Ordinance, and which are within the area of the city designated as a "Cultural District" by City Council Resolution No. 14,195, adopted August 9, 2004, that sells food for consumption on or off the premises of such establishment may use that portion of the public sidewalk that is immediately adjacent to and that lies in between the side property lines, as extended to the curb, of the public sidewalk, for the purpose of providing tables, chairs and/or benches, for the convenience of and use by such proprietor's customers and others, with the following restrictions:

(1) Such proprietor and the proprietor's employees shall not at any time serve any food or beverages to customers or others seated at such tables, chairs and/or benches.

(2) There must be a minimum of five (5) feet of unobstructed public sidewalk between any such tables, chairs and/or benches and the curb line of the public street, in order to allow for the free passage of pedestrian traffic on the public sidewalk, provided, however, that the city may, in granting a permit under this subsection, require more than five (5) feet of unobstructed public sidewalk clearance if, in the reasonable determination of the city, such additional clearance is necessary in the interests of public safety, health, or welfare, in light of the peculiar circumstances involved with the particular permit application, and the physical characteristics of the public sidewalk area in question.

(3) No such tables, chairs and/or benches shall be attached in any manner to the public sidewalk or to any public fixtures located on the public sidewalk. The proprietor

shall be responsible for any damage to the public sidewalk or to any public fixtures located on the public sidewalk by said tables, chairs and/or benches.

(4) By the closing time of such establishment each night, all such tables, chairs and/or benches shall either (i) be moved inside the building that is adjacent to such establishment, restoring the public sidewalk to its normal condition as a pedestrian walkway; or (ii) be moved to a location on the public sidewalk that directly abuts the front of the building in which such establishment is located, stacked neatly, and secured by means of chains and locks or some other secure means approved by the city director of public works, and not attached in any manner to the public sidewalk or to any public fixtures located on the public sidewalk, in such a way that such tables, chairs and/or benches cannot be used to cause damage to persons or property during the hours such establishment is closed. If the proprietor selects the alternative set forth in subparagraph (ii) of this subsection (d)(4), the proprietor shall be responsible for insuring that such tables, chairs and/or benches do not cause damage to persons or property during the hours such establishment is closed.

(5) Before a proprietor of such an establishment may lawfully place any tables, chairs and/or benches on the public sidewalk in front of such establishment, the proprietor shall file an application for a permit with the city clerk of the city, on a form furnished by the city clerk, and shall pay a non-refundable annual permit fee therefor, in such amount as shall be determined from time to time by resolution of the city council. The application and an accompanying diagram or site plan shall show (i) the dimensions, including the length and width, of the area of the public sidewalk that is adjacent to said establishment, as described in this subsection; (ii) the five (5) foot area of unobstructed public sidewalk adjacent to the curb which is to be reserved for pedestrian use; (iii) the approximate location where the tables, chairs and/or benches shall be positioned, and the size and number thereof; (iv) the location where the tables, chairs and/or benches shall be stored during the hours when such establishment is closed, in the event the establishment elects not to move said items inside the establishment each night; (v) the means by which such tables, chairs and/or benches shall be secured, as provided in this subsection; (vi) a physical description of the tables, chairs and/or benches that will be used; (vii) a minimum of a two (2) foot clearance between any such tables, chairs and/or benches and each side of any doorway leading from the establishment onto the public sidewalk; (viii) proof that the applicant holds a valid license or permit to operate the establishment; (ix) the written consent to the filing of said application from the owner of the building in which such establishment is located, if the applicant is not the owner of the building; and (x) such other information and documentation as the city may require in order to comply with the requirements of this subsection.

(6) The city clerk shall forward a copy of the proprietor's application, together with all other information and documentation required in connection with said application, to the city director of public works, and to Community Main Street, Inc., for review as to compliance with the requirements of this subsection, compliance with the interests of public safety, health or welfare, and compliance with the aesthetics of the downtown Parkade area. If the application is approved by both the city director of public works and Community Main Street, Inc., as being in compliance with the requirements of this subsection, the city clerk shall issue a permit therefor to the applicant. If the application is not approved by both the city director of public works and Community Main Street, Inc., the city clerk shall notify the applicant of the reason or reasons the application was

not approved. The applicant shall be afforded a period of thirty (30) days from the date of the city clerk's notice, within which to revise the application in an effort to comply with the requirements of this subsection and to correct the reasons for denial thereof. If the revised application is approved by both the director of public works and Community Main Street, Inc., the city clerk shall issue a permit. If the revised application is not approved by both the city director of public works and Community Main Street, Inc., the city clerk shall not issue a permit. In that event, the applicant shall have a period of thirty (30) days from the date of notice of denial to appeal the denial to the administration committee of the city council. The administration committee shall conduct a hearing on the appeal of the denial of the application within thirty (30) days, shall afford the applicant an opportunity to present information in support of the application, and shall issue a decision to either approve the application, which may be conditioned on one or more requirements, or to deny the application. The decision of the administration committee shall be final.

(7) Any permit issued under this subsection (d) shall be issued for a period of one (1) year, and may be renewed upon the filing of an application for renewal of the permit before its expiration by the proprietor, and by payment of the required annual fee. The application for renewal shall state whether or not any of the contents of the original application is being revised, failing which the contents of the application for renewal shall be deemed to be the same as contained in the original application.

(8) In the event that ownership of the establishment holding the permit is sold, conveyed or transferred to another person or entity, the permit shall not thereby be transferred, and the new owner shall be required to file a new and separate application for such a permit, as provided in this subsection.

(9) The city reserves the right to limit the number of permits issued under this subsection if necessary to maintain adequate pedestrian flow, to permit adequate access to building entrances, to safeguard pedestrian and traffic safety, to preserve the aesthetic quality of the surrounding area, or for any other valid public purpose. The city reserves the right to either deny an application which otherwise meets the requirements of this subsection, or to require the proprietor to meet additional terms and conditions for issuance of a permit beyond the requirements set forth in this subsection if, in the reasonable determination of the city, either granting the permit, or granting it without such additional terms and conditions, would not adequately protect and preserve the rights, privileges, and property of the city or of its residents, or would not adequately protect or preserve the peace, safety, health, welfare, comfort or convenience of the city's residents.

(10) The city director of public works may order the immediate removal of any or all of a permit holder's tables, chairs and/or benches in the event such items are causing a hazard to public safety, health or welfare, are interfering with the unobstructed passage of pedestrians, are unsightly in appearance or unsanitary in condition, are interfering with removal of ice and snow from the public sidewalks, or for any other reason affecting public safety, health or welfare.

(11) A permit issued under this subsection shall be revoked if the proprietor holding the permit does any of the following: (i) fails to maintain a valid license or permit covering the establishment adjacent to where the tables, chairs and/or benches are located; (ii) fails to either move the tables, chairs and/or benches inside the

establishment, or fails to secure them, as required in subparagraph (4) of this subsection; (iii) fails to pay the fee for issuance or renewal of the permit; (iv) fails to operate in strict compliance with all of the provisions of this subsection, of all other city ordinances, and of state law; or (v) creates or allows to exist a safety hazard, health hazard, or public nuisance under state law or city ordinance, in connection with the placement or use of the tables, chairs and/or benches. Upon the occurrence of any of the events described in this subparagraph (11), the city clerk shall give the proprietor of such establishment notice of revocation of the permit, and the permit holder shall thereupon immediately cease to place tables, chairs and/or benches on the public sidewalk adjacent to the proprietor's establishment.

(12) The permit holder may appeal the revocation of the permit by written notice of appeal mailed or delivered to the city clerk within ten (10) days of the date of notice of revocation. The administration committee of the city council shall conduct a hearing within twenty (20) days of the date of the notice of appeal. The permit holder shall be notified in writing of the time and place of hearing thereon, and shall be afforded an opportunity to present information to the committee, following which the committee shall issue a written decision within ten (10) days of the date of the hearing, either affirming or reversing the revocation of the permit. The decision of the administration committee shall be final. During the pendency of the appeal, the permit holder shall not be allowed to place the tables, chairs and/or benches on the public sidewalk.

(13) The city shall retain the right to terminate any permit granted under this subsection upon seven (7) days' written notice, and may require the removal of all tables, chairs and/or benches from the public sidewalk adjacent to an establishment, if the city council, after due consideration, determines that there is a reasonable and substantial need for the use of the public right-of-way being occupied by such tables, chairs and/or benches, for a valid public purpose. The determination of the city council shall be final, and there shall be no right of appeal from such decision.

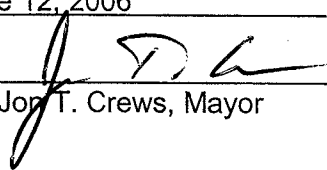
INTRODUCED: _____ May 22, 2006 _____

PASSED 1ST CONSIDERATION: _____ May 22, 2006 _____

PASSED 2ND CONSIDERATION: _____ June 12, 2006 _____

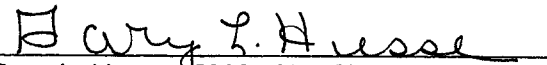
PASSED 3RD CONSIDERATION: _____ June 12, 2006 _____

ADOPTED: _____ June 12, 2006 _____



Jon T. Crews, Mayor

ATTEST:



Gary L. Hesse, CMC, City Clerk

CITY OF CEDAR FALLS
TABLES, CHAIRS AND/OR BENCHES
APPLICATION FOR PERMIT

Name of Applicant _____

Doing Business As _____

Street Address _____

Business Phone _____ Contact Phone _____

Mailing Address _____

(\$25.00 fee)

Placement of Benches, Tables, and/or Chairs must meet the following requirements:

- Zoned C-3 Commercial District and within city designated "Cultural District."
- Must comply with requirements of Section 23-65(d), Cedar Falls Code of Ordinances.
- Application to be submitted thirty (30) days in advance of desired start date.
- Application must include diagram, description, proof of control of establishment, and fee.
- Minimum of five (5) feet unobstructed public sidewalk between seating/tables and curb.
- Shall not be attached to any public sidewalk or public fixtures at any time.
- Furniture shall be moved inside or secured outside, adjacent to building each night.
- No food or beverages may be served to persons seated in such area at any time.
- Serving or consuming alcoholic beverages in such area is prohibited.
- Permit may be renewed prior to its expiration, one (1) year from the date of issuance.
- Permit is not transferable.
- Application is subject to approval by Public Works Director and Community Main Street.
- Public Works Director may order immediate removal for safety, health or welfare.
- The City reserves the right to limit number of permits issued.
- They City retains the right to terminate any approved permit upon seven (7) days notice.
- Failure to comply with and adhere to requirements may result in permit being revoked.

I certify that the application is complete and accurate and understand that failure to meet and maintain all requirements for display of tables, chairs and/or benches, shall be grounds for revocation of permit.

Signature of Applicant

Date