

SIDEWALK CAFE APPLICATION AND LICENSE

License No: 20__ – __

Operator: Business name: _____
Address: _____
Contact person: _____
Business phone: _____ Cell phone: _____
Email: _____

A scaled drawing of the area proposed to be occupied by the sidewalk cafe is attached as Exhibit A.

Operator's Certificate of Insurance and relevant endorsements are attached as Exhibit B.

Operator's Indemnity, Defense and Hold Harmless Agreement is attached as Exhibit C.

A copy of Resolution 10-R-13 authorizing the issuance of a Sidewalk Cafe License is attached as Exhibit D, and the provisions, limitations and requirements thereof are incorporated herein by reference. Operator accepts all provisions, limitations and requirements of such Resolution and agrees to comply with them.

___ Check if adjacent property is included, in which case the adjacent owner's Consent and Indemnity, Defense and Hold Harmless Agreement is attached as Exhibit E.

Operator specifically understands and agrees that this License may be unilaterally revoked by the City if, in the City's sole judgment, the License holder has failed to comply with the terms and conditions of the License or, without regard to the License holders' compliance, if the City determines that such revocation is in the best interests of the City.

OPERATOR: _____
Signature Printed name / title
Date submitted: _____, 20__.

A Sidewalk Cafe License is hereby granted to Operator to operate a sidewalk cafe at _____
in accord with the Application and Exhibits thereto.

The following special provisions apply: _____

_____. (attach separate page if necessary)

This license shall expire on December 31, 20__.

Date approved: _____, 20__.

CITY OF MURFREESBORO

By _____
Transportation Director Traffic Engineer

Copies: Planning, Urban Environmental, and Murfreesboro Police Departments

SIDEWALK CAFE

INDEMNITY, DEFENSE AND HOLD HARMLESS AGREEMENT

In connection with the issuance of Sidewalk Café License No. 20__ - _____ to

_____,
I / we (Operator by its authorized representative) hereby agree to indemnify and hold the City of Murfreesboro, together with any and all elected officials, appointed officers, employees and agents thereof (altogether, "City"), harmless from and against any and all claims, demands, losses, or causes of action of any kind or character that may be asserted against the City arising out of, connected with or related to the use of a portion of the City sidewalk for my / or Sidewalk Cafe. I / we further agree to defend said City, at my / our sole cost and expense, from any lawsuit or other legal proceeding brought or asserted against said City.

Although I / we believe that the insurance I / we have and will maintain will respond in the event of any such claim or lawsuit, I / we make this indemnification, defense and hold harmless commitment without regard to the existence of, or the coverage provided by, any such policy.

Dated: _____, 20____.

name

name

STATE OF _____)
: ss
COUNTY OF _____)

Before me, the undersigned notary public, personally appeared _____, the within named bargainor(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged such person(s) to be the within named bargainor(s), and that such person(s), as such bargainor(s), executed the within instrument for the purposes therein contained, by signing such instrument.

Witness my hand and seal, this ____ day of _____, 20 ____.

Notary Public

My Commission Expires:_____

(seal)

EXHIBIT C

RESOLUTION 10-R-13 to allow City sidewalks in the Central Business District to be used for food and/or beverage service by adjacent businesses in sidewalk cafes.

WHEREAS, the City's Central Business District is recognized as a special and historic area, which presents both unique opportunities and challenges for commercial activities; and,

WHEREAS, a vital and vibrant Central Business District is important to the economic health and well-being of the City as a whole; and

WHEREAS, the City desires to continue to facilitate expansion of certain commercial activities within the Central Business District, while recognizing the need for balance between such commercial activities and the need for reasonably efficient movement of people and motor vehicles through and within the Central Business District; and,

WHEREAS, the City is willing to consider and experiment with alternative uses of City sidewalks in the Central Business District; and,

WHEREAS, certain businesses in the Central Business District have sought City permission to expand their food and/or beverage service areas to the public sidewalk in front of the restaurant; and,

WHEREAS, it appears that certain City sidewalks are of sufficient size to allow for a limited amount of such activity while maintaining the clear pathways required by the Americans with Disabilities Act; and,

WHEREAS, said private commercial use of public space requires adoption of certain uniform safeguards to protect pedestrians and to protect the City; and,

WHEREAS, by simultaneous amendment of City Ordinances currently prohibiting such activities, the City Council intends to make such activity lawful if a business seeks, obtains and complies with the terms of a City license for a sidewalk cafe.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. The City hereby authorizes the issuance of a City license for use of a City sidewalk for food and, additionally or alternatively, beverage service ("sidewalk cafe") to applicants complying with the following terms and conditions:

A. Location. A sidewalk cafe may be located on a sidewalk in the Central Business District in front of or adjacent to a business providing food and/or beverage sales subject to the following:

1. The area proposed to be used for a sidewalk cafe shall be depicted on a drawing done to a scale of ½ inch = 1 foot on 11x17 paper, which drawing shall be made a part of the City license. The area must allow a minimum of 5 feet as a clear unobstructed pedestrian pathway outside the proposed sidewalk cafe area. Calculation of the pedestrian pathway shall not include, at a minimum, 1.5 feet from any curbside where there is angle parking towards the front of the building as this area is used, and should be considered as reserved for, vehicle overhangs.

2. The area of the sidewalk cafe must be clearly identified through the use of portable barriers. Any permanent or semi-permanent fixtures, including lamp

poles, planters, benches, newsracks and bikeracks, shall not be present in the unobstructed pedestrian pathway.

3. Sidewalk cafe areas shall not include, or be in such proximity to, bricked areas, crosswalks, intersections, stairs, ramps, handrails or other obstructions as might cause a hazard for pedestrians or drivers. The presence of any such feature may result in the establishment of a clear zone excluding an area in the vicinity of the feature from the sidewalk cafe area.

4. Approval of a proposed sidewalk cafe area shall be made after an on-site inspection by the City and determination of any clear zone in the vicinity of the proposed sidewalk cafe.

5. The sidewalk cafe area may be extended to the sidewalk in front of the contiguous building on either side of the business, with the written agreement of that owner as described below, provided that the sidewalk cafe area may not include or block the ingress or egress of said adjacent building.

B. Operations. A sidewalk cafe and sidewalk cafe operator shall comply with the following:

1. The sidewalk cafe area must be identified during its hours of operation by portable barriers which may be erected no sooner than 10 a.m. each day and which must be removed, along with all chairs, umbrellas, planters and other such portable furniture, furnishings or equipment no later than one half hour after closing. The portable barriers must have a flat, disk-like base for pedestrian safety and shall be consistent in appearance throughout each sidewalk cafe area.

2. From April 1 through October 31, and subject to Section C.5., tables may be left outside overnight in the sidewalk cafe area provided that they are located so as to not extend more than 3 feet from the exterior wall of the building and are secured against removal.

3. Furniture in the sidewalk cafe area shall be sufficiently sturdy and heavy that wind shall not cause its collapse or relocation, and such furniture shall not contain any advertising or other signage. No furniture shall be affixed to the sidewalk or anchored to City street infrastructure.

4. No open flames (e.g. candles, lanterns) shall be used. Portable gas heaters may be used if listed by an approved testing agency.

5. Any umbrella must be safely anchored, shall not obstruct the pedestrian pathway and shall not contain any advertising or other signage.

6. No electrical cords shall be run to the sidewalk cafe area from inside the business. Electrical outlets may be installed on the outside of the wall with approval of the Building & Codes Department and an appropriate electrical permit and inspections.

7. The sidewalk cafe operator must ensure that the sidewalk cafe area remains organized, attractive, and within the preapproved location at all times during its operation. The operator is responsible for retrieving and properly disposing of any napkins or other such paper or other trash that may blow away during the period of operation.

8. The sidewalk cafe area must be cleaned at the end of each business day when the portable barriers and furniture are removed. The business must use its own interior trash receptacles and shall not use the City's public trash cans for this purpose or for the disposal of surplus food or beverages.

9. The sidewalk cafe operator shall assure that the sidewalk cafe barrier is not used for attaching or resting bicycles, skateboards, scooters or other such devices

except such use is permissible by patrons while at the sidewalk cafe provided that such use does not block or impede required open pedestrian pathways.

10. The sidewalk cafe operator must ensure that the area is only used for the service and sale of food and/or beverages and that it is not used for the preparation of food or for the sale of non-edible merchandise. Service to patrons must be provided from within the sidewalk cafe area; the pedestrian pathway may not be used for this purpose.

11. The sidewalk cafe area may not be used to provide music, entertainment or sound amplification to patrons.

12. Smoking may be allowed or disallowed at the discretion of the sidewalk cafe operator.

13. If alcoholic beverages are served in the sidewalk cafe area, they are not allowed beyond that point. The operator shall post signs at the barrier and take such other measures as may prove necessary to enforce this limitation. The operator shall be responsible for compliance with all rules and regulations of the Tennessee Alcoholic Beverage Commission with respect to such service.

C. Procedures. A license to operate a sidewalk cafe shall be issued as follows:

1. Any business wishing to obtain a license from the City to operate a sidewalk cafe must submit a location plan to scale as provided above for the location requested to the City Transportation Department. The location plan must clearly show the pedestrian pathway and any obstructions therein or adjacent thereto.

2. Prior to issuance of a license, the City Traffic Engineer (or designee), together with such representatives of the Planning, Urban Environmental and other City Departments, as may be appropriate, shall inspect the proposed location for compliance with the provisions of this Resolution.

3. Prior to issuance of a license, the sidewalk cafe operator must submit proof of liability insurance that will be applicable to the sidewalk cafe area which is not owned by the operator and that will name the City as an additional insured. The sidewalk cafe operator shall maintain such insurance and shall provide appropriate certificates or other proof of renewal or continuation to the City. The operator of the sidewalk cafe must also agree to defend and hold the City harmless from any liability claim arising from operation of the sidewalk cafe.

4. If the proposed area includes a sidewalk in front of an adjacent building, that property owner's written consent to such use, along with that property owner's agreement to defend and hold the City harmless from any liability claim arising from operation of the sidewalk cafe, must also be provided.

5. The sidewalk cafe license will provide that the City may order that the sidewalk cafe not be opened or utilized during specific days or times and that the City may require that all furniture, furnishings and barriers be removed from the sidewalk during an emergency, or because of a special event, repairs or construction.

D. Duration and Revocation. The license shall be issued for a calendar year, or portion thereof, from January 1st through December 31st. The sidewalk cafe license will provide that it may be unilaterally revoked by the City if, in the City's sole judgment, the license holder has failed to comply with the terms and conditions of the license or, without regard to the license holder's compliance, if the City determines that such revocation is in the best interests of the City.

SECTION 2. The sidewalk cafe license program is being commenced on a trial basis. The City has and reserves the right to modify the program or to terminate the

program and all licenses issued thereunder at any time. No person or entity shall obtain any property (or "vested") right by obtaining a sidewalk cafe license.

SECTION 3. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and the welfare of the City requiring it.

Passed: May 27, 2010

Tommy Bragg, Mayor
Tommy Bragg, Mayor

ATTEST:

Melissa B. Wright
Melissa B. Wright
City Recorder

APPROVED AS TO FORM:

Susan Emery McGannon
Susan Emery McGannon
City Attorney

SIDEWALK CAFE

CONSENT, INDEMNITY, DEFENSE AND HOLD HARMLESS AGREEMENT OF ADJACENT PROPERTY OWNER

In connection with the issuance of Sidewalk Cafe License No. 20__ - _____
to _____,
I / we, (Owner or authorized representatives of Owner) of property adjacent to the
property upon which a Sidewalk Cafe is proposed to be operated, hereby consent to the
inclusion of a portion of my / our property within the Sidewalk Cafe area as shown on the
plan submitted to the City, a copy of which is attached hereto, and further hereby agree to
indemnify and hold the City of Murfreesboro, together with any and all elected officials,
appointed officers, employees and agents thereof (altogether, "City"), harmless from and
against any and all claims, demands, losses, or causes of action of any kind or character
that may be asserted against the City arising out of, connected with or related to the use
of a portion of the City sidewalk for a Sidewalk Cafe. I / we further agree to defend said
City, at my / our sole cost and expense, from any lawsuit or other legal proceeding
brought or asserted against said City.

Although I / we believe that the insurance I / we have and will maintain will
respond in the event of any such claim or lawsuit, I / we make this indemnification,
defense and hold harmless commitment without regard to the existence of, or the
coverage provided by, any such policy.

Dated: _____, 20____.

name

name

STATE OF _____)
: ss
COUNTY OF _____)

Before me, the undersigned notary public, personally appeared _____
_____, the within named bargainor(s), with whom I am
personally acquainted (or proved to me on the basis of satisfactory evidence), and who
upon oath acknowledged such person(s) to be the within named bargainor(s), and that such
person(s), as such bargainor(s), executed the within instrument for the purposes therein
contained, by signing such instrument.

Witness my hand and seal, this ____ day of _____, 20 ____.

Notary Public

My Commission Expires: _____ (seal)

EXHIBIT E