

**LICENSE APPLICATION for
SIDEWALK CAFÉ PERMIT**

SECTION 11.260
CITY OF MANITOWOC
900 QUAY ST



License # _____ License fee: \$75.00 Code: CSCP FEES ARE NON-REFUNDABLE

Initial Application (annual permit through 6/30). *Attach scale drawing.*
Renewal Application (due 4/15 each permit year).
Attach scale drawing only if changes to the café operation are being made.

SECTION 1 – LOCATION OF PROPERTY

Street Address of Tavern/Restaurant	Legal Description or Tax ID No. of Property
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Current Zoning of Property *(cafes are authorized in “B”, “C” and “I” zoning district where permitted or conditionally permitted, on portion of sidewalk adjacent to the building).*

Is a “WAIVER FOR PROXIMITY TO RESIDENTIAL DWELLINGS” required under Section 11.260(15) (h) (a waiver is required for café locations within 100 feet from any residential dwelling in a residential or “R” zoning district, unless the dwelling is the applicant/permittee’s dwelling—see attached statement of information for petition requirements)

Yes no (if “yes”, please attach original petition form to this application)

PROPOSED OPERATION OF SIDEWALK CAFÉ, USE OF PROPERTY, AND SCALE DRAWING
(see attached statement of information required to satisfy requirements under this section. All information identified on the attachment must be provided for the application to be deemed complete).

LICENSES
(attach copies of all applicable licenses requested below).

Current restaurant license number	Current Manitowoc County Department of Health license number
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Department of Agriculture, Trade and Consumer Protection (DATCP) license number

Current alcoholic beverage license number (required if applicant intends to sell alcoholic beverages in sidewalk café)

INSURANCE
(attach certificate of insurance required under Section 11.260(9) to prove commercial general liability and worker’s compensation coverage).

PERMIT FEE AND NOTICES

The required annual permit fee of \$75.00 is enclosed, and I understand that compliance with Section 11.260 of the City of Manitowoc Municipal Code is required in order to obtain and maintain a Sidewalk Café Permit.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of the laws and ordinances governing this permit will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any federal, state or local law.

The applicant further agrees to execute a notarized hold harmless agreement with the City, against any claim of any kind that may be filed at any time related to the operation of the cafe operation.

You will be informed of the date and time of the meeting where the Licensing, Permits and Inspections Committee will review this application and required documentation.

Applicant Name	Applicant Signature
Trade Name of Business	Mailing Address
City, State, Zip	Telephone Number
Fax Number	Email Address
Landlord Name	Landlord Signature (both signatures required if building not owned by Applicant)
Mailing Address	City, State, Zip
Telephone Number	Fax Number
Email Address	

- Attachments:**
- **Scale Drawing and Details of Sidewalk Café Permit Area**
 - **Filing Fee**
 - **Certificate of Insurance**
 - **Waiver for Proximity to Residential Dwellings (if required under 11.260(15)(h))**
 - **Hold Harmless Agreement**

SIDEWALK CAFÉ PERMITS
SECTION 11.260, CITY OF MANITOWOC MUNICIPAL CODE
INFORMATION REQUIREMENTS

1. The following information must be provided by applicant at the time of application.

A. SCALED DRAWING

1. Scaled elevation and/or drawing of the café area identifying the location of all existing and proposed trees, poles, signs, street furniture, trash containers, equipment, fixed and portable barriers, and other items that will be located in the café, and within an additional 10 feet long area immediately adjacent to the ends of both sides of the sidewalk café.
2. Identification of all amenities to be located in the café area (ie. tables, table umbrellas, chairs, signage, lighting, music etc.) with quantities of each provided.
3. Photographs, pictures from a sales catalogue or detailed renderings of the furniture and equipment being considered for usage, with dimensions included.
4. Photograph of the sidewalk area where the café will be located plus 10 feet immediately adjacent to the ends of both sides of the sidewalk café, plus the adjacent building including any building exits/entrances, fire escapes, and drop ladders, and existing street/sidewalk traffic regulatory or other signs

B. OPERATING PLAN

1. *Hours of operation.* Identify hours that food service would be available.
2. *Maintenance.* Sidewalk cleaning schedule.
3. *Alcoholic beverages.* Do you plan to serve liquor, and if yes, identify the hours that alcohol would be served to the public.
4. *Lighting.* Identification of additional lighting fixtures above and beyond existing public street lights, and their proposed location.
5. *Sound.* Will the operation include an outdoor sound system or outdoor speakers, piped in music, live music, televisions, or any other system for generating music?

C. WAIVER FOR PROXIMITY TO RESIDENTIAL DWELLINGS

1. *Petition.* A waiver is required for café locations within 100 feet from any residential dwelling in a residential or “R” zoning district, unless the dwelling is the applicant/permittee’s dwelling.
2. *Compliance.* To comply with this section will require the applicant to circulate a petition that will have to be signed by at least 50 per cent of the property owners resident within 100 feet of the boundaries of the café area, indicating they do not object to the sidewalk café. To comply with this section, the 100 foot measurement shall be defined as a radial measurement extending 100 feet from any point on the perimeter of the café, including street rights-of-way. The attached petition can be used to satisfy this requirement.

D. LICENSES AND INSURANCE

1. Provide copies of all applicable existing liquor, restaurant or other operating licenses issued by the City of Manitowoc, Manitowoc County, or the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP).

2. Provide evidence of commercial liability insurance in the following dollar amounts:
 - a) *Minimum liability limits of \$1,000,000 combined single limit for bodily injury and property damage claims.*
 - b) *Listing of the "City of Manitowoc" as a certificate holder.*
 - c) *Worker's compensation insurance at levels required by the State of Wisconsin.*

AGREEMENT TO HOLD HARMLESS

WAIVER OF LIABILITY, ASSUMPTION OF RISK

AND INDEMNIFICATION OF THE CITY OF MANITOWOC

WITH RESPECT TO SIDEWALK CAFÉS

In consideration for being issued a Sidewalk Café Permit, I (we) _____, **THE UNDERSIGNED**, including any of my (our) personal representatives, heirs, and assigns:

1. Shall hold harmless and indemnify the City of Manitowoc, including the City's affiliates, officials, employees, agents, assigns and successors with respect to the operation of a sidewalk café, from any claims, including third party claims for personal property damage, personal injury or death, actions, administrative proceedings, judgments, damages, punitive damages, penalties, fines, costs, liabilities (including reasonable sums paid for settlements), interests or losses including reasonable attorney's fees, consultant fees and expert fees, that are directly or indirectly from or in connection with the operation of a sidewalk café.

2. **HEREBY RELEASES, WAIVES, DISCHARGES, AND COVENANTS NOT TO SUE** the City of Manitowoc, Wisconsin, a municipal corporation, its affiliates, officials, employees, agents, successors and assigns who are or might be liable from any and all claims, demands, damages, costs, and causes of actions of whatever kind or nature which **THE UNDERSIGNED** may now have or may have hereafter, on account of or any way growing out of, any and all known and unknown personal injuries or death and/or property damage, in connection with the operation of a sidewalk café and further releases **FROM ALL LIABILITY TO THE UNDERSIGNED** and to any of my personal representatives, assigns, heirs, and next of kin **FOR ANY AND ALL LOSS OR DAMAGE, AND ANY CLAIMS OR DEMANDS THEREFORE ON ACCOUNT OF INJURY TO ANY PERSON OR PROPERTY OR RESULTING IN DEATH OF THE UNDERSIGNED OR ANY ONE ELSE ARISING OUT OF OR RELATED TO THE OPERATION OF A SIDEWALK CAFÉ WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE.**

3. **HEREBY AGREES TO INDEMNIFY AND SAVE AND HOLD HARMLESS**, the Releasees and each of them **FROM ANY LOSS, LIABILITY, DAMAGE OR COSTS** they may incur arising out of or related to the operation of a sidewalk café **WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE.**

4. **HEREBY ASSUMES FULL RESPONSIBILITY FOR ANY RISK OF BODILY INJURY, DEATH OR PROPERTY DAMAGE** arising out of or related to the operation of a sidewalk café **WHETHER CAUSED BY THE NEGLIGENCE OF RELEASEES OR OTHERWISE.**

5. **HEREBY** agrees that this Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement extends to all acts of negligence or otherwise and is intended to be as broad and inclusive as is permitted by the laws of the State of Wisconsin in which the activities are being conducted and that if any portion thereof is held to be invalid, it is agreed that the balance, notwithstanding, shall continue in full legal force and effect.

11.260 Sidewalk Cafes.**(1) Definition.**

Renewal permit shall mean a permit that is applied for, by April 15th of any given year, by a currently valid sidewalk cafe permit holder. All other permits shall be designated as initial application permits.

Sidewalk shall have the meaning given in Wis. Stat. § 340.01(58).

Sidewalk cafe shall mean any group of tables, chairs, benches, barriers or partitions, trash containers and suitable decorative devices maintained upon any part of the public right-of-way for use by an establishment, with a valid restaurant permit, for the sale to the public of prepared foods, refreshments and beverages of all kinds.

Zoning districts shall be defined by Chapter 15 MMC.

(2) Location. Sidewalk cafes shall be permitted on public sidewalks in any “B,” “C” and “I” zoning districts where allowed by the City’s zoning ordinances. “R” zoning districts shall require a waiver as stated under subsection (15)(h) of this section. The sidewalk cafe shall be located only on that portion of the public sidewalk which is directly adjacent to the building, or portion of the building, where the permittee’s business is located.

(3) Permit Required.

(a) It shall be unlawful for any person to sell or offer to sell any food and/or drink at a sidewalk cafe, unless such person shall have first applied for and obtained a sidewalk cafe permit.

(b) Special events using the right-of-way for a limited time period, which period does not exceed a maximum of seven days, are exempted

from the requirement of obtaining a sidewalk cafe permit. These events include, but are not limited to, Riverwalk, Volkswalk and Krazy Daze.

(c) Establishments holding a sidewalk privilege agreement with the City for their sidewalk cafe at the time in which the ordinance codified in this section becomes effective are grandfathered in, and shall not require a sidewalk cafe permit unless their sidewalk privilege agreement has been terminated.

(d) A sidewalk privilege agreement shall not be valid for the operation of a sidewalk cafe, except as stated under subsection (3)(c) of this section.

(e) The Board of Public Works shall not have jurisdiction in matters of sidewalk cafes.

(4) Procedure.

(a) An applicant for a permit under this section shall obtain an application form provided by the City Clerk, and shall contain such information as the Clerk shall require. The completed form shall be returned to the City Clerk, 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 cafe will be located. The initial application shall be accompanied by a drawing to scale of the site to be used as the sidewalk cafe, showing the location of all trees, poles, furniture, equipment, fixed and portable barriers and other items that will be located in the sidewalk cafe. The initial application shall also be accompanied by photographs, pictures from a sales catalog or detailed renderings of the furniture and equipment being considered for use, with dimensions and color included. All renewal applications in which changes are being made to the area used, the furniture, furnishings, equipment and barriers shall also comply with the requirements of an initial application.

(b) If the applicant intends to sell or serve alcoholic beverages to patrons of the sidewalk cafe, the applicant shall obtain the appropriate alcohol beverage license describing and including the outdoor area where alcoholic beverages will be sold, served or consumed.

(c) The City Clerk shall send a copy of all complete sidewalk cafe applications and renewal permits to the Chief of Police or the Chief of Police’s designee for a recommendation as to whether the applicant is a proper recipient of a permit. The Chief of Police’s or designee’s recom-

mentation shall be sent to the Public Utilities and Licensing Committee for consideration, along with the City Planner's recommendation, as stated under subsection (4)(e) of this section.

(d) Upon receipt of a completed initial application for a sidewalk cafe permit or an application for a renewal permit involving a change in the type or location of the sidewalk cafe furniture, furnishings, equipment, barriers or area, the City Clerk shall forward a copy of the application, together with all information required under subsection (4)(a) of this section, to the City Planner or the City Planner's designee for review.

(e) The City Planner 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 cafe; if the proposed cafe is in compliance with Chapter 15 MMC and the requirements contained herein; and if the area proposed is suitable for the sidewalk cafe. The City Planner or designee shall then make a recommendation to the Public Utilities and Licensing Committee as to the issuance of the permit, based on the criteria set forth above. The City Clerk shall notify the applicant of the date and time of the meeting where the Public Utilities and Licensing Committee shall review the application, permittee's required documentation and any recommendations from the City Planner and Chief of Police. The Public Utilities and Licensing Committee shall make a determination as to their recommendation to grant or deny this permit to the Common Council. The applicant shall be notified, in writing, within 10 calendar days of said meeting of their decision. If the recommendation is to grant the permit, the applicant must produce evidence of adequate liability, property and worker's compensation insurance in full force and effect before operating the sidewalk cafe. If the Public Utilities and Licensing Committee recommends denial, the applicant shall receive written notice stating:

1. The reason for denying the permit;
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 permit.

(f) Initial application permits have no right to appeal a denial.

(5) Limitation on Number of Permits Issued.

The population of the City of Manitowoc shall determine the number of permits issued. One permit may be issued for every 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.

(6) Permit Period. The permit year shall commence on the first day of July each year, or thereafter when applied for, and shall expire on the thirtieth day of June following its issuance.

(7) Permit Fee. The annual fee for a cafe permit shall be \$75.00, which shall be paid to the City Clerk at the time the applicant submits the completed application. The permit fee amount is a flat annual fee and shall not be prorated for partial years. Permit fees only on initial application permits shall be refunded to the applicant if the permit is denied. All other permits or applications are not entitled to a refund, including, but not limited to, permits subject to revocation, suspension or nonrenewal.

(8) Revocation, Suspension, Nonrenewal.

(a) In addition to any other penalty provided under this section, any sidewalk cafe permit issued hereunder may be suspended, not renewed for a specific period of time or revoked, after notice and hearing as provided herein, for violation of any provisions of this section, or of any other City ordinance or law which is substantially related to the permit activity.

(b) Any such hearing shall be held before the Public Utilities and Licensing Committee. The permittee shall be notified in writing of the hearing date and time and of the charges alleged, not less than three calendar days nor more than 10 calendar days prior to the hearing. At the hearing, the Chief of Police, or the Chief's designee, shall present evidence of the alleged violation(s). The permittee shall have the opportunity to question witnesses, may call witnesses on their own behalf, present evidence, and may be represented by counsel. At the conclusion of the hearing, the Public Utilities and Licensing Committee will make findings and a recommendation to the Common Council. The City Clerk shall send notice of the recommendation to the permittee notifying the permittee of the date

and time the Common Council shall consider the status of the permit.

(c) The Common Council shall consider the findings and recommendations of the Public Utilities and Licensing Committee within 30 days after receiving the Committee’s recommendation. If the City or the permittee wish to present additional evidence, they may do so to the Common Council, or the Common Council may, upon its own motion, consider additional evidence as necessary to fairly decide the issue.

(d) After due consideration of the Public Utilities and Licensing Committee’s recommendation and any additional evidence presented, the Common Council may decide to grant the permit, to suspend the sidewalk cafe permit for a period of time not to exceed six months, to not renew the sidewalk cafe permit for a specified period of time or to revoke the permit. The permittee shall be notified within 10 calendar days of the findings and determination of the Common Council by the City Clerk.

(e) The decision of the Common Council shall be a final decision. The final decision may be appealed. Appeals are by judicial review under Wis. Stat. Ch. 68. Any person aggrieved by the Common Council’s decision may seek judicial review thereof within 30 calendar days of the date of the final decision.

(9) Insurance. No person shall obtain a sidewalk cafe permit 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 cafe area:

(a) Commercial General Liability. The applicant shall procure a commercial general liability policy with the following minimum standard limits:

1. Bodily injury/property damage, per occurrence	\$1,000,000
2. General aggregate limit	\$1,000,000
3. Products/completed operations	\$1,000,000
4. Personal and advertising injury limit	\$1,000,000
5. Medical expense limit – any one person	\$5,000

(b) Worker’s Compensation. The permittee shall provide a worker’s compensation policy with the limits prescribed by Wisconsin State Statutes.

(c) Certificate of Insurance. The permittee shall provide the City with a certificate of insurance coverage required by this section, which certificate shall be approved by the City Attorney prior to operating the sidewalk cafe. 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 30 days’ prior written notice to the City.

(10) Signage. No signs shall be allowed in the sidewalk cafe area except the following:

(a) Table umbrellas approved by the City Planner or designee.

(b) Any signs for which the permittee has obtained a sign permit as required by Chapter 15 MMC.

(c) The sign which the permittee is required to post by subsection (15)(o) of this section, which sign shall be displayed in compliance with Chapter 15 MMC.

(d) A hand-held menu provided to patrons by the permittee or an employee shall not be considered a sign. Likewise, tabletop documents such as wine lists or information pertaining to the business shall not be considered signs as long as the documents are not more than nine inches by 12 inches.

(11) Furnishings. The permittee shall use safe, sturdy furniture, furnishings and equipment in the sidewalk cafe 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.

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

(13) Lighting. The permittee shall keep the sidewalk cafe area sufficiently illuminated so as to prevent injury to persons using the same. Any lighting of the outdoor area shall be shielded so as not to shine directly onto adjoining property or create a glare which is distracting to adjoining property or vehicles traveling in the public right-of-way.

(14) Music/Noise. There shall be no amplified music or sound unless the permittee can demonstrate to the satisfaction of the Public Utilities and

Licensing Committee that it shall not cause a disturbance. There shall be strict compliance with the loud noise ordinance, MMC 14.140. Any violation shall be the responsibility of the permittee whether or not the permittee is present upon the premises at the time of the violation.

(15) General Restrictions.

(a) The permittee shall remove from the sidewalk within a reasonable amount of time all furniture, furnishings, equipment, portable barriers and all visible evidence of the sidewalk cafe, any time that the sidewalk cafe is closed, service is prohibited or service is not being offered to the public at the sidewalk cafe.

(b) The permittee shall provide at least three feet of unobstructed sidewalk for pedestrian right-of-way through the sidewalk cafe, and shall not place anything within two feet of the curb or street.

(c) The permittee shall comply with all applicable requirements of the Americans with Disabilities Act, 42 USC 12101 to 12213.

(d) The permittee shall comply with all applicable Federal, State and local laws.

(e) No permittee shall obstruct access to a fire hydrant or obstruct one's view of the hydrant from the street.

(f) No sidewalk cafe shall be permitted within five 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.

(g) No person may be served in the sidewalk cafe 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.

(h) Sidewalk cafes shall not be less than 100 feet from any residential dwelling in an "R" zoning district, unless the dwelling is the permittee'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 percent of the property owners residing within 100 feet of the boundaries of the cafe area, indicating they do not object to the sidewalk cafe. The 100-foot measurement shall be a radial measurement extending 100 feet from any point on the perimeter of the cafe, including street right-of-way.

(i) No portion of the sidewalk cafe shall be permitted within five feet of a curb-out or a marked crosswalk.

(j) No portion of the sidewalk cafe may be placed on any portion of a public sidewalk beyond the width of the property line of the permittee's property.

(k) No portion of a sidewalk cafe shall be permitted within five feet of any truck, freight, or passenger loading zone, or adjacent to any handicapped parking space or loading zone.

(l) No person holding a sidewalk cafe permit 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.

(m) All sidewalk cafes shall remain within the approved boundaries of the sidewalk cafe site as set forth on the approved application.

(n) No permittee may construct a barrier, or anything 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.

(o) The permittee shall post a sign clearly visible for its patrons which lists the rules contained in this section and, if appropriate, those contained in subsection (17) of this section governing the conduct of patrons of the sidewalk cafe.

(16) Maintenance. The permittee shall pick up all trash from the sidewalk cafe on a regular basis throughout the day, and shall keep the cafe area in a clean, orderly, litter-free and hazard-free condition. The permittee shall provide covered trash containers for the customers. The permittee shall not place any solid waste in the City solid waste containers.

(17) Service of Alcoholic Beverages. The City of Manitowoc allows permittees to serve alcoholic beverages in outdoor cafes; provided, that the permittee complies with all the requirements for obtaining an alcoholic beverage license, and the sidewalk cafe is listed on the alcohol beverage license application as being an extension of the licensed premises. Alcohol may be served at sidewalk cafes if:

(a) The permittee has a valid and appropriate retail alcohol beverage license issued by the City of Manitowoc;

(b) The retail alcohol beverage license includes the sidewalk cafe in the description of the licensed premises;

(c) The retail alcohol beverage license permits the sale of the type of alcohol beverages being served in the sidewalk cafe;

(d) Alcohol beverages are sold and served only to patrons seated at tables in the sidewalk cafe by the employees or owner of the establishment;

(e) Alcohol beverages are served by the licensee or the licensee's employees in compliance with the alcohol beverage laws of the State of Wisconsin and the City of Manitowoc;

(f) The permittee shall be responsible for policing the sidewalk cafe area to prevent underage persons from entering or remaining in the sidewalk cafe, except when underage persons are allowed to be present on the licensed premises pursuant to Wis. Stat. Ch. 125;

(g) The permittee shall not allow patrons of the sidewalk cafe to bring alcohol beverages into the sidewalk cafe area from another location, nor to carry open containers of alcohol beverages about in the sidewalk cafe area, nor to carry open containers of alcohol beverages served in the sidewalk cafe outside the sidewalk cafe area;

(h) The facility from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk cafe area without first obtaining permission from the Public Utilities and Licensing Committee and the Common Council;

(i) Sidewalk cafes where alcohol beverages are sold shall have fencing or barriers on at least three sides. The barriers shall define the area where the alcohol beverages may be served and consumed. The barriers shall be approved by the City Planner or designee as part of the application process;

(j) All containers used for or containing alcoholic beverages shall be removed from the sidewalk cafe area at times of closing or during times when consumption of alcoholic beverages are prohibited. No containers of alcoholic beverages shall be present in the sidewalk cafe area between 12:00 midnight and 8:00 a.m.

(18) Permittee's Responsibility. Permittee 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 Wis. Stat. Ch. 125, by a patron, agent or employee of the permittee, shall constitute a violation by the permittee.

(19) Penalty. Any person who violates subsection (3) of this section shall be subject to a forfeiture of not less than \$500.00, nor more than \$1,000. Any person who violates any other subsection of this section shall be subject to a forfeiture of not less than \$50.00 nor more than \$500.00. Each day of a violation is a separate offense.

[Prior code § 11.21]