

ORDINANCE NO. 2042

AN ORDINANCE OF THE CITY OF WAHOO, SAUNDERS COUNTY, NEBRASKA, TO AMEND TITLE XI: BUSINESS REGULATIONS OF THE WAHOO MUNICIPAL CODE BY THE ADDITION TO CHAPTER 110 PROVISIONS PERTAINING TO SIDEWALK CAFES ON PUBLIC PROPERTY; TO PROVIDE FOR DEFINITIONS; LICENSE REQUIRED, APPLICATION FOR LICENSE, CONDITIONS, DISPLAY OF LICENSE AND DISPLAY OF LICENSE; AND BY THE ADDITION TO CHAPTER 113 PROVISIONS PERTAINING TO A BEER GARDEN LICENSE; TO PROVIDE FOR DEFINITIONS, LICENSE REQUIRED, APPLICATION FOR LICENSE, CONDITIONS, DISPLAY OF LICENSE, AND REVOCATION PROCEDURE; TO PROVIDE THAT THE MAYOR AND THE APPROPRIATE DEPARTMENT, WHETHER ONE OR MORE, OF THE CITY OF WAHOO, NEBRASKA, ARE AUTHORIZED AND DIRECTED TO IMPLEMENT THIS ORDINANCE; TO PROVIDE FOR THE SEVERABILITY OF ANY SECTION, CLAUSE, OR PROVISION OR PORTION OF THIS ORDINANCE FOUND UNCONSTITUTIONAL OR INVALID; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE THAT THIS ORDINANCE SHALL BE PUBLISHED WITHIN THE FIRST FIFTEEN (15) DAYS AFTER ITS PASSAGE AND APPROVAL, IN PAMPHLET FORM, IN THE CITY OF WAHOO, NEBRASKA, AND SHALL BE IN FULL FORCE AND TAKE EFFECT FROM AND AFTER ITS PASSAGE, APPROVAL, AND PUBLICATION, AS PROVIDED BY LAW, AND AS PROVIDED HEREIN; AND THAT IT IS THE INTENTION OF THE MAYOR AND COUNCIL OF THE CITY OF WAHOO, NEBRASKA, AND IT IS HEREBY ORDAINED, THAT THE PROVISIONS OF THIS ORDINANCE SHALL BECOME AND BE MADE A PART OF WAHOO MUNICIPAL CODE, AND THE SECTIONS OF THIS ORDINANCE MAY BE RENUMBERED TO ACCOMPLISH SUCH INTENTION.

WHEREAS, on January 24, 2002, the Mayor and Council of the City of Wahoo, Nebraska, did adopt the Wahoo Municipal Code, and,

WHEREAS, the Mayor and Council of the City of Wahoo, Nebraska, deem it in the best interests of the citizens of the City of Wahoo, Nebraska, that there be added to the Wahoo Municipal Code provisions relating to a sidewalk café license and provisions relating to a beer garden license,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF WAHOO, NEBRASKA, as follows:

1. That the findings hereinabove should be and are hereby made a part of this Ordinance as fully as if set out at length herein.
2. That there shall be added to the Wahoo Municipal Code, Chapter 110, of Title XI, BUSINESS REGULATIONS, pertaining to sidewalk cafes, to read as follows:

SIDEWALK CAFÉ LICENSE

§110.50 DEFINITIONS

(A) Sidewalk Café shall mean an outdoor area, adjacent to a street level eating or drinking establishment which derives sixty-five percent (65%) or more of its gross proceeds from the sale of food, located upon a portion of the public pedestrian walkway and used exclusively for dining, drinking, and

pedestrian circulation. The area shall be separated from the public sidewalk by railings, fencing, or landscaping or a combination thereof.

Any person or persons operating a sidewalk café, whether or not as a part of premises licensed to sell alcoholic liquors at retail, shall comply with all zoning regulations, including obtaining a Conditional Use Permit as may be required, and comply with all conditions established by the City Council as part of such Conditional Use Permit

§110.51 LICENSE REQUIRED

(A) A sidewalk café occupying any portion of the public space abutting the record owner's property must obtain and meet the conditions of a Sidewalk Café License.

(B) The annual fee for a Sidewalk Cafe License shall be \$100.00, non pro-rated, and every license shall terminate on the 30th day of April next following the issuance of the same.

§110.52 APPLICATION FOR LICENSE

(A) Application for a Sidewalk Café License required under the provisions of this subchapter shall be made in the office of the City Clerk on an application form prescribed and furnished by the City Clerk. The application form shall require of the applicant the following information:

(1) Name, address, and telephone number of the applicant (the licensee holding the State of Nebraska Class I Liquor License, if applicable)

(2) A plot plan showing the location, size and capacity of the sidewalk café and adjoining licensed structure, entrances and exits, ground surface, location, size and construction of surrounding walls, fences or barriers, and surrounding properties and structures within one hundred fifty feet (150) feet.

(3) The zoning district in which the use is located.

(4) Description of the food and drink (alcoholic and/or non-alcoholic) to be offered for sale. If alcoholic drinks are to be offered for sale, documentation must be included with the application demonstrating to the satisfaction of the City that:

(a) The business has a licensed kitchen and offers a full menu during the hours and days of operation of the sidewalk café;

(b) Gross sales from the sale of alcoholic drinks do not exceed thirty-five per cent (35%) of the gross sales of food and drink.

(5) The number of patrons which the proposed sidewalk café is designed to accommodate.

(6) The hours of operation for the proposed sidewalk café.

(7) How the extended premises will be supervised and maintained.

(8) Proof of comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount, per claim and aggregate, of at least

one million dollars (\$1,000,000.00) covering the applicant's operations on the City's sidewalk. Such insurance shall name on a special endorsement form, the City, its elected and appointed boards, officers, agents and employees as additional insureds. The certificate of insurance shall contain provisions that prohibit cancellations, modifications or lapse without thirty (30) days' prior written notice to the City.

(9) A statement by applicant that said applicant will, in consideration of being issued a license for the use of sidewalk space, agree to hold harmless the City and the officers and employees of the City for any loss or damage arising out of the use, or the discontinuance of any use of the sidewalk space; that said applicant understands that the use of the sidewalk space is to be temporary, on a day-to-day basis; that applicant shall not acquire any right, title, or interest in such sidewalk space; that applicant may be required by the City at any time to vacate all or any part of the sidewalk said applicant has been given permission to use; that upon demand to vacate such sidewalk space, applicant shall promptly remove any personal property placed thereon and return the sidewalk space to the same condition that it was prior to the commencement of use by applicant, or reimburse the City for the cost of moving such personal property and restoring the sidewalk space to its prior condition; that said applicant shall have no recourse against either the City or its officers or agents, either for any loss or damage occasioned by his or her being required to vacate all or any part of the sidewalk space which applicant has been granted permission to use.

(10) Agree to be bound by all ordinances of the City and to comply with all laws, regulations and rules of the State of Nebraska.

(11) To be signed and acknowledged by the applicant.

§110.53 CONDITIONS

(A) No sidewalk café shall be permitted, maintained, or operated on the public right of way except in conformity with the following regulations:

(1) The sidewalk café area shall be particularly described and included within the application for Class I Liquor License licensed premises, if applicable.

(2) A minimum of six (6) feet of clear path of travel is required on all sidewalks located within the C-1 Downtown Commercial District. A minimum of five (5) feet of clear path of travel is required on all other sidewalks in all other Zoning Districts. The clear path of travel is measured from the outside edge of the sidewalk café fencing or fence post base to the nearest obstruction (i.e. light pole, bike rack, planting strip, etc.). If no obstruction exists, the clear path of travel is measured to the back of the curb.

(3) Fencing, roping or railing may be required to ensure safety of pedestrian traffic. Any such fencing must be detectable by cane to warn visually impaired persons of potential hazards in the path of travel.

(4) All electrical wiring shall comply with national, state, and City electrical codes. Electrical cords or strings of lights may not be strung over or be placed on the pedestrian path of travel.

(5) The licensee shall ensure that all structures comprising the sidewalk café, including but not limited to chairs, tables, fencing, bollards, and planters, will be removed during periods of non-use and at the expiration of this license.

(6) No amplified sound or music is permitted outside the enclosed building premises. Any noise emanating from the sidewalk café shall not violate the regulations concerning noise.

(7) Sidewalk cafés shall not be used for smoking.

(8) The area shall be adequately illuminated by electric lights, but such illumination shall be so arranged and shielded by the licensee so as to reflect away from adjoining property and streets.

(9) Occupancy capacity shall be clearly posted.

§110.54 DISPLAY OF LICENSE

(A) Licenses issued under the provisions of this subchapter shall be displayed at all times at the place of business of the licensee.

§110.55 REVOCATION PROCEDURE

(A) Any Sidewalk Café License granted under this Chapter may be revoked by the City Council after notice and hearing, pursuant to the standards of the above conditions. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at its last known address, at least ten (10) days prior to the date set for the hearing before the City Council.

3. That there shall be added to the Wahoo Municipal Code, Chapter 113, of Title XI, BUSINESS REGULATIONS, pertaining to beer garden licenses, to read as follows:

BEER GARDEN LICENSE

§113.10 DEFINITIONS

(A) A beer garden is defined as an outdoor open air, roofed or unroofed area adjacent to and included in the licensed premises of a tavern, bar, or brewpub, which is used for the service and consumption of alcoholic liquors, and which is bounded by a fence or wall preventing the uncontrolled entrance or exit of persons from the premises, and preventing the passing of alcoholic liquors to persons outside the premises. Said outdoor area shall not exceed seventy-five percent (75%) of the gross floor area of the adjoining licensed premises. Beer gardens shall not be used for smoking.

The following are excluded from this definition if such are included within the licensed premises:

(1) A sidewalk café adjacent to a street level eating or drinking establishment which derives sixty-five percent (65%) or more of its gross proceeds from the sale of food;

(2) Recreational facilities which include a golf course

(B) Beer gardens as allowed by a Special Designated License of the Nebraska Liquor Control Commission, as the statute exists as of the date of the adoption of this ordinance, shall not be included within the above definition of beer garden.

§113.11 LICENSE REQUIRED

(A) No licensee shall permit the consumption of alcoholic liquors on any part of the licensed premises not enclosed within the building except under a Beer Garden License. Any person or persons operating a beer garden as a part of a premises licensed to sell alcoholic liquors at retail shall comply with all zoning regulations, including obtaining a Conditional Use Permit as may be required, and comply with all conditions established by the City Council as part of such Conditional Use Permit.

(B) The annual fee for a Beer Garden License shall be \$100.00, non pro-rated, and every license shall terminate on the 30th day of April next following the issuance of the same.

§113.12 APPLICATION FOR LICENSE

(A) Application for a Beer Garden License required under the provisions of this subchapter shall be made in the office of the City Clerk on an application form prescribed and furnished by the City Clerk. The application form shall require of the applicant the following information:

- (1) Name, address, and telephone number of the licensee holding the State of Nebraska Class I Liquor License.
- (2) A plot plan showing the location, size and capacity of the beer garden and adjoining licensed structure, entrances and exits, ground surface, location, size and construction of surrounding walls, fences or barriers; and surrounding properties and structures within one hundred fifty feet (150').
- (3) The zoning district in which the use is located.
- (4) The number of patrons which the proposed beer garden is designed to accommodate.
- (5) How the premises will be supervised and maintained.
- (6) The hours of operation for the proposed beer garden.
- (7) Agree to be bound by all ordinances of the City and to comply with all laws, regulations and rules of the State of Nebraska.
- (8) To be signed and acknowledged by the applicant.

§113.13 CONDITIONS

(A) No beer garden shall be permitted, maintained, or operated except in conformity with the following regulations:

- (1) The beer garden area shall be particularly described and included within the application for Class I Liquor License licensed premises.
- (2) The beer garden area shall not exceed seventy-five percent (75%) of the gross floor area of the adjoining licensed structure.
- (3) Construction of the beer garden shall be as follows:

(a) The ground area shall be of a fire-resistant material.

(b) There shall be maintained a seven (7)-foot solid wood, concrete, stone, or similar material fence surrounding the beer garden area to screen the patrons on the premises from the view of the surrounding property. Design and structure of the fence and landscaping shall preserve harmony with the appearance of the surrounding property. The fence shall contain the required fire exit(s). The gate(s) or exit(s) shall be of the same height as that required of the beer garden fence, shall swing to egress, shall be equipped with proper hardware, and shall swing free and clear of public sidewalks. The beer garden fence shall comply with all regulations regarding vision clearance along with required distance from corner.

(4) All electrical wiring shall comply with national, state, and City electrical codes.

(5) All combustible rubbish shall be stored in non-combustible covered containers.

(6) No amplified sound or music is permitted outside the enclosed building premises. Any noise emanating from the beer garden shall not violate the regulations concerning noise.

(7) The area shall be adequately illuminated by electric lights, but such illumination shall be so arranged and shielded by the licensee so as to reflect away from adjoining property and streets.

(8) Occupancy capacity shall be clearly posted.

§113.14 DISPLAY OF LICENSE

(A) Licenses issued under the provisions of this subchapter shall be displayed at all times at the place of business of the licensee.

§113.15 REVOCATION PROCEDURE

(A) Any Beer Garden License granted under this Chapter may be revoked by the City Council after notice and hearing, pursuant to the standards of the above conditions. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at the last known address, at least ten days prior to the date set for the hearing before the City Council.

4. That the Mayor and the appropriate Department, whether one or more, of the City of Wahoo, Nebraska, are hereby authorized and directed to implement this Ordinance.

5. That should any section, paragraph, sentence or word of this Ordinance hereby adopted be declared for any reason be invalid, it is the intent of Mayor and Council of the City of Wahoo, Nebraska, that it would have passed all other portions of this Ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

6. That all ordinances or parts of ordinances passed and approved prior to the passage, approval, and publication of this Ordinance and in conflict herewith, are hereby repealed.

7. That this Ordinance shall be published within the first fifteen (15) days after its passage and approval in pamphlet form within the City of Wahoo, Nebraska, and shall be effective on the fifteenth (15th) day from and after its passage and approval as provided by law.

8. That the provisions of this Ordinance shall become and be made a part of the Wahoo Municipal Code and the sections of this Ordinance may be renumbered to accomplish such intention.

PASSED AND APPROVED this 27th day of May, 2010.

CITY OF WAHOO, NEBRASKA

By: *Gerald D. Johnson*
Gerald D. Johnson, Its Mayor

ATTEST:

Melissa M. Harrell
Melissa M. Harrell, Its Clerk
(SEAL)

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