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repealed and replaced with new Sidewalk Cafés ordinance language to read as follows:

CHAPTER 4 SIDEWALK CAFÉS

SECTION:

3-4-1: Legal Authority

3-4-2: Purpose

3-4-3: Scope

3-4-4: General Licensing Provisions Applicable

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3-4-1: LEGAL AUTHORITY:

Idaho Code sections 50-301 and 50-307 authorize the City to adopt and enforce ordinances, rules, and regulations governing standards and procedures for licensing persons who engage in or operate a trade or business within the City. The Ada County Highway District ("ACHD"), as provided under Idaho Code Title 40, has jurisdiction over the public rights-of-way, including sidewalks throughout Ada County. Idaho Code section 67-2332 states public agencies may contract with one another to perform any governmental service, activity, or undertaking that each public agency entering the contract is authorized by law to perform. Since 2010, ACHD has granted the City a limited license in the greater downtown area of Boise to regulate and control sidewalk cafés, among other granted authorities under a Master License Agreement executed between these parties.

3-4-2: PURPOSE:

In order to support the development of social and economic activity and overall vibrancy of the City's downtown area, the City Council finds and determines that sidewalk cafés are an enhanced use of available public space and complementary to the businesses operating from the abutting premises.

3-4-3: SCOPE:

This chapter establishes minimum standards and procedures for permitting and operation of sidewalk cafés placed upon sidewalks and public plazas within the area of the City controlled under the Master License Agreement with ACHD. The boundaries of the greater downtown area

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controlled under the Master License Agreement are available for the public to review at the Clerk's Office during business hours.

3-4-4: GENERAL LICENSING PROVISIONS APPLICABLE:

To the extent not inconsistent with this chapter, the licensing provisions set forth in chapter 1, article A of this title, shall apply with full force and effect to all provisions and sections of this chapter, and chapter 1, article A of this title is hereby incorporated herein by reference and applies to those rights and responsibilities not further defined herein.

3-4-5: DEFINITIONS:

For the purposes of this chapter, the following terms, phrases, words, and derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used throughout this chapter, but not defined herein or in chapter 1, article A of this title, shall have their plain, ordinary, and common meaning. Words in any gender shall apply to the feminine, masculine, and neuter genders.

ALCOHOLIC BEVERAGE (OR "ALCOHOL"): Any beverage containing alcohol which is a product of distillation of any fermented liquor, or synthetic ethyl alcohol, including beer, wine, spirits, or any liquid containing alcohol, beer, wine, or spirits.

FIRE CHIEF: The Fire Chief for the city of Boise City, Idaho, or designee.

POLICE CHIEF: The Chief of Police for the city of Boise City, Idaho, or designee.

PLANNING AND DEVELOPMENT SERVICES (OR "PDS"): The Boise City Planning and Development Services Department.

PDS DIRECTOR: The director of Planning and Development Services Department for the city of Boise City, Idaho, or designee.

PREMISES: The business building in or the grounds on which the sale and service of any food or beverage (alcoholic or nonalcoholic) are authorized under this code and pursuant to the Idaho Code.

PUBLIC PLAZA: Any publicly owned property located within the downtown area that the City regulates sidewalk cafés and are spaces where people traditionally or historically gather, including but not limited to the Grove Plaza and the Boise City Hall Plaza.

RETAILER: Any person engaged in selling or distributing food or beverages (alcoholic or nonalcoholic) to the consumer (except for keg beer sold by Idaho licensed wholesalers) and portable vendors of food or nonalcoholic beverages not intended for consumption at the place

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of sale.

SIDEWALK: The portion of a public right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for use by pedestrians.

SIDEWALK CAFÉ: An outdoor dining or sitting area of a retailer that abuts or is contiguous to the retailer's premises and which is located in whole or in part on a sidewalk or public plaza and contains removable tables, chairs, barriers, planters, or related appurtenances.

STATE: The state of Idaho.

3-4-6: PERMIT REQUIRED; NON-TRANSFERABLE:

- A. Permit Required: It shall be unlawful for any person to operate a sidewalk café without first obtaining a permit issued under this chapter.
- B. A permit for a sidewalk café for the placement of tables, chairs, and other furnishings on a sidewalk or public plaza shall only be issued to a retailer in an abutting premises who holds a valid eating and drinking license, and if applicable, valid alcohol licenses issued by the state, county, and city.
- C. Permit Nontransferable: A sidewalk café permit may not be transferred between persons, businesses, or property locations.

3-4-7: APPLICATION FOR PERMIT; ONGOING DUTY TO UPDATE; CONDITIONS; NO PROPERTY INTEREST; AND TIMING;

- A. Permit Application and Renewal: In addition to the minimum application requirements set forth in chapter 1, article A of this title, permit applications pursuant to this chapter shall include the following:
 - 1. The name and contact information of the person who will be the main point of contact for the applicant business, including but not limited to phone numbers and email addresses;
 - 2. A detailed diagram and description of the proposed sidewalk café space. The diagram and description of the proposed sidewalk café space shall include, but not be limited to:
 - a. Detailed scale drawing, including exact measurements of the proposed sidewalk café space;
 - b. Fencing or barrier (if alcohol will be served and consumed in the sidewalk café space);
 - c. Placement of tables, chairs, umbrellas, canopies, and other furnishings within the proposed sidewalk café;
 - d. Placement of all sidewalk or public plaza fixtures and furniture, including but not limited to bicycle racks, poles, flower planters, bus stops, news racks, electrical boxes, trees, tree grates, etc. surrounding the proposed sidewalk café; and

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- e. ADA considerations for the sidewalk or public plaza, including but not limited to curb cuts, sidewalk or right-of-way slope, spacing of the unimpeded pedestrian pathway, and placement of impediments (e.g., tree grates) within the pedestrian pathway.
 3. The days and hours that the applicant requests the proposed sidewalk café be permitted to operate.
 4. If the applicant proposes the service and consumption of food or nonalcoholic beverages within the sidewalk café space, the following information must accompany the permit application:
 - a. A copy of the valid permit issued by the Central District Health Department for the premises; and
 - b. A copy of the valid eating and drinking license issued by the City.
 5. If the applicant proposes the service and consumption of alcoholic beverages within the sidewalk café space, the following information must accompany the permit application, in addition to the requirements set forth above for sidewalk cafés serving only food and nonalcoholic beverages:
 - a. A copy of the valid alcohol beverage license issued by the State of Idaho to the applicant for the premises;
 - b. A copy of the valid alcohol beverage license issued by Ada County for the premises; and
 - c. A sample of the alcohol signage as described in this chapter for Police review and approval.
 6. Proof of Insurance as set forth in this chapter.
- B. Manner; Form: Applications for the issuance or renewal of a sidewalk café permit shall be made to the City Clerk's Office in the form and manner prescribed by the City Clerk.
- C. Ongoing Duty to Update: Every applicant and permittee under this chapter shall have an ongoing affirmative duty to update information provided on the application for a permit, in the event such information becomes outdated, untrue, or otherwise incorrect, within ten (10) business days of such change.
- D. Conditions: Licenses may include conditions. If the City Clerk determines at any time that license conditions have not or cannot be met, the application may be denied or the permit suspended or revoked.
- E. No Property Interest: Issuance of a sidewalk café permit and the related use of the sidewalk or public plaza shall be considered temporary and revocable. In no way does the issuance of a sidewalk café permit create or confer any property interest or entitlement to the renewal and continuation of such permit.
- F. Application Timing: All applications for sidewalk café permits must be completed and filed with the Clerk's not less than thirty (30) days prior to the date the applicant intends to begin operating a sidewalk café. Incomplete or inaccurate permit applications may result in

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delay or denial of the permit.

3-4-8: FEES:

Each application for a sidewalk café permit shall be accompanied by the required, non-refundable application fees in an amount established by the City Council and listed on the most current fines and fee schedule. Sidewalk café permit fees may also include fees imposed by PDS for a zoning certificate.

3-4-9: INSURANCE:

- A. Minimum Insurance Requirements: The applicant shall be required to maintain throughout the entire term of a permit issued under this chapter, commercial general liability insurance with minimum liability limits not less than five hundred thousand dollars (\$500,000) per each occurrence and one million dollars (\$1,000,000) general aggregate for bodily injury and property damage.
- B. Evidence of Insurance: Every applicant shall tender to the City Clerk's Office the certificate of insurance certifying that insurance of the type and in the amounts required by this chapter are in full force and effect at all times. The certificates shall list the City, and if applicable ACHD, as separate additional insureds. Said certificates of insurance shall specify as the certificate holder the City of Boise, P.O. Box 500, 150 N. Capitol Blvd., Boise, Idaho 83701-0500.

3-4-10: APPLICATION REVIEW PROCESS:

- A. Permit Application Review Process:
 - 1. Complete Application; Forward for recommendations: The Clerk shall review all applications for sidewalk café permits for completeness, and if complete, forward said applications to the Police Chief, Fire Chief, and PDS Director for their recommendations.
 - 2. Recommendation of Officials; Conditions to Permit:
 - a. Recommendations: The Police Chief, Fire Chief, and PDS Director shall inspect all new or altered sidewalk café spaces. Based on the required standards set forth in this chapter and inspection of the proposed sidewalk café space, the Police Chief, Fire Chief, and PDS Director shall recommend that the City Clerk approve or deny the application. A recommendation to approve may include conditions upon the permit.
 - b. Police Conditions to Permit: The Police Chief shall consider such factors as the proposed number of patrons, configuration, the potential presence of minors, the occurrence of special events, pedestrian and vehicular traffic, alcohol signage, fencing, the intended use, ingress and egress of the space, state and city alcohol regulations if applicable, and potential for unusual noise or unlawful disturbances to determine whether permit conditions are necessary. Police recommended permit conditions may include but are not limited to limiting the days and hours a sidewalk café may operate or recommending that the space be maintained in a specific manner or configured in a specific way.

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- c. Fire Conditions to Permit: The Fire Chief shall consider such factors as the proposed size, occupancy, location, configuration, abutting premises, and ingress and egress to the space to determine whether permit conditions are necessary. Fire recommended permit conditions may include but are not limited to providing a maximum occupancy for the sidewalk café space or requiring that the sidewalk café be maintained or configured in a specific manner to ensure ready access of emergency vehicles and personnel to the space.
 - d. PDS Conditions to Permit: The PDS Director shall consider the proposed configuration, occupancy, placement of fixtures and furniture within the sidewalk café space, signs, the slope of the sidewalk or plaza right-of-way, and the ADA pedestrian access to the sidewalk or public plaza inside and outside of the boundaries of the space, particularly in relation to the placement of poles, signs, bicycle racks, electrical boxes, trees, grates, and other fixtures on the sidewalk or plaza. PDS recommended permit conditions may include but are not limited to recommending that the space be maintained in a specific manner or configured in a specific way or limiting the size or location of the space.
- B. Issuance of Permit or Denial of Application: The Clerk shall issue a permit if all of the following criteria are met:
- 1. The application is complete, and the applicant is qualified;
 - 2. The proposed sidewalk café will not violate any of the standards and requirements as set forth in this chapter;
 - 3. The Police Chief recommends issuance of a permit either absolutely or conditionally;
 - 4. The Fire Chief recommends issuance of a permit either absolutely or conditionally; or
 - 5. The PDS Director recommends issuance of a permit either absolutely or conditionally.

3-4-11: PERMIT STANDARDS AND REQUIREMENTS:

General Standards and Requirements: In addition to the minimum standards and requirements set forth in chapter 1, article A of this title, all sidewalk cafés shall comply with the following standards and requirements:

- A. Conspicuous Display of Permit: Upon issuance, the sidewalk café permit with any conditions imposed by Police, Fire, or PDS shall be prominently displayed on the premises abutting or contiguous to the sidewalk café at all times.
- B. Limited to Permitted Details: A permitted sidewalk café shall be limited to the size, location, configuration as detailed in the application and made part of the approved permit by the City Clerk. The City shall have the right to remove any furniture, fixtures, or other objects placed outside the permitted sidewalk café space area.
- C. Impede Pedestrian Corridor: A permitted sidewalk café shall at all times ensure that its use of the sidewalk or public plaza in no way impedes the pedestrian corridor or limits pedestrians' free and unobstructed passage on the sidewalk or public plaza. An unimpeded pedestrian corridor is no less than five feet (5') at its narrowest width unless otherwise allowed by the ADA and approved by the PDS Director.

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- D. Abuts or Contiguous to the Premises: All sidewalk cafés shall abut or be contiguous to the premises where food or beverages are prepared for consumption within the sidewalk café.
- E. Hours of Operation: Unless otherwise limited by a condition on the permit, sidewalk cafés serving alcoholic beverages may operate any day between the hours of ten o'clock (10:00) a.m. and two o'clock (2:00) a.m. Sidewalk cafés not serving alcoholic beverages may operate any day and during any hours unless otherwise limited by a condition on the permit.
- F. Signs: Except printed umbrellas and menu boards within the sidewalk café permitted space, all advertising and business identification signs located within the sidewalk café or in the abutting sidewalk or public plaza must follow all sign requirements set forth in title 11 of this code and not impede the pedestrian corridor.
- G. Furnishings:
 - 1. Maintenance: All sidewalk café furnishings, including but not limited to tables, chairs, umbrellas, and heaters shall be maintained in an orderly and attractive appearance and be in good repair at all times.
 - 2. Storage: A sidewalk café not in use for more than fourteen (14) consecutive days shall remove all furnishings (except boundary railing) and store such items off the sidewalk or public plaza until regular use of such items shall resume.
- H. Clean-up; Removal of Trash and Debris:
 - 1. Clean-up: A sidewalk café shall have all dirty dishes, glasses, and flatware removed from the space promptly.
 - 2. Trash and Debris: The sidewalk café space shall be kept clear of trash and debris at all times. The permittee shall also be responsible for ensuring that the twenty feet (20') of right-of-way adjacent to the permitted sidewalk café be cleared of all trash and debris no less than once a day.
- I. Sidewalk Cafés Serving Alcohol Requirements:
 - 1. Fencing: All sidewalk cafés serving or allowing the consumption of alcoholic beverages must have a continuous physical barrier with a minimum height of three feet (3') placed at the boundaries of the permitted sidewalk café and be flush or attached to the abutting physical premises of the retailer and be ADA compliant.
 - 2. Alcohol Signage: All sidewalk café points of ingress or egress shall display alcohol signs as follows:
 - a. The sign must be no smaller than nine inches by 12 inches (9" x12");
 - b. The sign must state in clear type, "It is unlawful to bring onto these premises alcohol beverages not purchased at (premises name) or to remove alcohol from the boundaries of this business," or other alcohol sign language as approved by the Police Chief; and
 - c. Signs must be displayed at all sidewalk café points of ingress or egress at the height

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of five feet (5') from the ground.

3. Alcoholic Beverage Storage Prohibited: No taps, kegs, coolers, or other alcoholic beverage storage devices are allowed within a sidewalk café.
- J. Temporary Removal: The City may require the temporary removal of a sidewalk café for the following reasons:
 1. Utility work or repair of the sidewalk or public plaza that necessitates such action;
 2. Special events that necessitate such action; or
 3. Emergencies endangering the public's health and safety.

The City shall not be responsible for any sidewalk café furnishing or other components removed during an emergency.

- K. Obey All Laws: All sidewalk cafés shall comply with all applicable federal, state, and local statutes, rules, and regulations.

3-4-12: PERMIT TERM; RENEWAL:

- A. Permit Expiration: All sidewalk café permits within the City shall terminate at midnight on February 28th each year.
- B. Renewal: All sidewalk café permittees must renew such licenses for the following succeeding year by complying with the permit renewal requirements set forth in chapter 1, article A of this title and this chapter.
- C. Permits Remain Valid During Renewal Application Investigation: Upon timely submission of a completed renewal application, the current sidewalk café permit shall remain valid until the City Clerk reviews the applicant's qualifications and either denies renewal or reissues the permit.

3-4-13: PERMIT DENIAL, SUSPENSION, REVOCATION, AND APPEAL:

Except as otherwise may be provided herein, the procedures for denial, suspension, revocation, and appeal of a sidewalk café permit shall be set forth in chapter 1, article A of this title.

3-4-14: PENALTY:

Violation of any of the provisions of this chapter may result in the suspension or revocation of the sidewalk café permit pursuant to chapter 1, article A of this title.

In addition to any action on the permit, violation of any of the provisions of this chapter, or the failure or omission to perform any duty imposed by the provisions of this chapter, is hereby declared unlawful and punishable as a general misdemeanor, subject

Section 2. That this Ordinance shall be in effect immediately upon its passage, approval, and publication.