



City of Excelsior
339 Third St. • Excelsior, MN 55331
(952) 653-3674

Sidewalk Café Permit Application

Contact Information For All Sidewalk Café Correspondence

Applicant Name:

Phone:

Email Address:

Mailing Address:

City:

State:

Zip:

Restaurant Information – Name and Location of Restaurant That Will Use Permit

Restaurant Name:

Name of Parent Company, if applicable:

Business Phone:

Business Address:

City:

State:

Zip:

Sidewalk Café Location Details

Name of street or streets on which Sidewalk Café will be located

Street:

Second Street, if applicable:

Complete Application Checklist

The following materials must be submitted to complete your application:

- Sidewalk Café Application (this form)
- \$100 application fee payment; check made payable to the City of Excelsior
- Sidewalk Café Concept Drawing (if new or if changes from previous year are requested)
- A Signed Hold Harmless Agreement (if new)

Certification and Hold Harmless Agreement

My signature on this application indicates that the information submitted is accurate and that I understand and accept the responsibility to operate the Sidewalk Café in compliance with all the relevant City rules and regulations.

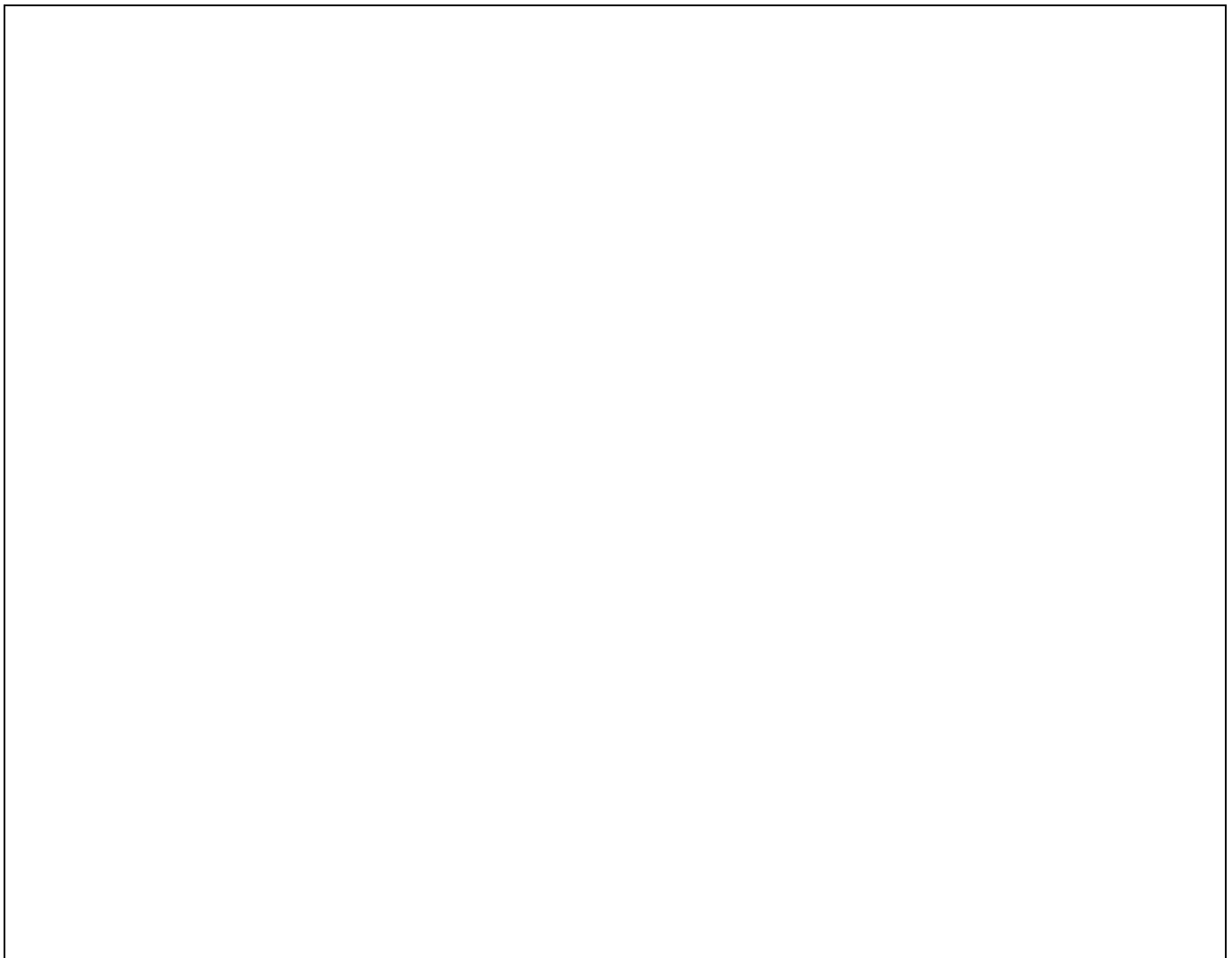
Applicant Signature: _____ Date: _____

SIDEWALK CAFÉ

Concept Drawing

In the space below, provide a drawing of your Sidewalk Café concept, including dimensions. Please include the following:

- Name of adjoining streets
- Width of sidewalk adjacent to café
- Outdoor seating plan
- Location of building entrances
- Location, dimensions, and square footage out of proposed area for café use (add sidewalk width remaining for public pedestrian access; minimum of 5 feet required)
- Location & dimensions of existing improvements (e.g., fire hydrants, traffic signs, light poles, benches, trees)
- Location & dimensions of any proposed improvements in the sidewalk area associated with the sidewalk café (e.g., chairs, tables, fences, umbrellas, planters, bollards, outdoor furniture, signs, etc.)



**Hold Harmless Agreement
(Sidewalk Café)**

THIS HOLD HARMLESS AGREEMENT, made and entered into as of the _____ day of _____ 20____, between _____, a _____ whose address is _____ (the “Indemnitor”) in favor of the CITY OF EXCELSIOR, a Minnesota municipal corporation, whose address is 339 3rd Street, Excelsior, Minnesota 55331, Attention: City Manager (the “City”).

WITNESSETH THAT:

WHEREAS, the Indemnitor has applied for a permit pursuant to Article 37 of the City Zoning Code to operate an Outdoor Sidewalk Café, as defined in Article 2 of the City Zoning Code (hereinafter the “Sidewalk Café”), on a public sidewalk abutting the food establishment operated by the Indemnitor located at _____;

WHEREAS, Section 37-2 of the City Zoning Code requires the applicant for the issuance of a permit for a Sidewalk Café to enter into a hold harmless agreement exempting the city from all liability claims associated with the Sidewalk Café;

WHEREAS, the Indemnitor finds it advantageous and desirable to comply with this requirement of Section 37-2 of the City Zoning Code by entering into this Indemnity Agreement.

NOW, THEREFORE, in consideration of the city issuing a permit to the Indemnitor to operate the Sidewalk Café and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Indemnitor, the Indemnitor hereby agrees as follows:

1. The Indemnitor hereby agrees to indemnify and hold harmless the City and the City’s officials and employees for any loss, costs, damages, and expenses (including attorneys’ fees) in connection with any claim or proceedings arising out of any use, design, operation or maintenance of the Sidewalk Café, other than claims or proceedings arising from any negligent or unlawful acts or omissions of the city or their contractors, agents, officers or employees. Promptly after receipt by the City of notice of the commencement of any action in respect of which indemnity may be sought against the Indemnitor under this Section 1, the City will notify the Indemnitor in writing of the commencement thereof and, subject to the provisions hereinafter stated, the Indemnitor shall assume the defense of such action (including the employment of counsel, who shall be counsel satisfactory to the City, and the payment of expenses) insofar as such action shall relate to any alleged liability in respect of which indemnity may be sought against the Indemnitor. The City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the Indemnitor unless the employment of such counsel has been specifically authorized by the Indemnitor. The Indemnitor shall not be liable to indemnify any person for any settlement of any such action effected without its consent. The failure to notify the Indemnitor as herein provided will not relieve it from any liability which it may have to any indemnified party pursuant hereto, otherwise than under this section.
2. Any notice, demand or request by the City to Indemnitor shall be in writing and shall be deemed to have been duly given or made if personally delivered to Indemnitor at the address listed herein or if mailed by registered or certified mail, return receipt requested, to Indemnitor at its address listed herein, or at such other address as Indemnitor may notify the city of, in writing. Notice, if so mailed, shall be deemed given and made upon deposit in the United States mail.
3. This Indemnity Agreement, for all purposes, shall be interpreted and construed in accordance with the laws of the State of Minnesota, in which state it is to be performed. The unenforceability or invalidity of any provision or provisions of this Indemnity Agreement as to any person or circumstance shall not render that

provision nor any other provision or provisions herein contained unenforceable or invalid as to any other persons or circumstances, and all provision hereof, in all other respects, shall remain valid and enforceable.

- 4. This instrument shall inure to the benefit of the City and its successors and assigns, and shall bind Indemnitor and Indemnitor’s successors and assigns.

IN WITNESS WHEREOF, Indemnitor has duly executed this Indemnity Agreement as of the day and year first above written.

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, the _____ of _____, a Minnesota corporation, on behalf of the corporation.

Notary Public
for the State of Minnesota
My commission expires:_____

(Notarial Seal)

- (a) ***District application.*** Outdoor sidewalk cafes are allowed within the B-1, B-2, and B-3 districts as an accessory use subject to the application of an administrative permit. New sidewalk cafes adjacent to or across the street from property zoned R-1 or R-2 require a conditional use permit.
- (b) ***Conditions of approval.*** An outdoor sidewalk cafe may be allowed provided that:
- 1) Cafe area shall be limited to the area directly adjacent to the property owned and/or operated by the primary restaurant or cafe.
 - 2) Cafe area shall be segregated from through pedestrian circulation by means of temporary fencing, bollards, ropes, plantings, etc. Segregation device(s) must not cause destruction to the sidewalk or other elements within the public right-of-way.
 - 3) Minimum clear passage zone for pedestrians at the perimeter of the cafe shall be at least five feet without interference from parked motor vehicles, bollards, trees, tree gates, curbs, stairways, trash receptacles, street lights, utility poles, parking meters, etc.
 - 4) Overstory canopy of tree/umbrellas extending into the pedestrian clear passage zone or pedestrian aisle shall have a minimum clearance of seven feet above sidewalk.
 - 5) Furniture shall not be stored, stacked and/or covered in the area of the outdoor sidewalk café.
 - 6) Any lighting used to illuminate the cafe area shall be so arranged so as reflect the light away from the adjoining property and public streets or alleys, and shall be in compliance with this Appendix E.
 - 7) No electronically amplified outdoor music, intercom, audio speakers, or other such noise generating devices shall be allowed in the cafe area.
 - 8) The outdoor sidewalk cafe shall comply with the design standards specified in article 35 of this Appendix E.
 - 9) The outdoor sidewalk café shall comply with all Minnesota State Liquor Control laws.
 - 10) Furniture shall be maintained in a safe and sanitary condition.
 - 11) Plant material shall be in containers to allow for movement.
- (c) ***Requirements for sidewalk cafes on public right-of-way or public property.***
- 1) The property owner, restaurant operator, and the city shall enter into a hold harmless agreement, as provided by the city, exempting the city from all liability claims associated with the cafe use.
 - 2) Maintenance of public right-of-way, including landscaping, for which the cafe is located upon shall be the property owner's responsibility.
 - 3) Furniture and the enclosed perimeter shall be movable.
 - 4) Security of the cafe area shall be the responsibility of the property owner.
 - 5) Property owner shall pick up litter within 100 feet of the cafe on a daily basis.
 - 6) A license for outdoor sidewalk cafes and shall be applied for and approved by the Zoning Administer on a yearly basis.
 - 7) The outdoor sidewalk café license term shall be April 1 to March 31 of each year.
- ***Signs are subject to sign standards listed in Article 24 of the Zoning Code and Excelsior's Design Standards***
 - ***Parking requirements are found in Article 19 of the Zoning Code.***
 - ***Any required alcoholic beverage licensing shall be applied for and approved by the City Council on a yearly basis.***