

**AGENDA ITEM EXECUTIVE SUMMARY****Agenda Item Number: 4e****Title:**

Recommendation to approve a Temporary License Agreement for an Outdoor Café for Pollyanna Brewing, 106 Riverside Ave.

Presenter:

Russell Colby

Meeting: Planning & Development Committee**Date:** April 11, 2022

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted: **Background:**

Both Pollyanna Brewing (106 Riverside Ave.) and Flagship on the Fox (100 Riverside Ave.) have expressed interest in continuing use of public space for outdoor café areas during the 2022 season.

Pollyanna has been utilizing a portion of the City-owned parking lot adjacent to their business. Flagship had been utilizing a closed section of Walnut Ave. adjacent to their business, up until last fall. The ability to utilize City parking lots and streets for outdoor cafés will end when the Temporary Dining Program ends on April 15, 2022.

There has been discussion regarding a potential property “swap” between the City and landlord/building owner of 100-106 Riverside Ave, Frontier/Curt and Conrad Hurst. If the “swap” is executed, outdoor café areas for both Pollyanna and Flagship would then be located on private property. The details of this potential property “swap” have not been finalized, but are under review and may be presented for consideration by the Committee in the next few months.

In the interim, both Pollyanna and Flagship have requested Temporary License Agreements to enable the continued use of the outdoor café areas. Staff is suggested that the license be based upon the same timeframe and fees being imposed for use of the First Street plazas (two 100-day time periods- April 15 to Oct. 31, \$0.50 per square foot of outdoor café area per 100-day period). Both businesses would be required to apply for a permit for each 100-day period.

Proposal for Pollyanna:

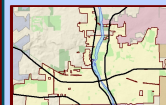
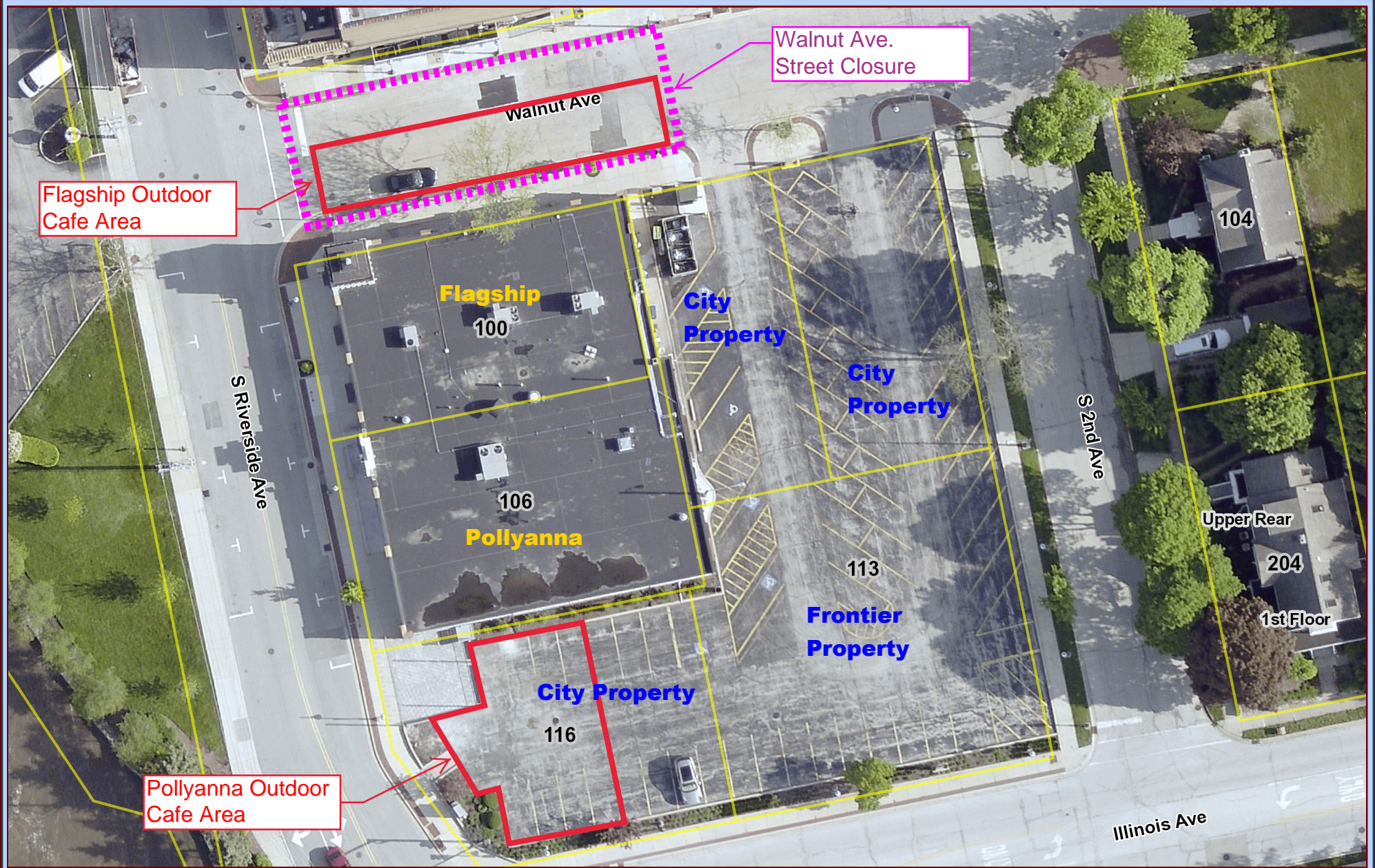
The Temporary License Agreement for Pollyanna would allow for continued use of 8 parking stalls at the west end of the parking lot. This is the location of the existing outdoor café set up.

Attachments (please list):

Aerial map, draft license agreement

Recommendation/Suggested Action (briefly explain):

Recommendation to approve a Temporary License Agreement for an Outdoor Café for Pollyanna Brewing, 106 Riverside Ave.



Data Source:
 City of St. Charles, Illinois
 Kane County, Illinois
 DuPage County, Illinois
 Projection: Transverse Mercator
 Coordinate System: Illinois State Plane East
 North American Datum 1983
 Printed on: April 7, 2022 02:03 PM



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TEMPORARY LICENSE AGREEMENT

This TEMPORARY LICENSE AGREEMENT (hereinafter the "*Agreement*") is made and entered into as of this ___ day of _____, 2022, by and between the City of St. Charles, an Illinois Municipal Corporation, Kane and DuPage Counties, Illinois (hereinafter "*City*"), and _____ LLC, an Illinois Limited Liability Corporation (hereinafter "*Licensee*"); the City and Licensee are sometimes hereinafter collectively referred to as the Parties ("*Parties*") or individually as the Party ("*Party*").

WITNESSETH:

WHEREAS, the City does own a public parking lot located at the northeast corner of Riverside Avenue and Illinois Avenue ("*City Parking Lot*"), legally described in Exhibit A attached hereto and made a part hereof, both immediately adjacent to 106 S. Riverside Avenue ("*106 S. Riverside Ave.*"), legally described in Exhibit B attached hereto and made a part hereof; and

WHEREAS, Licensee operates the business commonly known as Flagship Brewing Company, located at 106 S. Riverside Ave. ("*Licensee Property*"), the southerly property line of which abuts the City Parking Lot; and

WHEREAS, Licensee proposes to install, operate and maintain a temporary outdoor patio area with fencing, tables and chairs ("*Outdoor Patio*"), on the City Parking Lot, as illustrated on Exhibit C; and

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the Parties hereto hereby stipulate, the Parties hereby agree as follows:

1. The Recitals hereinabove are hereby incorporated into and made a substantive part of this Agreement as though they were fully set forth in this Paragraph.

2. The City, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid to City, the receipt and sufficiency of which is hereby acknowledged, hereby grants to the Licensee, its successors, grantees and assigns, an exclusive temporary license (hereinafter the "*License*") for the purpose of installing, operating and maintaining the Outdoor Patio solely within the City Parking Lot, in the location illustrated on the attached Exhibit C, subject to the terms, conditions and limitations herein specified together with any exhibits attached hereto and incorporated herein by reference.

3. Licensee shall submit for an Outdoor Café permit in accordance with Title 12, "Streets, Sidewalks, Public Places and Special Events", Chapter 12.04, "General Provisions," Section 12.04.102, "Outdoor Cafes in Public Places" of the St. Charles Municipal Code, attached hereto as Exhibit D, and shall be subject to all terms of the Outdoor Café permit, including permit time and date limitations and fees, which shall be equal to the fee rate for use of the First Street East and West Public Plazas (\$0.50 per square foot of Outdoor Café area).

4. Licensee must install, operate and maintain the Outdoor Patio in full compliance with the permit and all conditions contained herein or attached hereto by reference.

5. The Outdoor Patio shall not in any manner be operated, modified, expanded, or enlarged beyond the extent of described herein and shown in Exhibit C, without the prior written consent of the City.

6. This Agreement shall expire on October 31, 2022, the date the insurance required hereunder expires, or as otherwise provided for in this Agreement, whichever comes first. This Agreement may be renewed only through the action of the City. Licensee may terminate this Agreement immediately by providing written notice to City. Except for the immediate termination in the event of an emergency, as declared by City in its sole discretion, City may terminate this Agreement at any time during the term of this Agreement by notifying Licensee of its intention, with at least three (3) business days prior written notice.

7. Licensee understands and agrees that the Outdoor Patio shall remain in good condition at all times and that the City Parking Lot shall not be compromised in any unsafe or adverse manner, at all times complying with all local codes and ordinances, including Section 12.04.102, "Outdoor Cafes in Public Places" of the St. Charles Municipal Code.

8. To the fullest extent permitted by law, Licensee hereby agrees to defend, indemnify and hold harmless the City, its officials, agents, and employee, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, specifically including but not limited to, any claim for damages caused by or to the Outdoor Patio or caused by work performed by the City, or its agents, which may in anywise accrue against the City, its officials, agents, and employees, arising in whole or in part or in consequence of the performance of this Agreement by the Licensee, their agents, invitees, employees, contractors or subcontractors, or which may in anyway result therefrom, except that arising out of the sole legal cause of the City, its agents or employees, the Licensee shall, at their own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against the City, its officials, agents and employees, in any such action, the Licensee shall, at its own expense, satisfy and discharge the same. Prior to occupancy, the Licensee shall furnish to the City a certificate of insurance evidencing coverages and limits in conformance to the requirements described herein attached Exhibit D. The insurance policy shall be expressly endorsed to include the City as an additional insured, Such certification of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the City in the event of any cancellation, non-renewal or change in the policy limits, terms or conditions which would cause them to fail to meet the foregoing requirements. Such insurance shall be fully maintained during the term of the License.

9. The City shall have the right, in its sole and absolute discretion, to promulgate and enforce rules and regulations regarding the use of the Outdoor Patio to protect the health, safety and welfare of the public utilizing the City Parking Lot. The Licensee will provide, at its expense

(and the City shall have no obligation to provide or pay for), any and all improvements and/or modifications to the Outdoor Patio to comply with this provision.

10. Licensee accepts the City Parking Lot, "As-Is," "Where-Is" and in its current condition and the City makes no representations concerning the condition of the Licensed Area. The Licensee further acknowledges and agrees to secure authorization from STC Morse, LLC, as successor owner to BMO Harris Bank, N.D., to occupy reserved parking spaces identified in that certain Parking Easement Agreement, dated May 6, 2013, by and between the City and BMO Harris Bank, N.D., its successors and assigns, and recorded as Document 2013K-043676.

11. If this Agreement is terminated under any of the provisions contained herein, Licensee shall remove the Outdoor Patio within thirty (30) days of termination. The site shall be restored to the same general condition as existed before the Outdoor Patio was installed, unless otherwise agreed to by the City. If the required work is not performed or completed to the City's satisfaction, the City shall have the right to perform or complete such work. Licensee agrees to reimburse the City for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the 106 S. Riverside Ave. property.

12. The Outdoor Patio when installed does not become a part of or an interest in the City Parking Lot, the air rights above and below or the underlying property. This Agreement shall not be construed to grant any interest in realty or any other possessory interest beyond the irrevocable, permanent and exclusive license to the Licensee, as provided herein.

13. Licensee is responsible for the cost of installation, maintenance, and removal of such the Outdoor Patio and is responsible for any damage caused to the City Parking Lot resulting from such installation, maintenance, and removal.

14. The terms of this Agreement are covenants running with 106 S. Riverside Ave. and shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns.

15. The parties acknowledge that the licensed area is part of the City Parking Lot and that the City Parking Lot is owned by the City and is currently exempt from any tax assessment for real estate or any other taxes. In the event that the City Property or any part thereof becomes subject to real estate or other taxes arising out of this License Agreement, the Licensee shall be liable for those real estate or other taxes and will pay said taxes as they become due and owing.

16. This Agreement may be enforced either at law or in equity, with the non-breaching Party entitled to injunctive relief and/or monetary damages. If any action for enforcement of this Agreement is brought, the non-prevailing Party in such action shall reimburse the prevailing Party for its attorneys' fees and related costs in such action.

17. Licensee shall not assign this Agreement or its rights and duties under this License, without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion.

18. This Agreement may be modified or amended only by a written instrument executed by the Parties, or their respective permitted successors or assigns.

19. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

Dated this ____ day of _____, 2022.

Licensee:

_____, LLC
an Illinois Limited Liability Corporation

City:

CITY OF ST. CHARLES,
an Illinois Municipal Corporation

By: _____

By: _____
Mayor

Subscribed and sworn to before me
this ____ day of _____, 2022.

Attest: _____
City Clerk

Notary Public

Subscribed and sworn to before me
this ____ day of _____, 2022

Notary Public

Exhibit A:
City Parking Lot Legal Description

Lot 5 and 6 (except the northerly 25 feet thereof, and the portion of said Lot 5 dedicated for public right of way) in Block 10 of the Original Town of St. Charles, in the City of St. Charles, Kane County, Illinois.

PIN # 09-27-391-003

Exhibit B:
106 S Riverside Ave. Legal Description

That part of Lots 2, 3, 4, 5, 6 and 7, except the south 1 inch of the northerly 25 feet, 1 inch of the westerly 5 feet of Lot 7, in Block 10 of the Original Town of St. Charles, on the east side of the Fox River, described as follows: Commencing at the northwest corner of said Lot 4; thence southerly along the westerly line of said Block, 56 feet, 7 ½ inches to the center line of a partition wall extending 101 feet, 6 inches, to the east face of the east wall of said building on the northerly part of said Lots 2, 3 and 4; thence northerly along the east face of the said wall 56 feet, 7 ½ inches to the north line of Block 10; thence easterly along the north line of Block 10 aforesaid, 4 feet to the east line of the westerly 5 feet of Lot 2; thence southerly along the easterly line of the westerly 5 feet of Lot 2 to the north line of Lot 7; thence southerly parallel with the west line of Lot 7, a distance of 25 feet, 1 inch; thence westerly parallel with the northerly line of Lots 7, 6 and 5 a distance of 105.6 feet to the westerly line of said Block 10; thence northerly along the westerly line of said Block 69.03 feet to the place of beginning, in the City of St. Charles, Kane County, Illinois.

PIN # 09-27-391-002

Exhibit C:
Outdoor Patio Location Boundary

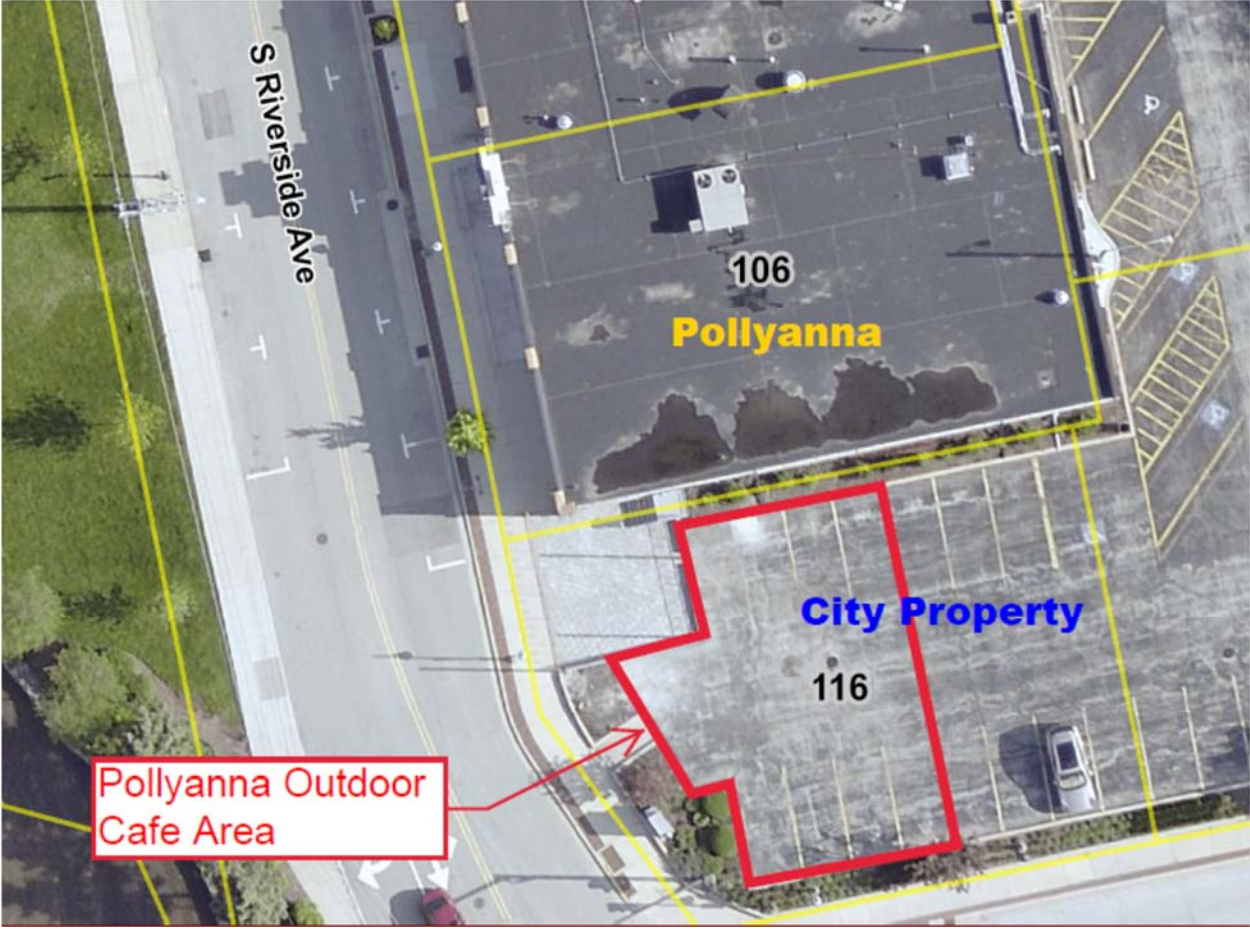


Exhibit D:
Section 12.04.102, “Outdoor Cafes in Public Places” of the St. Charles Municipal Code

12.04.102 – Outdoor Cafés in Public Places

The City Administrator is authorized to issue Outdoor Café Permits for the use of public places located in the CBD-1 zoning district, for the purpose of serving food and beverages to the public (including, without limitation, the placement of tables, chairs, carts, and similar or related equipment), subject to the conditions listed in this section. As a condition of an Outdoor Café Permit, applicants shall sign a form provided with the permit application materials acknowledging and agreeing to comply with all terms listed in this section.

- A. Permits issued hereunder shall be valid for a term of one hundred (100) days or less and shall be issued for:
 - 1. The period of April 15 (or the date of application, whichever is later) through July 23 and/or,
 - 2. The period of July 24 (or the date of application, whichever is later) through October 31.

The holder of a permit for April 15 through July 23 shall not have any automatic right to the issuance of a permit for the period of July 24 through October 31, but shall have the right to apply for a second permit.

- B. Permit fees shall be:
 - 1. Use of Public Sidewalk within right-of-way: \$50
 - 2. Use of the First Street East and West Public Plazas, based upon a layout approved by City Council: \$0.50 per square foot of Outdoor Café area within the plaza
- C. An Outdoor Café Permit shall be required prior to placing tables, chairs, umbrellas, enclosure fencing, carts, or any other equipment on any public sidewalk, or walkway or plaza.
- D. Outdoor Café Permits may be issued only where the equipment is incidental to the operation of a restaurant on private property contiguous to the sidewalk, walkway or plaza.
- E. The proposed use shall not unreasonably interfere with pedestrian or vehicular traffic or with access to parked vehicles, and in no event shall the uses permitted by a Outdoor Café Permit reduce the open portion of any sidewalk or walkway to less than five feet (5') in width. All equipment placed in the public area shall conform with Section 12.04.200 of this Chapter as to corner visibility.
- F. Prior to issuance of a permit, the applicant shall furnish a dimensioned plan showing the sidewalk or other public space and all existing public improvements and encroachments such as light posts, benches, planters, trash receptacles, fences, trees and tree grates and bicycle racks. The diagram shall also include the location of the curb relative to the building

and the proposed location of all café furniture, carts, and other equipment to be placed on the sidewalk.

- G. The consumption and possession of alcoholic beverages in the area for which a Outdoor Café Permit has been issued shall be prohibited, except as allowed pursuant to Title 5, "Business Licenses and Regulations," Chapter 5.08, "Alcoholic Beverages," Section 5.08.300, "Consumption and Possession of Alcoholic Liquor on Public Property."
- H. All applicable County Health Department sanitation requirements shall be followed for outdoor food handling. The permittee shall be responsible for posting the outdoor seating area as to any special Health Department requirements.
- I. All public areas encompassed by the Outdoor Café Permit shall be maintained in a sanitary manner at all times. Food scraps and containers shall be disposed of in appropriate refuse containers on a regular basis during the day by the permittee. Sweeping of refuse or food scraps into tree grates is not permitted.
- J. Permittees are responsible for emptying the public trash containers placed by the City if they should become full prior to the next regular pickup time.
- K. Permittees shall see that the public areas encompassed by their Outdoor Café Permit are clean at the end of each business day, so as not to have any food or drink leftovers remaining which would pose an attraction to animals or insects. Each permit holder shall wash, as needed, the public area to remove any food or drink residue that may attract animals and/or create a pedestrian slip hazard.
- L. Design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act and the Illinois Accessibility Act.
- M. No tables, umbrellas, enclosure fencing, or other equipment shall be attached or affixed to the sidewalk, parkway, poles or any other public facilities.
- N. The applicant for an Outdoor Café Permit shall provide at its sole cost and expense, and shall maintain in effect during the entire period of the permit, insurance at a minimum in at least the following manner, or equivalent coverage determined acceptable by the City Administrator:
 - 1. Worker's Compensation Insurance in at least the required statutory limits.
 - 2. Comprehensive General Liability Insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least two million (\$2,000,000.00) dollars per occurrence, and two million (\$2,000,000.00) dollars for any single injury.
 - 3. Umbrella Liability Insurance with limits of at least one million (\$1,000,000.00) dollars per occurrence.
 - 4. Liquor Liability Coverage for any establishment serving alcohol on public property.

5. Prior to issuance of a Outdoor Café permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City as an additional insured party.
 6. The required insurance policies shall each provide that they shall not be changed or cancelled during the life of the Outdoor Café Permit until 30 days after written notice of such change has been delivered to the City.
- O. The permittee shall indemnify, defend, protect, and hold harmless the City, its corporate authorities, officers, employees, agents and volunteers from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in a connection therewith, including but not limited to a reasonable attorney's fees, expert witness fees and costs of defense (collectively, the "Losses") directly or proximately resulting from permittee's acts or omissions, except to the extent that the city is the sole legal cause of said losses. The foregoing notwithstanding, under no circumstances shall the issuance of any permit provided for under the St. Charles Municipal Code, including but not limited to a Outdoor Café Permit, to the permittee or any other person or entity constitute an act of negligence or willful misconduct. Nothing set forth in the said permit shall be deemed a waiver by the city of any defenses or immunities relating to the permittee or its property, or to any person or entity or their property, that are or would be otherwise available to the city or its corporate authorities, officers, employees, agents and volunteers under the common law of the State of Illinois or the United States of America. The provisions of this section shall survive the expiration or earlier termination of each Outdoor Café permit, or the renewal thereof.
- P. The City may suspend or revoke the Outdoor Café Permit for any reason including, but not limited to violations of any provision of the St. Charles Municipal Code, after providing at least three (3) days written notice, except in an emergency, to a permittee.
- Q. An Outdoor Café Permit may not be assigned or transferred without prior written consent of the City Administrator. Any attempted assignment or transfer in violation of this paragraph shall be void and confer no rights upon any third person. The Outdoor Café Permit shall not confer any property rights.
- R. The Permittee shall promptly remove all of permittee's structures, equipment or improvements of all kinds, whether in or adjacent to the Outdoor Café, no later than the date of termination of the permit (or date of permit suspension or revocation, if applicable).