

ORDINANCE NO. 12-025

AN ORDINANCE ADDING CHAPTER 125, TO BE ENTITLED "SIDEWALK CAFES", TO THE CITY ORDINANCES OF THE CITY OF MONMOUTH, ILLINOIS

WHEREAS, the City Council for the City of Monmouth believes it to be in the City's best interest to pass an Ordinance for the City of Monmouth that allows for and encourages the addition of sidewalk cafes to existing restaurants within the city limits of the City of Monmouth;

BE IT ORDAINED by the City Council of the City of Monmouth, Warren County, Illinois, as follows:

Section 1:

Ordinance 12-020, previously enacted by the City Council of the City of Monmouth is hereby repealed in its entirety.

Section 2:

Chapter 125 of the City of Monmouth Code of Ordinances shall read:

CHAPTER 125: SIDEWALK CAFES

Section 125.01 - Definitions

The following words and terms shall have the meanings respectively ascribed to them for purposes of this Chapter of the Code of Ordinances to the City of Monmouth, as follows:

Pedestrian Way. An improved walk or passageway, not adjacent to any city street, intended for use by pedestrians.

Restaurant. Any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals are actually and regularly served, without sleeping accommodations, such space being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve food for its guests, and which place derives at least 50% of its revenue from the sale of food.

Restaurant Operator. An individual, partnership, corporation or other entity that owns or operates a restaurant.

Sidewalk. That portion of a public street between the curb line, or the lateral lines of a roadway if there is no curb, and the adjacent property line or street right-of-way line that is intended for the use of pedestrians.

Sidewalk Cafe. That portion of the dining operation of a restaurant that extends into the sidewalk or pedestrian way and is immediately adjacent to said restaurant building pursuant to a permit authorized by this ordinance.

Section 125.02 - Permit; Application

(a) General. Notwithstanding any other provisions of this Code to the contrary, sidewalk cafes shall be permitted at such locations and subject to such regulations as are set forth in this ordinance.

(b) Permit required. No restaurant may extend its dining operations into a sidewalk or pedestrian way without first obtaining a permit therefor in accordance with the requirements of this ordinance.

(c) Application. Any restaurant operator desiring to operate a sidewalk cafe shall prepare and file an application with the City Clerk which shall contain the following information:

(1) The name, address and telephone number of the restaurant, restaurant operator and the Landlord of the building where the restaurant is operated if said building is not owned by the restaurant operator.

(2) The types of food and beverages to be sold or served at the sidewalk cafe.

(3) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk cafe which must be between the hours of 8:00 a.m. and 10:00 p.m.

(4) A site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk cafe and the section to be kept clear for pedestrian use, and depicting the proposed placement of tables, chairs, barricades and other furnishings within the sidewalk or pedestrian way.

(5) Evidence of insurance and a statement of indemnity as required by this ordinance.

(6) A permit application fee of \$25.00 to recover the cost of processing the application and issuing the permit.

(d) Indemnity. In consideration for the granting of the permit, the restaurant operator agrees to indemnify and hold harmless the city, its officers, agents, and employees against loss or expense including attorney's fees, by reason of the liability imposed by law upon the city, for damage because of bodily injury, including death, at any time resulting therefrom, sustained by any person or persons, or on account of damage to property arising out of or in consequence of the granting of

a permit pursuant to this article. The restaurant shall agree to such indemnity on the application for the permit.

(e) Insurance. The restaurant operator shall secure and maintain comprehensive general liability insurance protection, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection covering the indemnification of the city by the restaurant operator. This insurance shall provide bodily injury limits of not less than \$1,000,000.00 for each occurrence and not less than \$1,000,000.00 in the aggregate, and with property damage limits of not less than \$500,000.00 for each occurrence and not less than \$500,000.00 in the aggregate. All insurance required under this agreement shall be written with a company licensed to do business in Illinois. A certificate of insurance naming the City of Monmouth as an additional insured must accompany the permit application and be kept on file in the City Clerk's office.

(f) Issuance of permit; denial. The City Clerk shall examine the application and determine whether all of the requirements stated in this article for the issuance of a permit have been satisfied. If all such requirements have been satisfied, then the City Clerk's office shall issue the permit. If the permit is denied, the applicant shall be provided with the reasons therefor in writing, and the permit application fee shall not be refunded.

(g) Permit revocation. The City may revoke a permit issued pursuant to this article if it is determined that the restaurant operator has:

- (1) Misrepresented or provided false information in the permit application.
- (2) Violated any provision of this ordinance or any other local or state regulations or laws, including, but not limited to health code violations.
- (3) Violated any law, regulation or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances.
- (4) Operated the sidewalk cafe in such manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare, specifically including failure to keep the sidewalk cafe area clean and free of refuse at end of each business day.
- (5) Failed to maintain any health, business or other permit or license required by law for the operation of the restaurant associated with the sidewalk cafe.

(6) Operated the sidewalk cafe in violation of any city, county or state law, ordinance or regulation. Before the revocation of a permit, the City shall notify the permit holder of its intent to revoke the permit and the reasons therefor. The permit holder shall have ten (10) days from receipt of such notice to file a written appeal of the proposed revocation, along with a statement of the grounds for the appeal, with the City Administrator or his designee, who shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the permit holder shall be notified in writing of the revocation decision and the reasons therefor.

(h) Reservation of rights. The City reserves the right to require any sidewalk cafe established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance or repair of any street, sidewalk, utility, or public building by the City, its agents or employees, or by any other governmental entity or public utility; to allow for use of the street or sidewalk in connection with parades, civic festivals and other events of a temporary nature as permitted by the city; and to remedy a public nuisance or to protect the public health, safety, or welfare.

(i) Term, transfer, renewal, etc. Permits issued in accordance with the provisions of this article shall:

(1) Be issued for the period beginning May 1 or thereafter and expiring April 30 of each year. If a permittee discontinues the restaurant operation or the sidewalk cafe, no refund of the permit fee shall be made.

(2) Not be transferable or assignable.

Section 125.03 - Regulation

(a) The sidewalk cafe must share the same management and same food preparation facilities as the restaurant to which it is associated with and is adjacent to. The sidewalk cafe must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business. Sidewalk cafes may operate at any time between the hours of 8:00 a.m. and 10:00 p.m., Sunday through Saturday. At the end of each business day the restaurant operator shall clean and remove all refuse from the sidewalk cafe area.

(b) The operation of the sidewalk cafe must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk cafe may not constitute more than 50 percent of the interior seating capacity of the restaurant.

(c) The placement of tables, chairs, and other furnishings, as shown on the site plan must leave five feet of unobstructed space (in the case of a sidewalk, as measured from the street-side edge of

the sidewalk, and in the case of a pedestrian way, as measured from the edge of the pedestrian way farthest from the sidewalk cafe) on the sidewalk or pedestrian way for the passage of pedestrians. Fire exits or lanes and wheelchair ramps must remain free of obstructions at all times.

(d) The restaurant seeking to operate a sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for such sidewalk cafe. The placement of tables, chairs, and other furnishings may not extend beyond the sidewalk or pedestrian way frontage of the associated restaurant.

(e) The tables, chairs, barricades and other furnishings used in the sidewalk cafe shall be specifically designed and constructed for purposes of outdoor use of a type that is easily removed from the public right-of-way. If the permit is revoked, table, chairs, barricades and other furnishings used in the operation of the sidewalk cafe must be removed within twenty-four (24) hours notice from the city, and if not so removed, the city shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The city shall also have the right to remove any and all such items immediately in emergency situations. The city shall not be responsible for damage to barricades or furnishings under any circumstances.

(f) Amplified or live music emanating from the restaurant operation or the sidewalk café shall not be able to be heard further than fifty (50) feet from the sidewalk cafe.

(g) Except as elsewhere permitted, the operation or furnishing of the sidewalk cafe shall not involve any permanent alteration to or encroachment upon any sidewalk or pedestrian way. The restaurant operator of the sidewalk cafe shall be responsible for repairing any incidental damage to public improvements resulting from its operation.

(h) Patrons must wear shoes and shirts at all times.

(i) All sidewalk cafes must have an opening for ingress and egress at all times.

(j) All sidewalk cafes must adhere to the size, design, and any other specifications approved by the City at all times. Strict adherence to required design standards as set forth herein is mandatory.

(k) Sidewalk cafes may be in operation from May 1 until October 31 during the calendar year. When not in operation, the tables, chairs, barricades and other furnishings used in the sidewalk cafe shall be removed and stored off of the sidewalk or pedestrian way.

(l) No smoking is allowed in either the sidewalk cafe or the interior food establishment. Smoking is also prohibited within 15 feet of an entrance to an enclosed area in which smoking is prohibited.

Section 125.04 - Alcoholic Beverages

(a) If a sidewalk cafe is operated by a restaurant with a Class 1 or Class 2 Liquor License (as defined by Section 115.24), then the cafe area must be separated from the remaining sidewalk or pedestrian way by a barricade. Such barricade must be constructed of materials of a finished quality and designed for outdoor use, including but not limited to, wrought iron, planters, picket fences, or velvet ropes. No signs shall be planted on the barricades.

(b) The consumption of malt beverages, unfortified wine and other alcoholic beverages in compliance with all state and local laws and regulations shall be permitted in a sidewalk cafe, and this shall be an exception to the general prohibition of such consumption on street right-of-way provided in Section 132.60 of the City Code of Ordinances as well as the Outdoor Operation requirements of Section 115.57 of the City Code of Ordinances.

(c) Bring Your Own Bottle of liquor (BYOB) shall not be allowed at a sidewalk cafe, with the following exception: if the restaurant is licensed to sell wine, then a patron may bring in a single, unopened bottle of wine for consumption within the restaurant or sidewalk cafe, provided the restaurant charges a minimum corkage fee of \$5.00.

Section 2:

In all other respects, Chapter 125 of the Monmouth Code of Ordinances previously enacted shall remain in full force and effect.

Section 3:

This ordinance shall be in full force and effect ten (10) days after this due publication in pamphlet form, passage and approval thereof as provided by law.

PASSED this 6th day of August, A.D., 2012.

APPROVED this 10th day of August, A.D., 2012.

ATTESTED:

Rod Davies
MAYOR

Susan L. Ferraro
CITY CLERK

Ayes: 7

Nays: 0

Absent or not voting: 1