

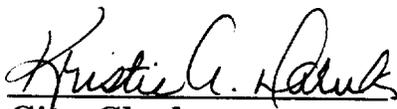
City of St. Charles, Illinois

Ordinance No. 1996-M-57

An Ordinance Amending Title 12, "Streets, Sidewalks and Public Places," Chapter 12.04, "General Provisions," Section 12.04.100, "Private Use of Public Places Restricted" and Adding Section 12.04.101, "Sidewalk Sales" and Section 12.04.102, "Outdoor Cafes in Public Places"

**Adopted by the
City Council
of the
City of St. Charles
this 5th day of August, 1996**

**Published in pamphlet form by
authority of the City Council
of the city of St. Charles,
Kane and Du Page Counties,
Illinois, this 9th day of
August, 1996**


City Clerk

(SEAL)

DATE OF PUBLICATION 8/19/96
NEWSPAPER Ramphlet Form

REFER TO:
MINUTES 8/5/96
PAGE _____

ORDINANCE NO. 1996-M- 57

AN ORDINANCE AMENDING TITLE 12, "STREETS, SIDEWALKS AND PUBLIC PLACES", CHAPTER 12.04, "GENERAL PROVISIONS", SECTION 12.04.100, "PRIVATE USE OF PUBLIC PLACES RESTRICTED" AND ADDING SECTION 12.04.101, "SIDEWALK SALES" AND SECTION 12.04.102, "OUTDOOR CAFES IN PUBLIC PLACES"

WHEREAS, the CITY is authorized to regulate the use of public rights of way pursuant to 65 ILCS 5/11-80-13; and

WHEREAS, various commercial enterprises seek to use a portion of the public rights of way adjacent to their establishments to permit patrons to consume food and beverages while being seated at tables and chairs; and

WHEREAS, the CITY deems it advisable to permit sidewalk cafes and to regulate the same;

WHEREAS, the CITY is a home rule unit as provided in the 1970 Illinois Constitution (Art. VII, Sec. 6), and this ordinance is an exercise of its powers and performance of its functions pertaining to its government and affairs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DU PAGE COUNTIES, ILLINOIS, AS FOLLOWS:

Section 1. That Title 12, "Street, Sidewalks and Public Places", Chapter 12.04, "General Provisions", Section 12.04.100, "Private Use of Public Places Restricted", of the St. Charles Municipal Code, be and is hereby amended by deleting the same and substitution the following:

12.04.100 Private use of public places restricted.

It is unlawful for any person, firm or corporation to use any street, sidewalk or other public place, as space for the display of goods or merchandise for sale, lease, trade or for free; or to write or mark any signs or advertisement on any such pavement except as provided in Sections 12.04.101, "Sidewalk Sales" and 12.04.102, "Outdoor Cafes in Public Places".

Section 2. That Title 12, "Streets, Sidewalks and Public Places", Chapter 12.04, "General Provisions", of the St. Charles Municipal Code be and is hereby amended by adding Section 12.04.101, "Sidewalk Sales" and Section 12.04.102, "Outdoor Cafes in Public Places" as follows:

12.04.101 Sidewalk Sales

The City Council may designate one or more days a year at its sole discretion when merchandise may be displayed and sold on the sidewalks of the City. However, display of merchandise for sale, lease, trade or for free, shall be confined to the sidewalks and City parking areas adjacent business zoned property; and, provided further, that the City may require a liability insurance policy naming the City as an additional insured and an indemnity agreement covering all such businesses displaying and selling merchandise. Such liability policy or policies shall be in an amount and issued by such company or companies as are acceptable to the City Council. The provision of this section providing for the display and sale of merchandise on sidewalks and City parking areas shall not be construed as a lease, and any/all sales of merchandise pursuant to the provisions of this section shall be in compliance with all ordinances of the City.

12.04.102 Outdoor Cafes in Public Places

A. Permit Required

Permits may be issued only to businesses licensed for food service and owning or leasing property immediately adjacent to the sidewalk in an area zoned business or in the Central Business District. Such permits may be purchased at anytime, but all such permits shall expire on April 30th following the date of issue and shall in no event remain in effect for more than one year without being renewed. No permit shall be issued to any business which has not satisfied all requirements set forth herein and elsewhere within the St. Charles Municipal Code. No person shall place any tables, chairs, umbrellas or other structures on any public sidewalk, in any alley or walkway, or on any other public right-of-way for the purpose of serving food and/or drink to the public without first having obtained a permit.

B. Application and Appeal

1. All applicants for sidewalk cafe permits shall complete an application in a form approved by the City and submitted to the St. Charles Building Commissioner. The Building Commissioner or designee shall promulgate rules and regulations for the reasonable and orderly use of all items placed on any public right-of-way fronting the permittee's existing commercial establishment for the purpose of serving food and/or non-alcoholic drink to the public, review all permit applications and any supporting documents, and recommend approval or denial of the permit based upon compliance with the St. Charles Municipal Code. All applications shall include the following information:
 - a. A street address and a dimensioned plan showing the sidewalk and all public improvements and encroachments such as light posts, benches, planters, trash receptacles, fences, trees and tree grates in the area, bicycle racks and newspaper boxes. The diagram shall also include the location of the curb relative to the building and the proposed location of all cafe furniture to be placed on the sidewalk. If the business has an awning and intends to use table umbrellas the diagram must also indicate the proximity in height and distance of the umbrellas to the awning. Walking areas shall be clearly marked including the number of feet for each walking area.
 - b. A copy of the Insurance Policies and the Certificates of Insurance described in subparagraph "1" below.
 - c. A signed indemnification statement on a form provided by the City indemnifying the City from any liability or loss arising out of and in connection with the use of tables and chairs in the public right-of-way including attorneys fees and expenses in relation to such liability / or loss.
2. No permit shall be issued except upon approval by the Building Commissioner or designee and submittal of an executed agreement on terms approved by the Building Commissioner.

3. An application denied by the Building Commissioner may be appealed to the City Council, provided, however such appeal is made within 35 days after denial of such permit.

C. Inspection

An inspection of the property to document existing conditions of public improvements shall be performed by the City prior to issuance of a permit. Applications should be filed at least two (2) weeks prior to the anticipated use to allow sufficient time for such inspection.

D. Regulations

All permits shall be subject to the following:

1. Items on the sidewalk shall at all times be placed in accordance with the approved plan.
2. The sidewalk adjacent to the permit holder's entire commercial property shall be kept clean and free of refuse and clutter at all times regardless of the source of such refuse and clutter, including but not limited to overflowing trash receptacles (private and public), cigarette, and paper refuse and the permittee at a minimum shall perform the following:
 - a. The entire area shall be swept twice daily and mopped or hosed down once after the items are brought inside.
 - b. The public receptacle in the proximity of the establishment shall be emptied when it is overflowing, and at the end of each business day and a liner shall be restocked in the receptacle.
 - c. All items shall be removed from the sidewalk and placed indoors at the end of each business day or 12:00 A.M., whichever is earlier, and none shall be placed on the sidewalk before 5:00 A.M. on any day.
3. All public improvements on the sidewalk including but not limited to benches, light poles and trees shall be maintained in the condition in which they existed immediately prior to the issuance of the permit, excluding normal wear and tear. A permittee shall immediately report any damage to such improvements to the Building Commissioner. The City may repair or replace such improvements at its discretion and may charge the cost of repair or

- replacement to the permittee, provided, however, that if the permittee can demonstrate the cause of the damage was not related to the issuance of the sidewalk use permit, then there shall be no charge.
4. Operations of the sidewalk cafe shall be conducted in a manner that does not interfere with pedestrians, parking, or traffic.
 5. The area used and the permittee's equipment shall be maintained and in good condition at all times. Broken, rusting, torn or tattered equipment shall be removed promptly.
 6. No activity within the area of a permit and within the public right of way shall generate or cause to be generated sound levels in excess of 60 dBA from 7a.m. to 10p.m., and 55dBA from 10p.m. to 7a.m., as measured at the property line of the property in any residence district, with a sound level meter using the "A" scale, slow response. If the measured ambient sound level exceeds the limits specified above, then the allowable maximum sound level shall be the ambient sound level. The ambient sound level shall be measured when the activity generating the sound to be measured is not in operation.
 7. The permittee shall prohibit the consumption and possession of alcoholic beverages in the licensee area as required by Title 5, "Business Licenses and Regulations", Chapter 5.08, "Alcoholic Beverages", Section 5.08.390, Consumption and Possession of Alcoholic Liquor on Public Property".
 8. The permit shall be posted in a conspicuous place inside the business so as to be visible from an adjacent window.
 9. All tables, chairs, benches and the like (hereinafter "items") shall be placed so that a five (5) foot wide unobstructed pedestrian walkway is maintained at all times; Clearances shall be maintained when any chair is pulled out from a table, particularly where a chair back faces the street or pedestrian walkway.
 10. Equipment including tables and chairs shall be immediately adjacent to the building and shall not extend beyond the permittee's storefront on any side and shall not obstruct normal ingress and egress from the permittee's business or from any other business, or from handicap accessible curbs, ramps, and entrances.
 11. Chairs shall be of a design and/or weight that will not create a wind-blown hazard.

12. The outdoor tables shall not be staffed to serve customers, rather the patrons may purchase food and beverage indoors only.
13. Glassware and glass containers are prohibited from being brought out of doors to the public right-of-way.
14. Hours of outdoor operation shall coincide with the hours of operation of the principal establishment.
15. Tables and chairs shall be removed if there is an accumulation of snow or ice on the sidewalk.

E. Term of Permit Agreement

1. A permit issued pursuant to this section shall remain in full force and effect from the date it is issued through the following April 30th.
2. The permittee may terminate the permit at any time upon written notice to the City.
3. The City may suspend or revoke the 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.
4. In the event of cessation of business by the permittee for a period of more than seven (7) consecutive days, the permit granted pursuant to this section automatically terminates at the end of such seven (7) days.

F. Notice

Notice hereunder shall be in writing and effected either by personal delivery or by depositing the same in an official U.S. mail receptacle as certified mail, return receipt requested, postage paid, addressed to:

If to CITY:
 Building Commissioner
 2 East Main Street
 City of St. Charles
 St. Charles, IL 60174

If to PERMITEE:
 [Name of person applying for permit]
 [Address]
 [City, State, and Zip Code]

or to such other address as either party may from time to time designate. Any notice according to this section shall be in writing and deemed received when personally delivered; or, if mailed and not sooner received, three days after placing same in an official U.S. mail receptacle.

G. Site Condition and Operation and Removal of Equipment

1. The City shall have no responsibility maintaining the permitted area or for its condition or damage suffered by a permittee or any other person due to such condition.
2. The permittee shall place, operate and maintain its equipment in accordance with all applicable laws, regulations, and ordinances.
3. The permittee shall not erect, attach or affix any permanent barrier, fixture, or connection to the sidewalk, or other structures within the right of way, or upon the property.
4. The permittee shall remove all of its equipment immediately upon the termination of the permit and leave the permitted site in substantially the same condition existing as of when the first permit under this section is authorized.
5. The permittee shall not cause any damage to the City's right-of-way or the premises in placing, operating, or removing its equipment.
6. Any damage to City property caused by the permittee, its employees, or agents shall be repaired at the sole cost and expense of the permittee to the City's satisfaction.
7. If the permitted site or any portion thereof is damaged by any act of the City so as to render the premises substantially unusable for the permittee's intended purpose, the City shall have no obligation to refund any permit fees to the permittee or to pay for any liability or loss in connection with the inability to use the permit.

H. Liability

1. The City shall not be liable to the permittee or to any of its patrons, customers, or invitees or any other person for any injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses which may in any arise out of or be connected with the granting of a permit hereunder.
2. The permittee shall hold harmless, indemnify, and defend the City from and against any and all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, consequential or otherwise, including reasonable attorneys' fees, which may in any way arise out of or be connected with the granting of this permit which may in any

way result therefrom, or from any act or failure to act by the permittee, its agents or employees.

I. Permittee's Insurance

1. The permittee shall, at its sole cost and expense, secure and maintain in effect during the entire period of this permit agreement, insurance including:
 - a. Worker's Compensation Insurance in at least the required statutory limits;
 - b. 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 three million (\$3,000,000.00) dollars per occurrence, and one million (\$1,000,000.00) dollars for any single injury; and
2. The permittee shall provide the City with copies of the policies and copies of the certificates of insurance for the required policies for the above specified types of insurance naming the City as an additional insured party prior to issuance of a permit hereunder.
3. The required insurance policies shall each provide that they shall not be changed or canceled during the life of this permit agreement until 30 days after written notice of such change has been delivered to the City.

J. Personal License

1. This permit agreement is personal to permittee and no assignment or sublicenses in whole or in part shall be allowed except upon the written consent of the City.
2. This permit shall be construed as a privilege granted to permittee and shall not create any vested rights to renewal or continuation.

K. Miscellaneous

1. The permit agreement shall constitute the entire understanding of the parties and supersedes any prior written or oral negotiations or understandings.
2. If any provision of a permit is held invalid or unenforceable, the remainder of this permit shall not be affected thereby, and each other provision of this permit shall be valid and enforceable to the fullest extent permitted by law.
3. The permittee shall pay any expenses incurred by City in defending the validity of its right to enter into a permit agreement for the use of sidewalk premises by a private party.

L. Enforcement and Revocation

Any violation of the provisions of this section may be punished by a fine of not less than one thousand dollars (\$1,000.00) for each offense and a separate offense shall be deemed to have been committed on each day during which the violation occurs or continues to occur.

M. Revocation or Suspension of Permit

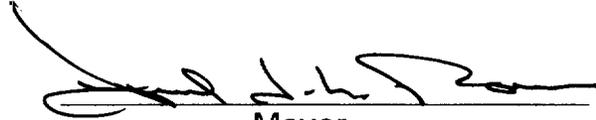
The Building Commissioner may revoke or suspend any permit issued hereunder if he determines that the permittee has violated any of the provisions of this Section 12.04.102 or of any ordinance enacted by the corporate authorities of the City or any applicable rule or regulation established by the Building Commissioner which is not inconsistent with law. However, no such permit shall be so revoked or suspended except after a public hearing by the Building Commissioner with a three-day (3) written notice to the permittee, affording the permittee an opportunity to appear and defend such notice period to begin the day following delivery by certified mail or by the City police department acting as agents. If the Building Commissioner has reason to believe that any continued operation of an outdoor cafe will immediately threaten the welfare of the community, he may, upon the issuance of a written order stating the reason for such conclusions and without notice or hearing, order the licensed premises closed for not more than seven (7) days giving the permittee an opportunity to be heard during that period; except, if the licensee is also engaged in another business on the licensed premises, such order shall not be applicable to such other business. The Building Commissioner may revoke a permit for a second violation where a warning has been previously given.

Section 3. That after the adoption and approval hereof the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 5th day of August, 1996.

PASSED by the City Council of the City of St. Charles, Illinois, this 5th day of August, 1996.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 5th day of August, 1996.



Mayor

ATTEST:



City Clerk

COUNCIL VOTE:

Ayes: 13

Nays: 0

Absent: 1

APPROVED AS TO FORM:



City Attorney

DATE: 8/13/96

State of Illinois)
) ss.
Counties of Kane and DuPage)

Certificate

I, KRISTIE A. DARULA, certify that I am the duly elected and acting municipal clerk of the city of St. Charles, Kane and DuPage Counties, Illinois.

I further certify that on August 5, 1996, the Corporate Authorities of such municipality passed and approved Ordinance No. 1996-M-57, entitled

"An Ordinance Amending Title 12, 'Streets, Sidewalks and Public Places,' Chapter 12.04, 'General Provisions,' Section 12.04.100, 'Private Use of Public Places Restricted' and Adding Section 12.04.101, 'Sidewalk Sales' and Section 12.04.102, 'Outdoor Cafes in Public Places'",

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 1996-M-57, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on August 9, 1996, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 14th day of August, 1996.


Municipal Clerk

(S E A L)

