

1st READING 2/20/2018
Busker / McClanahan
2nd READING 3/5/2018

CITY OF FREEPORT
STEPHENSON COUNTY, ILLINOIS

cc: *N. McDonald*
T. Barkalow
T. Allen

ORDINANCE NO. 2018-13

**AN ORDINANCE AMENDING THE CODIFIED ORDINANCES
OF THE CITY OF FREEPORT
REGARDING PARKLETS AND SIDEWALK CAFES**

AMENDS SECTIONS:

1252.01, 1034.03 1034.04, and 1026.17

OF THE CODIFIED ORDINANCES OF THE CITY OF FREEPORT

ADOPTED BY THE

CITY COUNCIL

OF THE

CITY OF FREEPORT, ILLINOIS

THIS 5th DAY OF March, 2018

Published in pamphlet form by authority of the

City Council of the City of Freeport,

Stephenson County, Illinois, this

6th day of March, 2018.

**AN ORDINANCE AMENDING THE CODIFIED ORDINANCES
OF THE CITY OF FREEPORT
REGARDING PARKLETS AND SIDEWALK CAFES**

ORDINANCE NO. 2018-13

WHEREAS, the City of Freeport, Illinois (“City”) has Codified Ordinances of the City (the “Code”); and

WHEREAS, the City of Freeport has ordinances providing for outdoor sales of food and beverages currently in place, which require an express permitting process and various approvals; and

WHEREAS, the City desires to streamline those processes for ease of administration and public convenience by ensuring that similar requirements for similar uses exist; and

WHEREAS, the outdoor sales of food and beverages is specifically contemplated in the context of parklets (Chapter 1034) and Sidewalk Cafes (Section 1026.17), and does not need to be subject to additional regulation through the zoning process within a business district;

WHEREAS, the City Council finds that such amendments are in the best interests of the public health, safety, morals and general welfare of the residents of the City of Freeport.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS AS FOLLOWS:

Section 1. The above-recitals are incorporated herein and made a part hereof.

Section 2. Section 1252.01 of the Codified Ordinances is hereby amended as follows (additions shown as underlines and deletions as strikethroughs):

CHAPTER 1252 – ZONING (BUSINESS DISTRICTS)

1252.01 B1-1 Restricted Retail Business District

(a) **Permitted Uses.** The following retail business and service uses are permitted, provided they are operated entirely within a building, except for off-street parking and loading facilities:

...

(49) Restaurants, validly permitted Sidewalk Cafes pursuant to Section 1026.17, validly permitted Parklets pursuant to Chapter 1034, tearooms or cafes, when the establishment is not of the drive-in type where food is served to occupants remaining in motor vehicles.

(b) Special Uses.

...

(10) Restaurants with outdoor serving areas, unless otherwise permitted as a Sidewalk Cafe or a Parklet pursuant to Chapter 1026 or 1034 of these Codified Ordinances; ~~however, if alcoholic beverages are to be served, such restaurant must be in compliance with Section 806.17 of these Codified Ordinances.~~

Section 3. Section 1034.03 and Section 1034.04 of the Codified Ordinances are hereby amended as follows (additions shown as underlines and deletions as strikethroughs):

CHAPTER 1034 - PARKLETS

1034.03 SALES OF ALCOHOL.

~~If~~No alcohol mayis to be served in an outdoor parklet, a special use permit for outdoor sales as required by Section 1252.01(b)(10) of the City ordinances must be in effect prior to the issuance of a license. The serving of alcohol in conjunction with an outdoor parklet license shall be governed by the rules and regulations established in this chapter and in the event of any conflict with Section 806.17 – Outdoor Sales, the provisions of this chapter related to an outdoor sales area shall prevail. unless under an appropriate license for the premises as described in the current application on file with the office of the City Clerk under Chapter 806 (Alcoholic Liquor Sales), and in accordance and compliance with that Chapter, as well as Chapter 608 (Alcoholic Liquor).

1034.04 INSURANCE AND SECURITY.

(a) Each applicant shall furnish proof of insurance evidencing commercial general liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence, ~~one~~two million dollars (\$~~1~~2,000,000) in the aggregate combined single limits, for bodily injury, personal injury and property damage liability. The insurance shall provide for thirty (30) days prior written notice to be given to the Community Development Director if coverage is substantially changed, canceled or non-renewed.

(b) The City shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operations of an outdoor parklet; and the licensee shall indemnify, defend and hold the City harmless from and against any and all losses, costs, damages or expenses to persons or property including property of the City, arising out of or claimed to have arisen out of such use. Furthermore, all users shall defend, at no cost to the City, any such claims or suits, provided that the City may, at its sole option, join in the defense of such claim or suit without relieving the user from any of its promises or obligations under this section.

(c) If alcoholic beverages will be served at the curbside cafe, the applicant shall provide proof of dram shop insurance for the outdoor parklet as required by Section 806.115 of these codified ordinances.

(d) Each permittee shall maintain the insurance coverage required under this section for the duration of the permit. The proof of insurance shall be presented to the Community Development Director prior to the issuance of a license. Failure of the permittee to maintain the insurance shall result in the revocation of the outdoor parklet license.

(e) A separate policy of insurance shall not be required under this Section if the general policy of insurance provided to satisfy the requirements of Chapter 806 or Chapter 1026.17 of these Codified Ordinances specifically addresses the requirements of this Section.

Section 4. Section 1026.17 of the Codified Ordinances is hereby amended as follows (additions shown as underlines and deletions as strikethroughs):

SECTION 1026.17 – SIDEWALK CAFES

1026.17 SALES; MERCHANDISE DISPLAYS; CAFES.

...

(c) Notwithstanding anything to the contrary in this section, any person or other entity owning, leasing, managing or operating a cafe, restaurant or hotel restaurant upon property which abuts upon any street within the City may serve food and/or non-alcoholic beverages upon the sidewalk of such street in an area adjacent to its premises, a sidewalk cafe, provided that such sidewalk cafe is operated in compliance with all license requirements of the Illinois Department of Public Health and/or the Stephenson County Health Department governing food and beverage preparation and service. For the purpose of this section, the term "sidewalk cafe" means any portion of an eating and drinking place located on a public right-of-way that provides food or beverage service and is either enclosed or unenclosed, operated by any inn, restaurant, eating place, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, soft drink parlor, ice cream parlor, tea room, delicatessen operation, hotel, motel or other facility licensed by the County Health Department where food and beverages are sold at retail in the City, or where food is prepared for immediate consumption and sold by a business which provides for on-premises consumption of said food, whether or not such facility is situated in an established, permanent business location and whether or not such facility is in connection with some other endeavor or enterprise. The term "sidewalk cafe" does not include any drive-in restaurant, buffet, tavern, bar, cocktail lounge, movie theater, mobile food or beverage or ice cream vehicle, club, public or private school or boarding house. It

shall be a violation of this chapter for a "sidewalk cafe" to serve alcoholic beverages, unless under an appropriate license for the premises as described in the current application on file with the office of the City Clerk under Chapter 806 (Alcoholic Liquor Sales), and in accordance and compliance with that chapter, as well as Chapter 608 (Alcoholic Liquor) ~~and the zoning restrictions of Chapter 1252 (Business Districts).~~

(d) All sidewalk cafes shall be adjacent to an existing building and shall not unreasonably interfere with unimpeded pedestrian traffic flow, access to building entrances, pedestrian and traffic safety and aesthetic compatibility with the surrounding area. Specifically, all sidewalk cafes shall comply with the Americans with Disabilities Act.

(e) No person shall operate a sidewalk cafe without first having obtained a sidewalk cafe license from the Community Development Department of the City of Freeport. The fee for a sidewalk cafe license shall be one hundred dollars (\$100.00). No licensee shall assign or transfer any license issued under this chapter. Prior to receiving a license hereunder, all licensees hereunder shall execute a document agreeing to indemnify the City from any and all losses or claims related to or arising from the operation of said sidewalk cafe upon the public right-of-way.

(f) ~~Prior to obtaining a sidewalk cafe license, the restaurant establishment operator shall provide the Community Development Department with proof of liability insurance coverage in an amount not less than five hundred thousand dollars (\$500,000) for personal injury for any one person on any one occurrence and five hundred thousand dollars (\$500,000) for property damage and naming the City of Freeport as an additional insured. Each applicant shall furnish proof of insurance evidencing commercial general liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) in the aggregate combined single limits, for bodily injury, personal injury and property damage liability. The insurance shall provide for thirty (30) days prior written notice to be given to the Community Development Director if coverage is substantially changed, canceled or non-renewed. The City shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operations of an sidewalk cafe; and the licensee shall indemnify, defend and hold the City harmless from and against any and all losses, costs, damages or expenses to persons or property including property of the City, arising out of or claimed to have arisen out of such use. Furthermore, all users shall defend, at no cost to the City, any such claims or suits, provided that the City may, at its sole option, join in the defense of such claim or suit without relieving the user from any of its promises or obligations under this section. If alcoholic beverages will be served at the sidewalk cafe, the applicant shall provide proof of dram shop insurance for the cafe as required by Chapter 806 of these codified ordinances. Each permittee shall maintain the insurance coverage required under this section for the duration of the permit. The proof of insurance shall be presented to the Community Development Director prior to the issuance of a license. Failure of the permittee to maintain the insurance shall result in the revocation of the sidewalk cafe license. A separate policy of insurance shall not be~~

required under this Section if the general policy of insurance provided to satisfy the requirements of Chapter 806 or Chapter 1034 of these Codified Ordinances specifically addresses the requirements of this Section.

(g) The franchisee shall indemnify, protect and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any worker's compensation law which may arise out of, or be caused by, the erection, maintenance, presence, use or removal of attachments on poles within the City, or by any act of the licensee, its agents or employees.

(h) The term of an annual license shall be from May 1 in any given year to November 1 of that year. The annual license fee shall be one hundred dollars (\$100.00). The initial license term shall be from the date of the issuance of the license to the following November 1. The initial license fee shall be a proration of the annual license fee based on the months and fraction thereof of the term of the initial license. A licensee may renew his or her license by paying the annual fee not later than March 31 in any year, provided that, upon payment of such fee, favorable reports are thereafter obtained as required not later than April 20 in any year.

(i) A sidewalk cafe license shall be conspicuously displayed near the cash register area within the establishment. Such sidewalk cafe license shall be in such form and shall include such information as may be prescribed from time to time by the Community Development Department.

(j) There shall be no permanent fixtures attached to the sidewalk and all materials and accessories appurtenant to such a sidewalk café shall be removed on or before November 1 of each year.

(k) The Community Development Department shall be empowered to promulgate reasonable rules and regulations governing sales, merchandise displays and sidewalk cafes, provided that such rules and regulations are consistent with the provisions of this section. In addition to such regulations imposed by the Community Development Department, and without limitation thereon, the requirements of Section 1034.08 of these Codified Ordinances pertaining to Parklets are hereby incorporated as if set forth fully herein as pertaining to Sidewalk Cafes authorized under this Section.

Section 5. In all other respects, and except as expressly indicated above, the remaining text of each Section or Chapter referenced herein shall remain unchanged.

Section 6. This Ordinance shall be effective upon its passage by the City Council, its approval by the Mayor, and its publication as provided by law.

Section 7. This ordinance is expressly adopted pursuant to the Home Rule Powers of the City of Freeport under Section 6 of Article VII of the Illinois Constitution of 1970.

Section 8. All ordinances or parts of ordinances in conflict with this Ordinance are repealed insofar as they conflict.

Section 9. If any section, clause or provision of this Ordinance be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid, and this City Council hereby expressly declares that it would have enacted this Ordinance even with the invalid portion deleted.

PASSED BY A ROLL CALL VOTE OF THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS this 5th day of March, 2018.



Dovie L. Anderson, City Clerk

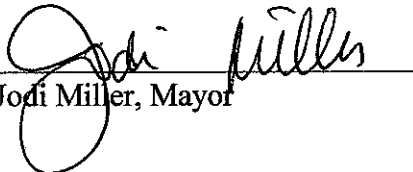
YEAS: Klemm, McClanathan, Ross, Smith, Brashaw, Busker, Koester, Chesney (8)

NAYS: None

ABSTAIN: None

PRESENT: Eight (8)

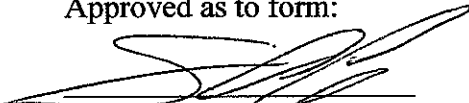
APPROVED by the Mayor of the City of Freeport this 6th day of March, 2018.


Jodi Miller, Mayor

Date Published: 03/06/2018

Date Effective: 03/05/2018

Approved as to form:


City Legal Counsel