

ORDINANCE NO. 797

AN ORDINANCE CONCERNING SIDEWALK DINING AREAS

WHEREAS, the City Council of the City of Momence, Illinois is charged with the continued administration and oversight of the City Code Book; and

WHEREAS, the City Council of the City of Momence, Illinois wants to promote outdoor dining in the downtown area; and

WHEREAS, the City Council of the City of Momence, Illinois, aspires to enhance the economic and social vitality of the downtown area, promote pedestrian and retail activity, allow for the use of public sidewalks for outdoor dining, ensure the public’s use of the sidewalks will not be significantly impaired by such dining; and

WHEREAS, the City Council of the City of Momence, Illinois wishes to add to the City Code, specifically under a portion of the Code that will be known as Title 3, Chapter 10, Sections 1 through 6.

WHEREAS, the City Council of the City of Momence, Illinois wishes to amend the City Code, specifically under a portion of the Code known as Title 5, Chapter1, Section 1, Subsection 2, titled “ALCOHOLIC LIQUOR.”

NOW, THEREFORE, be it ordained by the City Council of the City of Momence, Illinois, as follows:

SECTION 1: That there is hereby added to the City Code of the City of Momence, Illinois, in Title 3, a Chapter 10, and Sections 1 through 6.

Title 3

Chapter 10: DOWNTOWN SIDEWALK DINING:

3-10-1: PURPOSE:

The Downtown Sidewalk Dining Permit is intended to facilitate outdoor dining in the downtown area; to create an active streetscape, enhance the economic and social vitality of the downtown area; to promote pedestrian and retail activity; to allow for the use of public sidewalks for such outdoor dining; to expedite the approval of such facilities while ensuring that the public’s use of the sidewalks will not be significantly impaired by such dining; and to prevent any adverse impact to adjacent properties from such dining.

3-10-2: PERMITTED AREAS:

Sidewalk Dining shall be permitted only upon a property which is located within the Downtown district and zoned B-1.

3-10-3: ALCOHOLIC LIQUOR:

No alcoholic beverages shall be sold, served, consumed, or possessed by any person within a sidewalk dining area unless the sidewalk dining area is bordering the building face, and the premises has either a class A, B, or D liquor license.

3-10-4: APPLICATION/PERMIT:

- (A) It shall be unlawful to operate a Sidewalk Dining Area, to engage in, or allow sidewalk dining without first having obtained a Sidewalk Dining permit.
- (B) An applicant for a Sidewalk Dining permit shall file an application with the City Collector at City Hall on such forms and subject to such procedures as the Mayor and City Council may establish for such purpose. The application shall be made to the City Collector in writing, and signed by the proposed applicant.
- (C) The application shall state the name, address, and telephone number of the applicant. It shall include a legal description and the address of the premises proposed to be operated as a sidewalk dining area.
- (D) The application shall include a plan with dimensions showing the layout for the sidewalk dining area which accurately depicts the existing sidewalk conditions, including sidewalk width from the building face to curb, location and dimensions of any sidewalk features, or obstructions. The application will include the design, location, size, and space of the sidewalk dining area, chairs, tables, barriers, umbrellas, and other facilities to be located within the sidewalk dining area. The application shall include proof of insurance, detailed in **3-10-6-N** of this chapter.
- (E) No permit shall be issued to any applicant if the owner, or any partner, shareholder, or resident manager, of said applicant is indebted to the city, county, state of Illinois, United States of America or any department thereof.
- (F) The liquor control commissioner, or his/her designee, shall review the application to determine if the proposed sidewalk dining area meets the requirements of this chapter. The liquor control commissioner, or his/her designee, may approve, approve with conditions, or deny the application; upon receipt of written approval, the City Collector shall issue the Sidewalk Dining Permit. If the liquor control commissioner, or his/her designee, approves the application, then the approved plan and permit shall be posted at the premises, and be clearly visible to customers and the public. No material changes to an approved plan may be made without prior written approval of the liquor control commissioner, or his/her designee. No additional permit fee will be assessed for such a change.

3-10-5: PERMIT FEE AND TERM:

The fee for a downtown sidewalk dining permit shall be twenty-five dollars (\$25.00) per year. The fee shall be nonrefundable and shall not be prorated. No permit shall be assigned or transferred to any other person. The permit year shall be May 1 – April 30. The permit shall state the name of the applicant and specifically designate the sidewalk dining area.

3-10-6: REGULATIONS FOR DOWNTOWN SIDEWALK DINING:

- (A) Hours: The sidewalk dining area shall not be open to patrons except during the hours of 7:00 A.M. to 11 P.M. daily. Applicant shall permit no use by any patron, member of the public or other person within the sidewalk dining area, except during the permitted hours.
- (B) Sanitary Conditions: The sidewalk dining area must be kept sanitary, neat, clean, and litter free at all times; the sidewalk dining area shall be free from accumulation of food, litter, snow, ice, and other potentially dangerous or unsanitary conditions.
- (C) Food Preparation: No food preparation is permitted on the sidewalk dining area; all food shall be prepared within the kitchen of the establishment.
- (D) Sound: See 5-1-5-A Noise Nuisance:
- (E) Storage of sidewalk furniture: Furniture and other property used in the sidewalk dining area by applicant shall not be stored in the public right-of-way, and all such furniture and property must be removed from the sidewalk dining area when the establishment is closed to the public for any period in excess of seven (7) days.
- (F) Smoking: The applicant shall not permit smoking within any sidewalk dining area. “No smoking” signs shall be posted within the sidewalk dining area.

- (G) Space and Clearance: Sidewalk dining is permitted only on sidewalks with a minimum width of ten (10) feet from the property line to the curb face; the area designated for sidewalk dining shall be considered an extension of the establishment; therefore the location of the sidewalk dining area must be immediately adjacent to and have direct access to the establishment. In the interest of public safety, sidewalk dining areas must maintain a clear pedestrian path of at least three (3) feet at all times. This clear pedestrian path must be free of any obstruction to allow pedestrian passage. Sidewalk dining shall not interfere with any utilities or signs located on the sidewalk and in the public right-of-way. Sidewalk dining shall not interfere with snow removal within the clear pedestrian path; snow removal within the sidewalk dining area shall be the responsibility of the applicant. Sidewalk dining areas may not impinge on required clear distances for maneuvering around entrances or exits. The sidewalk dining area must be accessible to disabled patrons and employees. When a sidewalk dining area is located at a street corner, vision clearance requirements shall be in accordance with city ordinances; and in all events, the vision of pedestrians and of operators of motor vehicles shall not be obstructed. These regulations shall also apply if a sidewalk dining area is adjacent to an alley or driveway.
- (H) Furniture and Other Elements: Tables, chairs, umbrellas, awning, and any other elements associated with a sidewalk dining area must be of quality design, workmanship, and materials to ensure the safety and convenience of patrons as well as to enhance the visual and aesthetic character of the streetscape and adjacent neighborhood. All sidewalk dining area elements will be reviewed as part of the sidewalk dining permit process. Sidewalk dining area chairs and tables must be placed only inside the area designated for sidewalk dining. Table size should be kept to a minimum to avoid crowding. Appropriated density of tables and chairs will be reviewed; and same shall be subject to reasonable and appropriate conditions and restrictions. Permanent structures are not permitted within sidewalk dining areas. Elements cannot be attached permanently to sidewalks or other public rights-of-way. The applicant is responsible for the restoration of the sidewalk or other public property if any damage is caused by applicant's use of the sidewalk for sidewalk dining. Temporary physical barricades to separate sidewalk dining areas from pedestrian traffic are allowed if they are constructed of finished quality materials, including wrought iron chains, rope stanchions, picket fencing, planters, etc. Physical barriers clearly designating the sidewalk dining area (i.e. licensed premises) is required if liquor is consumed at a sidewalk dining area. No signs shall be placed on barricades.
- (I) Overhead Structures: Umbrellas and other temporary overhead structures are subject to approval during the sidewalk dining area permit process. No portion of any umbrella shall be less than seven (7) feet above the sidewalk. Umbrellas and overhead structures cannot interfere with street trees, must be weather resistant, and designed to be secure during windy conditions. Awnings, either permanent or temporary, are subject to approval during the sidewalk dining area permit process. Awnings shall have no support posts located within the public right-of-way, and no portion of an awning shall be less than eight (8) feet above the sidewalk.
- (J) Lighting: Lighting for sidewalk dining area is subject to approval during the dining area permit process. Lighting must complement the existing building and sidewalk dining area design and shall not cause a glare to passing pedestrians or vehicles. Electrical wires are not permitted within the sidewalk dining area. Acceptable tabletop lighting includes candles and low-wattage battery operated fixtures. Additional lighting may be attached to the adjacent structure provided that written approval from the liquor control commissioner, or his /her designee and all applicable City requirements are met.
- (K) Outdoor Heaters, Fans, and Coolers: Outdoor heaters, fans, and coolers for sidewalk dining areas are subject to approval during the sidewalk dining area permit process.
- (L) Vending Machines, Carts: Vending machines, carts, or other objects for sale are prohibited.
- (M) Service and Use: All services provided to sidewalk dining area patrons as well as all patron activity (waiting, sitting, dining, etc.) must occur only within the designated sidewalk dining area and not encroach on pedestrian traffic area (i.e. the clear pedestrian path) at any time. Equipment necessary for dispensing

any other items is subject to review during the sidewalk dining area permit process. The establishment must provide supervision of the sidewalk dining area at all times.

- (N) Insurance: Each applicant shall maintain the insurance coverage required during the permit period. The insurance coverage shall be equal to or better than, the requirement for any liquor license as set forth in Momence Code, 3-2-6, Application for License, Subsection N, and shall include all provisions designated in this subsection. The insurance coverage is to be filed with the City Collector, and presented to the liquor control commissioner, or his/her designee, prior to the issuance of a permit. Failure of the applicant to maintain any required insurance shall subject the permit to suspension or revocation. The policy of insurance shall provide for thirty (30) days' prior notice to the City if coverage is substantially changed, cancelled, or not renewed. The City shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operation of a sidewalk dining area. Each permit holder shall indemnify, defend, and hold the City harmless from any loss that results directly or indirectly from the permit issuance or operation of the sidewalk dining area.
- (O) Liability: The use of the sidewalk dining area by applicant shall be subject to, and conditioned upon the applicant maintaining liability insurance as provided above. Permission to establish and maintain the sidewalk dining area shall not be construed to relieve the establishment of liability for any negligence on the establishment's part on account of, or in connection with the sidewalk dining area. By acceptance of the authorization granted by the permit to establish and maintain a sidewalk dining area and by establishing and maintaining the sidewalk dining area, the applicant shall be deemed to have promised and agreed to save harmless the City of Momence, Illinois, from any and all liability (including attorney's fees) and litigation fees arising by reason of the formation, construction, placement, existence, use, or maintenance of the sidewalk dining area.
- (P) Immunity: The authorization granted by a permit approved under this Chapter of the Momence City Code to establish and maintain a sidewalk dining area is not intended to constitute, and shall not be deemed to be a waiver of sovereign immunity by or on behalf of the City of Momence, Illinois, or any of its officers or employees.
- (Q) Upkeep of sidewalk: Neither the City of Momence, Illinois, nor any public utility company shall be responsible for damage to property of applicant placed in the sidewalk dining area during repair, maintenance, or replacement of the sidewalk, or during repair, maintenance, or replacement of a right-of-way, or any public facility, or utilities in the area of the sidewalk dining area. Applicant shall, upon reasonable verbal, or written notification from the City of Momence, Illinois, remove any and all property of applicant designated by the City of Momence, Illinois, whenever the City of Momence, Illinois, desires to use the subject sidewalk for any purpose whatsoever. If applicant shall fail or neglect to remove the property of applicant within the time specified, the City of Momence, Illinois, shall have the right to remove the property at the expense of the applicant and the City of Momence, Illinois, shall not be liable to the applicant for any loss or damage to property of applicant, including but not limited to any property within the sidewalk dining area, caused by the removal.
- (R) Revocation of Permit: The Permit issued herein may be immediately suspended or revoked for cause, including violations of any provision of this chapter. The permit herein may also be permanently revoked upon thirty (30) days prior notice to applicant if, and when, the City of Momence, Illinois, requires use of its public right-of-way for any purpose inconsistent with the present use of the right-of-way, and said sidewalk dining.
- (S) Penalty: Any applicant or any person found guilty of violating any of the provisions of this chapter shall be fined not less than one hundred dollars (\$100.00), nor more than two hundred dollars (\$200.00) for each violation of this chapter; and a separate offense shall be deemed to be committed on each date in which a violation occurs or continues.
- (T) Appeal: In addition to any penalty imposed for violation of this chapter, the liquor control commissioner may suspend, or revoke any permit for any violation of this chapter after affording the applicant due notice and opportunity to be heard in its own defense.

SECTION 2: That Title 5, Chapter 1, Section 2, Subsections A and B, of the City Code of the City of Momence, Illinois, is hereby repealed.

SECTION 3: That there is hereby added to the City Code of the City of Momence, Illinois, in Title 5, Chapter 1, Section 2, titled "ALCOHOLIC LIQUOR", Subsections A, B, C.

(A) No person shall consume or possess any alcoholic liquor on any street, alley, public property, or in any automobile, or golf cart/utility vehicle (as defined in Momence City Code Title 8, Chapter 4, Section 20, and all subsections therein) traveling upon, or parked on any street, alley, public property, or on any unlicensed premises.

(B) No person shall consume or possess any alcoholic liquor on any sidewalk unless a permit has been obtained to establish a sidewalk dining area. Alcoholic liquor would be permissible in a sidewalk dining area as defined in Momence City Code Title 3, Chapter 10, and all sections therein. Special City events that the Mayor, with the advice and consent of the City Council has approved, may allow alcoholic liquor on sidewalks.

(C) No person shall possess alcoholic liquor in a motor vehicle with the original seal broken thereon.

SECTION 4: The provisions and sections of this ordinance shall be deemed separable and the invalidity of any portion of this ordinance shall not affect the validity of the remainder.

SECTION 5: That this ordinance shall be in full force and effect after its passage, adoption, and publication in pamphlet form, as required by law.

Passed by the Mayor and the City Council of the City of Momence, Illinois, this 20th day of July, 2015.

Alderman Denton	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___
Alderman Navratil	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___
Alderman N Metz	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___
Alderman Steele	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___
Alderman Kupferer	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___
Alderman Cook	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___
Alderman Lesyna	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___
Alderman J Metz	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___
TOTALS	Electronic___ Attendance	Aye___	Nay___	Absent___	Pass/Abstain___

Mick Porter, Mayor of the City of Momence, Illinois

ATTEST:

Jenene Henson, City Clerk, City of Momence, Illinois

**STATE OF ILLINOIS
COUNTY OF KANKAKEE
PUBLICATION CERTIFICATE**

I, Jenene Henson, certify that I am the duly elected and acting Municipal Clerk of the City of Momence, county of Kankakee, Illinois.

I further certify that on July 20th, 2015, the Corporate Authorities of such municipality passed and approved Ordinance No.797, entitled An Ordinance concerning downtown sidewalk dining areas, which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. 797, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the City Hall building, commencing on July 21st, 2015 and continuing for at least 10 days thereafter.

Copies of such Ordinance are also available for public inspection upon request from the City Collector at Momence City Hall.

Dated at Momence, Illinois, this 20th day of July, 2015

Jenene Henson,
City Clerk, City of Momence