

ORDINANCE 33-2015

ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 166 OF THE BOROUGH CODE ENTITLED "STREETS AND SIDEWALKS" REGARDING OUTDOOR DINING AT BUSINESS ESTABLISHMENTS

WHEREAS, the Assistant Borough Administrator has recommended that the Borough Council amend Chapter 166 of the Borough Code regarding sidewalk dining; and

WHEREAS, the Borough Council concurs in this recommendation to amend the sidewalk dining regulations in the Borough.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, County of Morris, State of New Jersey that:

SECTION 1: Chapter 166- of the Borough Code, entitled "Streets and Sidewalks" is amended to include the following:

...

Article V. Sidewalk Dining Licenses

§ 166-43. Purpose and intent.

The purpose and intent of this article is to allow portions of the public sidewalks in front of eating establishments to be used for sidewalk dining subject to issuance of a sidewalk dining license and strict compliance with all conditions set forth herein. This limited authorization to use the public sidewalks is intended to advance the public purposes of stimulating economic activity and providing amenities in the business districts of the Borough of Madison, and such authorization shall be solely in the nature of a revocable license which shall not be deemed to vest licensees with any property interest or other rights in the public sidewalks. The sidewalk area for purposes of this Chapter shall be defined as the right of way in front of the dining establishment between the building and the street.

§ 166-44. License required.

No person shall engage in or allow sidewalk dining on any public sidewalk without having first obtained a sidewalk dining license.

§ 166-45. Application for license.

An application, sworn to by the applicant, for a sidewalk dining license shall be filed annually with the Borough Clerk on forms supplied by the Clerk. The forms shall require the following information and such additional information as deemed necessary:

A. The name of the applicant and the address.

B. The name and address of the eating establishment where sidewalk dining is to be maintained.

C. A description of the dimensions of the area and the number of tables to be used for sidewalk dining.

D. Written consent of the owner of the premises, if other than the applicant.

E. An applicant wishing to serve alcohol on the sidewalk dining area must execute a revocable agreement with the Borough to have conditional use of the side walk as a right of way. Any licensed premises must secure and provide copies to the Borough of all necessary permits from the New Jersey Division of Alcoholic Beverage Control to extend their licensed premises in accordance with applicable New Jersey law.

E. A certificate of insurance providing at least \$1,000,000.00 of comprehensive general liability extending premises coverage to all activities associated with sidewalk dining and listing the Borough of Madison as an additional insured with respect to such activities.

F. A check payable to the Borough of Madison in the amount of the license fee required by § 166-47. [Amended 5-29-1996 by Ord. No. 12-96]

H. Execution and filing with the Borough Clerk of an indemnification agreement pursuant to which the licensee, in further consideration of the issuance of the license, shall agree to forever defend, protect, indemnify and save harmless the Borough, its officers, agents and employees, from and against any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs arising out of or which may arise out of the licensee's operation of it sidewalk dining establishment.

I. Execution and filing with the Borough Clerk of a maintenance agreement pursuant to which the licensee, in further consideration of the issuance of the license, shall agree, at the Borough's option, either to repair at its sole cost and expense any damage caused to the sidewalk by the operation of its sidewalk dining operation, or to reimburse the Borough in full for all costs and expenses incurred by it in making any such repairs.

The Borough Clerk may require a bond to be filed by the licensee in an amount to be fixed by the Borough.

§ 166-46. Application review.

A. The Borough Clerk shall review the application and investigation report on each applicant. The Borough Clerk shall approve or deny the application, taking into consideration the factors set forth in § **166-45**. [Amended 5-29-1996 by Ord. No. 12-96]

B. Any applicant who is denied a license may request in writing a hearing on the denial decision before the Borough Council.

§ 166-47. Fees.

The annual license fee for each and every premises on which sidewalk dining is conducted shall be \$100.

§ 166-48. License terms and conditions.

A. A sidewalk dining license shall be valid only through November 15 of a given year, and a new license must be obtained for each year.

B. A sidewalk dining license may not be transferred.

C. The license shall be displayed in a conspicuous place on the premises prior to the use of the premises for sidewalk dining.

§ 166-49. Regulations.

The conduct of sidewalk dining pursuant to a license issued under this article shall be subject to all of the following restrictions and requirements:

A. Public sidewalk dining may be conducted in the Central Business Districts (CBD-1 and CBD-2), General Business Area (GBA) and Multi-Use Commercial District (C), as designated on the Madison Zoning Map.

B. The sidewalk dining area must not inhibit pedestrian traffic on public sidewalks, and an area must be open and unobstructed for pedestrian traffic between the closest edge of the cafe-type tables and the curblines, which area shall have a minimum width of the greater of four (4) feet or one-half (1/2) of the sidewalk width.

C. Restaurateurs shall not place anything in an alleyway or walkway or set up tables in such a manner as to block any alleyways or walkways or any building entrance/egress. It shall be unlawful to obstruct or reduce in any manner the clear width of any exit discharge passageway, as determined by the clear width opening of the entrance/egress door(s). The passageway shall be as straight as possible leading directly to the street.

D. The only items permitted are tables, chairs, umbrellas and containers for the disposal of recyclable cans/bottles and garbage.

E. Restaurateurs shall not place any table, sign, umbrella or other item in such a manner as to block any municipal signs, receptacles for garbage, public benches or other public amenity, including fire hydrants.

F. Restaurateurs must provide for the disposal of recyclable cans/bottles and garbage. Public receptacles for garbage shall not be used. Sidewalk areas shall be kept clean during hours of operation. Litter shall not be permitted on adjoining sidewalks or property.

G. Restaurateurs are prohibited from serving drivers or passengers of vehicles. All customers must be seated throughout their meal.

H. Restaurateurs are prohibited from using public utility hookups.

I. All sound systems are prohibited.

J. All food preparation shall be in the regular kitchen area of the restaurant, not outside.

K. All outdoor food service is subject to the regulations contained in Chapter **12** of the New Jersey Sanitary Code.

L. The placement of outdoor tables shall be limited to the area immediately in front of existing and/or properly approved restaurants, cafes or eating establishments. No portion of any sidewalk dining equipment, including chairs, tables and opened umbrellas, shall encroach upon the sidewalk area in a manner to block, impede or cover adjacent store fronts, doors or windows in front of other business establishments.

M. Sidewalk dining may commence March 1 and may continue through November 15.

N. Permissible hours of operation shall be from 7:00 a.m. to 10:00 p.m.

O. Wine and beer are the only alcoholic beverages that may be consumed at a sidewalk dining establishment on the condition that table service is provided.

P. Everything must be removed and sidewalks must be washed daily by 10:30 p.m.

Q. The Borough retains the right to temporarily suspend a sidewalk dining license to allow for construction activity, utility repairs, special events or for other reason as deemed appropriate by the Borough Council, with reasonable advance notice to be given to affected licensees.

R. Restaurateurs must comply with the provisions of the Smoke-Free Air Act, N.J.S.A. 26:3D-55 to -64, including displaying the appropriate designated site-specific conditions for smoking that are appropriate to their particular circumstances and environments. Moreover, in accordance with N.J.S.A. 26:3D-63 and N.J.A.C. 8:6-2.3 smoking is prohibited at a sidewalk dining establishment if smoking in the exterior area results in migration, seepage, or recirculation of smoke to an indoor public place or a workplace at which smoking is prohibited.

S. The licensee shall comply with all other Borough ordinances.

§ 166-50. Suspension and revocation of license.

Any license may be suspended or revoked for good cause by the Borough Council, including but not limited to a misrepresentation of the information supplied in the application, the conviction of a crime, a violation of any ordinance, statute or government regulation or a violation of this article.

§ 166-51. Enforcement.

The Borough Clerk shall be responsible for licensing and the collection of fees. This chapter shall otherwise be enforced by the Zoning Officer, Madison Police Department and the Board of Health, as to the Sanitary Code.

§ 166-52. Violations and penalties.

Any violations of the provisions of this article shall be punishable by a fine not to exceed \$500 as determined by the Municipal Court. Each day the violation shall continue after a notice

and a reasonable opportunity to correct or remedy the violation shall constitute a separate violation.

§ 166-53. Appeals.

Any person aggrieved by any action of the Borough Clerk, in the denial or revocation of a Sidewalk Dining License, shall have the right to appeal to the Borough Administrator. The appeal shall be taken by filing with the Borough Clerk, within thirty (30) days after the notice of the action complained of has been served personally upon the licensee, or mailed, postage prepaid, to the licensee at the address given by the licensee in making application under § 166-44 herein, a written statement setting forth fully the grounds for appeal. The Borough Clerk shall set a time and place of hearing for the appeal, at which time the Borough Administrator shall conduct a hearing and affirm, modify or reverse the action appealed from.

§ 166-54. Severability.

Each section of this article is an independent section, and the holding of any section or part thereof to be unconstitutional or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other section or part thereof.

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SECTION 2: This Ordinance shall take effect as provided by law.

ADOPTED AND APPROVED
May 11, 2015

ROBERT H. CONLEY, Mayor

Attest:

ELIZABETH OSBORNE, Borough Clerk

Introduced and passed: April 27, 2015

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