



CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS

ADMINISTRATION

MEMORANDUM

TO: Bruce K. Walden, Chief Administrative Officer
FROM: William R. Gray, Public Works Director
Barbara H. Stiehl, Assistant to the Director
DATE: November 21, 2006
RE: Noise Ordinance Revision—Sidewalk Cafés

Introduction

With residential development growing in downtown Urbana a situation is occurring where existing businesses are interacting with new residents. The combined use of the downtown area by businesses and residents is providing an urban setting where residents can live and work within the downtown community. One such area of concern is amplified outdoor music within permitted sidewalk café areas. Currently, City ordinance does not permit piped in music in the public right-of-way.

It is the intention of staff to set some limits to help the businesses and residents flourish in this close-knit environment. The suggested attached noise ordinance changes will continue to allow businesses (in particular, some of the food and beverage establishments) to provide musical entertainment for their patrons. The changes in the sidewalk café license agreement will establish time restrictions (typically, during the hours of operation but no later than 1:00 a.m. or earlier than 11:00 a.m.) limiting the playing of amplified music to provide a quiet time for residents.

Fiscal Impacts

There would be no direct fiscal impacts to the City.

Recommendation

It is recommended that the City Council approve an Ordinance Amending Chapter 16, “Noise and Vibrations,” of the Urbana Code of Ordinances.

Attachments: Revision Sheet
Ordinance
Sidewalk Café License Agreement

ORDINANCE NO. 2006-10-130

AN ORDINANCE AMENDING CHAPTER 16 NOISE AND VIBRATIONS OF THE URBANA CODE OF ORDINANCES

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Article I, Section 16-5 (3) of the Code of Ordinances of the City of Urbana is amended to read follows:

(3) Parades, fireworks displays, sidewalk cafés and other special events for which a permit has been obtained from the city, within such hours and conditions as may be imposed for the issuance of the permit.

Section 2 The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED by the City Council this _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Laurel Lunt Prussing, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the _____ day of _____, approved Ordinance No. _____, (AN ORDINANCE AMENDING CHAPTER 16 NOISE AND VIBRATIONS OF THE URBANA CODE OF ORDINANCES,) which provided by its terms that it should be published in pamphlet form.

The pamphlet form of the Ordinance was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the _____ day of _____, _____, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this _____ day of _____,
_____.

(SEAL)

Phyllis D. Clark, CITY CLERK

REVISION SHEET FOR CHAPTER 16, ARTICLE 1, SECTION 16-5 (3)

Revisions are denoted by strikethrough for deleted text and underline for added text.

(3) Parades, fireworks displays, **sidewalk cafés** and other special events for which a permit has been obtained from the city, within such hours **and conditions** as may be imposed ~~as a~~ **condition** for the issuance of the permit.

AGREEMENT FOR LICENSE
TO USE CERTAIN PORTIONS OF A PUBLIC WAY
(Adjacent to address, Urbana)
Name of Establishment

WHEREAS, Name of Establishment (hereinafter "Licensee"), desires to utilize a portion of the public way adjacent to address, Urbana, for movable outdoor furniture and space for the consumption of food and/or beverages.

NOW, THEREFORE, in consideration of the mutual benefits to the parties and the covenants hereinafter stated, the parties do agree as follows:

A. Grant of License. The City of Urbana, Illinois (hereinafter "City") hereby grants to the Licensee, subject to the terms hereinafter set forth, a license for the sole purpose of maintaining movable outdoor furniture and providing space for the consumption of food and/or beverages on the property at the address commonly known as address, Urbana including the adjacent right-of-way to the extent shown on Exhibit A (attached), the licensed portion of right-of-way hereinafter called "Property". Said license shall be in effect only hours of operation and day of operation at address, Urbana. The Director of Public Works may limit or modify this license for those dates on which other approved activities may conflict with this use. Said license is given only to the Licensee as a personal privilege and not to any of its successors in interest and may not be transferred voluntarily or involuntarily. All license fees shall be due and payable upon the signing of this agreement.

B. Maintenance and Use.

(1) The Licensee, at its sole expense, shall properly supervise and maintain the Property in a clean, orderly and safe condition and in such a manner as to protect the public health and safety. The Licensee shall use positive action to assure that its use of the sidewalk in no way interferes with sidewalk users or limits their free unobstructed passage. All tables, chairs, umbrellas, and any other objects provided with a sidewalk café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.

(2) The Licensee shall, at all times hereunder, prevent the accumulation, blowing and scattering of trash, garbage, or any other such debris caused or permitted by Licensee's use of the Property or by any person's use of the Property during the time periods of said license. Licensee shall retrieve and properly dispose of any debris scattered on to adjacent property caused by any use of the Property under the license, and, additionally, shall maintain its own trash containers upon the Property for disposal of any debris.

(3) Licensee may not restrict ingress and egress to the Property during the time periods of such license except as needed as to comply with current liquor laws.

(4) Licensee shall be strictly responsible that no customer, employee, or other person, be permitted to remove alcoholic liquor from the area designated in the sidewalk café license.

(5) Licensee shall not erect, attach or affix any permanent barrier or fixture upon the Property.

(6) Licensee shall remove all outdoor furniture from the Property during any time period when the license for the Property is not in effect. No furniture or any parts of the sidewalk café shall be attached, chained or in any manner affixed to any tree, post, signs, sidewalk, streetlight, fire hydrant or other public fixture within or near the licensed area.

(7) Licensee shall not impede any maintenance activity conducted by the City or impair ingress or egress to the premise of any other person.

(8) Licensee shall not be permitted to use or operate any public address system, or similar device.

(9) Licensee shall be allowed to provide amplified or piped-in music within the permit area ~~between the hours of~~ during the hours of operation, but no earlier than 11:00 a.m. and no later than 1:00 a.m., so long as such sound otherwise complies with the noise regulations in Chapter 16 of the City of Urbana's Code of Ordinances.

(10) No advertising shall be permitted on or in any sidewalk café except a sandwich board: a portable sign that advertises daily specials or sales for a business. Such sign shall not be located in the traveled roadway or block pedestrian traffic, and shall be moved indoors at the end of business hours. Such sign shall be permitted in the B-1, B-2, B-3U, B-4, B-4E, or MOR Zoning Districts, and shall not exceed eight square feet in area and four feet in height. If applicable, a scale drawing of the sign shall be included as Exhibit B (attached).

(11) Should the Licensee breach any section of this paragraph, the City may perform such cleaning or removal as it considers in its best interests and the Licensee shall reimburse the City for the cost thereof.

C. Indemnity. Notwithstanding any other provisions of this license and irrespective of any insurance carried by the Licensee for the benefit of the City, the Licensee agrees to protect and defend the City and any of its officers or employees from any and all claims, suits or actions of whatever nature, arising out of or in connection with the use or maintenance of the Property as herein defined and further with regard to any activity of the Licensee in connection with this license other than claims or actions based solely upon allegations of negligence of the City. Additionally, Licensee agrees to indemnify the City, including reasonable attorney fees, for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees or officers.

D. Insurance. The Licensee shall maintain, at its sole expense for the duration of the license term, public liability and property damage insurance which insurance shall name the City as an additional insured. The insurance shall be in at least the amounts as follows:

\$1,000,000.00 commercial type, combined single limit, for bodily injury or death and property damage with a \$1,000,000.00 aggregate.

Additionally, if the Licensee holds a liquor license in that area, the Licensee shall maintain, at its sole expense for the duration of the license term, liquor liability (dram shop) insurance which names the City of Urbana as an additional insured.

The Licensee shall file with the City Finance Department a current Certificate of Insurance evidencing such coverage at the inception of the license and annually thereafter upon renewal of the license agreement.

- E. Termination. In the event of cessation of business by the Licensee at address, Urbana for a period exceeding seven (7) consecutive days, the license granted hereunder shall automatically terminate at the end of such seven (7) days.

Additionally, the Public Works Director may revoke or suspend this license for the violation(s) of any article of this license agreement. In any event, the City through the Public Works Director, may alter, suspend, or revoke the license upon demand at any time that the Public Works Director in his/her judgment concludes that it would be necessary or convenient for the City to perform any work in that area of the public property or right of way, or to reclaim that area for pedestrian or other public use, or if the use of that area causes public disruption or if alcoholic liquor is removed from that designated area, **or if the use of amplified music is abused**, or if the permit is otherwise violated, or if the required fees are not properly and timely paid, or if required insurance is not maintained, or for any other reason in the public interest at any time, and its use discontinued, with no recourse against the City for any loss or damage by any such alteration, suspension, revocation, or termination.

If any such space is not vacated and such use not discontinued by the time specified, the City may remove from such space any property left thereon at the risk and expense of the Licensee. This license shall be construed as a privilege granted to Licensee and shall not create any vested rights to renewal or continuation. Additionally, the Licensee agrees that such use is temporary and the Licensee acquires no right, title or interest in the space permitted to be used. The required fee for the license, as set forth under Chapter 14 of the Urbana City Code shall be due and payable upon the signing of this agreement.

Unless revoked or terminated under the terms of this agreement, this license shall remain valid indefinitely if all required fees are properly and timely paid to the City.

- F. Other Ordinances. The grant of this license shall not be construed to waive the application of any other ordinance or law to the use of the Property by the Licensee. No person shall possess any open container of, or consume alcoholic liquor on any public property including the Property granted a Licensee hereunder, without the possession of a valid City liquor license for the establishment named herein.

- G. Notices. Notices shall be effective when mailed, certified mail, postage prepaid, to each of the parties as follows:

City

Director of Public Works
City of Urbana
706 S. Glover
Urbana, Illinois 61802

Licensee

Owner
Name of Establishment
address
Urbana, Illinois 61801

IN AGREEMENT, the parties do set their hands.

CITY OF URBANA

BY: _____

Date: _____

NAME OF ESTABLISHMENT

BY: _____
ITS _____

Date: _____