

AN ORDINANCE

Amending Chapter 9-208 of Title 9 of the Philadelphia Code, entitled “Sidewalk Cafés” to revise standards and requirements associated with Sidewalk Cafes; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is amended to read as follows:

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CHAPTER 9-200
COMMERCIAL ACTIVITIES ON STREETS

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§ 9-208. Sidewalk Cafés.

(1) Definitions.

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(c) Restaurant. [Any establishment where food is handled or sold, provided that said establishment is located in a permanent structure.] *An establishment that primarily is engaged in the business of food preparation on the premises for sale to customers substantially for on-premises consumption and that maintains at least three tables for indoor dining on a regular basis.*

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(e) *Operation or Operate. Service of food and/or beverages at, or originating from, the Restaurant.*

(2) Location. Notwithstanding any provision of Section 9-205, a sidewalk café may be maintained *adjacent to any restaurant within the City, subject to license approval and subject to, and compliance with, all requirements of this Chapter and accompanying regulations.* [(i) within the area bounded by the Delaware River, the south houseline of South street, the center line of Third street, the south houseline of Bainbridge street, the Schuylkill River and the north houseline of Fairmount avenue; (ii) on Broad Street, between Bainbridge street and the north houseline of Washington avenue; (iii) within the area bounded by the south side of Shurs lane to the north side of Green lane and the east side of Cresson street to the Schuylkill River; (iv) on East Passyunk avenue, both sides, between Broad street and Federal street; (v) on Ninth street, both sides, between Christian street and Federal street; (vi) on Germantown avenue, both sides, from Washington lane to Cresheim Valley road; (vii) on Germantown avenue, both sides, from Cresheim Valley road to Rex avenue; (viii) on Bethlehem pike, both sides, from Germantown avenue to Newtown street; (ix) on Ridge avenue, both sides, from Rochelle avenue to Domino

lane; (x) Frankford avenue, both sides, from Bleigh avenue to Wellington street; and (xi) Cottman avenue, both sides, from Frankford avenue to Leon street; provided that the conditions of this Section are compiled with.]

(3) License, Indemnification, and Other Conditions. No person shall erect, construct or maintain a sidewalk café [, either where permitted by subsection (2) or where permitted pursuant to special ordinance,] unless [he] *such person* has obtained a sidewalk café license from the Department of Licenses and Inspections *and the sidewalk café is thereafter operated consistently with the plans submitted with the application for and with all other requirements of such license*. No license shall be issued unless:

(a) Such person submits the materials required pursuant to subsection (4) to the Department of *Licenses and Inspections* and the Department determines [that the location at which the sidewalk café is proposed is a permitted location, either pursuant to this Section or pursuant to special ordinance, and determines] that the restaurant to which the proposed sidewalk café is accessory has all other necessary licenses and permits; and

(b) The Department of Streets has determined, and advises the Department of Licenses and Inspections, that the proposed café meets the placement requirements of subsection (6);

* * *

(e) The licensee *provides proof of, and* agrees in writing in form satisfactory to the City Solicitor to obtain and maintain in full force and effect, at the licensee's own expense, an insurance policy naming the City of Philadelphia as an additional insured. The policy shall afford comprehensive general liability insurance including contractual liability insurance coverage the licensee's indemnification and hold harmless obligations under subsection (d) above and shall provide that the Law Department be notified upon the expiration of coverage in the event the policy is cancelled or the application fails to renew the café license. Within ten (10) days of the approval of the sidewalk café license application, and each year thereafter, the licensee shall submit a certificate of insurance in accordance with the agreement and maintain a copy on the premises for review;

* * *

(g) The licensee pays an annual fee *of two hundred dollars (\$200)*. [of one hundred eighty dollars (\$180).] Such fee shall be in addition to any fees for other permits and licenses necessary for the operation of the restaurant to which the sidewalk café is accessory. All sidewalk café licenses shall be issued for a one-year period established by the Department of Licenses and Inspections.

(4) License Applications.

(a) Applications for sidewalk café licenses shall be made on forms provided by the Department of Licenses and Inspections. Applicants must submit the following with the application:

(.1) The name of the applicant, the relationship of the applicant to the restaurant to which the café is accessory (owner, manager, etc.) and the street address of the property where the sidewalk café is proposed. If the applicant is other than the owner of the building abutting the location of the proposed sidewalk café, the applicant must provide written authorization from the property owner stating that the property owner has no objection to the sidewalk café;

(.2) Four copies of a plan drawn to minimum scale of 1/4" = 1' showing:

(.a) Dimensions of the proposed sidewalk café boundaries, including the building line of the existing building;

(.b) Existing sidewalk widths;

(.c) The location of all transit stops within fifteen (15) feet of the property line and its abutting sidewalk; and

(.d) All sidewalk obstructions, including, but not limited to: poles, parking meters, telephone stands, trees, cellar doors, etc. within ten (10) feet of the outer edge of the proposed sidewalk café;

(.3) Three color photographs, at least 5" x 7", showing the complete area of the building façade. This will necessitate three different photo angles;

(.4) A non-refundable application fee of *two hundred dollars (\$200)*. [one hundred eighty dollars (\$180).] When a license is granted, the application fee shall be credited towards the first year's license fee.

(.5) *Proof of permission to operate on the sidewalk of one adjacent building, if the licensee intends to utilize such property in connection with the sidewalk café.*

(.6) *Proof of a determination by the Department of Streets that the plans for the sidewalk café meet the requirements of subsection (6) of this Section.*

(.7) *Proof of satisfaction of the posting requirements of subsection (5).*

(b) [The applicant shall be provided with the current form of the written] *The submitted application shall contain constitute agreement by the applicant to the agreements required pursuant to subsection (3) at the time the application is made.*

(c) Approval or disapproval of a license to operate a sidewalk café must be issued within thirty (30) days after the applicant complies with all the requirements as set forth in this Section.

(d) A recipient of a Sidewalk Café [permit] *license*, or a recipient of a streetery [permit] *license* or temporary street closure permit, pursuant to regulations, shall be eligible to provide Outdoor Entertainment until December 31, 2021, so long as all other provisions of the Philadelphia Code are adhered to, including the following:

(.1) This provision shall apply retroactively to any applicant that had prior approval for a sidewalk café permit, streetery-street closure, or temporary lot closure.

(.2) Permittees must notify the City, through the streetery@phila.gov email address, that an Outdoor Entertainment performance is scheduled seventy-two (72) hours in advance of the Outdoor Entertainment performance taking place. The Streets Department may, by regulation, extend the notification requirement for significant geographic areas of the City when there is a determination that a longer notification period is necessary to ensure that the health and public safety of this significant geographic area of the City is sufficiently considered and addressed. In this notification, permittees must certify that:

(.a) they have read, understand, and will comply with the City's COVID safety guidelines relating to entertainment, dining, and leisure, and;

(.b) they will comply with any regulations promulgated by the City pursuant to this legislation.

(.3) Performers must wear a face mask at all times during an Outdoor Entertainment performance unless:

(.a) all performers stand more than twenty (20) feet from members of the public; or

(.b) performers perform behind a plexiglass barrier that will sufficiently prevent respiratory droplets from travelling from any performer to a member of the public.

(.4) All equipment must be removed at the conclusion of each Outdoor Entertainment performance.

(.5) A permittee that receives more than one violation notice for failure to maintain an Americans with Disabilities Act-compliant pedestrian path, shall be prohibited from providing Outdoor Entertainment.

(.6) There shall be no more than two (2) Outdoor Entertainment performances per City block, at any given time.

(.7) Until June 15, 2021, Outdoor Entertainment performances shall require a footway closure permit from the Streets Department, issued at the discretion of the Streets Commissioner.

(.8) After June 15, 2021, Outdoor Entertainment performances shall no longer require a footway closure permit from the Streets Department, however, the City reserves the right to deny the right to conduct Outdoor Entertainment performances on the basis of right-

of- way conflicts, public safety concerns, history of violations, or history of complaints. Such denials will be provided in writing with the cause identified.

(.9) The Streets Department may, by regulation, restrict the hours that Outdoor Entertainment performances may occur for significant geographic areas of the City when there is a determination that shorter Outdoor Entertainment performance hours are necessary to ensure that the health and public safety of this significant geographic area of the City is sufficiently considered and addressed.

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(5) Posting Requirement.

(a) [Within five (5) days of] *Prior to, but no more than 30 days before*, the filing of an initial application for a sidewalk café license, the applicant shall give public notice of the *proposed* application by posting at a conspicuous location in the front window or on the front door of the restaurant to which the sidewalk café will be accessory a form approved by the Streets Department. The applicant is responsible for assuring that such notice is posted continuously for a minimum of ten (10) consecutive days, and no license shall issue prior to the completion of at least ten (10) days of public notice.

(6) Placement Requirements.

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(b) On streets with a confirmed sidewalk width of thirteen (13) feet or less, at least [five (5)] *six (6)* feet of clear sidewalk space shall be maintained at all times to provide pedestrian access *and to meet accessibility requirements*. On streets with a confirmed sidewalk width of more than thirteen (13) feet, at least one-half the confirmed sidewalk width shall be maintained at all times to provide pedestrian access.

* * *

(e) The licensee shall be responsible for keeping all visitors, patrons, employees, and café [fixtures] *furniture and equipment*, including, without limitation, tables, chairs, and heaters, from occupying or encroaching into the required clear sidewalk space

(f) Sidewalk cafés located at street intersections shall provide corner clearance by providing a ten (10) foot clear space from the point of tangency of the curb line. *All furniture and equipment must be maintained at least six (6) feet from any curb cut.*

* * *

[(l) Provided that the clear sidewalk space is maintained as otherwise required in this subsection, an applicant may also occupy an area adjacent to the curb line after 7:00 p.m., provided that the following conditions are met:

(.1) the café must be located adjacent to a traffic lane regulated for use only for parking and/or loading (i.e. the lane cannot be a traffic lane after 7:00 p.m.);

(.2) only movable tables and/or chairs shall be permitted and must be placed at least one and one-half (1.5) feet from the curb line;

(.3) chairs must be placed in positions parallel to the curb line; and

(.4) the minimum clear sidewalk space required pursuant to this subsection must be maintained at all times except employees of the licensee are permitted to serve tables at the curb lines of cafés in compliance with other provisions of this subsection.]

(m) *A sidewalk café may only be located on the sidewalk directly abutting the restaurant in connection with which the license is obtained, and on the sidewalk abutting one, and no more than one, adjacent property, provided proof of permission to utilize the sidewalk of the adjacent property is provided at the time of license application and such permission remains in effect.*

(7) Maintenance of Sidewalk Cafés.

(a) Licensee shall maintain the sidewalk café in accordance with all City, state and federal laws, as well as any rules and regulations which pertain to the use of the sidewalk café including, but not limited to, any and all City Code rules and regulations as may be required by the Department of Fire, Police, Health, Streets and Licenses and Inspections.

[(b) All food served from sidewalk cafés in the following locations shall be served on non-disposable containers, and no sidewalk café shall be maintained in the following locations unless such café is directly abutting a restaurant where more than twenty-five percent (25%) of the interior gross floor area is used for seating:

(.1) Chestnut street from Broad street to Eighteenth street; and

(.2) Walnut street from Broad street to Eighteenth street.]

(b) Sidewalk cafes are only permissible in connection with eating establishments that primarily are engaged in the business of food preparation on the premises for sale to customers substantially for on-premises consumption and that maintain at least three tables for indoor dining on a regular basis.

(c) The issuance of a license pursuant to this Section does not permit any conduct otherwise prohibited by this Code, including otherwise prohibited outdoor cooking and outdoor storage of flammable materials.

(d) A license granted pursuant to this Section does not create any vested property right in the sidewalk area to which the license applies.

[(e) No sidewalk café, located within the following area, shall be operated or maintained between the hours of 12 midnight and 8 a.m.:

(.1) the area bounded by the south side of Shurs lane to the north side of Green lane and the east side of Cresson street to the Schuylkill River.]

(e) A sidewalk café shall only be operated for business between the hours of 7 a.m. and 10 p.m., Sunday through Thursday, and between 7 a.m. and 11 p.m., Friday and Saturday.

(8) Remedies.

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(d) If the owner or operator of the restaurant fails to comply as directed in the notice, or fails to comply with his or her written agreements under subsection (4) of this Section, the Department of Licenses and Inspections and the Streets Department is authorized to abate the violation, including by removing furniture or other property from the sidewalk, by itself or by contract, property storage and restoring the sidewalk to its original condition. [The Department of Licenses and Inspections] Such departments shall be further authorized to charge the costs of such removal, storage and restoration, including administrative costs, to the violator and the Law Department may take action to collect such costs by lien or any other method. If removed property is not claimed in writing within thirty (30) days, the City is authorized to dispose of said property.

(e) Penalties. The penalty for violation of this Section or any condition of a license or of a regulation issued pursuant to this Section shall be a fine [not exceeding] of three hundred dollars (\$300) per day.

(f) Repeat Offenders. Any person who commits, on more than one occasion, a violation of this Section or any condition of a license or of a regulation issued pursuant to this Section, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of [not more than] three hundred dollars (\$300), [or imprisonment for not more than ninety (90) days, or both.] A person shall be guilty of a Repeat Violation regardless whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

(9) The Department of Streets and the Department of Licenses and Inspections may issue [whatever] rules or regulations [they deem] necessary or desirable to effectuate the purposes of this Section. With respect to rules or regulations as to the extent of encroachments upon and obstructions of the streets, for the protection of public safety and [or] facilitation of pedestrian traffic, such rules or regulations shall not permit encroachments upon or obstructions of the streets greater than those [specified] authorized in this Section [Title 11 of The Philadelphia Cod]e.

[(10) Special Provisions for Existing Sidewalk Cafes and Pending Sidewalk Café Applicants. The following special provisions shall apply only within the First and Fourth Councilmanic Districts:

(a) Any sidewalk café operating under the provisions of a license granted before the date Bill No. 030254-A became law may continue to operate under the provisions of that license for the remaining terms of that license. Renewal of licenses for such sidewalk cafes will be governed by the provisions of this Section as amended by Bill No. 030254-A, except that no such sidewalk café shall be denied renewal because it fails to meet the “clear sidewalk space” requirements of subsection (6). Any such sidewalk café that does not meet the “clear sidewalk space” requirement must continue to operate in accordance with the plan submitted when the sidewalk café was licensed prior to the date Bill No. 030254-A became law, and if such a sidewalk cafe wishes to operate in accordance with a different plan, such plan must be approved in accordance with all provisions of this Section, including the “clear sidewalk space” requirements of subsection (6).

(b) If a special ordinance authorizing a sidewalk café was passed by Council before the date Bill No. 030254-A became law, but a license had not yet been issued for such sidewalk café as of such date, such sidewalk café shall be licensed under the provisions of this Section as it existed prior to the amendments set forth in Bill No. 030254-A. Once such license is issued, the provisions of subsection (10)(a) shall apply to such sidewalk café.]

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(11) *Provision for sidewalk cafes authorized prior to July 1, 2020.*

(a) *Sidewalk café licenses in effect on the date this section is added to the Code shall remain in effect until issuance of regulations pertaining to Section 9-208 of the Philadelphia Code.*

(b) *Sidewalk cafes operating under a current license that were operating pursuant to a license effective on August 1, 2020 are authorized to be operated under the terms of the license in effect as of such date until license renewal, but only with respect to that portion of the sidewalk café licensed on that date. No operational designs or plans need to be approved in connection with continued licensing of such pre-August 1, 2020 portions of such sidewalk cafes, but upon renewal of the sidewalk café license for that establishment, all minimum requirements of this Section must be adhered to and shall apply to all parts of the sidewalk café.*

(c) *Upon the trigger date set forth in subsection (a), and except as provided in subsection (b), all new sidewalk café licenses, all renewals of licenses issued between August 1, 2020 and the date this provision is added to the Code, and all renewals of licenses originally issued before August 1, 2020 shall comply with the requirements of this Section.*

SECTION 2. This Ordinance shall take effect immediately.

Introduced by CM Domb

Co-sponsored by CM Gilmore-Richardson, CM Henon, CM Parker, CM Green, CM Johnson, CM Brooks