

THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-16-09

AN ORDINANCE concerning sidewalk cafés

FOR the purpose of transferring and updating provisions relating to obstructing sidewalks and the display of retail goods; allowing a sidewalk café to extend onto the sidewalk of an adjacent property under certain circumstances; allowing a sidewalk café to be located adjacent to the curb; requiring a certain clear path of travel; requiring a certain clear unobstructed height; prohibiting a sidewalk café from being located in a certain area of sidewalk; requiring certain sidewalk cafés to be enclosed; requiring all sidewalk cafés to be operated in accordance with an approved permit; requiring a new permit if a property or restaurant is transferred; allowing a sidewalk café permit to be revoked under certain circumstances; clarifying language; and generally relating to obstructing sidewalks and sidewalk cafés within The City of Frederick.

BY repealing and reenacting, with amendments, and transferring,
Section 22-7
The Code of the City of Frederick, 1966 (as amended)

to be
Section 22-28.2
The Code of the City of Frederick, 1966 (as amended)

BY adding
Chapter 22
Article VII
The Code of the City of Frederick, 1966 (as amended)

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Section 22-7 of The Code of the City of Frederick, 1966 (as amended) is hereby transferred to be Section 22-28.2 of The Code of the City of Frederick, 1966 (as amended), which section is also repealed and reenacted, with amendments, as follows:

Sec. 22-28.2. Obstructing sidewalks.

- (a) **General prohibition.** [It shall be unlawful for any person to] Except as otherwise provided in this chapter, a person may not obstruct [any of the sidewalks of the city] a City sidewalk by placing thereon any boxes, barrels, goods, wares, tables, chairs, merchandise or any other [thing, except as defined in this section.] thing.
- (b) **Sidewalk retail displays** [in the Downtown Business District.] downtown. Businesses located in the [Downtown Business] downtown commercial/residential (DB) zoning district may display retail goods on the sidewalk immediately in front of their businesses either directly abutting the building or directly abutting the curb, in accordance with [the following:] this subsection. The owner or operator of a business shall:

- (1) [All] **remove all retail** displays and goods [shall be removed] from the sidewalk during the [establishment's] **business's** nonbusiness [hours.] **hours**;
- (2) [The] **clean the** affected portion of sidewalk [shall be cleaned] each day in which the business displays retail goods on the [sidewalk.] **sidewalk**;
- (3) [No] **ensure that no** portion of the retail display [shall obstruct] **obstructs** access to hydrants, streetlights, telephones, mailboxes, transit stops or any other public service facility on the sidewalk area or adjacent [street.] **street**;
- (4) [A] **ensure that a** clear unobstructed sidewalk width of at least [four (4)] **5** feet [shall be] **is** maintained at all times between the [use] **retail display** and any [obstacle (tree, tree well, meter, fire hydrant, etc.)] **tree, tree well, parking meter, fire hydrant, street light, bike rack, trash can, or other obstacle**;
- (5) [A] **ensure that a** clear unobstructed height of [seven (7)] **8** feet [shall be] **is** maintained between the [walkway] **sidewalk** surface and any **tree branch, overhead sign, awning, or other** overhead [obstacle (display, tree branch, overhead sign, awning, etc.)] **obstacle**; and
- (6) **locate the retail display so that it does not impede egress from the building or the ingress or egress of parked vehicles.**

[(e) ~~Sidewalk cafés. Restaurants located in the Downtown Business (DB) zoning district may sponsor a café on the sidewalk in front of their restaurant in accordance with the requirements herein. Sidewalk cafés are defined as outdoor dining areas on a portion of the sidewalk immediately abutting the sponsoring restaurant. Sidewalk cafés shall be classified as either: (1) sidewalk cafés with no enclosure, or (2) sidewalk cafés with enclosures.~~

- (1) ~~Sidewalk cafés with no enclosure.~~
 - (A) ~~Sidewalk cafés with no enclosure shall consist solely of chairs, tables and umbrellas.~~
 - (B) ~~All tables, chairs and umbrellas shall be removed from the sidewalk during the establishment's nonbusiness hours.~~
 - (C) ~~The affected portion of sidewalk shall be cleaned each day in which the sidewalk café is in use.~~
 - (D) ~~No portion of the sidewalk café shall obstruct access to hydrants, streetlights, telephones, mailboxes, transit stops or any other public service facility on the sidewalk area or adjacent street.~~
 - (E) ~~A clear unobstructed sidewalk width of at least four (4) feet shall be maintained at all times between the sidewalk café and any obstacle (tree, tree well, meter, fire hydrant, etc.).~~

(F) ~~A clear unobstructed height of seven (7) feet shall be maintained between the walkway surface and any overhead obstacle (tree branch, overhead sign, awning, etc.).~~

(2) ~~Sidewalk café with surrounding enclosure.~~

(A) ~~**Permit required.** A sidewalk café that has a surrounding enclosure shall obtain a permit from the city. The permit shall be issued on an annual basis by the department of permits and inspections.~~

(B) ~~**Permit application.** A city sidewalk café shall be submitted to the department of permits and inspections, which shall include the following information:~~

(i) ~~Documentation of approval from the owner of the property in which the establishment is located.~~

(ii) ~~Documentation of liability insurance coverage as required by the city, for the sidewalk area to be used.~~

(iii) ~~Documentation of approval from the Frederick County Liquor Board if alcoholic beverages are to be consumed in the sidewalk café area.~~

(iv) ~~The seating capacity of the proposed sidewalk café.~~

(v) ~~Scaled sketch plan showing all pertinent features of the area affected, including property lines, building footprint, sidewalks, street curb lines, lighting, trees, tree wells, planters, parking meters, street signs, and fire hydrants and proposed location of the outdoor café layout and enclosure.~~

(vi) ~~Description and scaled drawings of enclosure plan, including any physical changes proposed to the sidewalk such as holes for mounting railings or other enclosure systems.~~

(C) ~~**Design standards.**~~

(i) ~~Sidewalk cafés with an enclosure shall consist solely of chairs, tables, umbrellas and a surrounding enclosure.~~

(ii) ~~The affected portion of sidewalk shall be cleaned each day in which the business is in operation.~~

(iii) ~~No portion of the sidewalk café shall obstruct access to hydrants, streetlights, telephones, mailboxes, transit stops or any other public service facility on the sidewalk area or adjacent street.~~

(iv) ~~A clear unobstructed sidewalk width of at least four (4) feet shall be maintained between the use and any obstacle (tree, tree well, meter, fire hydrant, etc.).~~

- (v) ~~A clear unobstructed height of seven (7) feet shall be maintained between the walkway surface and any overhead obstacle (tree branch, overhead sign, awning, etc.).~~
- ~~(vi) No sidewalk café may be permanently located within the sidewalk area by means of raised deck, platform, fence, walls or other structures or enclosed by fixed walls of any material, except that sidewalk café boundaries may be delineated by the use of temporary barriers such as railings. Any such temporary barriers must be easily removed and no more than forty-two (42) inches in height above the sidewalk surface. Temporary barriers may be attached by removable clips or devices approved in advance by the city engineer.~~
- (D) ~~**Annual fee.** An annual fee may be charged by the city to cover administrative processing and review costs. Such fee shall be established by resolution approved by the mayor and board of aldermen.~~
- (d) ~~**Maintenance.** All components of the sidewalk café including enclosure devices shall be removable for sidewalk right-of-way maintenance and snow removal. In the event of an emergency, the city may remove all or part of a sidewalk café and shall not be liable for any damages.~~
- (e) ~~**Penalty for infraction.**~~
 - (1) ~~Failure to obtain a sidewalk café permit for sidewalk café café with enclosures shall be considered a municipal infraction and the penalty shall be a fine of five hundred dollars (\$500.00).~~
 - (2) ~~Any violation of any other provision of this section is also declared to be a municipal infraction. The penalty for violation shall be the sum of fifty dollars (\$50.00) for the first offense. Upon a second or subsequent violation of this section within a twelve (12) month period, said person shall be fined one hundred dollars (\$100.00). Each day that a violation continues shall constitute a separate offense.~~
- (f) ~~**Abatement.**~~
 - (1) ~~Any violation of any provision of this section which endangers the public health, safety and welfare shall constitute a public nuisance.~~
 - (2) ~~Whenever the director of planning and community development, or his designee, becomes aware that such public nuisance exists within the city, it shall be his duty to make immediate investigation, and if in his judgment, any such public nuisance does exist, he shall forthwith give written notice to the party in default to abate such public nuisance within such reasonable time as shall be prescribed in such notice.~~
 - (3) ~~In the event of any person neglecting or refusing to comply with the notice to remove or abate such public nuisance in the reasonable time provided, such~~

~~public nuisance may be abated or removed by the city at the expense of the party so refusing or neglecting.~~

SECTION II. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, that Chapter 22, Article VII be enacted to read as follows:

CHAPTER 22

ARTICLE VII. SIDEWALK CAFÉS.

Sec. 22-67. Generally.

- (a) **Scope.** This article applies to restaurants located within the City's downtown commercial/residential (DB) zoning district.
- (b) **Purpose.** It is hereby found and declared that:
 - (1) there exists the need for outdoor eating establishments downtown, to provide a unique environment for relaxation and the consumption of food and beverages;
 - (2) the existence of sidewalk cafés encourages additional pedestrian traffic, but may impede the free and safe flow thereof;
 - (3) there is a need for regulations and standards for the establishment and operation of sidewalk cafés to ensure a safe environment; and
 - (4) the establishment of permit conditions and other regulations for sidewalk cafés is necessary to protect and promote the general health, safety, and welfare of City residents and visitors.
- (c) **No vested right.** The establishment or operation of a sidewalk café does not create any vested property right in the sidewalk area being used.
- (d) **Other laws.** The establishment or operation of a sidewalk café does not eliminate the need for compliance with any other applicable law or regulation, including the necessity of obtaining a liquor license or any other required permit or approval.

Sec. 22-68. Definitions.

- (a) **In general.** For the purposes of this article, the following terms have the meanings indicated.
- (b) **Clear path of travel.** "Clear path of travel" means the area of the sidewalk reserved for pedestrian travel and free of obstacles.
- (c) **Department.** "Department" means the Department of Public Works.
- (d) **Director.** "Director" means the Director of Public Works or the Director's designee.

- (e) **Obstacle.** "Obstacle" means an object hindering passage, including but not limited to a tree, tree well, parking meter, fire hydrant, street light, bike rack, or trash can.
- (f) **Restaurant.** "Restaurant" means any business permitted to serve food, including but not limited to a general restaurant, fast food restaurant, delicatessen or ice cream parlor.
- (g) **Sidewalk café.** "Sidewalk café" means an outdoor portion of a restaurant, located on a public sidewalk and consisting of tables and chairs for use by patrons.

Sec. 22-69. Administration.

The Director may develop and implement administrative regulations as needed for the efficient implementation and enforcement of this article.

Sec. 22-70. Location.

A sidewalk café may be located on the sidewalk directly abutting a restaurant. It may extend onto the sidewalk of a neighboring property with the written permission of the neighboring property owner, as further described in Sec. 22-73(b) of this article. A sidewalk café may be located either adjacent to the building façade or adjacent to the curb.

Sec. 22-71. Clear path of travel.

(a) **Width.**

- (1) If a sidewalk café abuts a building façade, a clear path of travel of at least 5 feet wide must be maintained at all times between the sidewalk café and the curb or any obstacle.
- (2) If a sidewalk café abuts a curb, a clear path of travel of at least 5 feet wide must be maintained between the sidewalk café and the building façade or any obstacle.

(b) **Height.** A clear, unobstructed height of 8 feet must be maintained between the clear path of travel and any tree branch, overhead sign, awning, or other overhead obstacle.

(c) **Obstructions.** A sidewalk café must be located so as not to:

- (1) impede the ingress or egress of parked vehicles; or
- (2) obstruct access to any obstacle; or
- (3) prevent egress from the building.

(d) **Clear zone.** No portion of a sidewalk café may be located in the area known as the "clear zone". For purposes of this subsection, the "clear zone" is defined by extending the outer limits of the crosswalks into the sidewalk landing area to the point where the lines created by the outer limits intersect. The landing area is the space where pedestrians wait prior to crossing the street.

Sec. 22-72. Enclosures.

- (a) **Scope.** This section applies to sidewalk cafés that consist of:
 - (1) 4 or fewer tables at which alcoholic beverages may be served; or
 - (2) more than 4 tables, regardless of whether or not alcoholic beverages may be served.
- (b) **Generally.** Sidewalk café boundaries must be delineated by the use of enclosures meeting all the requirements of this article.
- (c) **Height.** An enclosure must be at least 42 inches in height above the sidewalk surface and no more than 48 inches in height above the sidewalk surface.
- (d) **Materials.** Enclosures must be stationary but removable, and may not include ropes or chains. All sides of the enclosure must be constructed of a stable, rigid, wind-resistant, self-supporting framework, capable of maintaining all furniture and other objects within the confines of the café and free from any supporting structures which may cause a tripping hazard either within or outside of the café.
- (e) **Weight.** The enclosure must be of sufficient weight so that it will not collapse, fall over, or shift in position due to incidental contact with patrons or pedestrians.
- (f) **Building walls.** If a sidewalk café is located next to a building, the building wall may serve as one side of enclosure and additional connecting enclosures shall be located in close proximity to the building wall.

Sec. 22-73. Permits.

- (a) **Generally.** A sidewalk café may operate only in accordance with a permit issued under this article.
- (b) **Permit application process.**
 - (1) Any person seeking a permit shall file a completed application with the Department, on a form provided by the Department.
 - (A) The application must be signed by the owner of the restaurant adjacent to which the sidewalk café is to be located.
 - (B) If the restaurant owner is not the owner of the real property on which the restaurant is located, the property owner must sign the application or an agent authorization form accompanying the application.
 - (C) If the sidewalk café is proposed to extend onto the sidewalk of a neighboring property, the neighboring property owner must sign the application or a form accompanying the application.
 - (D) The application must also be accompanied by any application fee as specified in the City's fee schedule ordinance.

- (2) The Director shall create and provide application forms for permits. The information required by the application will be the minimum information that is required of any applicant, and will include the following:
- (A) a scaled sketch plan showing all pertinent features of the area affected, including property lines, building footprint, sidewalks, street curb lines, lighting, and any obstacle, and the proposed location of the sidewalk café layout and enclosure (scaled and dimensioned);
 - (B) the seating capacity of the proposed sidewalk café;
 - (C) a description and scaled drawings of the enclosure plan, including any physical changes proposed to the sidewalk such as holes for mounting railings;
 - (D) a detail or cut sheet of the enclosure device;
 - (E) documentation of insurance coverage meeting the requirements of Section 22-74 of this article; and
 - (F) a certificate of approval from the Historic Preservation Commission if required.
- (3) The Department shall review a submitted application for compliance with this section. If the Department finds that the applicant meets the requirements of this section, the Department shall approve the application and shall issue a sidewalk café permit to the applicant. If the Department finds that the applicant fails to meet the requirements of this section, the Department shall deny the application.
- (c) **Term.** Sidewalk café permits are issued on an annual basis. A sidewalk café permit is valid starting on the later of its date of issuance or May 1 and ending on the following April 30, subject to the provisions of this article relating to transfer, suspension, and revocation. A new permit must be obtained each year in accordance with the permit application process established in this section."
- (d) **Transfer.** If a restaurant or the property on which it is located is transferred, the property owner must apply for and obtain a new sidewalk café permit before operating a sidewalk café.
- (e) **Violation.** Operating a sidewalk café without first obtaining a permit as required by this section is a municipal infraction punishable by a fine of \$500. Each day a violation continues is deemed a separate offense.

Sec. 22-74. Insurance.

The holder of a permit issued under this article shall obtain and maintain, for the period the permit is valid, a policy of commercial general liability insurance with bodily injury limits of \$1,000,000 per occurrence / \$2,000,000 aggregate, combined single limit, bodily injury & property damage, with the City named as additional insured. The insurance shall provide for 30 days prior written notice to be given to the City if coverage is substantially changed, canceled or non-renewed.

Sec. 22-75. Maintenance.

- (a) **Cleaning.** The property owner shall ensure that the sidewalk café, including the public sidewalk and furnishings, is kept in a clean and safe condition at all times.
- (b) **Emergencies.** In the event of an emergency, or if necessary to obtain access to a public utility facility or improvement, the City may remove or relocate all or part of a sidewalk café or direct the property owner to do so. The City will not be liable for any damages resulting from the removal or relocation.
- (c) **Routine maintenance.** A sidewalk café may not obstruct snow removal or street sweeping operations or otherwise interfere with routine maintenance by the City.

Sec. 22-76. Violations.

- (a) **Remedies not exclusive.** In addition to the remedies set forth in this section, the City may seek any other remedies available to it at law or in equity.
- (b) **Municipal infractions.** Except as otherwise provided in this article, violation of this article is a municipal infraction punishable by a fine of \$50 for a first offense and \$100 for a second or subsequent offense within a 12-month period. Each day a violation continues is deemed a separate offense.
- (c) **Revocation of permit.**
 - (1) The Director may revoke a permit issued under this article for one or more of the following reasons:
 - (A) The applicant has misrepresented or provided false information on a permit application;
 - (B) The permit has been suspended within the previous twelve months under subsection (d) of this section;
 - (C) The sidewalk café has been operated in such a manner as to create a public nuisance or constitute a hazard to the public health, safety, or welfare; or
 - (D) There is a superseding public need relative to the portion of the sidewalk occupied by or otherwise affected by the sidewalk café.
 - (2) Before revoking a permit, the Director shall provide written notice to the permit holder setting forth the grounds for and effective date of the revocation.

- (3) A permit will not be issued for a sidewalk café adjacent to the same restaurant for a period of one year after revocation.

(d) **Suspension of permit.**

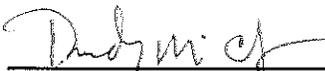
- (1) The Director may suspend a permit issued under this article for a period of up to 30 days, or a longer period if necessary to carry out the intent of this article; for one or more of the following reasons:
- (A) The sidewalk café or its operation is not in compliance with the permit or the clear path of travel has not been consistently maintained; or
 - (B) There is a superseding public need relative to the portion of the sidewalk occupied by or otherwise affected by the sidewalk café.
- (2) Before suspending a permit, the Director shall provide written notice to the permit holder setting forth the grounds for the suspension, the effective date of the suspension, and the length of the suspension.
- (3) The Director may reinstate a permit when the Director is satisfied that the grounds for the suspension have been remedied.

SECTION III. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

SECTION IV. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that this ordinance shall take effect on the date it is approved by the Mayor and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

PASSED:

DATE:



Randy McClement, President,
Board of Aldermen

February 18, 2016

APPROVED:

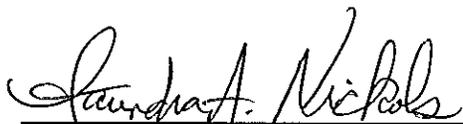
DATE:



Randy McClement, Mayor

February 18, 2016

Approved for Legal Sufficiency:



City Attorney