

City of Philadelphia



(Bill No. 030254-A)

AN ORDINANCE

Amending Title 9 of The Philadelphia Code (“Regulation of Businesses, Trades and Professions”), by amending Section 9-208 relating to sidewalk cafes by amending and adding certain provisions for regulating 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 hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS.

* * *

CHAPTER 9-200. COMMERCIAL ACTIVITIES ON STREETS.

* * *

§9-208. Sidewalk Cafes.

(1) Definitions:

* * *

(d) Sidewalk Cafe. An [area] *open-air space* on the *public* sidewalk [directing.] *directly* abutting [and adjacent to or vacant land immediate], adjacent and contiguous to a restaurant or any premises licensed by the Pennsylvania Liquor Control Board, pursuant to regulations (40 Pa. Code Chapter 7, Subchapter B, Section 7.21) of the Board, to conduct business on the above-mentioned premises, *where food is served at tables and chairs.*

* * *

[(3) License Fee. An annual license fee of one hundred sixty (\$160.00) dollars shall be paid in addition to any of the other license fees required within the building.]

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(4)] (3) License, Indemnification and Other Conditions.

[(a)] No person shall erect, construct or maintain a sidewalk cafe, *either where permitted by subsection (2) or where permitted pursuant to special ordinance*, unless he has obtained [the necessary] *a sidewalk cafe license* from the [d] Department of Licenses and Inspections. No license shall be issued unless:

[(.1)] the applicant submits a plan specifying the precise location of the sidewalk cafe, including a description of metes and bounds of the proposed sidewalk cafe;

(.2) the plan has been approved by the Department of Licenses and Inspections, as it pertains to the protection of the general public.

(.3) the plan has been approved by the Department of Streets as it pertains to location. Approval may be withheld if placement or maintenance of a sidewalk cafe at any proposed location would impede or endanger pedestrian travel, or if the sidewalk cafe would obstruct or interfere with the installation or maintenance of underground utility structures, or if the location of the proposed sidewalk cafe, in relation to the licensed premises, is not on the abutting sidewalk.]

(a) *Such person submits the materials required pursuant to subsection (4) to the Department and the Department determines that the location at which the sidewalk cafe 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 cafe is accessory has all other necessary licenses and permits;*

[(b)] The written consent of the property owner must be obtained and submitted with the license application.]

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

(c) The licensee agrees in writing, *in a form satisfactory to the City Solicitor*, to remove the sidewalk cafe [within thirty (30) days] after written notice has been given by *the Department of Licenses and Inspections that either:*

(.1) the Department of Streets [, if the Department determines that due to pedestrian traffic changes, the sidewalk cafe now tends to narrow the sidewalk to the extent that pedestrian traffic is impeded; or, the sidewalk cafe interferes with the maintenance or installation of underground utility structures] *has*

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determined that the sidewalk cafe no longer meets the placement requirements of subsection (6); the sidewalk cafe must be removed to accommodate a municipal or municipally sponsored public project; or the Streets Department has granted a temporary permit to close the sidewalk; or

(.2) the Department of Licenses and Inspections [, if the Department determines] *has determined* that the sidewalk cafe is no longer being used as such; [or] the [licensed premises] *restaurant to which the cafe is accessory* has been temporarily or permanently closed for violation of any City, state or federal law and/or regulation; or the sidewalk cafe is being operated in violation of any ordinance, rule or regulation of the City of Philadelphia;

(d) The licensee agrees *in writing in form satisfactory to the City Solicitor* to indemnify and hold harmless the City, its officers, employees and agents from and against any and all loss resulting from injury to, or death to persons or damage to property arising out of, resulting from, or in any manner caused by the presence, location, use, operation, installation, maintenance, replacement or removal of, such sidewalk cafe, or by the acts or omissions of the employees or agents of the licensee in connection with such cafe. *The licensee shall also agree to release the City from any and all claims relating to its sidewalk cafe, including, but not limited to, loss of business and/or value of the sidewalk cafe when it is ordered removed or when street, sidewalk or utility construction occurs;*

(e) *The licensee 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 covering 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 applicant fails to renew the cafe license. Within ten (10) days of the approval of the sidewalk cafe 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;*

(f) *The licensee obtains a bond with corporate surety in amount approved by the Streets Department and in form satisfactory to the Law Department to cover indemnification of the City for the cost of removal of any part of the sidewalk cafe, restoration of the public right-of-way, and all incidental costs; and*

(g) *The licensee pays an annual fee of \$160. 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 cafe is accessory. All sidewalk cafe licenses shall be issued for a one-year period established by the Department of Licenses and Inspections.*

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(4) License Applications.

(a) Applications for sidewalk cafe 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 cafe is accessory (owner, manager, etc.) and the street address of the property where the sidewalk cafe is proposed. If the applicant is other than the owner of the building abutting the location of the proposed sidewalk cafe, the applicant must provide written authorization from the property owner stating that the property owner has no objection to the sidewalk cafe;

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

(.a) Dimensions of the proposed sidewalk cafe 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 cafe;

(.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 \$160.00. When a license is granted, the application fee shall be credited towards the first year's license fee.

(b) The applicant shall be provided with the current form of the written agreements required pursuant to subsection (4) at the time the application is made.

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

(5) Posting Requirement.

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(a) *Within five (5) days of the filing of an initial application for a sidewalk cafe license, the applicant shall give public notice of the application by posting at a conspicuous location in the front window or on the front door of the restaurant to which the sidewalk cafe 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.*

(a) *All parts of a sidewalk cafe shall be easily removable;*

(b) *On streets with a confirmed sidewalk width of thirteen (13) feet or less, at least five (5) feet of clear sidewalk space shall be maintained at all times to provide pedestrian access. 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.*

(c) *The clear sidewalk space shall be measured from the curb line, or, if closer to the sidewalk cafe, from the nearest obstruction on a line parallel to the curb line, to the outside edge of any chair, table or collapsible railing as shown on the plans approved by the Department of Streets. For the purpose of determining clear sidewalk space, trees, steps, street light poles, sign poles, fire hydrants, parking meters, or other objects located on the sidewalk surface shall be considered as obstructions.*

(d) *Ventilation grates cannot be covered and cannot be included as clear sidewalk space.*

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

(f) *Sidewalk cafes 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.*

(g) *No part of the sidewalk cafe shall be within fifteen (15) feet of a transit stop.*

(h) *The sidewalk cafe shall be at the same elevation as the existing sidewalk surface.*

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(i) *The required clear egress space shall be maintained between the exit door(s) of the structure and the clear sidewalk space.*

(j) *The placement or maintenance of a sidewalk cafe shall not impede or endanger pedestrian travel, or obstruct or interfere with the installation or maintenance of underground utilities.*

(k) *Collapsible or removable handrails shall only be permitted where the ground receptacle can be capped. The anchors for such handrails cannot exceed a depth below grade of the sidewalk of four (4) inches. The collapsible or removable handrails shall be removed during periods of the year when the sidewalk cafe is not in use. The Department of Streets may require an applicant to maintain removable or collapsible handrails or guards when it determines handrails or guards are necessary to prevent encroachment into the clear sidewalk area that is required pursuant to this Section.*

(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 cafe 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 feet (1' 6") 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 cafes in compliance with other provisions of this subsection.

[(5)] (7) Maintenance of Sidewalk Cafes.

* * *

(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.*

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

[(6) Removal of Sidewalk Cafes:

(a) Upon any notice to remove a sidewalk cafe by the City, the costs of removal and shall be paid to the City by the licensee within sixty (60) days after written notice or demand to remove was made upon the licensee by the City. Should payment not be forthcoming within the prescribed time, the City, acting through and by the Law Department, shall institute any and all appropriate legal action to ensure payment of any appropriate cost of removal and restoration. Should the licensee not comply with any notice of removal of a sidewalk cafe, and should the sidewalk cafe be removed by the City as stated herein, the licensee shall be entitled to the return of the equipment, furnishings or appurtenances so removed only after payment of all costs due to the City as stated herein, and by requesting the return in writing. The responsibility for removal under the provisions of this section shall be the sole responsibility of the licensee without any obligation or cost assessed against the City.

(b) The licensee shall obtain a bond with corporate surety in amount and in such form satisfactory to the Law Department to indemnify the City for the cost of removal of any sidewalk cafe, restoration of the premises, and all incidental costs.]

(8) Remedies.

(a) Any officer authorized to enforce this Code shall, upon making a determination that the owner or operator of a sidewalk cafe is in violation of this Section or a sidewalk cafe license, provide the owner or operator a violation notice.

(b) Such notice shall specify whether the placement of the sidewalk cafe must be modified to come into compliance with this Section or whether the sidewalk cafe must be entirely removed and shall provide a time in which compliance is required.

(c) If the owner or operator fails to comply as directed in the notice, the City may institute court proceedings either for collection of penalties as provided in this Section or seeking a court order to force compliance or both.

(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), the Department of Licenses and Inspections is authorized to abate the violation, including by removing furniture or other property from the sidewalk, by itself or by contract, and restoring the sidewalk to its original condition. The Department of Licenses and Inspections shall be further authorized to charge the costs of such removal and restoration, including administrative costs, to the violator and the Law Department may

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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.

[(7) 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 or facilitation of pedestrian traffic, such rules or regulations shall not permit encroachments upon or obstructions of the streets greater than those specified in Title 11 of The Philadelphia Code.

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

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

[(10) (f) Repeat Offenders. Any person who commits, on more than one occasion, a violation of this Section or any condition of a [permit or rule and/or] *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 (300) dollars, 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 or facilitation of pedestrian traffic, such rules or regulations shall not permit encroachments upon or obstructions of the streets greater than those specified in Title 11 of The Philadelphia Code.*

(10) *Special Provisions for Existing Sidewalk Cafes and Pending Sidewalk Cafe Applicants.*

The following special provisions shall apply only within the First and Fourth Councilmanic Districts:

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(a) *Any sidewalk cafe operating under the provisions of a license granted before the date Bill No. 030254 became law may continue to operate under the provisions of that license for the remaining term 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, except that no such sidewalk cafe shall be denied renewal because it fails to meet the “clear sidewalk space” requirements of subsection (6). Any such sidewalk cafe that does not meet the “clear sidewalk space” requirement must continue to operate in accordance with the plan submitted when the sidewalk cafe was licensed prior to the date Bill No. 030254 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 cafe was passed by Council before the date Bill No. 030254 became law, but a license had not yet been issued for such sidewalk cafe as of such date, such sidewalk cafe shall be licensed under the provisions of this Section as it existed prior to the amendments set forth in Bill No. 030254. Once such license is issued, the provisions of subsection 10(a) shall apply to such sidewalk cafe.*

SECTION 2. All regulations pursuant to this Section in effect prior to the adoption of this Ordinance are hereby superseded.

Explanation:

[Brackets] indicates matter deleted.
Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 12, 2003. The Bill was Signed by the Mayor on July 31, 2003.



Patricia Rafferty
Chief Clerk of the City Council