



# City of Philadelphia

City Council  
Chief Clerk's Office  
402 City Hall  
Philadelphia, PA 19107

**BILL NO. 230622**

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**Introduced September 21, 2023**

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**Councilmember Gauthier**

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**Referred to the  
Committee on Streets and Services**

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## **AN ORDINANCE**

Authorizing encroachments in the nature of a sidewalk café in the vicinity of 4629-4631 Baltimore Avenue, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Permission is hereby granted to the owner of the property identified below or the owner's designee, 4629-31 Baltimore Ave LLC, (the "Owner"), to install, own, and maintain an open-air sidewalk café (the "Encroachment") at 4631 Baltimore Avenue, Philadelphia, PA 19143 (the "Property"), as follows, subject to all restrictions set forth in this ordinance:

Encroachment Description:

Property: 4631 Baltimore Avenue, Philadelphia, PA 19143 D/B/A Loco Pez

A sidewalk café located as follows, with a minimum of six feet (6'-0") of clear passable sidewalk space to remain after installation of each part identified below:

A total of eight (8) tables and twenty-four (24) seats for a sidewalk café will be located along the west sidewalk of Baltimore Avenue along the property line of 4629-31 Baltimore Avenue and the north sidewalk of South 47<sup>th</sup> Street along the property line of 4629-31 Baltimore Avenue written in two parts:

**Part 1**

Four (4) tables and sixteen (16) seats will be located adjacent to the building and will encroach a distance of approximately four feet (4'-0") towards the east, along the west footway of Baltimore Avenue starting from a point approximately thirty-six feet seven inches (36'-7") north of the South 47<sup>th</sup> Street north curblineline to a point approximately twenty-seven feet (27'-0") farther north leaving a minimum twelve feet (12'-0") of clear unobstructed footway.

# City of Philadelphia

BILL NO. 230622 continued

## Part 2

Four (4) tables and eight (8) seats will be located adjacent to the building and encroach a distance of approximately four feet (4'-0") towards the south, along the north footway of South 47<sup>th</sup> Street starting from a point approximately forty-two feet eight inches (42'-8") west of the Baltimore Avenue west curbline to a point approximately twenty-four feet (24'-0") farther west leaving a minimum six feet (6'-0") of clear unobstructed footway.

SECTION 2. The construction, installation, use, and maintenance of the Encroachment described and listed in Section 1 shall be in accordance with the laws, rules and regulations of the City of Philadelphia, and specifically those of the Department of Licenses and Inspections, the Department of Streets, and the Art Commission, provided that the Department of Streets, in its sole, unreviewable discretion, may allow minor variations of the dimension limits of Section 1, within standard tolerances of current engineering practice.

SECTION 3. Before exercising any rights or privileges under this Ordinance, Owner must first obtain or have its contractor(s) obtain all required permits, licenses, and approvals from all appropriate departments, boards, agencies, or commissions. No such department, board, agency, or commission shall be required to issue any such permit, license or approval solely because this Ordinance has been enacted, it being the express intent of this Ordinance not to supersede any other provision of law governing the issuance of such permits, licenses or approvals. In addition, before exercising any rights and privileges under this Ordinance, Owner shall enter into an agreement ("Agreement") with the appropriate City department or departments, satisfactory to the City Solicitor, to provide that Owner, *inter alia*:

- (a) Agrees to remove or relocate any or all of the Encroachment of this Ordinance from the public right-of-way within thirty (30) days after lawful service of notice by the City of Philadelphia. Such notice may be given when:
  1. The Department of Streets has determined that the sidewalk café no longer meets the City's placement requirements; the sidewalk café or any portion of the Encroachment 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 has determined that the sidewalk café is no longer being used as such; the restaurant to which the café is accessory has been temporarily or permanently closed for violation of any City, state, or federal law and/or regulation; or the sidewalk café is being operated in violation of any ordinance, rule, or regulation of the City of Philadelphia.
- (b) Shall secure all necessary permits, licenses, and approvals from all appropriate departments, agencies, boards or commissions of the City as may be required by

# City of Philadelphia

*BILL NO. 230622 continued*

regulation or law. No such department, board, agency, or commission shall be required to issue any such permit, license or approval solely because this Ordinance has been enacted;

- (c) Shall assume the costs of all changes and adjustments to, and relocation or abandonment of City utilities and City structures wherever located as may be necessary by the reason of the construction of the Encroachment;
- (d) Shall carry public liability and property damage insurance that covers the Encroachment, listing the City of Philadelphia as an additional insured party, as well as Worker's Compensation and Employer Liability insurance, all in such amounts as shall be satisfactory to the City Solicitor, or in lieu thereof, submit documentation in form and content acceptable to the City that Owner is self-insured and will protect the City of Philadelphia against liability for property damages and liability for injuries or death to persons, including employees and patrons of the sidewalk café, as a result of the ownership, use, installation, maintenance, or removal of the Encroachment.
- (e) Shall ensure that all contractors performing work or services in connection with the Encroachment carry public liability and property damage insurance, naming the City of Philadelphia as an insured party in such amounts as shall be reasonably satisfactory to the City Solicitor;
- (f) Shall give the City and all public utility companies the right-of-access, ingress and egress for the purpose of inspection, maintenance, alteration, relocation, or reconstruction of any of their respective facilities which may lie within the public footway adjacent to the Encroachments described in Section 1;
- (g) 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 the Encroachment, or by acts or omissions of the employees or agents of the restaurant in connection with the sidewalk cafe. Owner shall also agree to release the City from any and all claims relating to the Encroachment, including if ordered removed or when street, sidewalk, or utility construction occurs;
- (h) Shall furnish the City with either a bond with corporate surety in an amount required by the Department of Streets and in a form satisfactory to the Law Department to insure compliance with all the terms and conditions of this Ordinance and the Agreement, or in lieu thereof, submit documentation in a form and content acceptable to the City that Owner self-assumes the liabilities and obligations normally covered by the Surety Bond;
- (i) Shall adhere to all applicable requirements in The Philadelphia Code, including the requirements set forth in Section 9-208 of the Code;

# City of Philadelphia

*BILL NO. 230622 continued*

- (j) Limit the hours of operation for the sidewalk café to:
  - Tuesday-Thursday: 11:30 am to 9:30 pm
  - Friday: 11:30 am to 10:30 pm
  - Saturday: 4 pm to 10:30 pm
  - Sunday: 4 pm to 9:30 pm
  
- (k) Limit the number of seats in the sidewalk café to twenty-four (24) seats; and
  
- (l) Agree to manage the sidewalk café in a manner that prevents nuisance behavior as that term is defined under Chapter 9-4400 of The Philadelphia Code.

SECTION 4. The City Solicitor shall include in the Agreement such other terms and conditions as shall be deemed necessary to protect the interests of the City.

SECTION 5. The permission granted to Owner to install, own, and maintain the Encroachment described in Section 1 shall expire without any further action by the City of Philadelphia if Owner has not entered into an Agreement and satisfied all requirements of the Agreement that are listed in Section 3 of this Ordinance within one (1) year after this Ordinance becomes law.

SECTION 6. This Ordinance shall not become effective unless the sum of two hundred dollars (\$200.00), toward costs thereof, is paid into the City Treasury within sixty (60) days after the date this Ordinance becomes law.