

City of Philadelphia



(Bill No. 100717)

AN ORDINANCE

Authorizing CM123, LLC t/a The Wishing Well to construct, own and maintain an open-air sidewalk café at 767 South Ninth Street, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to CM123, LLC t/a The Wishing Well to construct, own and maintain various sidewalk encroachments at 767 South Ninth Street as follows:

One (1) table and two (2) chairs will be placed adjacent to the building on the east sidewalk of South Ninth Street. The table and chairs encroach approximately two feet (2') onto the east sidewalk of South Ninth Street, leaving approximately seven feet eight inches (7' - 8") of clear unobstructed footway. No rails will be used.

Four (4) tables and eight (8) chairs will be placed adjacent to existing encroachments adjacent to the building on the north sidewalk of Catharine Street. The tables and chairs encroach approximately two feet (2') onto the north sidewalk of Catharine Street, leaving approximately six feet four inches (6'-4") of clear unobstructed footway. No rails will be used.

The exact number, type and location of the encroachments are identified on plans that have been supplied to the Department of Streets for review and have been approved. The Department of Streets will maintain the authority to review and approve the location of each proposed encroachment prior to installation.

SECTION 2. Before exercising any rights or privileges under this Ordinance, CM123, LLC t/a The Wishing Well must first obtain all required permits, licenses and approvals from all appropriate City 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 or privileges under this Ordinance, CM123, LLC t/a The Wishing Well shall enter into an agreement ("Agreement") with the appropriate City department(s), in a form satisfactory to the Law Department, to provide that CM123, LLC t/a The Wishing Well shall, *inter alia*:

City of Philadelphia

BILL NO. 100717 continued

Certified Copy

- (a) secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the City, or from any other governmental entity as may be required by law;
- (b) assume the cost of all changes and adjustments to, or relocation or abandonment of, all utilities and structures within the public right-of-way which are necessary due to the construction of the encroachments described in Section 1;
- (c) carry public liability and property damage insurance that covers the encroachments described in Section 1, co-naming the City of Philadelphia as an insured party, in such amounts as shall be satisfactory to the Law Department. Alternatively, if approved by the City of Philadelphia Office of Risk Management, furnish the City with documentation in a form acceptable to the Law Department acknowledging that CM123, LLC t/a The Wishing Well is self insured and will protect the City against liability for property damages and liability for injuries or death to persons, including employees of The Wishing Well, as a result of the ownership, construction, maintenance or removal of the encroachments described in Section 1;
- (d) remove or relocate any or all of the encroachments described in Section 1 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 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;
- (e) insure that each construction contractor for the encroachments described in Section 1 carries 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 Law Department;
- (f) give the City and all public utility companies the right-of-access, ingress and egress for the purpose of inspection, maintenance, alteration, relocation or

City of Philadelphia

BILL NO. 100717 continued

Certified Copy

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 sidewalk café, or by the acts or omissions of the employees or agents of the restaurant in connection with the café. CM123, LLC t/a The Wishing Well shall also agree to release the City from any and all claims relating to the sidewalk café, including, but not limited to, loss of business and/or value of the sidewalk café when it is ordered removed or when street, sidewalk or utility construction occurs; and
- (h) 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 the 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 CM123, LLC t/a The Wishing Well self-assumes the liabilities and obligations normally covered by the Surety Bond.

SECTION 3. The Law Department shall include in the Agreement such other terms and provisions deemed necessary to protect the interest of the City of Philadelphia.

SECTION 4. The permission granted to CM123, LLC t/a The Wishing Well to construct, own and maintain the encroachments described in Section 1 shall expire without any further action by the City of Philadelphia if CM123, LLC t/a The Wishing Well has not entered into an Agreement and satisfied all requirements of the Agreement that are listed in Section 2 of this Ordinance within one (1) year after this Ordinance becomes law.

SECTION 5. This Ordinance shall not become effective unless the sum of two hundred dollars (\$200.00), toward the costs thereof, is paid into the City Treasury within sixty (60) days after this Ordinance becomes law.

City of Philadelphia

BILL NO. 100717 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 9, 2010. The Bill was Signed by the Mayor on January 5, 2011.



Michael A. Decker
Chief Clerk of the City Council