

City of Philadelphia



(Bill No. 200542)

AN ORDINANCE

Authorizing DSW1, LLC d/b/a Nifty Fifty's ("Owner") to install, own, and maintain a proposed sidewalk café at 2700 South 10th Street, Philadelphia, PA 19148 ("Property"), 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, (currently DSW1, LLC d/b/a Nifty Fifty's) ("Owner") to install, own, and maintain a proposed sidewalk café (the "Encroachment") at 2700 South 10th Street, Philadelphia, PA 19148 (the "Property"), as follows:

Encroachment Description:

A sidewalk café, located along the south Right-of-Way line of Oregon Avenue and the west Right-of-Way line of South 10th Street, in two (2) parts.

Part 1:

From a point approximately nine feet eight inches (9'-8") west of the South 10th Street west Right-of-Way line to a point approximately thirty-eight feet ten inches (38'-10") farther west and encroaching into the south footway of Oregon Avenue approximately four feet zero inches (4'-0") toward the north.

Part 2:

From a point approximately four feet eight inches (4'-8") south of the Oregon Avenue south Right-of-Way line to a point approximately eight feet six inches (8'-6") farther south and encroaching into the west footway of South 10th Street approximately four feet zero inches (4'-0") toward the east.

A clear passable sidewalk space, with a minimum width of nine feet zero inches (9'-0") on Oregon Avenue and eight feet six inches (8'-6") on South 10th Street, shall remain after installation.

The hours of operation for the sidewalk café shall be dictated by the license issued by L&I.

SECTION 2. The construction, 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.

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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 that upon one hundred and eighty (180) days notice from the City, it shall remove the Encroachment without cost or expense to the City and shall remove the Encroachment at no cost and expense to the City of Philadelphia when given written notice to do so by the City of Philadelphia to accommodate a municipal or municipal sponsored construction project;
- (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 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 and co-naming the City of Philadelphia as an 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 is providing the City of Philadelphia the same coverage and benefits had the insurance requirements been satisfied by an insurance carrier authorized to do business in the Commonwealth of Pennsylvania, and establishing that the Owner will protect the City against all liability for property damages and liability for injuries and death to persons, including employees of the café, as a result of the ownership, installation, maintenance or removal of the Encroachment;
- (e) shall insure that each contractor performing work and/or services in connection with the Encroachments 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;

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- (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 Encroachment described in Section 1; and
- (g) shall 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 the acts or omissions of the employees or agents of the restaurant in connection with café. 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; and
- (h) shall remove or relocate any or all of the Encroachments 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 & 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;
- (i) shall adhere to all applicable requirements in The Philadelphia Code, including the requirements set forth in Section 9-208 of the Code.
- (j) shall limit the hours of operation for the sidewalk café to: Sunday through Thursday, 11 a.m. to 11 p.m., and Friday through Saturday, 11 a.m. to 1 a.m.

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 construct 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.

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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.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 10, 2020. The Bill was Signed by the Mayor on January 20, 2021.



Michael A. Decker
Chief Clerk of the City Council