Legislation Text

File #: 200373, **Version:** 1

Authorizing Gojjo Incorporated ("Owner") to install, own, and maintain a proposed sidewalk café at 4536-40 Baltimore Avenue, Philadelphia, PA 19143 ("Property"), all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to Gojjo Incorporated **("**Owner") to install, own, and maintain a proposed sidewalk café at 4536-40 Baltimore Avenue, Philadelphia, PA 19143 (the "Property") as follows:

Encroachment Description:

A proposed sidewalk café, located along the south Right-of-Way line of Baltimore Avenue, in two (2) parts:

Part 1:
From a point approximately one hundred sixty feet (160'-0") east of the South 46th Street east Right-of-Way line to a point approximately fifty feet (50'-0") farther east and encroaching into the south footway of Baltimore Avenue approximately five feet (5'-0") toward the north.

Part 2:
From a point approximately one hundred sixty feet (160'-0") east of the South 46th Street east Right-of-Way line to a point approximately fifty feet (50'-0") farther east and encroaching into the south footway of Baltimore Avenue, starting from a line offset approximately one foot six inches (1'-6") south of the south curb line and extending approximately two feet six inches (2'-6") further south.

A minimum nine feet (9'-0") of clear passable sidewalk space is to remain after installation.

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 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;

(b) shall 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 regulation or law. No such governmental entity, 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 Encroachments and lists the City of Philadelphia as an additional insured party, as well as Worker's Compensation and Employer Liability insurance, in such amounts as shall be required by the City's Risk Management Unit and satisfactory to the City Solicitor, or in lieu thereof, submit documentation in form and content acceptable to the City Solicitor that Owner 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 café, as a result of the ownership, installation, maintenance or removal of the Encroachments;

(e) shall insure 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 Encroachment 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 Encroachments, or by the acts or omissions of the employees or agents of the restaurant in connection with the café. Owner shall also agree to

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release the City from any and all claims relating to the sidewalk café, including if ordered removed or when street, sidewalk or utility construction Occurs;

(h) adhere to all applicable requirements in The Philadelphia Code, including the requirements set forth in Section 9-208 of the Code; and

(i) limit the hours of operation for the sidewalk café to: Monday - Sunday: 7:00 a.m. - 12:00 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.

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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