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

Legislation Text

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Authorizing encroachments in the nature of a sidewalk café in the vicinity of 941 S. 8th Street, 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 (the "Owner"), to install, own, and maintain an open air sidewalk café at 941 S. 8th Street, Philadelphia, PA 19147 (the "Property")], as follows, subject to all restrictions set forth in this ordinance:

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

Part 1:
From a point approximately seven feet (7'-0") north of the Carpenter Street north Right-of-Way line to a point approximately seven feet nine inches (7'-9") farther north and encroaching upon the east footway of South 8th Street approximately three feet seven inches (3'-7") toward the west.

Part 2:
From a point approximately one foot (1'-0") north of the Carpenter Street north Right-of-Way line to a point approximately eighteen feet (18'-0") farther north and encroaching upon the east footway of South 8th Street, starting from a line offset approximately six inches (0'-6") east of the east curb line and extending approximately three feet (3'-0") farther east.

Part 3:
From a point approximately seven feet seven inches (7'-7") east of the South 8th Street east Right-of-Way line to a point approximately twenty-nine feet three inches (29'-3") farther east and encroaching upon the north footway of Carpenter Street approximately three feet seven inches (3'-7") toward the south.

Part 4:
From a point approximately zero feet (0'-0") east of the South 8th Street east Right-of-Way line to a point approximately thirty-eight feet seven inches (38'-7") farther east and encroaching upon the north Footway of Carpenter Street, starting from a line offset approximately six inches (0'-6") north of the north curb line and extending approximately four feet (4'-0") farther north.

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*:

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(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 or any portion of the Encroachments 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 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 Encroachments, 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 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 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) 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 the sidewalk café. Owner shall also agree to release the City from any and all claims relating to the sidewalk café or the Encroachments, including but not limited to, loss of business or value of the sidewalk cafe, including if ordered removed or when street, sidewalk or utility construction occurs; and

(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 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 Owner self-assumes the liabilities and obligations normally covered by the Surety Bond.

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(i) shall adhere to all applicable requirements in The Philadelphia Code, including the requirements set forth in Section 9-208 of the Code.

(j) Limit the hours of operation for the sidewalk café to:

- Sunday - Thursday: 10am to 10pm
- Friday - Saturday: 10am to 11pm

(k) Limit the number of seats in the sidewalk café to one hundred (100) seats.

(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.

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