

Council of the City of York, PA  
Session 2014  
Bill No.  
Ordinance No.

INTRODUCED BY: **Michael Ray Helfrich**

DATE: **May 6, 2014**

**AN ORDINANCE**

Amending Article 1113.10 SIDEWALK CAFES of the York City Codified Ordinances to update and clarify language.

BE IT ORDAINED, by the Council of the City of York, Pennsylvania, that Article 1113.10 SIDEWALK CAFES is hereby amended as follows:

SECTION ONE: That Article 1113.10 SIDEWALK CAFES be hereby amended as follows:

**1113.10 SIDEWALK CAFES.**

(a) Declaration of Purpose. The City of York City Council encourages an attractive, functional and economically vital community and shopping areas that are safe and pleasant environments to live near and to do business within. Council recognizes that commercial development is a major identifying feature in a community, offering impressions to residents and visitors alike of the quality of life available. It is Council's intent to encourage commercial growth that contributes to a vibrant and attractive community. Council believes that these activities can greatly contribute to a pedestrian friendly community if they conform to specific public health, and safety requirements defined herein.

(b) Sidewalk Cafes. No person shall engage in the operation of a sidewalk cafe, without first applying for and obtaining a permit from the City of York Community Development Department and then operating within the terms and conditions of all applicable City ordinances. The sidewalk cafe permit enables a restaurant to have outdoor dining, consistent with the terms herein, ~~between April 15 and October 15 of each calendar year.~~

(c) Definitions. For the purpose of this section, the following terms shall have the following meanings:

- (1) **ABUTTING PROPERTY** - property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under the terms of this section.
- (2) **CENTRAL BUSINESS DISTRICT (CBD)** - is the zoning district defined as the downtown center for government services, offices, shopping, hotels, entertainment and cultural activity.
- (3) **CITY ENGINEER** - the Engineer appointed by the City of York to hold this position.
- (4) **COMMERCIAL WATERFRONT DISTRICT (CW)** - is the zoning district defined as the area established to allow for special water oriented commercial activity in the central area of the City bordering on the Codorus Creek and to incorporate normal commercial activity and tourist-related commercial activity in an urban park setting of the Codorus Creek.
- (5) **HEALTH OFFICER** - the Health Officer of the City of York or his authorized representative.
- (6) **MINI CAFE** - a sidewalk cafe comprised of bistro tables which seats no more than four persons, does not serve alcohol and is without service from wait staff.
- (7) **OWNER** - includes any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole of the land contiguous to the street right-of-way on which a sidewalk cafe is to be operated under the authority of this section.
- (8) **PEDESTRIAN WALKWAY** - that portion of a sidewalk area that is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.
- (9) **PERSON** - includes a partnership, corporation, association, trust, estate or other

- legally recognized entity, as well as an individual.
- (10) **PUBLIC SERVICE FACILITY** - a public telephone, mailbox, bench or other facility provided for the use of the general public.
  - (11) **RESTAURANT** - a food service establishment where food is purchased and served in individual portions for consumption on the premises. This term shall not include an establishment that operates exclusively as a caterer, a commissary, a food processing establishment, a mobile food unit, a retail food store or a temporary food service establishment.
  - (12) **SIDEWALK** - any paved area between the curblin and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.
  - (13) **SIDEWALK CAFE** - an outdoor dining area operated by a restaurant, ~~generating sixty-five percent (65%) of its annual revenue from food sales,~~ serves alcohol, has tables that seat two or more patrons, provides wait staff for its patrons and is located on a sidewalk area or other designated public place and containing removable tables, chairs, plants and related appurtenances, which is not located on or does not encroach upon the pedestrian walkway as established under the provisions of this section. It shall not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy. ~~It may, but is not required to, abut its sponsoring restaurant.~~
  - (14) **STREET RIGHT-OF-WAY** - the entire right-of-way of a public highway, public alley or public road, including the designated sidewalk areas.

(d) Unlawful to Operate Without Registering. It shall be unlawful for any person, firm, corporation, transient merchant, church, club, charitable institution, hawker or peddler to vend, sell or dispose of or offer to vend, sell, dispose of or display, any food, goods, wares, merchandise, produce or vegetables on any public walk, street, alley or anywhere within the City of York without registering with the Economic and Community Development Department and Treasurer's Office. The phrase "sidewalk cafe" in this section will be applied to both sidewalk cafes and mini-cafes unless otherwise stated. (??? Need language for proposed amendment to this section.)

(e) Issuance of Permits, Display. The Community Development Department is hereby authorized to grant revocable licenses for the use of the sidewalks for sidewalk cafes in the Central Business (CBD) Zoning District and the Commercial Waterfront (CW) Zoning District upon the following terms and conditions. When the Community Development Department has approved the issuance of a sidewalk cafe permit, the applicant shall be issued a permit. The permit shall contain the information required on the application, the expiration date, and one of the photographs submitted with the application. The permit shall be carried by the applicant at all times when engaged in sidewalk café activities and shall be exhibited for inspection for any person.

- (1) The applicant shall delineate the cafe area as an established and recognizable area that may include a removable physical barrier separating patrons from pedestrian traffic. The delineation and layout of the café area shall be consistent with the site plan submitted by the applicant.
- (2) No sidewalk cafe may be operated except:
  - A. As an accessory to a restaurant or retail food store lawfully operating on the first floor of the premises.
  - B. On the sidewalk in front of the principal place of business of such entity.
  - C. By the entity which operates the restaurant or retail food store.
- (3) Sidewalk cafes shall operate the hours the establishment operates, only during the hours that the facility's kitchen is open for service, but not after 11:00 p.m.
- (4) Furnishings of a sidewalk cafe shall consist solely of readily removable umbrellas, covers, railings, tables, chairs, planters containing live plants, waste receptacles and accessories. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property or to any building or structure. All furnishings shall be secured and out of the path of foot traffic or removed from the sidewalk and stored in an approved manner when the sidewalk cafe is not in operation. All furnishings stored outside shall be stored in a neat

- and orderly fashion.
- (5) All food must be prepared by a licensed food provider within the existing-  
~~restaurant or retail food store upon which the cafe permit has been granted.~~
  - (6) The applicant shall be responsible for obtaining, maintaining in full force and effect and complying with the terms and conditions of any permit which may be required under any other law or regulation for the serving of food or beverages, including alcoholic beverages, at a sidewalk cafe.
  - (7) Sidewalk cafes, the public property on which they are located and the surrounding area shall at all times be kept free and clear of litter, debris and any substance that may damage the sidewalk or cause pedestrian injury.
  - ~~(8) The applicant shall maintain a sufficient number of receptacles for the disposal of waste, properly covered to prevent infestation by insects. Such receptacles shall be emptied as often as is necessary, but in no event less than once per day.~~
  - (9) All sidewalk cafes and attendant facilities shall be inspected by the Community Development Department prior to permit issuance.
  - (10) Acceptance of a sidewalk cafe permit is an express acknowledgment and consent to the terms and restrictions set by this section. The grant and usage of such license is a privilege, not a right, subject to reasonable restrictions as set out herein or as may be promulgated by the regulatory authority.
  - (11) As an express condition of the acceptance of a permit hereunder, the recipient agrees to police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least twice daily.

(f)  
standards:

Design Standards and Regulations. All sidewalk cafes shall comply with the following

- (1) A sidewalk cafe shall have a pedestrian walkway with an unobstructed width of 5 feet between the sidewalk café and the interior curbline and 4 feet between the sidewalk cafe and any obstacle (tree, pole, post, sign, planting area, bus shelter, etc.) when such an obstacle exists. The pedestrian walkway shall have a minimum of 3 feet of smooth, even surface with traditionally accepted irregularities, be provided with an unobstructed height of 7 feet between the ground plane and an overhead obstacle (tree branch, overhead sign, awning, etc.).
- (2) No sidewalk cafe may be permanently located within the sidewalk area by means of raised deck platform, fence, walls or other structures or enclosed by fixed walls, except that sidewalk cafe boundaries may be delineated by the use of temporary barriers such as balustrades, cordons or railings. Any such temporary barriers must be easily removed and 3 feet or less in height above the sidewalk. Under no circumstances shall temporary barriers as authorized hereunder be allowed in the identified pedestrian walkway, nor shall a temporary barrier be affixed to the sidewalk or to any permanent structure, except that it may be attached by removable clips or devices approved in advance by the City Engineer.
- (3) The City Engineer may approve temporary platforms or similar structures for the sole purpose of leveling sidewalk cafe areas on which sidewalk cafes are located. Any such structures shall be subject to Section 1 "Removal of Improvement" restrictions, including removal for snow and ice maintenance.

- (4) No sidewalk cafe shall be situated:
  - A. Within 6 feet of any pedestrian crossing.
  - B. Within 5 feet along the street line of any fire hydrant or other emergency facility.
  - C. Within 5 feet of any driveway.
  - D. Within 10 feet to the rear of any sign marking a designated bus stop.
  - E. In a manner which restricts sight easements of vehicular traffic.
  - F. In a manner which obstructs traffic control devices or traffic signs.
- (5) All sidewalk cafes shall be open to the air.
- (6) Canopies and awnings may be permitted in accordance with specifications, as delineated by the Building Code and the Zoning Ordinance that relate to height, placement, interference with pedestrian passage and traffic sight easements.
- (7) Sidewalk cafes shall in no way obstruct the ingress to or the egress from any building or business.
- (8) All sidewalk cafes and their attendant facilities or improvements shall comply with clearances required for structures in relation to utility lines as provided in the Building Code.
- (9) No sidewalk cafe shall be located on the sidewalk between the building facade and a bus stop.
- (10) No portion of a sidewalk cafe or its facilities, appurtenances, planters, shrubs, tables, chairs or other materials shall be permitted in the pedestrian walkway as defined in this section. Sidewalk cafes shall provide and maintain adequate lighting in and around the pedestrian walkway so as to allow sidewalk users to observe and avoid obstructions.
- (11) Sidewalk cafes shall not obstruct access to hydrants, streetlights, telephones, mailboxes, transit stops or any other public service facility on the sidewalk area or street.
- (12) No signs shall be hung or attached to any portion of the sidewalk cafe, except those signs that are in compliance with provisions of the City Zoning Ordinance.
- (13) A sidewalk cafe may be expanded to an abutting property with the written permission of that abutting property owner.
- (14) In the event that the proposed sidewalk cafe is not in front of a restaurant or abutting property, the applicant must provide written permission from the owner of the property and reasonable procedures that a sidewalk cafe can be operated in a noncontiguous location.

(g) Regulations. A sidewalk cafe authorized and operated pursuant to this section shall:

- (1) Comply with all plans submitted to and approved by the Community Development Department.
- (2) Serve alcoholic beverages only in conformance with Pennsylvania Liquor Control Board requirements.
- (3) Operate only during the same hours that the ~~establishment is open for service~~ ~~kitchen is open for service~~. All patrons must be vacated from the sidewalk cafe and all utensils, containers or any other serving materials used in the operation of the sidewalk café or within the area used by the sidewalk cafe shall be removed from the sidewalk cafe area within ~~15 minutes~~ ~~4-hour~~ after the ~~establishment~~ ~~kitchen~~ closes; provided, however, that any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe may be allowed to remain on the sidewalk area if specifically permitted in the Community Development Department's approval of the sidewalk cafe plans as described below.
- ~~(4) Remove all sidewalk cafe structures by October 30, and not install prior to April 1, in any year for which a license is granted. In the event that favorable weather conditions should prevail, a sidewalk cafe may temporarily reopen on a daily basis during the time period set forth in this subsection, with the approval of the Community Development Department. All tables, chairs and other materials must~~

~~be removed every day by sundown.~~

- (5) Use no food serving or food service equipment to hold, store, heat, warm, cool, chill or otherwise keep food to be served outside of the sponsoring restaurant for use in or by a sidewalk cafe.
- (6) Serve no food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table. If the sidewalk cafe is located adjacent to the sponsoring restaurant, the following is allowed:
  - A. Self-service by patrons, without table service.
  - B. Facilities for standing instead of sitting.
- (7) Play no music, from whatever source (acoustical, electric, or other) on the premises outdoors, except in conformance with other City ordinances.
- (8) Police for trash and debris, including cigarette butts, an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least twice daily.
- (9) Comply with all other provisions of the Codified Ordinances of the City of York.

(h) Permit Fees.

- (1) The permit fee for a sidewalk cafe shall be fifty dollars (\$50) for the first calendar year and twenty-five dollars (\$25) for each calendar year thereafter.
- (2) The permit fee for a mini-cafe shall be twenty-five dollars (\$25) for the first calendar year and fifteen dollars (\$15) for each calendar year thereafter.
- (3) There shall be no prorating or rebating of permit fees.
- (4) These fees shall be in addition to all other fees and taxes required for the establishment.

(i) Application Requirements. Each applicant for a license under this section shall submit three copies of his application and plans for the sidewalk cafe to the Community Development Department, which shall issue a permit upon compliance with the terms and conditions of this section. Application must be made within 14 business days prior to the intended start date. Applications for sidewalk cafe permits shall include the following:

- (1) The name and street address of the applicant.
- (2) The name and street address of the owner of the sidewalk cafe, of the owner of the underlying freehold and/or abutting property owner if not the same person and:
  - A. A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
  - B. Letter from the abutting property showing their support for the operation of a sidewalk café
  - C. Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.
- (3) The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.
- (4) The name and street address of the operator, manager or other person responsible for the operation of the sidewalk café
- (5) The name under which the sidewalk cafe will be operated.
- (6) The street address and the City food establishment license number of the restaurant operating and servicing the sidewalk café
- (7) A copy of the current City business license.
- (8) A site plan drawn to a scale of ½ inch equals 1 foot, showing:
  - A. The entirety of the sidewalk abutting the property of the owner.
  - B. The frontage of the property proposed for the sidewalk café
  - C. All abutting properties.
  - D. All existing sidewalk features including, but not limited to, trees,

utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks and mailboxes.

E. Any bus stops within 25 feet on either side of the proposed sidewalk café area.

F. Detailed drawings of legible proportions showing the limits of the proposed sidewalk café site, the design dimension and proposed location of all proposed temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed pedestrian walkway and the side and front elevations of the proposed sidewalk café

(9) The seating capacity of the proposed sidewalk café

(10) A copy or copies of the certificate or certificates of insurance required to be provided.

(11) If the serving of alcoholic beverages is proposed, a copy of the current State liquor license that will allow or can be amended to allow applicant to serve alcoholic beverages in the sidewalk café

(j) Review of Application.

(1) Before any permit is issued pursuant to this section, the plans submitted to the Community Development Department pursuant to this section shall be referred to and approved by the Public Works Director, Police Department and Department of Fire and Rescue Services.

(2) The Community Development Department shall determine if the applicant has:

- A. Obtained the approval of the Public Works Director and Building Official for any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk café. No such railing, flooring or other support or enclosure shall be considered an erection of, addition to or a structural alteration of a building or structure under applicable City Building Code unless such railing, flooring or other support or enclosure is permanently attached to such building or structure.
- B. Complied with all rules, regulations and specifications of this section.
- C. Complied with all applicable local and state building, fire and property maintenance codes.
- D. Been deemed a "public nuisance" pursuant to Article 1751 of the City's Codified Ordinances ("Nuisance Abatement"). Properties that are considered a "public nuisance" and subject to possible closure shall not be eligible for a permit under this section.

(3) The Community Development Department may impose any other restriction on the location, size or design of the sidewalk café that protects the health, safety and welfare of the public.

(k) Conditions for Issuance of Permit.

(1) Upon approval by the Community Development Department of the plans submitted by the applicant and upon the applicant furnishing to the City the following, the Community Development Department shall issue a permit, valid through the end of the calendar year:

A. A hold-harmless agreement executed by the applicant and indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the sidewalk café. Said hold-harmless agreement shall be subject to the approval of the City Solicitor.

B. Proof of liability insurance in the amount of \$500,000 per individual shall be provided, with the City named as an additional insured.

C. If applicable, proof that the applicant has a State liquor license authorizing him to serve alcoholic beverages in his/her sidewalk café



- (2) Sidewalk cafe permits are not transferable. Changes in ownership/operation require reapplication for a permit.

(l) Removal of Improvements. If the City incurs any costs in removing any equipment or improvements from a sidewalk café for the following reasons: ~~the establishment failed to remove equipment at the close of the business day, the establishment allowed improvements to interfere with sidewalk maintenance including snow shoveling or de-icing by city Public Works Department,~~ the establishment went out of business or the establishment failed to renew its license, within 30 days of the close of the outdoor season, the City shall remove and store all equipment and bill the property owner for the actual costs of labor, materials, equipment or any other item, service, including storage costs, or expense incurred by the City to correct such violation, plus any additional administrative fees. The equipment removed shall remain in the City's possession until the bill for removal and any fines or fees are paid in full.

(m) Permit Duration and Renewal.

- (1) A permit issued pursuant to this section shall be valid for one (1) calendar year unless the permit is suspended or revoked as provided herein, or unless the restaurant is closed, sold, or otherwise dissolved. Upon application for renewal, a sidewalk cafe permit will be reviewed and its complaint history, if any, shall be provided by the Community Development Department, Police Department, Department of Public Works, and Department of Fire and Rescue Services. Each agency shall provide to the Community Development Department copies of any inspection results, complaints filed and citations issued concerning the sidewalk cafe under consideration. The renewal fee for the renewed permit shall be as stipulated above in Section 1113.10(h).
- (2) Before a permit is renewed, the restaurant and property upon which the sidewalk café is located must be compliant with all applicable local and state building, fire and property maintenance codes, and must not be considered a "public nuisance" pursuant to Article 1751 of the City of York's Codified Ordinances ("Nuisance Abatement").

(n) Written Notice of Violations; Suspension of Permit. Upon finding by either the Community Development Department or Police Department that an applicant has violated any provisions of this section, the Community Development Department shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Community Development Department may take appropriate action, as necessary, to maintain the pedestrian walkway. The Community Development Department may suspend the applicant's permit issued pursuant to this section, as well as pursue prosecution in accordance with the requirements herein. The Community Development Department shall give a violator reasonable time to repair any structural damage or physical violation of any provision of this section. An appeal before City Council shall be accorded if requested in writing and within fifteen (15) days from the date of the Community Development Department's written decision.

(o) Violations and Penalties; Effect on Eligibility for Permit.

- (1) Whoever violates any provisions of this section shall, upon conviction thereof in a summary proceeding, be fined not less than two hundred dollars (\$200.00) and not more than one thousand dollars (\$1,000) for each offense, to be collected as other fines and costs are by law collectible, or imprisoned for not more than 90 days, or both. Each day during which a violation occurs shall constitute a separate offense. Any person who is convicted of a violation of any of the provisions of this section may have his permit suspended for one full year and may not be eligible for another license until the expiration of one (1) full year from the date of the license suspension.
- ~~(2) Any person who fails to remove a sidewalk structure by October 30, as provided for in this section shall not be eligible for a permit in any following year.~~
- (3) In the event of one or more infractions to the provisions herein or other violations or city ordinances, the permit may be revoked by the Community Development

Department. Prior to such revocation, the Community Development Department shall give ten (10) days written notice to the permittee of his violation of or his failure to observe a general condition as set out above. If the permittee requests a hearing in writing prior to the expiration of that 10-day notice period, the Community Development Department shall hold a hearing to determine if the permit should be revoked. The permittee may present evidence in his own behalf if he so desires. The decision in regard to revocation may be appealed in writing to City Council within fifteen (15) days of the Community Development Department's written decision to revoke the permit. If the permittee fails to request such a hearing, the revocation shall become effective upon the expiration of the 10-day notice period. If a permit granted under this Section is revoked, all tables, chairs, and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.

- (4) This section and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law.

(p) Determination on Application. The Community Development Director shall grant or deny an application for a permit pursuant to this section within ten (10) business days of its complete submission.

(q) Reservation of Rights. Neither the adoption of this section nor the granting of any permit pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the City of York with respect to streets and sidewalks, whether express or implied.  
(Ord. 13-2010. Passed 4-20-10.)

SECTION TWO: This ordinance shall become effective in accordance with the law.

PASSED FINALLY:

BY THE FOLLOWING VOTE:

YEAS: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

NAYS: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Carol Hill-Evans, President of Council

ATTEST:

\_\_\_\_\_  
Dianna L. Thompson-Mitchell, City Clerk

Presented to the Mayor for approval this \_\_\_\_\_ day of \_\_\_\_\_.

Approved: \_\_\_\_\_  
Mayor Date

Vetoed: \_\_\_\_\_  
Mayor Date