

CODIFIED ORDINANCES OF THE CITY OF FRANKLIN

PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

TITLE ONE - Street and Sidewalk Areas

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ARTICLE 912
Sidewalk Café

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912.01 DEFINITIONS

Abutting Property. Property contiguous to a public street right-of-way.

City. The City of Franklin, Venango County, Pennsylvania.

City Representative. A City employee designated by the City Manager to represent the interests of the City in the administration and enforcement of this ordinance.

Owner. 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 café is to be operated under the authority of this ordinance.

Pedestrian Walkway. The portion of a sidewalk or walkway area this free of any obstruction, fixture, or appurtenances and is used for pedestrian travel.

Permit Period. From April 1 through October 31 each calendar year.

Person. A natural person, heirs, executors, administrators or assigns, and includes a firm, partnership corporation, association, trust, estate or other legally recognized entity, and its or their successors or assigns, or the agent of any of the aforesaid.

Public Service Facility. A public feature, such as a mailbox, bench, trash receptacle or other facility that is provided for use by the general public.

Restaurant. A food service or drinking establishment where food or drink is purchased and served in individual portions for consumption on the premises. This term shall not include an establishment which operates exclusively as a caterer, a commissary, a food processing establishment, a mobile food unit, or a retail food store.

Seating Area. The defined area of a sidewalk café, in which all tables, chairs, and other related appurtenances must be contained within at all times.

Sidewalk. That improved portion of the street right-of-way, which is used by the public or open for use by the public, located between the curblin and abutting property.

Sidewalk Café. Designated seating area located on a sidewalk or pedestrian walkway, which is associated with an adjacent eating and/or drinking establishment, where food or beverages are delivered for consumption on the premises. It is characterized by movable tables, chairs, and other related appurtenances, and may be shaded by umbrellas. Sidewalk cafes shall be permitted only as an accessory use to a properly licensed restaurant.

Street Right of Way. The entire right-of-way of a public highway, alley, or road, including any sidewalks or pedestrian walkways contained within it.

912.02 PERMIT REQUIRED

No person shall engage in the operation of a sidewalk café without first applying for and obtaining an annual permit from the City, and then operating within the terms and conditions of all applicable ordinances and general permit requirements. If the applicant is not also the owner of the property, the property owner must also be listed as a joint applicant, evidencing the owner's agreement to seek a permit.

912.03 REQUIREMENTS

Each sidewalk café shall comply with the following requirements:

- (a) The sidewalk or pedestrian walkway area on which the sidewalk café is to be located shall be flat and in good repair.
- (b) The sidewalk café's location and use on the sidewalk shall not interfere with the clear vision of a motorist on the adjoining street, particularly at any intersection of the sidewalk and another street or alley. The sidewalk café shall not extend laterally along the sidewalk beyond the building frontage of the business operating the sidewalk café, unless it adjoins a pedestrian walkway and that area has been approved for use by the City, as well. Notwithstanding the foregoing, a sidewalk café may extend laterally along the sidewalk of an adjoining area so long as the adjoining property owner and/or adjoining business owner submits their consent for the operation of such sidewalk café and complies with all of the terms and conditions of this Ordinance.
- (c) For safe pedestrian circulation, the sidewalk café's location shall leave a clear and unencumbered area of not less than five (5) feet between the edge of the seating area and the building in which the business is present. Consideration for clearances shall also be given to any other obstruction or public service facility such as a fence, utility pole, light fixture, planters, and trash receptacles within the seating area.
- (d) No sidewalk café shall be situated in a manner which interferes with any pedestrian crossing or driveway, restricts access to fire hydrants and any public service facility, obstructs traffic signs and traffic control devices, or interferes with the parking or exiting of vehicles. No seating area shall be permitted within two (2) feet from the curblines of a public street.
- (e) The property owner and operator of the establishment shall keep the sidewalk café clean and free of all paper, trash, refuse, and debris and shall power wash the sidewalk or public way if determined by the City Representative that it is necessary.
- (f) Establishments requesting a sidewalk café must provide a sufficient number of trash receptacles for their own waste. Public receptacles placed by the City are not to be used for such purposes. Further, a sidewalk café permittee agrees to police for trash and debris to an

area extending at least fifteen (15) feet in each direction from the outermost boundary of the sidewalk café.

- (g) The seating area may accommodate tables with or without umbrella-type shades, as long as all such shading devices are secure and affixed in a manner acceptable to the City.
- (h) A sidewalk café may operate only during the same hours that the associated restaurant is open for service, but at any rate, all patrons must be vacated from the sidewalk café area by 9:00 p.m.
- (i) No sidewalk café advertising or signs will be allowed, unless approved by zoning and/or with a proper certificate of appropriateness issued, as applicable.
- (j) All materials, including outdoor furniture and accessory items used in conjunction with the sidewalk café, shall be secured for normal wind load at all times to avoid associated traffic and pedestrian hazards during windy conditions. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property. Tables must have smooth and easily cleanable tops. No picnic tables shall be permitted. During off-season periods, all outdoor furniture and accessories shall be removed and stored elsewhere.
- (k) A sidewalk café shall contain no food service equipment to cook, hold, store, heat, warm, cool, chill, or otherwise keep food to be served outside of the restaurant.
- (l) No electrical cords are permitted within the café area.
- (m) Alcoholic beverages may be served or allowed to be consumed only while seated within the delineated area of the sidewalk café, and only in conformance with Pennsylvania Liquor Control Board requirements. For those establishments duly licensed for sale and consumption of alcoholic beverages by the PLCB, patrons shall not be subject to Article 703 of the Codified Ordinances of the City of Franklin, which is also known as the open container law, while in the area encompassed within a permitted sidewalk café.
- (n) The holder of a sidewalk café permit is responsible for keeping all visitors, patrons, employees and café furnishings from occupying or encroaching upon the required clear sidewalk space.
- (o) No music may be played, from whatever source, emanating from the outdoor sidewalk café premises.

- (p) Sidewalk café permits are not transferrable to another entity. Any applicant issued a permit must also have a mercantile license on file in accordance with Article 301 of the Codified Ordinances of the City of Franklin.

912.04 PERMIT APPLICATION PROCESS

All applicants for a sidewalk café permit must submit an application on a form provided by the City of Franklin. Submitted applications shall include, without limitation:

- (a) Applicant and restaurant information, including that of the property owner, if different from the applicant;
- (b) A site plan showing dimensions of the abutting property, all existing features (trees, utility poles, sign poles, fire hydrants, trash receptacles, mailboxes, etc.);
- (c) Proposed limits of the seating area, the size and location of all proposed tables and chairs, and proposed remaining pedestrian walkway, with dimensions;
- (d) Color photos showing the restaurant or establishment and its spatial relationship to the requested sidewalk area; and
- (e) Any other information as may be determined necessary by the City.

912.05 CONDITIONS FOR PERMIT ISSUANCE

Upon approval by the City of the application and upon the applicant furnishing the City with the following, the City shall issue a permit, valid for the permit period. The permit shall include the dates and duration of the sidewalk café. Any permit so issued shall be subject to immediate revocation by the City for failure to meet or to maintain the area of the sidewalk café in strict accordance with the requirements of this ordinance or other applicable laws, rules, regulations, orders or directives. Further, the applicant agrees to provide the following:

- (a) The applicant and property owner, if different than the applicant, shall agree(s) in writing to defend, 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 such sidewalk café, or by the acts or

omissions of the employees or agents of the permit holder in connection with such café. The applicant and property owner, if different than the applicant, 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 any street, sidewalk, or public construction occurs that necessitates its removal.

- (b) The applicant and property owner, if different than the applicant, shall agree in writing to obtain and maintain in full force and effect, at the applicant and property owner's own expense, an insurance policy naming the City as an additional insured with coverage of not less than \$1,000,000. The policy shall afford comprehensive general liability insurance including contractual liability insurance covering the applicant and property owner's defense, indemnification, and hold harmless obligations under (a) above, and shall provide the City be notified upon the expiration of coverage in the event the policy is cancelled or the applicant or property owner fails to renew the insurance policy.

912.06 PERMIT FEES

Prior to the issuance of the sidewalk café permit, the applicant shall pay a non-refundable fee to the City when the application is filed. The amount of the fee shall be determined by the fee schedule in place at the time of application review.

912.07 REMOVAL OF SIDEWALK CAFÉ

If the City should incur any costs in removing any sidewalk café appurtenances, for any reason, the City shall bill the property owner for the actual costs incurred. Any bill for such removal of items shall be paid by the property owner within forty-five (45) days of the date the bill is posted in the United States mail.

912.08 REVOCAION OF PERMIT

The City shall have the right to revoke a sidewalk café permit for any single violation or multiple violations of this Ordinance, or for any reason deemed necessary by the City.

For any permit revocation, the permit holder may file an appeal with the Code Enforcement Officer or City Manager within seven (7) calendar days after the date of revocation. The appeal shall be submitted in writing and mailed to, or personally served upon, the Code Enforcement Officer or City Manager. The appeal shall set forth the reason for the challenge to the permit revocation. The

filing of an appeal shall not stay the permit revocation, and neither the permit holder nor any other person shall operate a sidewalk café at the same location during the time of the appeal process.

An appeal hearing shall be held before the City Council at a date and time established by the City Council, but no later than forty-five (45) calendar days after the date of service of the appeal upon the Code Enforcement Officer or City Manager. At the appeal hearing, the City Council shall receive evidence in the form of testimony and exhibits. The Code Enforcement Officer shall prosecute the revocation on behalf of the City, and the City Solicitor shall serve as the City's legal counsel for the hearing and decision. The appellant may elect to be represented by counsel at the appeal hearing.

The City Council shall issue a written decision concerning the appeal no less than twenty (20) days following the last day of the appeal hearing. An aggrieved party shall be entitled to file an appeal to the decision of City Council with the Court of Common Pleas of Venango County, Pennsylvania, within twenty (20) days after the date of mailing of the written decision of City Council.

912.09 RESERVATION OF RIGHTS

Neither the adoption of this Ordinance nor the granting of any permit pursuant hereto shall be construed as a waiver of any right, privilege, or immunity of the City with respect to streets, and sidewalks, whether expressed or implied.

A permit granted pursuant to this Ordinance does not create any vested property right in the sidewalk or pedestrian walkway area to which the permit applies.

912.99 PENALTIES.

Any person who shall violate any provision of this Ordinance, including, without limitation, the operation of a sidewalk café without a permit, shall, upon conviction thereof in a summary proceeding, be punishable by a fine of not more than Three Hundred Dollars (\$300.00) and costs of such proceedings or, upon default of payment of such fine and costs, by imprisonment in the Venango County Prison for a term of not more than thirty (30) days; provided, however, that if the Magisterial District Judge determines that the defendant is without the financial means to pay the fines and costs immediately or in a single remittance, such defendant shall be permitted to pay the fines or costs in installments and over such periods of time as the Magisterial District Judge deems to be just. For the operation of a sidewalk café without a permit, the fine shall be assessed for each day a person violates this Ordinance. (Ord. 7 of 2022, Sect. 2, Passed 05-02-22)