

**THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN
ORDINANCE G-20-13**

AN ORDINANCE concerning
Temporary outdoor dining on private property

FOR the purpose of permitting food and beverage service establishments to provide outdoor dining in parking lots and other outside areas on account of the ongoing COVID-19 pandemic

BACKGROUND

An outbreak of disease (“COVID-19”) caused by the novel coronavirus occurred in China in late 2019 and has currently been detected in all but two countries worldwide, and in every state within the United States. COVID-19 is a serious respiratory disease, resulting in illness or death, caused by the person-to-person spread of the novel coronavirus, which was not previously found in humans. The World Health Organization (WHO) and the Centers for Disease Control and Prevention (CDC) have declared the COVID-19 outbreak a “public health emergency of international concern”, and the Secretary of the U.S. Department of Health and Human Services has declared that COVID-19 creates a public health emergency.

In response to the COVID-19 pandemic, Governor Hogan issued a proclamation declaring a state of emergency and catastrophic health emergency for the State of Maryland on March 5, 2020 and renewed such state of emergency on March 17, 2020, April 10, 2020, and May 6, 2020. The Governor has further issued a series of executive orders to control and prevent the spread of COVID-19 within the state. Specifically, the Governor’s March 16, 2020 order closed restaurants, bars, and other such establishments to the general public, while allowing the sale of food and beverages that are promptly taken from the premises and delivery of food and beverages to customers off the premises. On May 27, 2020, an order of the Governor superseded such closure in that it allowed food service establishments as well as social and fraternal clubs with dining facilities to serve food and beverages to customers for consumption in outdoor seating areas (in addition to the already-permitted carry-out/drive-through/delivery provisions), subject to certain conditions. That order was subsequently superseded by a June 3, 2020 order including the same provisions with respect to food service establishments. The foregoing order is in effect statewide, subject to any more stringent local orders. The City has not issued a local order amending the aforementioned provisions, and therefore outdoor dining is currently permitted in the City as described in the June 3, 2020 order of the Governor.

In light of the foregoing, and as a mechanism to support food and beverage service establishments, workers, and patrons, the City wishes to allow increased outdoor dining in parking lots and similar outdoor areas adjacent to a food and beverage service establishment, subject to certain terms and conditions as described herein.

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK THAT:

- (a) **Definitions.** For the purposes of this ordinance, the following terms have the meanings given:
 - (1) “Department” means the City’s Department of Public Works.

- (2) "Director" means the Director of Public Works or the Director's designee.
 - (3) "Food or beverage service establishment" (FBSE) means a business permitted to serve food or beverages or both for consumption on-premises, including but not limited to a general restaurant, fast food restaurant, restaurant with entertainment, winery, brewery, distillery, delicatessen, or ice cream parlor, as those terms are defined or used in the LMC.
 - (4) "LMC" means the Land Management Code, Appendix A of the Frederick City Code.
- (b) **Scope.**
- (1) This ordinance applies to an FBSE, whether free-standing or located within shopping centers, that:
 - (A) provides on-site parking in accordance with the minimum parking requirements of LMC § 607; or
 - (B) has a patio or similar outside area on the same lot as the primary structure.
 - (2) This ordinance does not apply to any outdoor dining area that has or will be permitted under existing laws and regulations.
- (c) **Prior laws.** This ordinance expressly supersedes any conflicting provision in any City Code provision, ordinance, regulation, or policy, including but not limited to the minimum parking requirements of LMC § 607, to the extent of the inconsistency. This ordinance shall be construed to give full effect to the language set forth herein.
- (d) **Administration.** The Director may develop and implement administrative regulations as needed for the efficient implementation and enforcement of this ordinance.
- (e) **Outdoor dining allowed.** An FBSE may serve food and beverages to customers in the outdoor areas described in subsection (b) of this ordinance, subject to all applicable laws and regulations, including but not limited to this ordinance, the Frederick City Code, state health department and liquor regulations, and any applicable order of the Governor. Nothing in this ordinance shall be construed to eliminate the requirement to obtain any permit or approval required by any government agency with jurisdiction over the FBSE, including but not limited to the Frederick County Liquor Board or the Frederick County Health Department.
- (f) **Capacity.** The maximum number of customers that may be served in an outdoor dining area may not exceed 50% of the maximum occupancy of the FBSE. In no event shall the number of customers served inside the FBSE and in an outdoor dining area combined exceed 100% of the maximum occupancy of the FBSE. For purposes of this subsection, "maximum occupancy" means the maximum occupancy load of the FBSE as stated on the applicable certificate of occupancy or certificate of completion or, if no certificate has been issued for the FBSE, the maximum occupancy pursuant to applicable laws, regulations, and permits.

- (g) **Parking requirements.** In establishing an outdoor dining area, the owner of an FBSE shall make reasonable efforts to ensure that sufficient space for parking of vehicles is provided on the site to meet the applicable minimum parking requirements established for the FBSE in accordance with LMC § 607. At a minimum, 75% of the required spaces must remain available for parking.
- (h) **Permits required.**
- (1) Prior to serving food and beverages in accordance with this ordinance, the owner of a property on which an FBSE is located shall obtain a zoning certificate/permit from the Department. Notwithstanding the fee listed in the annual fee schedule ordinance, there is no fee for this permit.
 - (2) An FBSE may operate outdoor dining only in accordance with this ordinance and a permit issued under this ordinance.
- (i) **Permit application process.**
- (1) Any person seeking a permit shall file a completed application with the Department, on a form provided by the Department. The application must be signed by the owner of the FBSE providing the outside dining. If the owner of the FBSE is not the owner of the real property on which the FBSE is located, the property owner must sign the application or an agent authorization form accompanying the application. If an FBSE or the property on which it is located is transferred, the property owner must notify the Department of the change.
 - (2) In addition to any other information required by the Department, an application must include a plan showing all pertinent features of the area affected, including property boundaries, building footprint, parking areas, drive aisles, fire lanes, hydrants, road access, the proposed location of the outdoor dining area, and the dimensions of any proposed tents, awnings, or other temporary structures. The applicant shall demonstrate that minimum accessibility requirements are met in accordance with the Americans with Disabilities Act.
 - (3) The Department shall review a submitted application for compliance with this section. If the Department finds that the applicant meets the requirements of this section, the Department shall approve the application and shall issue a permit to the applicant.
- (j) **Conditions.** The Department may attach conditions to a permit in order to protect the public health, safety, or welfare or to ensure compliance with any applicable law or regulation, including but not limited to this ordinance.
- (k) **Term.** A permit issued under this ordinance is valid starting on the date of its issuance and ending on the earlier of October 31, 2020 or the day the Governor of Maryland rescinds the current state of emergency.

(l) Operating regulations.

- (1) In addition to all requirements or conditions attached to a permit, all permit holders shall ensure compliance with the provisions of this subsection.
- (2) All holders of permits under this ordinance shall comply with any order of the Governor in effect.
- (3) Outdoor dining areas must be maintained in a clean and safe condition at all times.
- (4) Adequate bathroom facilities must be available for customers dining in outdoor dining areas.

(m) Revocation. Nothing in this ordinance shall be construed to limit the authority of the City to modify or revoke a permit. The City may cancel a permit affected by the provisions of this ordinance if the City determines that the permit holder violates this ordinance or any condition of the permit or the operation of an outdoor dining area presents a threat to the public health, safety, or welfare of its citizens. Before revoking a permit, the Director shall provide written notice to the permit holder setting forth the grounds for and effective date of the revocation.

(n) Penalties. Violation of any provision of this ordinance is a municipal infraction punishable by a fine of \$100. Each day a violation continues is deemed a separate offense. In addition, the City may seek any other remedies available to it at law or in equity.

SECTION II. AND BE IT FURTHER ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK THAT this ordinance shall take effect on the date it is signed by the Mayor.

SECTION III. AND BE IT FURTHER ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK THAT in the event of a conflict between this ordinance and any other ordinance or resolution previously adopted by The City of Frederick, this ordinance shall prevail.

SECTION IV. AND BE IT FURTHER ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK THAT in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

APPROVED: June 5, 2020



**MICHAEL C. O'CONNOR, Mayor
Board of Aldermen**

PASSED: June 5, 2020



MICHAEL C. O'CONNOR, President,

Approved for Legal Sufficiency:

Laundra A. Nichols

City Attorney