

**THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN
ORDINANCE G-20-22**

AN ORDINANCE concerning
Temporary outdoor dining on public property

FOR the purpose of extending the period during which food and beverage service establishments are permitted to provide outdoor dining in parklets and other areas on public property, subject to certain conditions and limitations; and otherwise generally relating to outdoor dining on public property within The City of Frederick.

BACKGROUND

The City has general control of all public ways and certain public property within its boundaries. The City further has the authority to regulate the parking of motor vehicles and to allow the placement of improvements within a public way (City Code, Sec. 22-10.1).

In response to the COVID-19 pandemic, Governor Hogan has issued several proclamations declaring a state of emergency and catastrophic health emergency for the State of Maryland. The Governor has further issued a series of executive orders to control and prevent the spread of COVID-19 within the state, some of which have been modified by the Mayor. By virtue of such orders, as of October 2, 2020, a "foodservice establishment" within The City of Frederick may not allow the number of persons in the establishment to exceed 75% of its maximum occupancy, subject to numerous terms and conditions.

As a means of supporting food and beverage service establishments, workers, and patrons, on June 4, 2020, the City enacted Ordinance No. 20-14. That ordinance increased the capacity for outdoor dining in certain public areas through the earlier of October 31, 2020 or the day the Governor of Maryland rescinds the current state of emergency. The current state of emergency is still in effect and there is no indication its rescission is imminent. The purpose of this ordinance is to allow for continued opportunities for expanded outdoor dining, subject to some of the same criteria and conditions as were established in Ordinance No. 20-14 as well as some revised conditions.

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK THAT the above recitals are expressly incorporated herein and made part of this ordinance as though fully set forth herein.

SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK AS FOLLOWS:

- (a) **Definitions.** For the purposes of this ordinance, the following terms have the meanings given:
- (1) "Department" means the City's Department of Economic Development.
 - (2) "Director" means the Director of Economic Development 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 Land Management Code (Appendix A of the Frederick City Code).
 - (4) "Outdoor dining area" means the public property being used by an FBSE for outdoor dining in accordance with this ordinance, including parklets, parks, and other public property.
 - (5) "Parklet" means a portion of a public street designated as parking space between the travel lanes and the curb; and intended to provide space for customers of adjacent restaurants to enjoy outdoor dining.
 - (6) "Sidewalk café ordinance" means Chapter 22, Article VII of the Frederick City Code.
 - (7) "Sidewalk café permit" means a permit issued under the sidewalk café ordinance.
- (b) **Prior laws.** This ordinance expressly supersedes any conflicting provision in any City Code provision, ordinance, regulation, or policy, including but not limited to the sidewalk café ordinance. This ordinance shall be construed to give full effect to the language set forth herein.
- (c) **Vested rights.** The establishment, use, or operation of an outdoor dining area does not create any vested right in the property being used.
- (d) **Administration.** The Director may develop and implement administrative regulations as needed for the efficient implementation and enforcement of this ordinance.
- (e) **Outdoor dining, generally.**
- (1) An FBSE may serve food and beverages to customers in outdoor dining areas, 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 orders issued by the Governor of Maryland.
 - (2) 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.
 - (3) Outdoor dining areas for individual FBSEs will be designated by the Director of Economic Development and will be memorialized as part of the agreement referenced in subsection (i) of this section.
- (f) **Operating requirements.**
- (1) All furniture and temporary structures must be removed from the outdoor dining area and secured in an approved location when the outdoor dining area is not in use.

- (2) In locations designated by the Directory, temporary outdoor structures, including tents and awnings, may be used in outdoor dining areas in accordance with this paragraph. Temporary structures on public property require a separate building permit. Temporary structures must be weighted, anchored, or secured to the ground, but cannot be anchored with any method that requires screwing, cutting, or drilling into the public way or any other public property. Temporary structures must be at least 10 feet from any adjacent permanent or temporary structure, parked car, vegetation, or other combustible material, and may not obstruct or impede the use of drive aisles, fire lanes, or hydrants. The Director may prohibit the use of temporary structures during severe weather events.
 - (3) Portable propane-fired or electric heaters may be used in open, uncovered portions of outdoor dining areas. Heaters shall be installed, operated, and maintained in a safe manner in accordance with the prescribed recommendation of the manufacturer and the City Fire Prevention Code. Electric heating equipment should be unplugged or disconnected and removed from public property for overnight storage. Propane canisters shall not be stored on public property.
 - (4) The owner of an FSBE shall ensure that an outdoor dining area is kept in a clean and safe condition at all times. Outdoor dining areas, including storm drain inlets and curb lines located thereon, must be kept free of leaves, ice, and snow. Leaves must be bagged in biodegradable compost bags and placed on the sidewalk for pickup by the City on the appropriate day each week. Within 12 hours after snow stops falling, the owner of an FSBE shall remove any accumulated snow and ice from the outdoor dining area.
- (g) **Parklets.** Outdoor dining will be permitted in parklets on those streets or portions of streets designated by the Mayor for such purpose subject to all applicable provisions of this ordinance, including the following conditions:
- (1) A parklet may not be located within parking space reserved for individuals with disabilities.
 - (2) An FSBE with an existing sidewalk café permit shall remove all property comprising the sidewalk café before placing any property in a parklet. The sidewalk café permit shall be deemed suspended for the duration of the use of the parklet.
 - (3) No personal property used in a parklet may encroach into the travel lanes or onto the sidewalk. No portion of a parklet may obstruct access to any hydrants, streetlights, mailboxes, or any other such improvement on the adjacent street or sidewalk area. To ensure a clear path of travel along the sidewalk as well as adequate physical distancing of individuals, all furniture and other personal property must be at least 7 feet from the face of any adjacent building.
 - (4) Umbrellas may be used but must be a solid color with no markings or graphics. All furniture, umbrellas, and other personal property must be immediately removed in the event of severe weather.
- (h) **Parks and other public property.** Outdoor dining will be permitted in city parks or on other city property designated by the Mayor for such purpose subject to all applicable provisions of this ordinance. Umbrellas may be used but must be a solid color with no markings

or graphics. All furniture, umbrellas, and other personal property must be immediately removed in the event of severe weather.

(i) Existing sidewalk cafés.

- (1)** In addition to the automatic suspension established in subsection (f) of this section, the Director may suspend an existing sidewalk café permit if the Director deems it necessary to effectuate the provisions of this ordinance. Before suspending a permit, the Director shall provide written notice to the permit holder setting forth the grounds, effective date, and length of the suspension. For purposes of this paragraph, "Director" means the Director of Public Works or designee.
- (2)** The sidewalk café ordinance is hereby modified such that enclosures need not be constructed of a stable, rigid framework and may instead include ropes or chains, railings, or other such temporary, easily removed barriers.

(j) Agreement required.

- (1)** Except as otherwise provided in paragraph (3) of this subsection, an FBSE wishing to provide outdoor dining in accordance with this ordinance shall enter into an agreement with the City for such purpose. An agreement issued under this section will:
 - (A)** include provisions requiring the FSBE to adhere to all applicable orders of the Governor, including but not limited to the requirements for staff to wear face coverings, for patrons (except household members) to be seated at least six feet away from each other, and to clean and disinfect in accordance with CDC and MDH guidelines;
 - (B)** require the FBSE to carry liability insurance and to indemnify the City and hold the City harmless with respect to any damages arising from personal injury or property damage sustained from the installation, use, operation, or maintenance of an outdoor dining area under this ordinance;
 - (C)** specify hours of operation for the outdoor dining area;
 - (D)** indicate where the FSBE's property will be stored when the outdoor dining area is not in use;
 - (E)** include a statement as to whether or not the possession, consumption, and sale of alcoholic beverages is permitted, subject to a valid liquor license and all other applicable laws and regulations; and
 - (F)** be valid starting on the date of its issuance and ending on the earlier of October 31, 2021 or 30 days after the day the Governor of Maryland rescinds the current state of emergency.
- (2)** This paragraph applies to an FBSE that has entered into an outdoor dining agreement with the City pursuant to Ordinance No. 20-14, and which is not proposing to change the location of its outdoor dining area. The FBSE and the City

may amend the prior agreement to incorporate the new deadlines and requirements of this ordinance.

- (3) The Director of Economic Development is hereby authorized to sign an outdoor dining agreement or amendment to an outdoor dining agreement on behalf of the City.

(k) Agreement application process.

- (1) Any person seeking to enter into a new outdoor dining agreement shall file a completed application with the Director, on a form provided by the Department. The application must be signed by the owner of the FBSE providing the outside dining. If ownership of an FBSE is transferred, the owner must notify the Department of the change.

- (2) In addition to any other information required by the Department, an application for a new outdoor dining agreement must include a plan showing scaled drawing of dimensions of the proposed outdoor dining area, and details of the furniture and temporary structures to be used, and an operations plan.

- (3) The Department shall review a submitted application for a new outdoor dining agreement for compliance with this section. If the Department finds that the applicant meets the requirements of this section, subject to the availability of space for outdoor dining area and other reasonable considerations, the Department will prepare a proposed agreement and submit it to the applicant for signature. When the agreement is fully executed, the Department will issue the applicant a notice to proceed with installation and operation of the outdoor dining area.

- (4) Any person seeking to amend a dining agreement entered into under Ordinance No. 20-14 shall file a completed application with the Director, on a form provided by the Department.

(A) The application for an amendment must specify any changes proposed to the design or operation of the outdoor dining area. Upon review of the application, the Department may require the applicant to submit an application for a new outdoor dining agreement instead of amending the agreement entered into under Ordinance No. 20-14.

(B) If the Department finds that the applicant meets the requirements of this section, the Department will prepare a proposed amendment and submit it to the applicant for signature. The Department will notify the applicant when the amended agreement is fully executed.

- (l) **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 III. AND BE IT FURTHER ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK THAT this ordinance shall take effect on October 15, 2020 and shall remain in effect until the earlier of October 31, 2021 or 30 days after the date the Governor of Maryland rescinds the current state of emergency.

SECTION IV. AND BE IT FURTHER ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK THAT this ordinance supersedes Ordinance No. 20-14 to the extent of any inconsistency, and 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 V. 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.

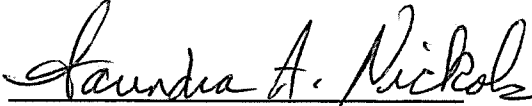
APPROVED: October 15, 2020


MICHAEL C. O'CONNOR, Mayor
Board of Aldermen

PASSED: October 15, 2020


MICHAEL C. O'CONNOR, President,

Approved for Legal Sufficiency:


Sandra A. Nichols
City Attorney