

**THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN
ORDINANCE G-21-18**

AN ORDINANCE concerning
Temporary outdoor dining on public property

FOR the purpose of extending a certain sunset provision to continue to allow food and beverage service establishments to provide expanded outdoor dining in parklets and other areas on public property during the ongoing COVID-19 pandemic.

BY amending Ordinance No. G-20-22

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).

On March 5, 2020, Governor Hogan issued a proclamation declaring a statewide state of emergency and catastrophic health emergency to control and prevent the spread of COVID-19 within the State. After renewing such proclamation several times, on August 11, 2021, Governor Hogan issued a proclamation under which the state of emergency was continued one more time, until 11:59 p.m. on August 15, 2021. The statewide state of emergency relating to COVID-19 is therefore no longer in effect.

On March 13, 2020, pursuant to the Maryland Annotated Code, Public Safety Article, § 14-111, finding that the impending threat to the City of Frederick by COVID-19 was a catastrophic health emergency requiring the City to deploy resources and implement certain emergency powers, Mayor O'Connor issued Executive Order No. 20-1, proclaiming a state of emergency and catastrophic health emergency to control and prevent the spread of COVID-19. On April 8, 2020, pursuant to the consent of the Board of Aldermen granted via Resolution No. 20-06, Mayor O'Connor issued Executive Order No. 20-2, providing for the continuation of the declaration of emergency. The Mayor currently intends to lift the City's state of emergency once at least 70% of the community is fully vaccinated or we return to a state of low transmission of the virus; however, this is subject to change in response to evolving conditions. Nevertheless, at this time, the City's state of emergency remains in effect.

Since the onset of the COVID-19 pandemic, the City has enacted several ordinances intended to support food and beverage service establishments, workers, and patrons. On June 4, 2020, the Board of Aldermen enacted Ordinance No. G-20-14, which increased the capacity for outdoor dining in certain public areas "until the earlier of October 31, 2020 or the day the Governor of Maryland rescinds the current state of emergency". On October 15, 2021, the City enacted Ordinance No. G-20-22, which modified some of the terms and conditions relating to outdoor dining and provided that it would remain in effect "until the earlier of October 31, 2021 or 30 days after the Governor of Maryland rescinds the current state of emergency".

The Board of Aldermen believes it is in the best interests of the residents, businesses, and visitors to the City of Frederick to extend the above-referenced sunset provision to align with the City's state of emergency, recognizing that the local public health metrics and other local circumstances

are a more accurate indicator of the necessity or desirability of expanded opportunities for outdoor dining.

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Ordinance No. G-20-22 is hereby amended by revising subsection (j) thereof as follows:

(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; Governor or MDH.] **and regulations;**
 - (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] **Mayor** 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.

SECTION II. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Ordinance No. G-20-22 is amended by revising subsection (k) thereof as follows:

(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] an existing** 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.] existing agreement.**
 - (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.

SECTION III. AND BE IT FURTHER ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Ordinance No. 20-22 is hereby amended by revising Section III thereof as follows:

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] Mayor rescinds the current state of emergency.

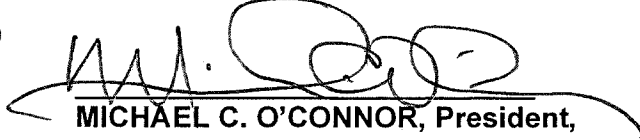
SECTION IV. AND BE IT FURTHER ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That except as otherwise amended by this ordinance, Ordinance No. G-20-22 remains in effect as originally enacted; and that this ordinance shall take effect on the date signed by the Mayor; and that in 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.

APPROVED: September 2, 2021

PASSED: September 2, 2021



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



MICHAEL C. O'CONNOR, President,

Approved for Legal Sufficiency:



City Attorney