

ARTICLE 32 - DOWNTOWN SIDEWALK DINING

- A. Purpose The Downtown Sidewalk Dining Permit is intended to facilitate outdoor dining in the downtown area to create an active streetscape, enhance the economic and social vitality of the downtown area, and promote pedestrian and retail activity; to allow for the use of public sidewalks for such outdoor dining; and to expedite the approval of such facilities while ensuring that the public's use of the sidewalks will not be significantly impaired by such dining; and to prevent any adverse impact to adjacent properties from such dining.
- B. Permitted Areas Sidewalk Dining shall be permitted only upon a property which is located within the Downtown Special Service Area #1 of the City, which is zoned B-1, Primary Business District, and which has a restaurant business being operated thereon; for purposes of Article 32 "restaurant" means a public place kept, used, maintained, advertised, and held out to the public as a place where food and/or beverages are prepared for consumption on-premises and then served on-premises.
- C. Alcoholic Liquor No alcoholic beverage shall be sold, served, consumed, or possessed by any person within a sidewalk dining area unless the sidewalk dining area is part of the "licensed premises" of a Restaurant or a Restaurant With Lounge having a "Downtown Sidewalk Dining Liquor Permit" issued under Article 6, Section 6.5, Subparagraph 15 of the Revised Code of Ordinances.
- D. Application/Permit It shall be unlawful to operate a Sidewalk Dining Area or to engage in or allow sidewalk dining without first having obtained a permit therefor.

An applicant for a Downtown Sidewalk Dining Permit shall file an application with the City Clerk on such forms and subject to such procedures as the City Clerk and City Manager may establish for such purpose. The application shall be made to the City Clerk and shall be in writing, under oath, and signed by an authorized agent of the proposed Permittee.

The application shall state the name, address, and telephone number of the applicant and shall include a legal description and the address of the premises proposed to be operated as a restaurant adjacent to the sidewalk subject of the application.

The application shall include a plan with dimensions showing the layout for the sidewalk dining area which accurately depicts the existing sidewalk conditions, including sidewalk width from the building face to curb, location and

dimensions of tree wells, location of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions, as well as the design, location, size, and space of the sidewalk dining area, chairs, tables, barriers, umbrellas, and other facilities to be located within the sidewalk dining area. The application shall also provide proof of insurance complying with the provisions of this Article 32 and shall also include such additional information as the City Manager may determine to be necessary to establish compliance with Article 32.

No permit shall be issued to any person in default of any payment to the City, including but not limited to any licensing fee under any Article of the Revised Code, or any other charge or fee imposed by the Revised Code, any tax imposed by the City of Mt. Vernon, or any charge for water, sewer, or garbage services, or to any person in default on any loan agreement, or contract with the City, or in default on any amount owed to the City.

The City Manager shall review the application to determine if the proposed sidewalk dining area meets the requirements of this Article 32. The City Manager may approve, approve with conditions, or deny the application; upon receipt of written approval, the City Clerk shall issue the Sidewalk Dining Permit. If the City Manager approves the application, then the approved plan and permit shall be posted at the restaurant premises and be clearly visible to customers and to the public. No material changes to an approved plan may be made without prior written approval of the City Manager upon application of the Permittee, although no additional permit fee will be assessed for such change.

- E. Permit Fee and Term The fee for a Downtown Sidewalk Dining Permit shall be \$25.00 per year. The fee shall be nonrefundable and shall be non-proratable. No permit shall be assigned or transferred to any other person. The permit year shall be May 1 – April 30. The permit shall state the name of the Permittee and shall specifically designate the sidewalk dining area subject of the permit.

F. Standards for Downtown Sidewalk Dining

The following rules and regulations shall apply to all restaurants providing sidewalk dining and to all sidewalk dining areas.

- 1) Space and Clearance - Sidewalk dining is permitted only on sidewalks with a minimum width of 10 feet from the property line to the curb face; provided that if a traffic lane is adjacent to the sidewalk, sidewalk dining will be permitted only if the sidewalk width is 15 feet or more. The area

designated for the sidewalk dining shall be considered an extension of the restaurant; therefore the location of the sidewalk dining area must be immediately adjacent to and have direct access to the restaurant. In the interest of public safety, sidewalk dining areas must maintain a clear pedestrian path of at least 4 feet at all times; on sidewalks with an adjacent traffic lane, the clear pedestrian path must be 10 feet wide. This clear pedestrian path must be free of any obstructions such as trees, parking meters, and utility poles to allow adequate pedestrian passage. Sidewalk dining areas shall not interfere with any utilities or other facilities such as telephone poles, fire hydrants, parking meters, mailboxes, or signs located on the sidewalk and in the public right-of-way. Sidewalk dining shall not interfere with snow removal within the clear pedestrian path; snow removal within the sidewalk dining area shall be the responsibility of the Permittee.

Sidewalk dining areas may not impinge on required clear distances for maneuvering around entrances or exits. The sidewalk dining area must be accessible to disabled patrons and employees. When a sidewalk dining area is located at a street corner, vision clearance requirements shall be in accordance with city ordinance; and in all events the vision of pedestrians and of operators of motor vehicles shall not be obstructed. These regulations shall also apply if a sidewalk dining area is adjacent to an alley or driveway.

- 2) Furniture and Other Elements - Tables, chairs, umbrellas, awnings, and any other elements associated with a sidewalk dining area must be of quality design, workmanship, and materials to ensure the safety and convenience of patrons as well as to enhance the visual and aesthetic character of the streetscape and adjacent neighborhood. All sidewalk dining area elements will be reviewed as part of the sidewalk dining permit process.

Sidewalk dining areas tables and chairs must be placed only inside the area designated for sidewalk dining. Table size should be kept to a minimum to avoid crowding. Appropriate density of tables and chairs will be reviewed; and same shall be subject to reasonable and appropriate conditions and restrictions. Permanent structures are not permitted within sidewalk dining areas. Elements cannot be attached permanently to sidewalks or other public rights-of-way. The Permittee is responsible for the restoration of the sidewalk or other public property if any damage is caused by Permittee's use of the sidewalk for sidewalk dining.

Temporary physical barricades to separate sidewalk dining areas from pedestrian traffic are allowed if they are constructed of finished quality materials including wrought iron chains, rope stanchions, picket fencing, planters, etc. Physical barriers clearly designating the sidewalk dining area

(i.e. licensed premises) are required if liquor is consumed at a sidewalk dining area. No signs shall be placed on barricades. Paper products for the consumption of food or beverages are not permitted.

- 3) Overhead Structures - Umbrellas and other temporary overhead structures are subject to approval during the sidewalk dining area permit process. No portion of any umbrella shall be less than seven feet above the sidewalk. Umbrellas and overhead structures cannot interfere with street trees, must be weather resistant, and designed to be secure during windy conditions.

Awnings, either permanent or temporary, are subject to approval during the sidewalk dining area permit process. Awnings shall have no support posts located within the public right-of-way, and no portion of an awning shall be less than eight feet above the sidewalk.

- 4) Signage - Menus are restricted to a maximum size of 9x12 inches. . If the sidewalk dining area is not subject of a Downtown Sidewalk Dining Liquor Permit issued under Article 6, Section 6.5, Subparagraph 15 of the Revised Code of Ordinances, a sign shall be posted in a visible location within the sidewalk dining area that states: "It is unlawful to possess or consume alcoholic beverages within the sidewalk dining area."
- 5) Lighting - Lighting for sidewalk dining area is subject to approval during the sidewalk dining area permit process. Lighting must complement the existing building and sidewalk dining area design and shall not cause a glare to passing pedestrians or vehicles. Electrical wires are not permitted within the sidewalk dining area. Acceptable tabletop lighting includes candles and low-wattage battery-operated fixtures. Additional lighting may be attached to the adjacent restaurant structure provided that written approval is obtained from the City Manager and all applicable City requirements are met.
- 6) Outdoor Heaters, Fans and Coolers - Outdoor heaters, fans and coolers for sidewalk dining areas are subject to approval during the sidewalk dining area permit process.
- 7) Vending Machines, Carts - Vending machines, carts, or other objects for sale are prohibited.
- 8) Service and Use - All services provided to sidewalk dining area patrons as well as all patron activity (waiting, sitting, dining, etc.) must occur only within the designated sidewalk dining area and not encroach on pedestrian traffic areas (i.e. the clear pedestrian path) at any time. Equipment necessary for dispensing any other items is subject to review during the sidewalk dining area permit process. The restaurant must provide

supervision of the sidewalk dining area at all times to ensure that dining operations and the conduct of patrons are in compliance with this Article 32.

- 9) Each Permittee shall maintain the insurance coverage required during the permit period. The certificate(s) of insurance shall be filed with the City Clerk and presented to the City Manager prior to the issuance of a permit. Failure of the Permittee to maintain any required insurance shall subject the Permit to suspension or revocation.

Insurance Requirements - Every Downtown Sidewalk Dining Permit applicant (and Permittee) must furnish a certificate of insurance proving commercial insurance coverage of at least \$1,000,000 for bodily injury, death, disability, and property damage liability. The policy of insurance shall provide for 30 days' prior written notice to the City if coverage is substantially changed, cancelled, or not renewed. The City shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operation of a sidewalk dining area. Each permit holder shall indemnify, defend, and hold the City harmless from any loss that results directly or indirectly from the permit issuance or operation of the sidewalk dining area. If alcoholic beverages are served at the sidewalk dining area, the permit holder shall provide proof of liquor liability insurance for the sidewalk dining area with limits not less than \$1,000,000 or as required by Article 6 of the Revised Code of Ordinances, whichever is greater.

G. Additional Regulations of Sidewalk Dining Areas

The sidewalk dining area must be kept sanitary, neat, clean, and litter free at all times; the sidewalk dining area shall be free from accumulation of food, litter, snow, ice, and other potentially dangerous or unsanitary conditions.

No food preparation is permitted on the sidewalk dining area; all food shall be prepared within the kitchen of the restaurant.

Loud speakers are prohibited and amplified sound from inside the restaurant shall not be audible within any sidewalk dining area nor upon any adjoining sidewalk or public right-of-way or private property.

Furniture and other property used in the sidewalk dining area by Permittee shall not be stored in the public right-of-way and all such furniture and property must be removed from the sidewalk dining area when the restaurant is closed to the public for any period in excess of seven days.

The Permittee shall not permit smoking within any sidewalk dining area nor within 15 feet thereof; no person shall smoke within the sidewalk dining area nor within 15 feet thereof. "No smoking" signs shall be posted within the sidewalk dining area.

- H. Additional Conditions of Downtown Sidewalk Dining License The use of the sidewalk dining area by Permittee shall be subject to and conditioned upon the Permittee maintaining liability insurance as provided above. Permission to establish and maintain the sidewalk dining area shall not be construed to relieve the restaurant of liability for any negligence on the restaurant's part on account of or in connection with the sidewalk dining area. By acceptance of the authorization granted by the permit to establish and maintain a sidewalk dining area and by establishing and maintaining the sidewalk dining area, the Permittee shall be deemed to have promised and agreed to save harmless the City of Mt. Vernon from any and all liability (including attorney's fees) and litigation fees arising by reason of the establishment, construction, placement, existence, use or maintenance of the sidewalk dining area.

The authorization granted by a permit approved under this Article 32 to establish and maintain a sidewalk dining area is not intended to constitute, and shall not be deemed to be a waiver of sovereign immunity by or on behalf of the City of Mt. Vernon or any of its officers or employees.

Neither the City of Mt. Vernon, nor any public utility company shall be responsible for damage to property of Permittee placed into the sidewalk dining area during repair, maintenance, or replacement of the sidewalk or during repair, maintenance, or replacement of a right-of-way or any public facility or utilities in the area of the sidewalk dining area. Permittee shall upon reasonable notice from City remove any and all property of Permittee designated by City whenever the City of Mt. Vernon desires to use the subject sidewalk for any purpose whatsoever and when the City by written notification requests from the Permittee to remove Permittee's equipment. If Permittee shall fail or neglect to remove the property of Permittee within the time specified, the City shall have the right to remove the property at the expense of the Permittee and City shall not be liable to the Permittee for any loss or damage to any property of Permittee, including but not limited to any property within the sidewalk dining area, caused by the removal.

- I. Revocation of Permit The Permit issued herein may be immediately suspended or revoked for cause, including violations of any provision of this Ordinance, as provided within subparagraph J below. The permit issued herein may also be permanently revoked upon 30 days prior notice to Permittee if and when the City requires use of its public right-of-way for any purpose inconsistent with the use of the right-of-way as and for said sidewalk dining.

J. Penalty Any Permittee or any person found guilty of violating any of the provisions of this Ordinance shall be fined not less than \$100.00, nor more than \$200.00 for each violation of this Ordinance; and a separate offense shall be deemed to be committed on each date in which a violation occurs or continues.

In addition to any penalty or fine imposed for violation of this Ordinance, the City Manager may suspend or revoke any permit for any violation of this Ordinance after affording the Permittee due notice and opportunity to be heard in its own defense.