

BOROUGH OF LIGONIER
COUNTY OF WESTMORELAND
COMMONWEALTH OF PENNSYLVANIA
ORDINANCE NO. 544

AN ORDINANCE PERMITTING SIDEWALK CAFÉS

BE IT ORDAINED, and it is hereby enacted and ordained by the Council of the Borough of Ligonier in session lawfully assembled as follows:

1. Declaration of Purpose.

The Ligonier Borough Council encourages attractive, functional and economically vital community and shopping areas that are safe and pleasant environments to live near and to do business within. As the current Code does not allow sidewalk cafés, Council believes that sidewalk cafés can contribute to a pedestrian friendly community if they conform to specific public health and safety requirements defined herein. This Ordinance permits and regulates outdoor dining on the public right of way within the Borough. This Ordinance does not regulate outdoor dining on private property.

2. Definitions.

For the purpose of this Ordinance, the following terms shall have the following meanings:

ABUTTING PROPERTY - property contiguous to a public street right-of-way on which a sidewalk café will be operated under the terms of this Ordinance.

OWNER - includes 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. An authorized agent of the owner may act for the owner under this Ordinance.

PEDESTRIAN WALKWAY - that paved portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

PERSON - includes a partnership, corporation, association, trust, estate, or other legally recognized entity, as well as an individual.

PUBLIC SERVICE FACILITY - a public telephone, mailbox, bench or other facility provided for the use of the general public.

RESTAURANT - a food service establishment where food 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, a retail food store, or a temporary food service establishment.

SIDEWALK - any paved area between the curblin and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

SIDEWALK CAFÉ - an outdoor dining area operated by a restaurant, has tables that seat one or more patrons, is with or without wait staff for its patrons, and is located on a sidewalk area or other designated public place.

3. Unlawful to Operate Without Permit.

No person shall engage in the operation of a sidewalk café without first applying for and obtaining a permit from the Borough of Ligonier (“Borough”) and then operating within the terms and conditions of all applicable Borough ordinances. The Sidewalk Café Permit enables a restaurant to have outdoor dining consistent with the terms herein during the calendar year for which the permit is issued.

4. Application Requirements.

Each applicant for a permit under this Ordinance shall submit an application on a form provided by the Borough, and plans for the sidewalk café to the Borough, which shall issue a permit upon compliance with the terms and conditions of this Ordinance. Applications for Sidewalk Café Permits shall include the following:

- A. The name of the applicant, the relationship of the applicant to the restaurant to which the cafe is accessory (owner, manager, etc.) and the street address of the property where the sidewalk café is proposed. If the applicant is other than the owner of the building abutting the location of the proposed sidewalk café, the applicant must provide written authorization from the property owner stating that the property owner has no objection to the sidewalk café;
- B. A copy of the current business license;
- C. A site plan with dimensions showing:
 - 1) The entirety of the sidewalk abutting the property of the owner showing sidewalk widths;
 - 2) The frontage of the property proposed for the sidewalk café;
 - 3) All existing sidewalk features including, but not limited to, trees, utility poles, sign poles, fire hydrants, permanent litter receptacles, and mailboxes;
 - 4) the limits of the proposed sidewalk café site, the size and location of all proposed tables and chairs, all exterior lighting, and the proposed pedestrian walkway;

- D. The seating capacity of the proposed sidewalk café;
- E. Three color photographs showing the complete area of the sidewalk and building façade from three different angles;
- F. A copy of certificates of insurance required to be provided; and,
- G. Other information as may be determined by the Borough.

5. Review of Application.

- A. Before any permit is issued pursuant to this Ordinance, the plans submitted to the Borough pursuant to this Ordinance shall be referred to and reviewed by the Public Works Director, Mayor, and President of Borough Council to determine if the applicant has complied with all the provisions of this Ordinance.
- B. The Borough may impose any other restriction on the location, size or design of the sidewalk café in order to protect the health, safety and welfare of the public.
- C. The Borough shall grant or deny an application for a permit pursuant to this Ordinance within 14 business days of its complete submission.

6. Conditions for Issuance of Permit.

- A. Upon approval by the Borough of the application and plans submitted by the applicant and upon the applicant furnishing to the Borough of Ligonier the following, the Borough shall issue a permit, valid through the end of the calendar year:
 - 1) Applicant agrees in writing to defend, indemnify and hold harmless the Borough, 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 permit holder shall also agree to release the Borough from any and all claims relating to its sidewalk café, including, but not limited to, loss of business and/or value of the sidewalk café when it is ordered removed or when street, sidewalk or utility construction occurs; and,
 - 2) The applicant agrees in writing to obtain and maintain in full force and effect, at the permit holder's own expense, an insurance policy naming the Borough of Ligonier as an additional insured with coverage of not less than \$1,000,000.00. The policy shall afford comprehensive general liability insurance including contractual liability insurance covering the permit holder's defense, indemnification, and hold harmless obligations under subsection 1) above, and shall provide that the Borough be notified upon the expiration of coverage in the event the policy is cancelled or the applicant fails to renew the insurance policy. Within ten (10) days of the approval of the

Sidewalk Café Permit application, and each year thereafter, the permit holder shall submit a certificate of insurance in accordance with the agreement and maintain a copy on the premises for review.

- B. Sidewalk Café Permits are not transferable. Changes in ownership/operation require reapplication for a permit.
- C. A Sidewalk Café Permit may be renewed annually, upon review of the renewal application and complaint history, if any.

7. Design Standards.

- A. A sidewalk café shall leave a paved pedestrian walkway with a clear unobstructed width of sixty (60) inches between the sidewalk café and any obstacle (tree, pole, post, sign, planting area, etc.). No portion of a sidewalk café shall be permitted in the pedestrian walkway. The pedestrian walkway shall be provided with an unobstructed height of 7 feet between the ground plane and an overhead obstacle (tree branch, overhead sign, awning, etc.)
- B. All parts of a sidewalk café shall be easily removable. Furnishings of a sidewalk café shall consist solely of tables, chairs, and, if needed, waste receptacles. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property or to any building or structure.
- C. A sidewalk café shall contain no food serving or food service equipment to hold, store, heat, warm, cool, chill or otherwise keep food to be served outside of the sponsoring restaurant for use in or by a sidewalk café.
- D. No sidewalk café shall be situated:
 - 1) In a manner which interferes with any pedestrian crossing.
 - 2) In a manner which restricts access to fire hydrants.
 - 3) In a manner which interferes with any driveway.
 - 4) In a manner which restricts sight easements of vehicular traffic.
 - 5) In a manner which obstructs traffic control devices or traffic signs.
- E. All sidewalk cafés shall be open to the air.
- F. Sidewalk cafés shall in no way obstruct the ingress to or the egress from any building or business.

- G. Sidewalk cafés shall provide and maintain adequate lighting of not less than one-half foot candle (.5 lm/ft²) in and around the pedestrian walkway so as to allow sidewalk users to observe and avoid obstructions.
- H. Sidewalk cafés shall not obstruct access any public service facility on the sidewalk area or street.
- I. No signs shall be hung or attached to any portion of the sidewalk café.

8. Regulations.

- A. No sidewalk café may be operated except:
 - 1) As an accessory to a restaurant lawfully operating on the first floor of the premises in the C-1, C-2, or VR District;
 - 2) On the sidewalk in front of the principal place of business of such entity; and,
 - 3) By the entity which operates the restaurant.
- B. A sidewalk café may operate only during the same hours that the restaurant is open for service. All patrons must be vacated from the sidewalk café and all tables, chairs, and any other materials used in the operation of the sidewalk café or within the area used by the sidewalk café shall be removed from the sidewalk café area each day within one-half (1/2) hour after the restaurant closes.
- C. All food must be prepared within the existing restaurant upon which the café permit has been granted.
- D. No food or beverages may be served to a patron at a sidewalk café unless that patron is seated at a table.
- E. No alcoholic beverages may be served or allowed to be consumed upon the sidewalk café.
- F. No music may be played from whatever source (acoustical, electric, or other) on the sidewalk café.
- G. The applicant shall be responsible for obtaining, maintaining in full force and effect, and complying with the terms and conditions of any state or county health permit which may be required under any other law or regulation for the serving of food or beverages at a sidewalk café.
- H. The applicant shall maintain a sufficient number of receptacles for the disposal of waste. Such receptacles, if any, shall be emptied as often as is necessary.

- I. Sidewalk cafés, the public property on which they are located and the surrounding area shall at all times be kept free and clear of litter, debris and any substance that may damage the sidewalk or cause pedestrian injury. As an express condition of the acceptance of a permit hereunder, the recipient agrees to police for trash and debris an area extending at least 15 feet in each direction from the outermost portion or boundary of the sidewalk café.
- J. The holder of a Sidewalk Café Permit is responsible for keeping all visitors, patrons, employees, and café fixtures, including tables and chairs, from occupying or encroaching into the required clear sidewalk space.
- K. All sidewalk cafés and attendant facilities may be inspected at any time by the Public Works Director, his designee, or the Police Department.
- L. Acceptance of a Sidewalk Café Permit is an express acknowledgment and consent to the terms and regulations set by this Ordinance. The grant and usage of such permit is a privilege, not a right, subject to reasonable regulations as set out herein or as may be promulgated by the Borough.

9. Written Notice of Violations; Suspension of Permit.

Upon finding by either the Public Works Director or Borough Police Department that an applicant has violated any provisions of this Ordinance, the Public Works Director or Police Department shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Public Works Director of Borough Police Department may take appropriate action, as necessary, to maintain the pedestrian walkway. The Borough, Public Works Director, or Borough Police Department may suspend the applicant's permit issued pursuant to this Ordinance, as well as pursue prosecution in accordance with the requirements herein. The Public Works Director or Borough Police Department may give a violator reasonable time to correct any violation of any provision of this Ordinance. An appeal before Borough Council shall be accorded if requested.

10. Violations and Penalties; Effect on Eligibility for Permit.

- A. Whoever violates any provisions of this Ordinance shall, upon conviction thereof in a summary proceeding, be fined not less than \$300 and not more than \$1,000 for each offense, to be collected as other fines and costs are by law collectible. Each day during which a violation occurs shall constitute a separate offense.
- B. Any person who is convicted of a violation of any of the provisions of this Ordinance shall have his or her permit suspended for one full year and shall not be eligible for another permit until the expiration of 1 full year.
- C. Failure to observe any of the conditions set out herein is grounds for revocation of a permit. Prior to such revocation, the Borough shall give 10 days' written notice to the permit holder of his violation of or his failure to observe a general condition as set out above. If the permit holder requests a hearing prior to the expiration of that 10-day notice

period, the Borough shall hold a hearing to determine if the permit should be revoked. The permit holder may present evidence in his own behalf if he so desires. If a hearing is not requested, the revocation shall become effective upon the expiration of the 10-day notice period. If a permit granted under this Section is revoked, all tables, chairs and other appurtenances used as a part of the sidewalk café shall be immediately removed from the sidewalk.

- D. This Ordinance and the foregoing penalties shall not be construed to limit or deny the right of the Borough or any person to such equitable or other remedies as may otherwise be available with or without process of law.

11. Removal of Sidewalk Café.

- A. If the Borough incurs any costs in removing any tables, chairs, or other materials from a sidewalk café for any reason the Borough may bill the property owner for the actual costs incurred by the Borough plus any additional administrative fees. The tables, chairs, and other materials removed shall remain in the Borough's possession until the bill for removal and any fines or fees are paid in full.
- B. Any bill for such removal of tables, chairs, and other materials undertaken pursuant to this Section shall be billed to and paid by the property owner within 60 days. Upon failure of the property owner to pay the amounts due within 60 days, the Borough shall assess this uncollected debt on the property taxes of the building.

12. Reservation of Rights.

- A. 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 Borough of Ligonier with respect to streets and sidewalks, whether express or implied.
- B. Ligonier Borough reserves the right to suspend Sidewalk Café Permits during Fort Ligonier Days, and at other times for community events as determined by the Borough Council at its sole discretion. No sidewalk café may operate during these periods as determined by the Borough.
- C. Ligonier Borough reserves the right to revoke or suspend Sidewalk Café Permits for cause and to amend Sidewalk Café Permit requirements and regulations as may be necessary for compliance with any change in local, state, or federal laws.
- D. A Permit granted pursuant to this Ordinance does not create any vested property right in the sidewalk area to which the permit applies.

13. Effective Date.

This ordinance shall become effective upon passage.

Enacted and ordained this _____ day of _____, 2009.

BOROUGH OF LIGONIER

ATTEST:

By: _____
Dale G. Show, President of Council

Paul A. Fry, Jr. Secretary

Examined and approved this _____ day of _____, 2009.

Ormond Bellas, Mayor