

**THE CITY OF FREDERICK  
MAYOR AND BOARD OF ALDERMEN  
ORDINANCE G-20-14**

**AN ORDINANCE** concerning  
Temporary outdoor dining on public property

**FOR** the purpose of permitting food and beverage service establishments to provide outdoor dining in parklets, streets, and other areas on public property, 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 On May 27, 2020, an order of the Governor superseded such closure in that it allowed food service establishments as well as social and fraternal clubs with dining facilities to serve food and beverages to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. Likewise, on May 29, 2020, an order of the Governor allowed state-licensed manufacturers of alcohol to serve alcoholic beverages to consumers in outdoor seating areas, subject to certain conditions. The foregoing orders are 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 those orders.

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) and to temporarily close a public street or any portion thereof, and to order the placement of barricades thereon (City Code, Sec. 22-3.1).

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 certain public areas, as further described herein, and finds this ordinance to be in the best interests of its citizens.

**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, streets or portions thereof, parks, and other public property.
  - (5) "Parklet" means a portion of a public street intended to provide space for customers of adjacent restaurants to enjoy outdoor dining. A parklet may include the portion of the street between the travel lanes and the curb designated as a parking space and the portion of the adjacent sidewalk that may contain meters, streetlights, or similar structures.
  - (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 allowed.**

- (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 (j) of this section.
  - (4) All furniture must be removed from the outdoor dining area and secured in an approved location when the outdoor dining area is not in use.
- (f) **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.
- (g) **Market Street.** Outdoor dining areas will be permitted in the travel lanes of Market Street, between Patrick Street and Third Street, and in any other 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) Furniture and other personal property comprising an individual outdoor dining area must remain in the designated location at all times. Under no circumstances may any private property be placed within 6 feet of the center line of the street, in order to ensure that a 12-foot-wide clear zone is available for emergency vehicles. Any property placed in violation of this paragraph shall be deemed a public nuisance and may be summarily removed by the Department of Public Works.

- (2) 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) Beginning on the effective date of this ordinance and ending on the earlier of October 31 or the day the Governor of Maryland rescinds the current state of emergency, 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) An FBSE wishing to provide outdoor dining in accordance with this ordinance shall enter into an agreement with the City for such purpose.
  - (2) An agreement issued under this section will:
    - (A) include provisions requiring the FSBE to adhere to all applicable orders of the Governor;
    - (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 or the day the Governor of Maryland rescinds the current state of emergency.

(3) The Director of Economic Development is hereby authorized to sign any such agreement on behalf of the City.

**(k) Agreement application process.**

(1) Any person seeking an 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 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 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.


(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 the date it is signed by the Mayor.

**SECTION IV. 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 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: June 4, 2020**



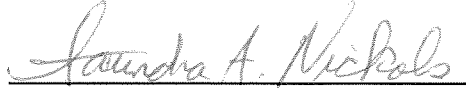
**MICHAEL C. O'CONNOR, Mayor  
Board of Aldermen**

**PASSED: June 4, 2020**



**MICHAEL C. O'CONNOR, President,**

**Approved for Legal Sufficiency:**



**City Attorney**