



City of Cincinnati

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An Ordinance No. _____

- 2021

MODIFYING the provisions of Title VII, "General Regulations," of the Cincinnati Municipal Code by **MODIFYING** Section 723-14, "Outdoor Dining Areas," of Chapter 723, "Streets and Sidewalks, Use Regulations," and by **ORDAINING** new Section 718-7, "Standard Conditions of RSP Approval," of Chapter 718, "Revocable Street Privileges," to authorize revocable street privileges for outdoor dining on public sidewalks and streets.

WHEREAS, a revocable street privilege ("RSP") is the primary tool by which the City provides permission for a person to make special use of the public right-of-way or to place a structure or other object in the right-of-way; and

WHEREAS, Cincinnati Municipal Code Chapter 723, "Street and Sidewalks, Use Regulations," authorizes and governs certain uses of the City's streets and sidewalks for which RSPs are made available, and these uses currently include outdoor dining on public sidewalks; and

WHEREAS, through emergency health orders issued in response to the Covid-19 pandemic emergency, the City has additionally permitted outdoor dining on City streets on a temporary basis to encourage restaurants' compliance with public health orders and guidelines, to incentivize them to engage in social distancing, and to help them operate in an economically viable manner; and

WHEREAS, the Council wishes to allow outdoor dining on public streets on a permanent basis to encourage economic vitality and the multi-dimensional use of streets; and

WHEREAS, in authorizing the use of public streets for outdoor dining, the Council also wishes to establish a clear and effective framework for managing outdoor street dining that promotes the public health, safety, and welfare, and the uniformity of RSPs throughout the City of Cincinnati; and

WHEREAS, the City Planning Commission, at its regularly scheduled meeting on December 18, 2020, approved the use of public streets for outdoor dining and recommended passage of this ordinance; and

WHEREAS, authorizing the use of public streets for outdoor dining is in accordance with the first goal of the Live initiative area to "build a robust public life" as described on pages 149 to 155 of Plan Cincinnati (2012), as well as the first goal of the Collaborate initiative area to "work in synergy with the Cincinnati community" as described on pages 209 to 212 of the plan; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 723-14, "Outdoor Dining Areas," of Chapter 723, "Streets and Sidewalks, Use Regulations," of the Cincinnati Municipal Code is hereby modified to read as follows:

Sec. 723-14. - Outdoor Dining Areas.

(a) Program Authorization; Applications.

(1) The city manager or his or her designee is authorized to grant revocable street privileges for the placement establishment and maintenance of outdoor dining areas on public streets and sidewalks following receipt of a complete application and payment of the applicable fee. subject to the following restrictions:

(2) Applications for the establishment of outdoor street dining shall be made in the form and in the manner prescribed by the city manager or his or her designee, and they may require the payment of a fee to offset the city's cost of administering the outdoor street dining program.

(3) Upon receipt of a complete application and the applicable fee, the city manager or his or her designee shall consider whether the application meets the general location, design, and materials criteria set forth herein and whether to approve or deny the application.

(4) The city manager or his or her designee may approve or deny an application in his or her sole discretion and shall notify an applicant in writing of the determination, including the specific reasons supporting a denial of an application.

(b) All outdoor street dining shall comply with the following general location, design, and material criteria, unless otherwise authorized by the city manager or his or her designee upon the determination that a variance from those criteria will not negatively impact the public health, safety, or welfare, or unreasonably interfere with the use and function of a sidewalk or street:

(1) General Location Criteria.

1. Outdoor street dining may be located on sidewalks or in existing parking lanes adjacent to the curb, but it shall not extend into lanes of automobile travel and shall not impact existing traffic control indicators, e.g. crosswalks, lane lines, or regulatory signs.

2. Outdoor street dining must be associated with an existing eating or drinking establishment licensed by the Cincinnati Board of Health, if applicable, and it must be located adjacent to the establishment.
3. All outdoor street dining locations must ensure the safety of patrons and staff, and it must not create a hazard to users of the right-of-way.
4. Outdoor dining areas may be placed:
 - a. i. Only on paved surfaces;
 - ~~ii. Only immediately adjacent to and as part of the routine business of an established restaurant or food service facility maintaining a current license from the Cincinnati Board of Health;~~
 - b. iii. In a location that does not block the entrance to or exit from any building;
 - c. ~~iv. In such a way that all chairs, tables and/or railings do not interfere with the use and function of~~ are located at least five (5) feet from any alley, pedestrian crosswalk, driveway curb cut, curb ramp, fire hydrant, or sidewalk café, or and at least four (4) feet from any bicycle rack;
 - d. ~~v. In a manner such that the open area available for that ensures the flow of pedestrian traffic around the outdoor dining area (including any railings or fencing) is not less than four (4) feet in front of the outdoor dining area. In a way that and does not block access to buses at interfere with the use and function of any bus stops, fire escapes, sidewalk access doors, traffic or street lighting equipment, utility valve boxes or other utility equipment; and~~
 - e. vi. In a way that does not obstruct permanent building signage or building display windows, (unless prior permission from the property owner has been obtained).
 - ~~vii. In a way that does not obstruct curb control signage or traffic signal equipment, including pedestrian crosswalk signs.~~
5. Outdoor dining areas shall be given location priority over sidewalk vendors.

(2) Design and Materials Criteria.

1. Outdoor street dining areas shall be enclosed by a barrier, railing, or other separation to delineate the area and provide protection to patrons and staff as appropriate.

2. Outdoor street dining areas shall be designed to comply with ADA requirements and guidelines.

3. No drilling, adhesives, or attachments of structures, fixtures, or equipment to a sidewalk or roadway surface shall be permitted in connection with an outdoor street dining area without the express written permission of the city manager or his or her designee.

4. Outdoor street dining areas shall be designed to maintain existing stormwater drainage in the roadway and curb gutter.

(c) Revocable street privileges issued pursuant to this section shall be subject to the standard conditions contained in Section 718-7, "Standard Conditions of RSP Approval," and the following special conditions applicable to outdoor street dining:

~~2. Persons desiring to secure a revocable street privilege for placement of an outdoor dining area within the public right-of-way shall submit an application on a form to be provided by the city manager or his designee which shall:~~

~~i. Identify the name of the applicant;~~

~~ii. Identify the requested location for the outdoor dining area;~~

~~iii. Include a scaled sketch plan showing the proposed outdoor dining area boundary and surrounding streetscape details covering six (6) feet on either side of the property line including property lines, sidewalks, curb lines, lighting, trees, tree grates, planters, mail drop-off boxes, park benches, parking meters, street signs, and fire hydrants;~~

~~iv. Identify the name and address of the person authorized to receive notices pursuant to Chapter 718 of the Cincinnati Municipal Code;~~

~~v. Include proof of liability insurance in an amount not less than \$1,000,000.00. The City of Cincinnati shall be named as an additional insured;~~

~~vi. Include a non-refundable application fee as set forth in section 723-6 of this Chapter;~~

~~vii. Include a copy of the applicant's current food service license issued by the Board of Health.~~

~~3. Revocable street privileges for outdoor dining areas shall not expire but shall be revocable as set forth in Chapter 718 of the Cincinnati Municipal Code.~~

~~4. Holders of revocable street privileges for outdoor dining areas must maintain liability insurance in an amount not less than \$1,000,000.00 at all times while the revocable street privilege is in effect. The City of Cincinnati shall be named as an additional insured. Proof of insurance shall be provided upon request. Failure to provide proof of insurance may result in the revocation of the revocable street privilege.~~

~~5. Outdoor dining areas may be surrounded by railings or fencing provided that the railings or fencing are portable.~~

(1) The holder of a revocable street privilege for outdoor dining shall pay the charge established by the city manager or his or her designee for the special use of a public sidewalk or street, which the city manager or his or her designee is hereby authorized to establish in his or her reasonable discretion.

(2) The holder of a revocable street privilege for outdoor dining shall comply with health and safety measures required in connection with the issuance of the revocable street privilege, including those related to cleanliness, food safety, and keeping the area free of litter, debris, and graffiti.

(3) The hours of operation for the outdoor dining area, and any outdoor entertainment provided within the outdoor dining area, shall comply with applicable zoning laws and approvals governing the operation of the eating or drinking establishment with which the outdoor dining area is associated.

(4) No alcohol shall be served within the outdoor dining area unless the owner or operator of the area holds an existing and valid liquor license permitting the service of alcohol within the area.

(5) 6. Outdoor dining areas must be at removed on a seasonal basis at the direction of the city manager or his or her designee to allow for the seasonal needs of the city. must be removed from January 1 through April 1 of each year.

(6) 7. Notwithstanding any other provision of this section, the owner or operator of an outdoor dining area shall immediately remove said outdoor dining area from the sidewalk upon notice given by any Cincinnati Police Officer or authorized employee of the city that the outdoor dining area is unreasonably obstructing pedestrian traffic or has otherwise created a dangerous condition.

~~8. Outdoor dining areas shall be given location priority over sidewalk vendors.~~

- (d) Supplemental Design Standards, Rules, and Regulations. The city manager or his or her designee is authorized to create supplemental design standards, rules, and regulations as are necessary to carry out the intent and purpose of this section, to ensure public health, safety, and welfare, and to maintain the use and function of public sidewalks and streets.

Section 2. That existing Section 723-14, "Outdoor Dining Areas," of Chapter 723, "Streets and Sidewalks, Use Regulations," of the Cincinnati Municipal Code is hereby repealed.

Section 3. That new Section 718-7, "Standard Conditions of Revocable Street Privilege Approval," of Chapter 718, "Revocable Street Privileges," of the Cincinnati Municipal Code is hereby ordained to read as follows:

Sec. 718-7. - Standard Conditions of Revocable Street Privilege Approval.

(a) Any revocable street privilege issued pursuant to this chapter or Chapter 723, "Streets and Sidewalks, Use Regulations," shall automatically be subject to the following conditions, in addition to any other conditions imposed by the Cincinnati Municipal Code, provided that the city manager or his or her designee may waive one or more conditions upon the determination that it will not negatively impact public health, safety, or welfare, unreasonably interfere with the use and function of city streets, or pose an undue threat to the fiscal interests of the city:

1. *Expenses.* All costs and expenses associated with the use of the revocable street privilege and the construction, maintenance, modification, use, operation, repair, removal, and abandonment of all building encroachments, fixtures, equipment, personalty, or other improvements associated with the revocable street privilege shall be the sole responsibility of the holder. The city shall have no responsibility for any costs or expenses associated with the use of the revocable street privilege and the construction, maintenance, modification, use, operation, repair, removal, and abandonment of any building encroachments, fixtures, equipment, personalty, or other improvements associated with the revocable street privilege.
2. *Maintenance of Building Encroachment.* The holder shall maintain all building encroachments, fixtures, equipment, personalty, or other improvements associated with the revocable street privilege in a good, clean, and safe condition and repair and in accordance with applicable city standards, which may be established by the city manager or his or her designee in his or her sole discretion.
3. *City's Right to Enter the Area.* The holder acknowledges that the city and its authorized representatives have the unlimited right to enter upon the revocable street privilege area at any time for any purpose, including without limitation to inspect the area and any building encroachments, fixtures, equipment, personalty,

or other improvements located in the area, provided that the city shall have no duty to inspect.

4. *Rights of Utility Companies.* The revocable street privilege granted to a holder is subject and subordinate to the rights of any and all utility companies that may now or hereafter have utility lines and other utility installations located in, under, over, or within the vicinity of the revocable street privilege area.
5. *Insurance; Bond.* For so long as the revocable street privilege remains in effect, the holder shall maintain a policy of general liability insurance for the revocable street privilege area and any building encroachments, fixtures, equipment, personalty, or other improvements located in the area in an amount that, unless a specific amount is otherwise provided by the code, corresponds to the prevailing rate for similar property used for a similar purpose as determined by the city manager or his or her designee in his or her sole discretion.

The city shall be named as an additional insured. The holder shall furnish a certificate of insurance to the city evidencing such insurance prior to commencing use of the revocable street privilege area or the construction of any building encroachments or improvements in the area. The holder shall furnish a new certificate of insurance annually by the anniversary of the date of the issuance of the revocable street privilege upon the request of the city.

In addition, whenever, in the opinion of the city manager, the construction or maintenance of building encroachments, fixtures, equipment, personalty, or other improvements associated with the revocable street privilege presents the possibility of substantial damage or loss to the city, to other property owners, or to members of the public, the city manager shall be authorized to require a reasonable bond to protect against such damage or loss.

6. *Waiver of Claims for Damage.* The city shall have no responsibility or liability for loss or damage related to the use of the revocable street privilege, the construction, maintenance, operation, repair, removal, or abandonment of building encroachments, fixtures, equipment, personalty, or other improvements associated with the revocable street privilege, or the loss, theft, or damage of equipment, fixtures, or personalty that may at any time be placed within the revocable street privilege area.
7. *Indemnification.* The holder shall indemnify, defend, and save the city, its officials, employees, agents, contractors, guests, and invitees harmless from and against any and all claims, liens, demands, obligations, actions, proceedings, causes of action, losses, damages, settlements, costs, charges, professional fees, and other expenses and liabilities of every kind and character (including without limitation attorney fees) arising out of, or related to, the use, maintenance, or abandonment of the revocable street privilege, the construction, maintenance, use, operation, repair, removal, or abandonment of building encroachments, fixtures,

equipment, personalty, or other improvements associated with the revocable street privilege, or the loss, theft, or damage of equipment, fixtures, or personalty that may at any time be placed within the revocable street privilege area.

8. *Personal to Holder.* Each revocable street privilege is personal to its holder and cannot be transferred. If a holder sells or transfers any interest in the privileged premises associated with the street privilege, the revocable street privilege shall automatically terminate and all applicable termination provisions in this chapter shall apply.
9. *Use for Advertising Purposes Prohibited.* Unless expressly authorized by the code, no structure placed upon any sidewalk, city street, alley or way pursuant to a revocable street privilege shall be used for advertising purposes.
10. *Revocation or Modification.* Each revocable street privilege shall be subject to revocation or modification by the city manager or his or her designee at any time and for any reason. Except for instances in which a different time is specified by the code, the revocation or modification of a revocable street privilege shall be effective 30 days after notice of the revocation or modification is served on the holder; provided, however, that the revocation or modification of a revocable street privilege on the basis of public health or safety concerns shall be immediately effective.
11. *Notice.* Notice from the city or any of its authorized officers, employees, agents of the provisions of this section shall be valid if served on the holder or on any local agent of the holder either personally, by mail addressed to the last known place of residence, or by publication in the manner required for ordinances of the City of Cincinnati.
12. *Restoration and Required Changes.* Upon the revocation or modification of a revocable street privilege, the holder shall take immediate steps to remove or modify all building encroachments, improvements, equipment, fixtures, and personal property from or in the revocable street privilege area and shall repair and restore any and all public improvements within the area to their original condition as they existed immediately prior to the issuance of the revocable street privilege, unless otherwise authorized by the city manager or his or her designee. All repairs, modifications, and restorations shall be subject to the supervision and approval of the city manager or his or her designee.
13. *Failure to Restore or Modify.* In case of a holder's failure to remove or modify all building encroachments, fixtures, equipment, personalty, and other improvements from the revocable street privilege area, or to repair and restore any and all public improvements within the area within a reasonable time, the city manager shall be authorized to make the necessary removal, modify, repair, and restoration, and to charge the expense thereof to the holder; provided, however, in the case of underground pipes, equipment, or construction that may be effectively sealed

without interfering with the use and maintenance of public streets, the city manager may authorize the sealing of the pipes, equipment, or construction in lieu of their removal and, upon their sealing, all pipes, equipment, or construction shall become the property of the city. In the case of modifications required by a privately owned public utility company, the city manager shall authorize such company to make the change and the holder shall be liable for the reasonable cost thereof.

(b) In addition to the conditions contained herein, the city manager or his or her designee may impose additional conditions that shall automatically apply to revocable street privileges issued pursuant to this chapter or Chapter 723, "Streets and Sidewalks, Use Regulations," to the extent necessary to carry out the intent and purpose of the code section authorizing the revocable street privilege, to ensure the public health, safety, and welfare, to maintain the use and function of public streets, or to protect the fiscal interests of the city.

Section 4. That existing Sections 718-9, "Use for Advertising Purposes Prohibited," 718-11, "Changes in Street Uses," 718-13, "Street Restoration," 718-15, "Termination of Revocable Street Privilege," 718-17, "Liability of Holder," 718-19, "Revocability," and 718-21 "Notice," of Chapter 718 "Revocable Street Privileges," of the Cincinnati Municipal Code are hereby repealed.

Section 5. That the City Manager or his or her designee is hereby authorized to convert existing outdoor street dining authorizations issued under Joint Emergency Order No. 10 by the Mayor and City Health Commissioner on May 12, 2020, to revocable street privileges without the submission of a new application and review; provided that any revocable street privilege issued pursuant to this authority shall be subject to the terms and conditions contained in new Section 718-7, "Standard Conditions of RSP Approval," and those conditions contained in Section 723-14, "Outdoor Dining Areas," of Chapter 723, "Streets and Sidewalks, Use Regulations," as modified herein; and provided, further, that the City Manager or his or her designee, in his or her discretion, may refuse to convert an existing outdoor street dining authorization to a revocable street privilege if it is determined that the authorization substantially deviates from the guidelines and requirements enacted herein, including any supplemental design standards, rules, and regulations for outdoor street dining adopted by the department of transportation and engineering.

Section 6. That the City Manager and the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Section 1 through 5 hereof.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

Deletions are struck through. Additions are underlined.