

ORDINANCE NO. 8 - 21

AN ORDINANCE AMENDING CHAPTER 727 OF THE CODIFIED ORDINANCES OF THE CITY OF PORT CLINTON AND DECLARING AN EMERGENCY

WHEREAS, the City previously adopted Chapter 727 of the Codified Ordinances of the City of Port Clinton requiring permits be obtained for outdoor restaurants located in the City and assessed a \$200.00 permit fee and a \$100.00 renewal fee to be submitted with a permit application, and

WHEREAS, this Council finds and determines that an amendment should be made to Chapter 727 of the Codified Ordinances to include permits for outdoor seating and outdoor retail immediately adjacent to a business establishment in the City of Port Clinton in addition to permits already available for outdoor restaurants; and

WHEREAS, this Council finds and determines that the associated \$200.00 permit fee and the \$100.00 renewal fee should be abolished to give all business establishments an opportunity to apply for a permit without the associated fees; and

WHEREAS, this Council finds and determines that offering outdoor seating and outdoor retail in addition to outdoor dining will give residents and guests to the City more options for shopping and dining in the City.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Port Clinton, County of Ottawa and State of Ohio:

Section 1. Chapter 727 of the Port Clinton Codified Ordinances is hereby amended to read as follows:

CHAPTER 727 Temporary Public Right-of-Way Occupancy Permits For Outdoor Restaurants, Outdoor Seating, and Outdoor Retail

727.01 DEFINITIONS.

When used in this chapter, the following words shall have the following meanings:

- (a) "Director" means the Director of Public Safety and Service or his designee.
- (b) "Outdoor Restaurant" means a portion of a public sidewalk, alley, or other public right-of-way that is used by a business establishment to serve food and beverage.
- (c) "Outdoor Seating" means a portion of a public sidewalk, alley, or other public right-of-way that is used by a business establishment to provide outdoor seating for carryout dining.
- (d) "Outdoor Retail" means a portion of a public sidewalk, alley, or other public right-of-way that is used by a business establishment to provide to space in front of the business establishment for outdoor retail.

(e) "Permit" means a temporary public right-of-way occupancy permit authorized by Section 727.02.

(f) "Permittee" means the person who owns the outdoor restaurant, provides outdoor seating, and provides outdoor retail, permitted to occupy an area of the public right-of-way.

(g) "Right-of-way" means any sidewalk, alley, or other area dedicated or otherwise designated for public use and held by the City.

(h) "Unobstructed Walk" means a clear, continuous paved surface free of tree grates, elevator grates and all vertical obstructions.

727.02 TEMPORARY PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS.

(a) Notwithstanding any codified ordinance to the contrary, the Director is hereby authorized to issue temporary public right-of-way occupancy permits revocable at the will of the Council authorizing the placement of outdoor restaurants, outdoor seating, and outdoor retail at permitted locations on sidewalks, alleys or other public rights-of-way in the City, subject to the provisions of this chapter. A separate encroachment permit for such outdoor restaurants shall not be required.

(b) No owner or operator of a business establishment shall occupy any portion of a public sidewalk, alley or other public right-of-way with an outdoor restaurant, outdoor seating, and outdoor retail without first obtaining a permit in accordance with this chapter. Any business owner or operator occupying any portion of a public sidewalk, alley or other public right-of-way without a permit as required by this Chapter shall be subject to the fines and penalties set forth in Sections 727.09 and 727.99 of this Chapter.

727.03 APPLICATION OF PERMITS.

Application for a permit shall be made to the Director in a form deemed appropriate by him. Such application shall include, but not be limited to, the following information:

(a) Name, phone number and address of the applicant;

(b) Name and address of the business establishment seeking the temporary permit;

(c) A description of the proposed area, with photographs, to be occupied by the outdoor restaurant, outdoor seating, or outdoor retail location and the hours and days of operation;

(d) If applicable, details plans drawn to scale showing the locations, number and arrangement of tables, chairs and other structures, the location of the pedestrian diverters planned to demarcate the occupied area, the location of the entrance to the establishment, the locations of fire exits or fire escapes, and the nature and location of any existing sidewalk obstructions;

(e) If applicable, a description of the tables, chairs, pedestrian diverters and other structures, including information about the composition;

(f) A signed statement that the applicant is the owner of the business establishment immediately adjacent to the proposed area to be occupied by an outdoor restaurant outdoor seating, or outdoor retail;

(g) A description of the type of food and beverage to be served at the outdoor restaurant;

(h) If applicable, a copy of the applicant's liquor permit, expansion permit, and a complete copy of the expansion permit submitted to the Division of Liquor Control;

(i) Evidence that all required health licenses have been obtained or have been applied for the outdoor restaurant; and

(j) A signed statement that the permittee shall hold harmless the City of Port Clinton, its officers and employees and shall indemnify the City of Port Clinton, its officers and employees for any claims or damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, liquor liability and property damage insurance as will protect permittee and the City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage in an amount of not less than one million dollars (\$1,000,000) on account of an accident involving injuries, including death, to one or more persons and property damage insurance in an amount not less than one million dollars (\$ 1,000,000), or a combined single limit of one million dollars (\$1,000,000) provided however, that this insurance requirement shall not be construed to limit permittee's indemnification obligations to the above-required limits of insurance. Such insurance shall also name the City of Port Clinton as an additional insured, its officers and employees, and shall further provide that they policy shall not terminate or be canceled prior to the expiration date of the permit without thirty (30) days' written notice to the Director.

727.04 PERMIT ISSUANCE AND DURATION.

(a) An application for a permit shall be submitted for each outdoor restaurant, outdoor seating, and outdoor retail area for which a permit is desired.

(b) On approval of the application by the Director, the Director shall issue a permit in accordance with this chapter. Denial of a permit may be appealed to the Board of Zoning Appeals.

(c) Permits shall be valid for an eight-month period, commencing April 1 and ending November 30. Permits may be renewed, on a form provided by the Director, for the following season provided all the requirements of this chapter are met, and no changes have been made from the previous approved application. If there are changes to the application, a new application must be made in accordance with this application.

727.05 PERMITTED LOCATIONS.

(a) The Director, consistent with the provisions of this chapter and the Zoning Code, shall establish rules and regulations as the Director deems proper with respect to permitted locations for the operation of outdoor restaurants, outdoor seating, and outdoor retail. The Director shall consider the operation and location of the outdoor restaurants, outdoor seating, and outdoor retail, the maintenance of the business establishment requesting a permit, the proximity and location of emergency exits, fire standpipes, fire hydrants, driveways, handicap ramps, handicapped parking zones, commercial loading and unloading zones, the condition of the sidewalk, and other factors he deems relevant. The Director may modify the rules and regulations as he deems necessary.

(b) The issuance of permits and the maintenance of tables, chairs, and other structures shall be subject to the rules and regulations established by the Director, the Zoning Code and the following conditions and restrictions:

(1) The public health, safety or welfare will not be negatively impacted upon the granting, or renewal, of such a permit;

(2) Outdoor restaurants, outdoor seating, and outdoor retail shall not obstruct emergency exits or fire standpipes;

(3) Outdoor restaurants, outdoor seating, and outdoor retail shall not occupy any portion of the roadway or within two (2) feet of the curb;

(4) Outdoor restaurants, outdoor seating, and outdoor retail shall not be permitted within six (6) feet of any fire hydrant, within five (5) feet of any driveway, within three (3) feet of any sidewalk handicap ramp, or within that portion of the sidewalk parallel to an area designated for parking, handicapped parking or commercial loading and unloading;

(5) At any location where the clear, continuous, unobstructed sidewalk for the passageway of pedestrians is reduced to less than six (6) feet; and

(6) The applicant or the property owner is not delinquent in any taxes or other obligations to the City or to Ottawa County.

727.06 PERMITS.

(a) Permits shall be issued in such a manner that they are distinguishable from liquor permits issued by the State of Ohio and shall be posted in a conspicuous location in a window or other readily visible location of the frontage of the applicant's business establishment. The permit shall be protected from the weather as necessary and shall be clearly visible from the public sidewalk, alley or street, and not obstructed by awnings, landscaping or other impediments.

(b) Each permit shall contain the following information:

The name and address of the permittee;

A description of the permitted location;

A description of the tables, chairs and other structures;

A statement indicating whether the permittee is authorized by the State of Ohio to serve alcohol in the outdoor restaurant;

The expiration date of the permit; and

Any other information the Director deems desirable.

727.07 REQUIREMENTS AND CONDITIONS OF PERMIT.

(a) Permittees and their agents shall comply with all of the requirements of this Chapter and any applicable state law, while engaged in business at permitted locations.

(b) The outdoor restaurant, outdoor seating, and outdoor retail shall be placed only on the location set forth in the permit.

(c) Outdoor restaurants, outdoor seating, and outdoor retail located in the Central Business District shall not operate earlier than 6:00 a.m. or later than 1:00 am. Outdoor restaurants, outdoor seating, and outdoor retail located in any district other than the Central Business District shall not operate earlier than 6:00 a.m. or later than 11:00 p.m.

(d) Permittees and their agents shall obey any order of a police officer or other emergency personnel to remove their tables, chairs and other structures from the public right-of-way if necessary to avoid congestion or obstruction in an emergency.

(e) Permittees shall maintain all required health licenses for the operation of their business.

(f) Permittees and their agents shall be responsible for maintaining all outdoor restaurant, outdoor seating, and outdoor retail structures and associated equipment in good repair, free of corrosion and in a safe, sound and nonhazardous condition.

(g) Permittees and their agents shall be responsible for keeping the general area around the permitted location free of litter. Permittees and their agents shall provide a suitable container for the placement of paper, wrappers and other similar items used by customers and others within the permitted area.

(h) Permittees shall not cook food in the outdoor restaurant, outdoor seating area, and outdoor retail area.

(i) Permittees shall not place signs in the outdoor restaurant, outdoor seating area, and outdoor retail area, except pursuant to a permit issued by the City of Port Clinton.

(j) No permit shall be transferable in any manner.

(k) A permit is valid only when used at the location designated in the permit.

(l) The permittee shall restrict use of the permit premises to the patrons, customers and guests of permittee's establishment when said premises are used for outdoor dining, outdoor seating, and outdoor retail purposes.

(m) Permittees shall not erect or permit any obstructions of a permanent nature to be located within the permit premises.

(n) Permittees shall not erect or permit obstructions of a permanent or temporary nature to be located within the non-permit portion of the public sidewalk or other real property within the public right-of-way.

(o) Permittees shall restrain and prevent their employees, patrons, customers, business invitees and guests from blocking, obstructing or hindering the flow of pedestrian traffic upon the non-permit portion of the public sidewalk or other real property within the public right-of-way.

(p) Permittees shall keep the premises and any adjacent non-leased public sidewalk or other real property within the public right-of-way clean and free of debris.

(q) Permittees shall acknowledge acceptance of the premises in an "as is" condition with absolutely no warranties, implied or expressed, by the City as to the condition or suitability of the premises for the intended use.

(r) Permittees shall apply for and receive approval for all building, zoning and any other permits required as a result of the proposed use of public sidewalk or other real property within the public right-of-way before any occupation of the public sidewalk or other real property within the public right-of-way may occur.

727.08 PERMIT SUSPENSION AND REVOCATION.

(a) The Director may suspend or revoke the permit of any permittee if the permittee or his agent fails to abide by the provisions of these Codified Ordinances or State law, or if any required health license has been suspended or revoked.

(b) The Director shall give written notice of suspension or revocation of the permit to the permittee or his agent stating the reasons therefor. If the reason for the suspension or revocation is that a required health license has been suspended or revoked or that the permittee does not currently have an effective insurance policy as required by Section 727.03(j), the action shall be effective upon giving such notice to the permittee or to his agent. otherwise, such notice shall contain the further provision that the action shall become final and effective ten (10) days thereafter unless, within five (5) days of receipt

of notice, the permittee requests a hearing before the Director. The Director shall forthwith hold the requested hearing, at which time the permittee shall be afforded the opportunity to give his version of the facts which gave rise to the Director's action. After the hearing, the Director shall determine whether to proceed with the action or to rescind it.

(c) The action of the Director may be appealed to the Board of Zoning Appeals.

727.09 REMOVAL OF TABLES, CHAIRS AND OTHER EQUIPMENT THAT BELONGING TO THE PERMITTEE.

(a) Any tables, chairs and other equipment placed in a public sidewalk, alley or other public right-of-way without a permit issued pursuant to this Section may be seized and removed. Prior to such seizure and removal, the property owner or operator of the business establishment fronting on the public right-of-way from which the tables, chairs and other equipment are to be removed shall be notified and given two (2) days in which to remedy the violation. If the property owner or operator of the business establishment fails to remedy the violation, the City may seize and remove the tables and chairs and other equipment.

(b) Notwithstanding any other provisions of this chapter, the City may seize any tables and chairs and other equipment, whether placed with or without a permit, without prior notice if the tables and chairs and other equipment are placed in the public right-of-way in such a place or manner as to pose an immediate and serious danger to persons or property or if the condition of the tables, chairs and other equipment renders them unsafe, unsound or hazardous so as to pose an immediate and serious danger to persons or property. After seizure, the City shall promptly notify the owner or operator of the business establishment and such individual shall have the right to request an informal hearing before the Director within ten (10) days after such notification to determine whether the seizure was proper.

(c) As a condition of recovering any tables and chairs and other equipment properly seized pursuant to this Section, the owner of such tables and chairs and other equipment shall pay an impound fee covering the actual cost to the City of transporting and storing such tables and chairs and other equipment.

727.10 TAXES.

The permittee shall be responsible for all charges and all federal, state or local taxes, including property taxes, which may now or hereafter be imposed or levied upon the outdoor restaurant, outdoor dining, and outdoor retail and the services provided in connection therewith.

727.11 REGULATIONS.

The Director may promulgate such regulations, not inconsistent with the provisions of this chapter, establishing procedures for the issuance of permits.

727.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the third degree. Each day during which noncompliance or a violation continues shall constitute a separate offense.

Section 3. Chapter 727 of the Codified Ordinances as currently enacted is hereby repealed.

Section 4. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council, and any of its committees, that resulted in those actions were in meetings open to the public, in compliance with the law.

Section 5. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective so all business establishments can apply for permits immediately; **wherefore**, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____, 2021

President of Council

Attest: _____
Clerk of Council

Approved _____, 2021

Mayor