

BOROUGH OF RIDGWAY, COUNTY OF ELK, COMMONWEALTH OF PENNSYLVANIA

ORDINANCE NO. 679

AN ORDINANCE PERMITTING SIDEWALK CAFÉS IN THE BOROUGH OF RIDGWAY

WHEREAS, after discussion Borough Council determined it would be beneficial to adopt this Ordinance to ensure the health, safety and welfare of all residents and visitors to the Borough, **NOW, THEREFORE**, it is hereby **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Ridgway, County of Elk and Commonwealth of Pennsylvania, as follows:

Section 1. Declaration of purpose.

The Ridgway 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. The current ordinances do not address sidewalk cafes. Council believes that sidewalk cafes 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.

Section 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 cafe 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 cafe 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 curb line and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

SIDEWALK CAFE. An outdoor dining area operated by a restaurant, which 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.

Section 3. Unlawful to operate without permit.

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

Section 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 cafe to the Borough, which shall issue a permit upon compliance with the terms and conditions of this Ordinance. Applications for sidewalk cafe 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 cafe is proposed. If the applicant is other than the owner of the building abutting the location of the proposed sidewalk cafe, the applicant must provide written authorization from the property owner stating that the property owner has no objection to the sidewalk cafe.
- B. 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 cafe.
 - 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 cafe site, the size and location of all proposed tables and chairs, and the proposed pedestrian walkway.
- C. The seating capacity of the proposed sidewalk cafe.
- D. Other information as may be determined by the Borough.

Section 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 Borough Manager and Code Enforcement Officer 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 people.

Section 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 Ridgway 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 cafe, or by the acts or omissions of the employees or agents of the permit holder in connection with such cafe. The permit holder shall also agree to release the Borough from any and all claims relating to its sidewalk cafe, including, but not limited to, loss of business and/or value of the sidewalk cafe when it is ordered removed or when street, sidewalk, or utility construction occurs.

- B.** Sidewalk cafe permits are not transferable. Changes in ownership/operation require reapplication for a permit.
- C.** A sidewalk cafe permit may be renewed annually, upon review of compliance and/or complaint history, if any.

Section 7. Design standards.

- A.** A sidewalk cafe shall leave a paved pedestrian walkway with a clear unobstructed width of sixty (60) inches between the sidewalk cafe and any obstacle (tree, pole, post, sign, planting area, etc.). In the event that five (5) feet is not obtainable, the applicant may request a reduction in the minimum feet of usable, safe, clear walk area of the sidewalk, but not less than thirty-six (36) inches. No portion of a sidewalk cafe shall be permitted in the pedestrian walkway. The pedestrian walkway shall be provided with an unobstructed height of seven (7) feet between the ground plane and an overhead obstacle (tree branch, overhead sign, awning, etc.).
- B.** All parts of a sidewalk cafe shall be easily removable. Furnishings of a sidewalk cafe shall consist solely of tables, chairs, and, if needed, waste receptacles. Other furnishings may be approved upon further review. 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 cafe 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 cafe.
- D.** No sidewalk cafe 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.
 - 6. In a manner which interferes with parking or exiting of vehicles.
- E.** All sidewalk cafes shall be open to the air.
- F.** Sidewalk cafes shall in no way obstruct the ingress to or the egress from any building or business.
- G.** Sidewalk cafes shall not obstruct access to any public service facility on the sidewalk area or street.
- H.** No signs shall be hung or attached to any portion of the sidewalk cafe.

Section 8. Regulations.

- A.** No sidewalk cafe may be operated except:
 - 1. As an accessory to a restaurant lawfully operating on the first floor of the premises.
 - 2. On the sidewalk in front of the principal place of business of such entity, and on the sidewalk of an adjacent business with owner's written permission.
 - 3. By the entity which operates the restaurant.
- B.** A sidewalk cafe may operate only during the same hours that the restaurant is open for service. All patrons must be vacated from the sidewalk cafe and all tables, chairs, and any other materials used in the operation of the sidewalk cafe or within the area used by the sidewalk cafe shall be removed from the sidewalk cafe 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 cafe permit has been granted.
- D.** No food or beverages may be served to a patron at a sidewalk cafe unless that patron is seated at a table.
- E.** Alcoholic beverages may be served or allowed to be consumed within the delineated area of the sidewalk cafe if permitted by the Pennsylvania Liquor Control Board.
- F.** 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 cafe.
- G.** The applicant shall maintain enough receptacles for the disposal of waste. Such receptacles, if any, shall be emptied as often as is necessary.
- H.** Sidewalk cafes, the public property on which they are located, and the surrounding area shall always 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 fifteen (15) feet in each direction from the outermost portion or boundary of the sidewalk cafe.
- I.** The holder of a sidewalk cafe permit is responsible for keeping all visitors, patrons, employees, and cafe fixtures, including tables and chairs, from occupying or encroaching into the required clear sidewalk space.
- J.** All sidewalk cafes and attendant facilities may be inspected at any time by the Borough Manager, Code Enforcement Officer, or the Police Department.
- K.** By accepting a sidewalk café permit, the owner/operator acknowledges and consents 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.

Section 9. Written notice of violations; suspension of permit.

Upon finding by either the Borough Manager, Code Enforcement Officer or Borough Police Department that an applicant has violated any provisions of this Ordinance, the Borough Manager, Code Enforcement Officer 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 Borough Manager, Code Enforcement Officer or Borough Police Department may take appropriate action, as necessary, to maintain the pedestrian walkway. The Borough Manager, Code Enforcement Officer or 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 Borough Manager, Code Enforcement Officer or 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.

Section 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 one 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 ten (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 before the Borough Council prior to the expiration of that ten (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 ten (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 cafe 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.

Section 11. Removal of sidewalk cafe.

- A. If the Borough incurs any costs in removing any tables, chairs, or other materials from a sidewalk cafe 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.

Section 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 with respects to streets and sidewalks, whether express or implied.

- B. Ridgway Borough reserves the right to revoke or suspend sidewalk cafe permits for cause and to amend sidewalk cafe permit requirements and regulations as may be necessary for compliance with any change in local, State, or Federal laws.
- C. A permit granted pursuant to this Ordinance does not create any vested property right in the sidewalk area to which the permit applies.

Section 13. Severability.

If any provision, paragraph, word, section, or subsection of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, or subsections shall not be affected and shall remain in full force and effect.

Section 14. Repealer.

All relevant ordinances, regulations, and policies of the Borough of Ridgway, Pennsylvania not amended shall remain in full force and effect. If any section subsection, sentence, or clause of this Ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance. Any ordinance or part of an ordinance conflicting with the provisions of this Ordinance shall be and the same is hereby repealed to the extent of such conflict.

Section 15. Effective Date.

This Ordinance shall be effective immediately upon passage and approved in the manner prescribed by law.

ORDAINED AND ENACTED into an Ordinance this _____ day of _____, 20_____.
 Borough Council of the Borough of Ridgway

BY: _____
 Sam MacDonald, President

ATTEST: _____
 Paul McCurdy, Secretary

APPROVED by the Mayor this _____ day of _____, 20_____.

BY: _____
 Guillermo Udarbe, Mayor