



Legislation Details (With Text)

**File #:** 2009-1158      **Version:** 4

**Type:** Ordinance      **Status:** Passed Finally

**File created:** 3/3/2009      **In control:** Committee on Public Works

**On agenda:**      **Final action:** 3/31/2009

**Enactment date:** 3/31/2009      **Enactment #:** 4

**Effective date:** 4/7/2009

**Title:** Amending and supplementing the Pittsburgh Code of Ordinances, Title 4: Public Places and Property; Article I: Public Rights of Way; Chapter 416: Obstructions, by making various changes relating to street encroachments for sidewalk cafes.

**Sponsors:** Bruce A. Kraus

**Indexes:** ENCROACHMENTS & EASEMENTS, PGH. CODE ORDINANCES TITLE 04 - PUBLIC PLACES

**Code sections:**

**Attachments:** 1. 2009-1158.doc, 2. 2009-1158 version 2.doc, 3. 2009-1158 Version 3.doc, 4. 2009-1158 Version 4.doc, 5. 2009-1158 Version 4 clean.doc

| Date      | Ver. | Action By                 | Action                               | Result |
|-----------|------|---------------------------|--------------------------------------|--------|
| 4/7/2009  | 4    | Mayor                     | Signed by the Mayor                  |        |
| 3/31/2009 | 4    | City Council              | Passed Finally, As Amended           | Pass   |
| 3/31/2009 | 4    | City Council              | AMENDED                              | Pass   |
| 3/25/2009 | 3    | Committee on Public Works | AMENDED BY SUBSTITUTE                | Pass   |
| 3/25/2009 | 3    | Committee on Public Works | Affirmatively Recommended as Amended |        |
| 3/18/2009 | 2    | Committee on Public Works | AMENDED                              | Pass   |
| 3/18/2009 | 2    | Committee on Public Works | Held in Committee                    | Pass   |
| 3/11/2009 | 1    | Committee on Public Works | Held in Committee                    | Pass   |
| 3/3/2009  | 1    | City Council              | Read and referred                    | Pass   |

Amending and supplementing the Pittsburgh Code of Ordinances, Title 4: Public Places and Property; Article I: Public Rights of Way; Chapter 416: Obstructions, by making various changes relating to street encroachments for sidewalk cafes.

Whereas, use of the public right-of-way for private purposes is a privilege, and not a right;

Whereas, sidewalk cafes can add aesthetic appeal and community activity that enhance the quality of life; and

Whereas, the City of Pittsburgh wishes to address the concerns of business owners, patrons, and communities about the potential for noise, encroachment, and unruly behavior on publicly owned sidewalk property; and

Whereas, the City wishes to encourage the enjoyment of open air dining, especially in business districts in historic districts; and

Whereas, the City wishes to ensure that Sidewalk Cafés are regulated for the protection of pedestrians, police

and other emergency workers, and the disabled; and

Whereas, the City wishes to ensure good order and cleanliness, consistent enforcement, and high quality design standards for sidewalk cafés; and

**Be it resolved that the Council of the City of Pittsburgh does hereby enact as follows:**

**Section 1.** The Pittsburgh Code of Ordinances, Title 4: Public Places and Property; Article I: Public Rights of Way; Chapter 416: Obstructions is hereby amended and supplemented as follows:

**SEE ATTACHMENT**

**CHAPTER 416. OBSTRUCTIONS**

- § 416.01 Minor street obstructions; permit required
- § 416.02 Permit fee for minor street obstructions
- § 416.03 Street encroachments and major street obstructions; permit required
- § 416.04 Permit fee for street encroachments and major street obstructions
- § 416.05 Standards of permit issuance <
- § 416.06 Sidewalk Cafés (Purpose)
- § 416.07 Sidewalk Cafés (Definition)
- § 416.08 Approval Process for Sidewalk Café, including Permits and Fees
- § 416.09 Sidewalk Café Site Plan
- § 416.10 Sidewalk Café Annual Renewal
- § 416.11 Permit revocation and penalties
- § 416.12 Effective Date
- ~~§ 416.06~~ § 416.13 Work approval
- ~~§ 416.07~~ § 416.14 Use of construction within public right-of-way

**§ 416.03 Street Encroachments and Major Street Obstructions; Permit Required.**

(a) Except [as set forth in subsection (e) below] for Sidewalk Cafés, no person shall erect, construct or maintain a permanent bridge, tunnel, vault or other encroachment in any public right-of-way without first obtaining a resolution from Council and permission from the Department of Public Works. Application therefore shall clearly indicate the purpose and proposed use of the encroachment, shall include a plan identifying the portion of the right-of-way in which the encroachment is requested, and shall include other information as may be required to demonstrate compliance with the Pittsburgh Code and with requirements for encroachments established by the Director of the Department of Public Works. Once granted, such encroachment and its use shall not be changed, modified or altered without reapplication to Council and the Department. The Director shall notify Council on a weekly basis of all individuals or entities who have made formal application for an encroachment, easement or vacation of a city street or right-of-way.

(b) The City Clerk shall notify the Director of the approval by Council of the resolution authorizing the encroachment permit. However, the Director shall not issue the permit until the applicant has paid the applicable fee, obtained all applicable zoning approvals, submitted proof of insurance in coverages and amounts approved by the Director and supplied such other information as may be required and approved by the Director.

(c) By accepting a permit, the permittee agrees where applicable:

(1) To remove or relocate, at its own expense, all installations from the public street, sidewalk or other public way upon thirty (30) days written notice from the City requesting the removal; and

(2) To hold the City nonliable for removal or relocation and to indemnify it for any costs incurred as a result of the removal or relocation; and

(3) To notify abutting and adjoining property owners of the encroachment or obstruction thirty (30) days prior to its installation.

~~[(d) No encroachment of any kind shall be granted to any individual, entity, that owes the City any delinquent taxes (including, but not limited to, property taxes on any real property in the City, wage tax, earned income tax, mercantile tax, business privilege tax, institutional privilege tax, occupation tax or amusement tax); that owes the City or Pittsburgh Water and Sewer Authority any delinquent water or sewage charges; that has any property in the City with any outstanding Bureau of Building Inspection or Housing Court violations, and/or that is delinquent in the payment of any other fees or fines that may be levied by the City of Pittsburgh. For purposes of this subsection, an entity shall be deemed to be delinquent or in violation either if the named entity is delinquent or in violation or if any individual that owns fifty (50) percent or more of the entity has a delinquency or violation. The Department of Public Works shall be responsible for the enforcement of this subsection]~~

~~[(e) A resolution of Council is not required for cafes that meet the specifications described below, and a permit may be obtained from the Department of Public Works without a Council Resolution:~~

~~(1) All sidewalk cafes must have removable barriers that encompass the entire cafe. (Rope & Stanchion)~~

~~(2) A minimum of five (5) feet of open sidewalk must be maintained for pedestrian traffic.~~

~~(3) Insurance must be obtained naming City of Pittsburgh as Co-Insured.~~

~~Limits:~~

~~\$100,000.00 – \$300,000.00 – Public Liability~~

~~\$50,000.00 – Property.~~

~~(4) Applicant must obtain an occupancy permit from zoning.~~

~~(5) Applicant must obtain approval from the Department of Public Works and the City Council Member of the District and Ward the cafe is in.~~

~~(6) The City Council Member representing the District where the cafe is proposed shall acknowledge, in writing, having reviewed the application, prior to issuance of the permit.~~

~~(7) A one hundred twenty-five dollar (\$125.00) application fee on all new sidewalk cafe applications. A fifty dollar (\$50.00) renewal fee each year after.]~~

#### **§ 416.06 Sidewalk Cafés (Purpose)**

It is the purpose of this legislation to permit and encourage Sidewalk Cafés in City of Pittsburgh neighborhoods, as a way of providing vibrant enhancements to pedestrian-oriented business districts.

This general purpose includes, but is not limited to, the following specific purposes:

1. To encourage the establishment of sidewalk cafes as one means of developing a pleasant and distinctive dining experience.

2. To ensure that adequate space will be provided for pedestrian circulation through areas where sidewalk cafes are established and to ensure adequate access to adjoining properties and businesses.

3. To ensure unobstructed passage to police and other emergency personnel.

4. To ensure the comfort, safety, and welfare of disabled persons, including those with limited mobility or vision.

5. To attract business and enhance revenue opportunities.
6. To streamline the application process and improve efficiency.

#### **§ 416.07 Sidewalk Cafés (Definition)**

(a) A sidewalk café is defined as an extension of the services of an existing establishment included but not limited to serving food and beverages for consumption within an existing building, to the extent that food and beverages are permitted to be served and consumed at tables placed on the public sidewalk adjacent to and within the confines of the frontage of that portion of the building in which the establishment is situated. A sidewalk café contains readily removable tables and chairs, is enclosed by rope and stanchion unless some other barrier system is approved by the City as an architectural design element, and shall be otherwise open to the air.

(b) The sidewalk café shall be located on the public right-of-way adjoining the property owner's property and in a location where it shall be determined to be appropriate by this ordinance, and all applicable related ordinances.

#### **§ 416.08 Approval Process for Sidewalk Café, including Permits and Fees**

A proprietor wishing to establish a Sidewalk Café must follow the process described below. Responsibilities of the departments include, but are not limited to, those described. For expediency and to benefit the applicant, each department shall complete its responsibilities within 10 days.

##### A. Department of Public Works (DPW)

At DPW, the proprietor obtains an application form for a permit to encroach on the public right-of-way with a Sidewalk Café. A Checklist of Sidewalk Café Requirements, delineating the steps to be followed in acquiring a Sidewalk Café permit, is issued to the applicant.

##### B. Department of Public Works

Applicant returns to DPW with a completed application. As part of the application for a Sidewalk Café, applicant shall submit a Site Plan conforming to the specifications in Sections 416.09 and 922.01.d.1. The proposed site plan for the Sidewalk Café must be attached to the required permit application. Sample plans are available from DPW. The permit fee is due at this time, at \$1.00 for each square foot of café area (Gross square footage). Also due at this time is a certificate from the proprietor's insurance company, naming the City as co-insured, with minimum amounts of \$100,000.00--\$300,00.00-Public Liability and \$50,000.00-Property. DPW issues a printed notice that the application has been accepted, but not approved.

##### C. Zoning

DPW sends the applicant to the Zoning counter, with the application, and with DPW's notice of acceptance. The application is registered and the applicant pays a one-time filing fee at the Zoning counter. Zoning will verify that the applicant has a valid certificate of occupancy for the primary use of the property. A certificate of occupancy for a Sidewalk Café will not be granted without a valid certificate of occupancy for the primary use.

The Zoning Department reviews the site plan design of the proposed Sidewalk Café. If disapproved, the applicant is given an opportunity to revise the Site Plan to meet Zoning's requirements. If the proposed Sidewalk Café is to be in an Historic District, there will be an additional level of review by the local body that provides historic review for that site. Zoning marks the Site Plan as approved and directs the applicant to the Bureau of Building Inspection.

##### D. Bureau of Building Inspection (BBI)

BBI checks the applicant's record for violations. Any violations must be rectified before a Sidewalk Café permit can be issued. No permit can be issued unless the proprietor has a valid occupancy permit for the establishment that the sidewalk café will abut. Upon being cleared of violations, and consistent with the requirement for commercial venues, the applicant must submit a Site Plan, prepared and sealed by a licensed architect or engineer, to BBI's Plan Examiner. This plan must contain the sidewalk café seating layout, aisles, enclosure, ADA requirements, and means of egress, including egress from the main restaurant to the curb. The Plan Examiner will review the Site Plan for compliance with City Code and for compliance with the Americans with Disabilities Act (ADA). The applicant then pays a one-time fee for the Certificate of Occupancy for a Sidewalk Café. BBI will inspect and issue the Certificate of Occupancy for a Sidewalk Café, if approved. A copy of the Site Plan will be given to the applicant to be maintained at the establishment. The applicant will receive a copy of the Certificate of Occupancy by mail. Upon completion of BBI's process, BBI will forward the Sidewalk Café application packet, including DPW's notice of acceptance, the Site Plan approved by Zoning, and a copy of the Certificate of Occupancy for a Sidewalk Café, to DPW.

E. Department of Public Works

A DPW representative conducts a Field Survey to check the accuracy of information submitted in the proprietor's application for a Sidewalk Café.

F. City Council

When it is deemed that the application is completed fully and correctly, the Director of Public Works submits the application to the District Council Person. The completed Checklist of Sidewalk Café Requirements is included in the packet provided to the District Council Person. The City Council Member representing the District where the cafe is proposed shall acknowledge, in writing, having reviewed the application, prior to issuance of the permit.

G. Department of Public Works

The Director of Public Works notifies the applicant of the City's decision. If approved, the Sidewalk Café permit is issued by the Department of Public Works. **A DPW representative demarcates the margins of the approved sidewalk café on the sidewalk.**

If the proprietor wishes to change the Sidewalk Café from the approved Site Plan, a new application and review process is required.

**§ 416.09 Sidewalk Café Site Plan**

In furtherance of the intent of this legislation that Sidewalk Cafés shall enhance the aesthetic appeal and community activity where they are located, especially in historic business districts, the following requirements are placed on the design and operation of Sidewalk Cafés.

1. Site Plans shall include:

- (a) Size of encroachment onto publicly owned sidewalk
- (b) Sidewalks up to ten (10) feet in width shall leave four (4) feet of sidewalk clear of obstructions to allow unimpeded pedestrian and disabled pedestrian traffic, in accordance with Americans with Disability Act (ADA) standards. Sidewalks over ten (10) feet in width shall leave five (5) feet of sidewalk clear of obstructions to allow unimpeded pedestrian and disabled pedestrian traffic, in accordance with the Americans with Disability Act (ADA) standards. No obstruction shall be placed within eighteen inches of the face of any curb, within five feet of any fire exit, fire hydrant, or building corner.
- (c) The width of the storefront. A sidewalk café is limited to the width of the storefront of the establishment with which the area is associated. The area of ingress and egress is to be shown.
- (d) Gross square footage.

- (e) Compliance with federal accessibility standards, to accommodate persons with disabilities.
- (f) Compliance with Building Code standards for egress from the Café and from the establishment, in case of fire or other emergency
- (g) City and other approved obstructions are shown outside the required ADA clear passageway. Obstructions shall include, but not be limited to, light poles, traffic signal poles, fire hydrants, utility structures, bike racks, parking meters, street trees, and street signs. Further, the sidewalk café cannot obstruct the clear sight distance for vehicles or access or crossings for the disabled.
- (h) The seating, table layout, and barrier system, to scale, along with passageway/aisle clearances.

## 2. Design aspects to be included in the Site Plan are:

- (a) Sidewalk cafés shall have a rope and stanchion as an enclosure, unless some other barrier system is approved by the City as an architectural design element.
- (b) Sidewalk Cafés are comprised of tables for dining. There shall be no standing room. No service equipment is permitted.
- (c) Furnishings for sidewalk cafés shall consist solely of moveable tables, chairs, and decorative accessories. There shall be at least one table that is ADA compliant.
- (d) The square footage of the sidewalk café area shall determine the number of permitted tables and chairs based on the Building Code requirements in effect at the time of the initial application. The proprietor is also required to update sidewalk café seating to meet Building Code requirements in effect at the time of annual renewal.
- (e) If awnings are proposed, they shall be adequately secured and retractable. If umbrellas are proposed, they are to be included in the submitted Site Plan, and must meet ADA standards for encroachment into the public right-of-way, that is, umbrellas must be totally within the sidewalk café area and the edges and prongs must leave the path of travel clear and unobstructed.
- (f) Sidewalk cafés shall be at the same elevation as the public sidewalk. Paint, carpeting, artificial turf, or other floor coverings of any kind shall not be permitted at any time in the sidewalk café area.
- (g) No signage shall be allowed in any sidewalk café, or on the adjacent sidewalk, with the exception that small lighted menu boards may be permitted.
- (h) Sidewalk Café uses shall be subject to Pittsburgh Zoning Code standards, as stated at Pittsburgh City Code section 911.04.A.68.

## 3. General Requirements

- (a) A permit to operate a Sidewalk Café shall only be granted to an establishment with a valid retail food license.

## 4. Operation

- (a) Operation shall be during the normal business hours of the permittee, but no earlier than 7 AM and no later than 2:00 AM.
- (b) Furnishings must be kept in a state of good repair and in a clean and safe condition at all times
- (c) Where Rope and Stanchion is used as the barrier, furnishings and rope and stanchion must be off the sidewalk by close of business, but no later than 2:00 AM each evening. Rope and stanchion must also be removed at that time.
- (d) Sidewalk café permits are not transferable.
- (e) Permittees are bound by all applicable rules for alcohol and tobacco consumption, including state statutes and City ordinances.
- (f) The sidewalk surface in the sidewalk café area shall be maintained in good repair.
- (g) Busing stations, trash receptacles, food preparation stations, cashier stations, and music shall not be permitted in the sidewalk café.

- (h) Sanitary cleaning of the sidewalk café dining area before, during, and after food service is required.
- (i) The proprietor shall maintain on-site copies of both the BBI Certificate of Occupancy for a Sidewalk Café and ~~the DPW Sidewalk Café Permit~~ **the certified Site Plan.** Both shall be presented on request from an enforcement official from Public Safety, DPW, BBI, or other authorized representative of the City. **The DPW Sidewalk Café Permit shall be displayed in the front window, clearly visible from the street.**

#### **§ 416.10 Sidewalk Café Permit Annual Renewal**

The Annual Permit runs from January through December, at which time the proprietor is required to pay the annual renewal fee at DPW \$25.00 at DPW.

#### **§ 416.11 Permit Revocation and Penalties**

- (a) Any person who violates any of the provisions of this article or regulations promulgated hereunder shall be subject to a fine of not less than \$200 and not more than \$1000 for each offense, and each day such a violation continues shall be deemed a separate and distinct offense. The Department of Public Works, the Bureau of Building Inspection, and the Bureau of Police provide enforcement if the permit holder violates the terms of the permit.
- (b) Any sidewalk café or other business activity, including signage, on publicly owned sidewalk in front of a business establishment without a valid permit is subject to removal from the public way by the Department of Public Works.

In addition to fines and other penalties as provided for herein, three or more violations of any provision of this article or regulations promulgated hereunder within a permit period shall subject the permittee to revocation of the sidewalk café permit by the Department of Public Works.

#### **§ 416.12 Effective Date**

This Ordinance shall become effective January 1, 2010.