Legislation Details (With Text)

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Title:	Ordinance amending the Pittsburgh Code, Title Four: Public Places and Property, Chapter 416: Obstructions by deleting sections, 416.14, 416.18, 416.20, 416.21, 416.22, and 416.27; adding new Chapter 425 entitled Outdoor Dining or Retail Activities in the Public Right-of-Way.		
Sponsors:	Bobby Wilson, Anthony Coghill		
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Attachments:			

Date	Ver.	Action By	Action	Result
2/17/2022	3	Mayor	Signed by the Mayor	
2/15/2022	3	City Council	AMENDED	Pass
2/15/2022	3	City Council	Passed Finally, As Amended	Pass
2/9/2022	2	Standing Committees	AMENDED	Pass
2/9/2022	2	Standing Committees	Affirmatively Recommended as Amended	Pass
2/1/2022	1	City Council	Read and referred	

Ordinance amending the Pittsburgh Code, Title Four: Public Places and Property, Chapter 416: Obstructions by deleting sections, 416.14, 416.18, 416.20, 416.21, 416.22, and 416.27; adding new Chapter 425 entitled Outdoor Dining or Retail Activities in the Public Right-of-Way.

WHEREAS, The City of Pittsburgh streamlined its review process of outdoor dining and retail to accommodate COVID-19 safety measures under the emergency declaration, in order to support our business community, especially restaurants, during these trying economic times; and

WHEREAS, the emergency declaration has expired, but restaurants and other businesses are still struggling to stay open, and the ability to offer outdoor dining and retail could help save many businesses; and

WHEREAS, the City recognizes that outdoor dining and retail activities can be in the interest of economic development, vibrancy, and attractive places; and

WHEREAS, accessibility, appearance, safety and maintenance are a critical piece of the privilege of the use of public space; and

WHEREAS, the Department of Mobility and Infrastructure (DOMI), through the issuance of licenses, permits the use of portion(s) of the public right-of-way for food and retail services; and

WHEREAS, DOMI recognizes the need to clarify and streamline regulations, standards, and procedures for outdoor dining or retail activities to better serve our business community; and

WHEREAS, The City of Pittsburgh also recognizes the importance of accessible public spaces for all, especially in the right-of-way, and is committed to continuing to enforce accessibility codes and standards, and intends to continue to work with the accessibility community to maintain and improve those standards.

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF PITTSBURGH HEREBY ENACTS AS FOLLOWS:

Section 1. The Pittsburgh City Code, Title Four: Public Places and Property, Chapter 416: Obstructions is hereby amended by repealing sections 416.14, 416.18, 416.20, 416.21, 416.22, and 416.27.

Section 2. The Pittsburgh City Code, Title Four: Public Places and Property, Chapter 416: Obstructions is hereby amended by adding Chapter 425 entitled Outdoor Dining or Retail Activities in the Public Right-of-Way.

§ 425. Outdoor Dining or Retail Activities in Public Right-of-Way

§ 425.01 License Required

Prior to establishing an outdoor dining or retail presence in the Public Right-of-Way (ROW), a license for the obstruction of public space must first be obtained from the Director of the Department of Mobility and Infrastructure. Such license does not supplant necessary authorizations or approvals as may be required by City, county, or state laws, rules, or regulations of any other entity that has jurisdiction over the activity proposed in the ROW. Outdoor dining and license holders are responsible for obtaining all applicable licenses or approvals needed to operate.

For the purposes of this chapter, an outdoor dining or retail activity in the public ROW includes but is not limited to use of the sidewalk and / or cartway for:

(a) Seating for a food establishment;

(b) Retail display;

(c) Food preparation or cooking.

Provisions of this Chapter shall not apply to operations regulated under Chapter 719: Vendors and Peddlers.

§ 425.02 Definitions

(a) CARTWAY. The portion of the public right-of-way between curb lines. May include parking lanes or travel lanes.

(b) SIDEWALK. For the purposed of this Chapter, portion of the public right-of-way measured from the face of the curb to property line.

(c) PUBLIC RIGHT-OF-WAY. The surface and space above and below any real property in which the City has

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an interest in law or equity. Public Right-of-Way will be referred to as the ROW.

§ 425.03 Outdoor Dining and Retail in the ROW

(a) No person shall occupy the public right-of-way for the purpose of establishing a dining or retail presence unless the person has obtained an Outdoor Dining and Retail license from the Department of Mobility and Infrastructure.

(b) No person shall operate a dining or retail presence in the public right-of-way without obtaining necessary authorizations or approvals as may be required by City, county, or state laws, rules, or regulations.

(c) The Department of Mobility and Infrastructure is authorized to promulgate regulations, standards, and procedures for the issuance and enforcement of outdoor dining and retail licenses.

(d) Such regulations shall provide for standards concerning license issuance, location and standards of operation that are designed to protect public safety and the orderly, safe and efficient use of the right-of-way by pedestrians and vehicles and shall include, at a minimum, the standards set forth in this Section.

(e) The Director shall consult with and abide by any legal requirements set forth by the City of Pittsburgh's Art Commission.

(f) An application for an outdoor dining and retail license shall include, ~~at a minimum~~ including but not limited to:

(1) The name of the applicant and the street address of the property where the outdoor dining or retail activity is proposed. If the applicant is other than the owner of the building of the establishment proposing the outdoor dining or retail activity, the applicant must provide written authorization from the property owner stating that the property owner has no objection to the proposed use.

(2) A plan of the proposed use of the public ROW drawn to minimum scale of 1/4" = 1’ showing:

(i) Dimensions of the outdoor dining or retail activity boundaries, including the building line of the existing building;

(ii) Layout of and dimensions tables, barrier system and/or other furnishings;

(iii) Existing sidewalk, parking lane, and travel lane widths;

(iv) The location of all transit stops within thirty (30) feet of the property line and its abutting sidewalk; and

(v) All sidewalk obstructions, including, but not limited to poles, parking meters, trees, cellar doors, vaults, bike racks, etc. located within ten (10) feet of the outer edge of the proposed use.

;(3) Three color photographs, at least 5” x 7”, showing the complete area of the building façade from three different angles.

(4) Daily and weekly hours of operation.

(5) Applicant attestation that the outdoor dining or retail activity will comply at all times with terms and conditions of the license and with all applicable accessibility standards, including but not limited to,

maintaining sidewalk clearances.

~~(6) A copy of a valid Certificate of Occupancy for the business seeking an outdoor dining and retail license.~~

(6~~7~~) A certificate of insurance from the proprietor's insurance company, naming the City as additional insured. The certificate of insurance shall be occurrence-based and not claims based. The Director of the Department of Mobility and Infrastructure, in consultation with the City Solicitor, shall set the type and coverage of insurance required. In determining the insurance requirements, the Director shall take into consideration factors including, but not limited to, the type of permit, the scope of the project, the risk to the City and to the general public, as well as other salient factors. The permittee shall further provide that the policy shall not terminate or be cancelled prior to the expiration date of the permit without thirty (30) days' written notice to the Director.

(g) Placement and Design Requirements for all Outdoor Dining and Retail Activities

(1) Outdoor dining and retail activities located at street intersections shall provide corner clearance ~~by providing a ten (10) foot clear space from the curb line~~ at a distance determined by the Department.

(2) No part of the outdoor dining and retail activity shall obstruct ~~be within fifteen (15) feet of~~ a transit stop or curb cut.

(3) No part of the outdoor dining and retail activity shall be within ~~five (5)~~ fifteen (15) feet of a fire hydrant.

(4) In reviewing applications for outdoor dining and retail, the Department shall strive to accommodate all existing and potential users of the ROW, generally to the highest and best use of the right-of-way, and according to the order of completed license applications. The Department may deny an application or order a license revoked or revised based on consideration of the public interest, safety, and convenience, the condition of the right-of-way, the time of year, the protection of existing equipment in the right-of-way, **failure to maintain accessibility standards,** and future City plans for public improvements and development projects.

(h) Placement and Design Requirements for Use of Sidewalk

(1) Sidewalks up to ten (10) feet in width shall leave a minimum of four (4) feet of sidewalk clear of obstructions. Sidewalks over ten (10) feet in width shall leave at least one-half of the sidewalk clear of obstructions.

(2) Furnishing and additions, including but not limited to, tables, chairs, planters, dividers, tents or umbrellas must be a minimum of 18” from the edge of curb and, may not be bolted down or drilled into the roadway, sidewalk, or building façade without the permission of the Department, and must not block any right-of-way sign or interfere with required clear egress space.

(3) Vaults, grates, etc. cannot be covered or obstructed by any furnishings or barriers.

(4) The licensee shall be responsible for keeping all visitors, patrons, employees, and furnishings, including, without limitation, tables, chairs, planters, and delineators, from occupying or encroaching into the required clear sidewalk space.

(5) The required clear egress space shall be maintained at all times.

(6) In evaluating the placement of an outdoor dining or retail activity, the Department shall consider that

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the placement or maintenance of the activity shall not impede or endanger pedestrian travel, obstruct the **straight,** contiguous clear pedestrian path, nor interfere with the installation or maintenance of underground utilities.

(7) when considering the placement of the outdoor retail or dining on the sidewalk, the Department's preference will be for designs that exceed minimum clear sidewalk requirements and maintain a straight, contiguous clear pedestrian path wherever there are the least number of structural interferences. In most cases this will the building-side of the sidewalk. The most intuitive route for blind and visually-impaired pedestrians, and pedestrians who use mobility devices should be chosen.

(i) Placement and Design Requirements for Use of Cartway

(1) Outdoor dining and retail activities in the cartway is only permissible in connection with establishments that are primarily engaged in the business of food service on the premises for sale to customers substantially for on-premises consumption and that maintains at least three tables for indoor dining on a regular basis.

(2) Outdoor dining and retail in the cartway is not permitted on streets with a speed limit greater than 25 mph. Exceptions may be made to permit outdoor dining and retail in the cartway on streets with a speed limit greater than 25 mph with approval from the Municipal Traffic Engineer.

(3~~2~~) Outdoor dining and retail activities in the cartway shall not be located in a travel lane of any type, including a bicycle lane. The Department may consider applications for travel lane closures where the applicant has proposed a street reconfiguration plan, stamped by a traffic engineer, that does not materially alter the street in a way that negatively impacts vulnerable road users.

(4~~3~~) The number of dining seats shall be no more than thirty (30) for an individual establishment.

(54) Outdoor dining and retail activities in the cartway may only be located in the right-of-way directly abutting the establishment in connection with the approved license, and in the right-of-way abutting adjacent properties, provided proof of permission to utilize the right-of-way of the adjacent property owner is provided at the time the application is submitted.

(6~~5~~) Outdoor dining and retail activities in the cartway must be protected by a physical barrier abutting any portion of the activity alongside of which vehicular traffic passes at any time, pursuant to such standards as promulgated by the Department.

(7~~6~~) All outdoor dining and retail activities in the cartway must be accessible pursuant to standards established by all applicable federal, state, and local laws, rules, and regulations.

(8~~7~~) Furnishing and additions, including but not limited to, tables, chairs, planters, dividers, tents or umbrellas must be a minimum of 18” from the edge of curb and, may not be bolted down or drilled into the roadway, sidewalk, or building façade,

(j) Hours of Operation. Outdoor dining and retail activities shall only be operated during the normal business hours of the licensee, but no earlier than 7 a.m. and no later than 10:00 p.m. Sunday through Thursday and no earlier than 7 a.m. and no later than 11 p.m. on Friday and Saturday.

(k) Maintenance of ROW

(1) Licensee shall maintain the outdoor dining and retail activity in accordance with license terms and conditions, all City, state, and federal laws, as well as any rules and regulations which pertain to the use of the outdoor dining and retail activity including, but not limited to, any and all City Code rules and

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regulations as may be required by the Department of Public Safety and Department of Permits, Licenses, and Inspections.

(2) The issuance of an outdoor dining and retail license does not permit any conduct otherwise prohibited by this Code, including otherwise prohibited outdoor cooking and outdoor storage of flammable materials.

(3) Licensees shall keep the permitted area and surrounding fifty (50)-foot radius litter-free.

(4) Licensees shall provide and maintain access to City and utility infrastructures, including, but not limited to utility poles, gas valves, manhole covers, wastewater systems, and fire hydrants. the Director reserves the right to require temporary or permanent removal and/or storage of any structure(s) inhibiting access to these facilities.

(5) Licensees shall monitor and maintain the enjoyment, quiet, safety, and sanitation of the use of public ROW.

(6) Licensees shall remove snow and ice from the licensed area and adjacent sidewalk, and may be required to remove furnishings and barriers to allow for proper snow removal.

(7) Licensees may be required to complete trainings, held by the Department, relating to ROW maintenance and accessibility standards and best practices for stewardship of the public ROW.

(l) Structures, furnishing, and additions built or maintained at an outdoor dining or retail activity must conform to any standards established by regulation and must conform in all respects with all requirements of the Pittsburgh Code (Building and Fire Code). Any such structure not permanently installed must be removable within 48 hours upon notice from the City of Pittsburgh or such lesser time established by regulation.

(m) Approval process.

(1) When it is deemed that the DOMI application is completed fully and correctly, the Department shall have thirty (30) days to ~~approve~~ ~~or deny~~ review the application and, if approved, issue a license.

(2) An Occupancy Only permit or Certificate of Occupancy shall be issued where required.

(3~~2~~) Prior to the issuance of a license, the licensee must pass a pre-site inspection.

(4~~3~~) A notice poster, in the format determined by the Department, of the intent to install outdoor dining or retail in the right-of-way shall be posted at a conspicuous location on the property plainly visible from the street for a minimum of ten (10) consecutive days at the start of the thirty (30) day review period. As part of the application, the applicant shall submit a photo of the poster to demonstrate compliance with this requirement.

(54) All other applicable certificates of approval must be obtained before operations can commence.

(6~~5~~) Prior to the issuance, the licensee must pay any and all applicable fees as outlined in the Department's publicly posted Right-of-Way Fee Schedule.

(n) License Placard. Once the license is issued by the Department, a license placard shall be displayed in a conspicuous location on premise, plainly visible from the street.

§ 425.04 Special Provisions for Outdoor Retail Display

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(a) A retail or food service establishment may apply for a license to use the public sidewalk in front of their establishment for the purpose of displaying goods or providing pedestrian queue space for walk-up service.

(b) Retail display is only permitted on the sidewalk ~~and must be up against the wall of the business or as close as possible to the building.~~ Display must be at least 3' from adjacent business or property line.

(c) Retail display must not interfere with clear sidewalk requirements in § 425.03(g) **and (h) .**

(d) Retail Display is intended for temporary display during hours of business operations only, and not intended for permanent encroachments of any kind. All elements of display must be removed from the public right-of-way outside of business hours of operation.

(e) Outdoor Retail expressly prohibits sales transactions of any kind on the sidewalk. No money is to be exchanged outside of the premises. This violation constitutes immediate forfeiture of the license for one (1) full year.

(f) Seating area is acceptable but does not include upholstered furniture., Tables and chairs may be used as long as there is no ~~waiter~~ table service, orders taken, or money transactions occurring outside.

(g) Applications for retail display with four (4) seats or fewer under this subsection shall be exempt from site plan requirements of this chapter as long as they can demonstrate that they meet all requirements in Placement and Design Requirements for Use of Sidewalk in § 425.03.

§ 425.05 Special Provisions for Outdoor Dining and Retail with Cooking

(a) An establishment including, but not limited to, a restaurant, grocery store, café, or deli shall apply for a license to use the public sidewalk for the purpose of outdoor cooking and other related food services. Outdoor cooking includes, but is not limited to, outdoor grilling or food preparation. Related food services include selling, sampling, and displaying food cooked and/or prepared outside of the business premises.

(b) Outdoor dining and retail with cooking is only permitted on the sidewalk ~~and must be up against the façade of the business or as close to the building as possible~~ **and must meet requirements of section 425.03 (g) and (h).**

(c) Applications for food prepared outside of the building premises require a notarized consent form from the adjacent building owners left and/or right of the building housing the licensed business as part of the application.

(d) No employee, or other individual on behalf of the business while on the sidewalk or public right-of-way, shall create excessive smoke or strong odors through the preparation of goods that are cooked outdoors.

(e) The merchant's outdoor equipment and set-up must also include a sanitary receptacle for the purposes of controlling the waste generated from the cooking. Placement of receptacle must not interfere with clear sidewalk requirements in § 425.03(g)1.

(f) All other applicable certificates of approval, and a certificate of approval from the Allegheny County Health Department must be obtained before operations can commence.

~~(g) If an applicant possesses outstanding citations issued under this Chapter and related to the premises for which the application is submitted, a license will not be issued.~~

(g) If an applicant possesses outstanding citations issued under, Title 8, Title 9 and/or Title 10 related to the

operation of the outdoor dining and retail with cooking, or under this Chapter, related to the premises for which the application is submitted, a license will not be issued.

§ 425.06 License revocation and penalties.

(a) The Department shall have the authority to inspect for violation of any provision of this Title.

(b) Any person who violates any of the provisions of this Chapter or regulations promulgated hereunder shall be subject to a fine for each offense as outlined in the Department's publicly posted Right-of-Way Fee Schedule, and each day such a violation continues shall be deemed a separate and distinct offense.

(c) Three (3) or more violations of any provision of this Article or regulations promulgated hereunder, within a license period shall subject the licensee to revocation of the license by the Department of Mobility and Infrastructure.

(d)The Department will consider violations of applicable county or state laws, regulations, or policies enforced under the jurisdiction of others in the revocation of license. including outstanding citations issued under Title 8, Title 9 and/or Title 10 related to the operation of the outdoor dining and retail with cooking, or under this Chapter.

(e) The Department may order a license revoked or revised based on consideration of the public interest, safety, and convenience, the condition of the right-of-way, the time of year, the protection of existing equipment in the right-of-way, **failure to maintain accessibility standards,** and future City plans for public improvements and development projects.

§ 425.07 License Term and Renewals.

(a) Licenses are effective upon the date of issuance and shall remain in full force in effect for one (1) year, subject to § 425.06.

(b) Upon the Department’s initial approval, licenses may be ~~renewed on an annual basis~~ may be renewable annually upon meeting requirements of renewal and the satisfaction of the City.

(c) If an applicant possesses outstanding citations issued under §425.06 and related to the premises for which the renewal is submitted, a renewal will not be issued.

§ 425.08 Unpermitted Commerical Activities

(a) Any commercial activity or other business activity, including signage, on public space without all valid permits, licenses, and certificates is subject to immediate removal from the public right-of-way by the Department and City of Pittsburgh Police.

(b) The Director of DOMI shall have the right to withhold issuing certain permits or licenses for an applicant under the following circumstances:

(1) The applicant fails to meet the provisions of this Chapter or regulations promulgated hereunder.

(2) The applicant was issued a warning (i.e. request for compliance) or citation more than three times in any six-month period for failure to comply with the terms and conditions of any City ordinance, rule, regulation, or condition of a previously issued permit or license.

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§ 425.09 Special Provisions for Existing Sidewalk Café, Outdoor Dining in the Cartway, or Extension of Premise Permit Holders

(a) Any sidewalk café, outdoor dining in the cartway, or extension of premise operating under the provisions of a license or permit granted before the effective date this Ordinance is enacted may continue to operate under the provisions of that license or temporary permit until the expiration of that permit, upon which time the operator will be required to comply with the provisions of this Ordinance by, at the sole discretion of the Department, either submitting evidence of compliance to the Department or submitting a new application.

(b) Any sidewalk café operating pursuant to § 419.01 may continue to operate on the provisions of that Section, provided a minimum four (4) foot clearance is maintained.

(c) Any sidewalk café operating pursuant to § 416.19 may continue to operate on the provisions of that Section.

§ 425.10 - Effective Date

This ordinance shall take effect thirty (30) days following the date the Mayor signs the enabling legislation. The Department of Mobility and Infrastructure shall issue rules and regulations to carry out this Chapter no more than thirty (30) days after the effective date.

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