

ORDINANCE NO. 2019 -

**BOROUGH OF PHOENIXVILLE
CHESTER COUNTY, PENNSYLVANIA**

AN ORDINANCE OF THE BOROUGH OF PHOENIXVILLE, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 13 “LICENSES, PERMITS, AND GENERAL BUSINESS REGULATIONS”, PART 11 “SIDEWALK CAFE” OF THE CODE OF ORDINANCES OF THE BOROUGH OF PHOENIXVILLE.

The Council of the Borough of Phoenixville, Chester County, Pennsylvania, hereby ORDAINS that:

Section 1:

Part 11, “Sidewalk Cafe,” of Chapter 13, “Licenses, Permits and General Business Regulations,” of the Borough Code of Ordinances is hereby created and shall provide as follows:

§ 13-1101 Short Title.

This Part shall be known as “Sidewalk Cafe.”

§ 13-1102 Purpose and Findings.

The purpose of the Sidewalk Cafe designation is to advance the public purposes of stimulating economic activity and providing amenities in the business district in the Borough of Phoenixville.

§ 13-1103 Definitions.

- A. Definitions. The following words and phrases, as used herein, shall have the meanings hereby ascribed to them, except in those instances when the context clearly indicates a different meaning:

BOROUGH

The Borough of Phoenixville.

BOROUGH MANAGER

The Borough of Phoenixville Borough Manager or his or her designee.

DEPARTMENT

The Department of Codes Enforcement of the Borough.

DIRECTOR

The Director of the Department of Codes or her/his designee.

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 Part.

PEDESTRIAN ZONE DETAILS

The Sidewalk details which have been approved for use in establishing the Pedestrian Zone and identified in this Part as Pedestrian Zone Details. Such Pedestrian Zone Details shall be made available for review and copies provided upon request at Borough Hall. The Borough may, from time to time by resolution, amend the Pedestrian Zone Details as deemed necessary and appropriate by the Borough Council.

PERMIT

Any permit, in writing as issued by the Borough Manager or his or her designee.

SIDEWALK

A paved surface between the curb line or the lateral line of a roadway and the adjacent property line or easement of private property that is intended for use by pedestrians.

SIDEWALK CAFÉ

A place maintained anywhere outside the Property's building footprint, used for the purpose of furnishing food and/or beverages to the public. This includes any area on the Sidewalk directly abutting and adjacent to the eating place.

§ 13-1104 Sidewalk Café Permit Required.

It shall be unlawful for any person to erect, construct or maintain an Sidewalk Cafe without first applying for and securing a Permit therefor as provided in this chapter. The Permit shall specify if the business is permitted as a Sidewalk Cafe and shall be valid from the date of issuance until the end of the calendar year in which the permit was issued.

§ 13-1105 Specific Standards.

The following regulations shall apply to restaurant-cafes.

- A. A minimum pedestrian walkway of 60 inches clear shall be maintained in a contiguous, linear alignment as designated by the Department and acknowledged on the permit. Acceptable examples are contained in the Pedestrian Zone Details.
- B. The minimum height of umbrellas which project into the required minimum pedestrian walkway shall be 84 inches.

- C. There shall be no objectionable advertising displayed on umbrellas or tables which are located on the pedestrian walkway in the Sidewalk Cafe.
- D. Tables which are placed on the pedestrian walkway within the Sidewalk Cafe shall not exceed 16 square feet in area.
- E. Sidewalk Cafes providing table service shall serve all products in glass or on china with silverware and linens. Sidewalk Cafes providing table service shall not utilize disposable products.
- F. The Owner of the Sidewalk Cafe is responsible for keeping the pedestrian walkway in front of the Property clean and free of trash and debris.
- G. Owners of a Sidewalk Cafe shall stop serving customers and clear all tables of food, beverages and customers at or before 11:00 p.m., prevailing time.
- H. Furnishings for Sidewalk Cafes shall consist solely of movable tables, chairs and decorative accessories. Furnishings must be kept in a state of good repair and in a clean and safe condition at all times. No plastic furniture will be allowed. All furniture must be approved by the Director.
- I. Tables, chairs, and all other furnishings or accessories may not be left in place during non-business hours, but shall either stored indoors or stacked and stored in an orderly fashion adjacent to structure.
- J. Tables, chairs or any other fixtures used in connection with an Sidewalk Cafe shall not be attached, chained or in any manner affixed to any tree, post, sign or other Borough-owned fixture.
- K. The owner shall maintain the Sidewalk Cafe in accordance with all Borough ordinances and county, state and federal laws, as well as rules and regulations promulgated and adopted by the Borough which pertain to the use of Sidewalk Cafes.
- L. Radios, televisions (whether or not the volume is off) and other electronic media either in or visible to Sidewalk cafés are permitted only as permitted in Chapter 6, Part 4 "Noise."

§ 13-1106

Notice for Removal.

- 1. The Owner shall remove the Sidewalk portion of the restaurant-cafe within 30 days after written notice by the Borough if it determines that the Sidewalk Café is detrimental to the health, safety and general welfare of the Borough or its citizens because one or more of the following conditions has occurred:

- A. Due to pedestrian traffic changes, the Sidewalk Café narrows the pedestrian walkway to the extent that pedestrian traffic is impeded;
 - B. The Sidewalk Cafe interferes with the maintenance or installation of an underground utility structure;
 - C. The Sidewalk Cafe is no longer being used as such;
 - D. The Sidewalk Cafe has been temporarily or permanently closed for violation of any Borough, county, state or federal law and/or regulation; or
 - E. The Sidewalk Cafe is operated in violation of any ordinance, rule or regulation of the Borough of Phoenixville.
 - F. The Sidewalk Cafe is permitting non-patrons of its establishment to utilize its Sidewalk seating area or allows patrons or non-patrons to leave and enter the Sidewalk Cafe area with open alcoholic beverages.
2. In the event that the Owner fails to remove the Sidewalk Cafe within 30 days after written notice, the Borough may proceed to remove and restore the area and charge the Owner for the cost thereof. Should the Sidewalk Cafe be removed by the Borough, the Owner shall be entitled to a return of the equipment, furnishings or appurtenances so removed only after the payment of all costs due to the Borough and by requesting the return in writing. The responsibility for removal under the provisions of this subsection shall be the sole responsibility of the Owner without any obligation or cost assessed against the Borough.

§ 13-1107 **Penalty for Violation.**

The penalty for violation of this Section shall be a fine of at least fifty dollars (\$50) for the first offense and not less than one hundred dollars (\$100) for the second and subsequent offense. The failure to pay the fine within ten (10) days shall result in imprisonment for a period not exceeding ten (10) days, together with costs. Each day that a violation of this Part continues shall constitute a separate offense.

Section 2: Officer Authorization. The appropriate officers of the Borough are authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Ordinance.

Section 3: Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or

invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, parts, or sections hereof. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, part or section thereof not been included herein.

Section 4: Repealer. All ordinances or parts of ordinances conflicting or inconsistent herewith are hereby repealed.

Section 5: Effective Date. This Ordinance shall become effective upon enactment as provided by law.

PASSED by Borough Council this 8th day of January, 2019.

By: _____
James C. Kovaleski
President, Borough Council

APPROVED by the Mayor, this 8th day of January, 2019.

By: _____
Peter J. Urscheler
Mayor

ENACTED this 8th day of January, 2019.

By: _____
E. Jean Krack
Borough Manager/Secretary

I HEREBY CERTIFY that the foregoing is a true and correct copy of the said Ordinance duly adopted at a regular meeting of Borough Council held on the 8th day of January, 2019.

By: _____
E. Jean Krack
Borough Manager/Secretary