

ORDINANCE NUMBER 5447-2018

AN ORDINANCE AMENDING CHAPTER 82 (STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES), ARTICLE I – IN GENERAL, SECTION 82-17 – SIDEWALK CAFES, OF THE CODE OF WOODSTOCK, GEORGIA, PROVIDING REGULATIONS FOR SIDEWALK CAFES ON PUBLIC SIDEWALKS WITHIN CERTAIN AREAS OF DOWNTOWN WOODSTOCK

Whereas, the City of Woodstock, Georgia (hereinafter sometimes referred to as the “City”) is a municipality duly formed and existing pursuant to Georgia law; and

Whereas, the 1983 Constitution of the State of Georgia provides for the self-government of municipalities without the necessity of action by the General Assembly¹; and

Whereas, the City of Woodstock, Georgia, has the legislative power to adopt clearly reasonable ordinances, resolutions or regulations relating to its property, affairs and local government for which no provision has been made by general laws or which are expressly allowed by general laws, and which are not inconsistent with the Constitution or any charter provision applicable thereto²; and

Whereas, the governing body of the City has determined that it is in the best interest of the City and its citizens to adopt the following; and

NOW THEREFORE BE IT RESOLVED, THE MAYOR AND COUNCIL OF THE CITY OF WOODSTOCK, GEORGIA HEREBY ORDAINS:

That Chapter 82 (Streets, Sidewalks, and Other Public Places) of the Code of Woodstock, Georgia, shall be amended by deleting Section 82-17 – Sidewalk Cafes, and adding a new Section 82-17, to read as follows:

Sec. 82-17. – Sidewalk Cafés – Downtown District

1. *Purpose.* The purpose of this section is to provide for the authorization and regulation of Sidewalk Cafes on public sidewalks under certain conditions and within authorized areas of the City of Woodstock Downtown District.

¹ Ga. Const., 1983, Article IX, Section II, Paragraph II provides in pertinent part as follows:

“The General Assembly may provide by law for the self government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to the municipalities may be dealt with without the necessity of action by the General Assembly. “

²O.C.G.A. § 36-35-3 (a) provides as follows:

“(a) The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto. Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code section. This Code section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any local law to repeal, modify or supersede any action taken by a municipal governing authority under this Code section, except as authorized under Code Section 36-35-6.”

2. *Definitions.* For the purposes of this ordinance, these terms shall have the following definitions:

Authorized Business – a Licensed Business is permitted to provide a Sidewalk Café under the provisions of this ordinance.

Encroach or Encroachment – any intrusion onto the public sidewalk.

Licensed Business – a business with an active business license with no occupation taxes due to the City.

Sidewalk Cafés – any Encroachment of seating, tables, kitchen equipment, trash cans, or other furnishings and appurtenances for use by patrons or to serve patrons or used by the general public. Sidewalk cafes are considered temporary.

3. *Sidewalk Cafes - Authorization and Requirements.*

- a. *Authorization.* Only Authorized Businesses may provide a Sidewalk Café, only within the DT-CBD zoning district and only with frontage along Main Street, East Main Street, and Chambers Street. The provision of a Sidewalk Café on a public sidewalk in any other zones or locations is expressly prohibited. Additionally, any placement of a Sidewalk Cafe constitutes consent to comply with the requirements of this ordinance. All Sidewalk Cafés on public property must comply with the provisions of this ordinance.
- b. *Opt-out Provision.* An Authorized Business may elect not to provide a Sidewalk Café and not to provide the information required under this ordinance. By doing so, the Authorized Business is no longer authorized to provide a Sidewalk Café. A business may elect to opt back in at any time and should the business place a Sidewalk Café after opting out, the business automatically consents to comply with the provisions of this ordinance.
- c. *Registration.* An applicant for a Sidewalk Cafe shall provide the following information with the business license application and at the annual renewal of the business license:
- i. *Location, Layout.* The Sidewalk Cafe may extend from private property onto the public sidewalk, only the width of the storefront leased or owned by the Authorized Business. The Sidewalk Café may be enclosed with a temporary barrier, which must be approved by the Director of Community Development. The temporary barrier must be black in color and if a chain is used with the barrier, it must be black or silver. The Sidewalk Cafe may not extend more than six (6) feet from the building and a minimum of five (5) of sidewalk clearance shall be maintained at all times. A drawing identifying the perimeter area, the dimensions of the area, the distance from perimeter to curb or nearest obstacle, number and placement of tables shall be provided. The distance from the edge of the Sidewalk Café to the curb and

the total encroachment into public property shall be indicated; all measurements shall be provided in feet.

The drawing should also include the location of the Sidewalk Café in relation to the surrounding buildings, streets, and sidewalks, along with the location of all furnishings to be placed in the Sidewalk Cafe.

- ii. *Insurance.* A current certificate of insurance with general liability insurance naming the city as an additional insured in the following minimum amounts: \$500,000.00 per person; and \$1,000,000.00 per occurrence, with an additional \$1,000,000.00 umbrella coverage. Not applicable as to private property.
- iii. *Indemnification.* As a condition of Encroachment, the approved applicant and any person acting under or pursuant to said approval, agrees to indemnify, hold harmless, release, and defend (even if the allegations are false, fraudulent, or groundless) to the maximum extent allowed by law, the city manager, community development director, the city, its city council, and each member thereof, and its officers, employees, advisory board members and representatives, from and against all liability, loss, suits, claims, damages, costs, judgments, and expenses (including attorneys' fees and costs of litigation) which in whole or in part result from arise out of, or are claimed to result from or arise out of, any acts, negligence, errors or omissions of approved applicant, its employees, representatives, contractors, subcontractors, or agents by reason of or arising out of, or in any matter connected with, any and all acts, operations, privileges authorized, allowed, or undertaken pursuant to the use approval under their ordinance including, without limitation, any condition or property used in operations.

d. *Operating Standards.*

- i. *Limitations on area.* In no event shall a Sidewalk Cafe reduce the portion of any public sidewalk customarily used by pedestrians to less than five (5) feet in width. If a proposed or installed Sidewalk Café cannot maintain five (5) feet of clearance for pedestrians, then it is not allowed and must be removed. Nothing will be placed within five (5) feet of a fire hydrant, pedestrian crosswalk, or handicapped corner curb cut.
- ii. *Tables and chairs.* Tables and chairs shall match and be made of safe, sturdy, and durable material. All furniture shall be commercial grade and manufactured for outdoor use. White plastic or PVC furniture shall be prohibited.
- iii. *Furnishings.* Furnishings shall not be secured to lamp posts, streetlights, trees, or any public fixtures. All furnishing shall be removed from the sidewalk cafe from time to time as required by the city.

- iv. *Umbrellas.* Each table may be equipped with one umbrella and shall be maintained in good, clean, and operable condition. Table umbrellas shall have no signs or advertisements on them, be completely contained within the Sidewalk Cafe area, even when fully extended, and the lowest dimension of the umbrella shall maintain a minimum of seven-foot vertical clearance above the sidewalk to allow for patron and server circulation.
- v. *Alcohol.* Only an Authorized Business which holds a valid alcohol license for consumption on premises, may serve alcohol to customers in the sidewalk cafe, subject to the following restrictions:
 - (a). Alcohol may only be served in the Sidewalk Cafe during the hours allowed under the city's ordinance for service.
 - (b). The Sidewalk Cafe shall be considered part of the premises for the purposes of consumption of alcoholic beverages.
 - (c). Alcohol shall not be served from temporary locations upon the premises unless specifically allowed by issuance of a special event permit (See Section 6-117 (c)).
 - (d). Patrons may only remove alcohol from the premises in accordance with the provisions of Section 6-117 in the entertainment district.
- vi. *Kitchen Equipment.* Kitchen equipment and refuse containers used to service the Sidewalk Cafe is permitted.
- vii. *Smoking.* Patrons shall not be allowed to smoke within the sidewalk cafe.
- viii. *Sound.* Music, live or recorded, or other amplified sound shall be allowed within the sidewalk cafe, provided it does not violate the city's ordinances related to noise.
- ix. *Sanitation.* The Authorized Business shall keep the Sidewalk Cafe clean, neat, and orderly at all times, and is responsible for removing all debris and trash from the Sidewalk Cafe at all times.
- x. *Americans with Disabilities Act.* Any person Encroaching agrees to fully comply with all requirements of the Americans with Disabilities Act as currently existing or as may be hereafter amended.
- xi. *No property right.* The provisions of this Ordinance shall not be construed or interpreted to convey any property rights or any estate in land to any person or business.

xii. *Closing of Sidewalk Cafe.* Sidewalk Cafes may be ordered closed at any time by the City, for any reason including, but not limited to, construction, maintenance, public health, safety or welfare, emergencies, public parades, and special events.

xiii. *Compliance with regulations.* The applicant must sign a copy of this ordinance, acknowledging and agreeing to comply with these regulations.

4. *Suspension.* The use of a public sidewalk for a Sidewalk Café or Encroachment can be suspended by the Director of Community Development at any time for any of the reasons listed below. The Director of Community Development shall issue the suspension in writing to the Person violating this ordinance.
 - a. The business license or health permit has been suspended, revoked, or cancelled.
 - b. The Authorized Business is not in compliance with any of the regulations with respect to the Sidewalk Café or Encroachment.
 - c. The Authorized Business has failed to correct violations of this chapter or any other ordinance within 48 hours of receipt of the notice of same delivered in writing to the Authorized Business.
 - d. The Authorized Business has a history of violations of this chapter of three or more within a two-year period, or immediately upon any violation depending upon the severity of the violation.
 - e. The use of the public sidewalk in accordance with this ordinance may be suspended for a period up to 12 months depending upon history and severity of the violation.
5. *Appeals.* A Person may appeal a suspension directly to the City Manager. The appeal shall be filed within ten (10) days from the receipt of the written suspension from the Director of Community Development. The City Manager will adjudicate the appeal within thirty (30) days from receipt, responding to the appellant in writing. Thereafter, the appellant may appeal directly to the City Council in accordance with the appeal provisions of the Code of Woodstock, Georgia.
6. *Compliance Grace Period.* Upon adoption, a 45-day compliance grace period will commence, where the Community Development Department will contact and educate business owners and property owners on the provisions of this ordinance and no penalty shall be assessed, giving business owners and property owners time to comply. At the expiration of the 45 days, compliance with this ordinance is required and the penalty provision shall take effect.
7. *Penalty.* Any violations of this ordinance will be punished in accordance with Section 1-7 of the Code of Woodstock, Georgia.

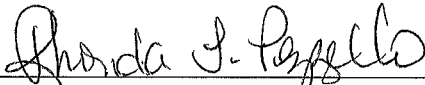
Effective Date. This Ordinance shall take effect immediately upon adoption by City Council.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF WOODSTOCK, GEORGIA, THIS 22 DAY OF October, 2018.

1st Reading: October 8, 2018 2nd Reading: October 22, 2018



DONNIE HENRIQUES, MAYOR



RHONDA L. PEZZELLO, CLERK

