

**ORDINANCE NUMBER 5635-2019**

**AN ORDINANCE AMENDING CHAPTER 82 (STREETS, SIDEWALKS AND OTHER PUBLIC PLACES), ARTICLE I –IN GENERAL, SECTION 82-18 – SIDEWALK ENCROACHMENT OF THE CODE OF WOODSTOCK, GEORGIA, PROVIDING REGULATIONS FOR SIDEWALK ENCROACHMENT 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 Assembly<sup>1</sup>; 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 thereto<sup>2</sup>; 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 adding Section 82-18- Sidewalk Encroachment, to read as follows:

**Sec. 82-18. – SIDEWALK ENCROACHMENT**

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

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<sup>1</sup> 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. “

<sup>2</sup>O.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.

*Outdoor Display of Merchandise*- Merchandise displayed temporarily outside of an Authorized Business.

*Stoop Line Stand*- Retail businesses operating outside of their storefront to sell fruits, vegetables, soft drinks, flowers, or ice cream.

3. *Sidewalk Encroachment - Authorization and Requirements.*

- a. *Authorization.* Only Authorized Businesses located on the ground floor may Encroach on public sidewalks directly in front of their business to display merchandise, only within the DT-CBD zoning district and only with frontage along Main Street, East Main Street, and Chambers Street. The provision Encroachment on a public sidewalk in any other zones or locations is expressly prohibited. Additionally, any Encroachment constitutes consent to comply with the requirements of this ordinance. All Encroachment on public property must comply with the provisions of this ordinance.
- b. *Opt-out Provision.* An Authorized Business may elect not to Encroach on a public sidewalk and not to provide the information required under this ordinance. By doing so, the Authorized Business is no longer authorized to Encroach on public sidewalks. A business may elect to opt back in at any time and should the business Encroach on a public sidewalk after opting out, the business automatically consents to comply with the provisions of this ordinance.
- c. *Registration.* An Authorized Business applying to Encroach on a public sidewalk shall provide the following information with the business license application and at the annual renewal of the business license:
  - i. *Location, Layout.* Encroachment may extend from private property onto the public sidewalk, only the width of the storefront leased or owned by the Authorized Business. Outdoor Displays of Merchandise and Stoop Line Stands may not extend more than five (5) feet from the building and a minimum of five (5) feet of sidewalk clearance shall be maintained at all times. A drawing identifying the perimeter area, the dimensions of the area, and the distance from perimeter to curb or nearest obstacle. The distance from the edge of the Outdoor Display of Merchandise or Stoop Line Stand 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 Outdoor Display of Merchandise or Stoop Line Stand in relation to the surrounding buildings, streets, and sidewalks

- ii. *Insurance.* Commercial General Liability Occurrence at \$1,000,000 and Aggregate at \$2,000,000. The City of Woodstock should be included as additional insured. Coverage should be primary and noncontributory. A waiver of subrogation should apply in favor of the City of Woodstock and a 30 day notice of cancellation should apply in favor of the certificate holder.

Umbrella/Excess Occurrence at \$1,000,000. Policy should follow form of the underlying coverages and a 30 day notice of cancellation should apply in favor of the certificate holder. If the policy is not a follow form policy then the City of Woodstock should be included as additional insured and a waiver of subrogation should apply in favor of the City of Woodstock.

- 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. *Outdoor display of merchandise*

- i. *Limitations on area.* In no event shall any Encroachment of an Outdoor Display of Merchandise reduce the portion of any public sidewalk customarily used by pedestrians to less than five (5) feet in width. If a display 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. You may exhibit merchandise on a temporary installation that is less than five feet high and no more than five (5) feet from the building into the sidewalk.
- ii. *Indoor Sales.* While you may display merchandise outside, customers must pay for those items inside. Additionally, merchandise may only be displayed that is also sold inside the store.

- iii. *Temporary Restrictions.* The City may temporarily prohibit displays that encroach on a public sidewalk due to health concerns or unusually high pedestrian or vehicle congestion.
  - iv. *Sound.* Music, live or recorded, or other amplified sound shall not be allowed within the encroachment area.
  - v. *Sanitation.* The Authorized Business shall keep the encroachment area clean, neat, and orderly at all times, and is responsible for removing all debris and trash from the Encroachment area at all times.
  - vi. *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.
  - vii. *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.
  - viii. *Compliance with regulations.* The applicant must sign a copy of this ordinance, acknowledging and agreeing to comply with these regulations.
- e. *Stoop Line Stand.*
- i. *Limitations on area.* In no event shall any Encroachment of a Stoop Line Stand reduce the portion of any public sidewalk customarily used by pedestrians to less than five (5) feet in width. If a display 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. You may exhibit merchandise on a temporary installation that is less than five feet high and no more than three (3) feet from the building into the sidewalk.
  - ii. *Indoor Sales.* While you may display merchandise outside, customers must pay for those items inside. Additionally, merchandise may only be displayed that is also sold inside the store.
  - iii. *Construction and materials.* Stoop Line Stands must be constructed of wood, metal, or other rigid material. Folding tables or boxes set on crates may not be used.
  - iv. *Leasing Prohibited.* You may not lease the stand to another business or allow others to operate it.

- v. *Temporary Restrictions.* The City may temporarily prohibit displays that encroach on a public sidewalk due to health concerns or unusually high pedestrian or vehicle congestion.
  - vi. *Sound.* Music, live or recorded, or other amplified sound shall be allowed within the Encroachment area, provided it does not violate the city's ordinances related to noise.
  - vii. *Sanitation.* The Authorized Business shall keep the encroachment area clean, neat, and orderly at all times, and is responsible for removing all debris and trash from the Encroachment area at all times.
  - viii. *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.
  - ix. *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.
  - x. *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 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 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

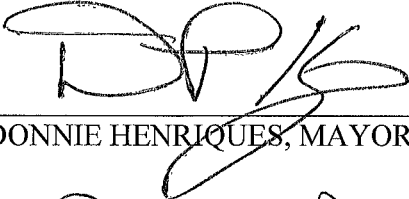
of Community Development. The City Manager will adjudicate the appeal within thirty (30) days from receipt, responding to the appellant in writing. Thereafter, the appellant may appeal directly to the City Council in accordance with the appeal provisions of the Code of Woodstock, Georgia.


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.
8. *Exemptions.* City sanctioned or permitted events are exempt from this ordinance.

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 25 DAY OF February, 2019.

1st Reading: February 11, 2019 2nd Reading: February 25, 2019

  
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DONNIE HENRIQUES, MAYOR

  
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RHONDA L. PEZZELLO, CLERK

