

Bill No. 33-2007
AN ORDINANCE

AN ORDINANCE AMENDING THE CITY OF READING CODIFIED ORDINANCES BY ADDING PART 16 SIDEWALK SALES TO CHAPTER 10 HEALTH AND SAFETY AND ADDING THE PERMIT FEES TO THE CITY OF READING FEE SCHEDULE

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Amending the Codified Ordinances by adding Part 16 Sidewalk Cafes to Chapter 10 Health and Safety as attached in Exhibit A and adding the permit fees to the City of Reading Fee Schedule.

SECTION 2. This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted May 14th, 2007

[Signature]
President of Council

Attest:

[Signature]
City Clerk

Submitted to Mayor: CAK

Date: 05/15/07

Received by the Mayor's Office: MA

Date: 5/15/07

Approved by Mayor: [Signature]

Date: [Signature]

Vetoed by Mayor: _____

Date: _____

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 14th day of May, A. D. 20 07. Witness my hand and seal of the said City this 15th day of May, A. D. 20 07.

[Signature]
CITY CLERK

Exhibit A

SIDEWALK SALES

§10-1600. Declaration of Purpose. The City of Reading City Council encourages an attractive, functional and economically vital community and shopping areas that are safe and pleasant environments to live near and to do business within. Council recognizes that commercial development is a major identifying feature in a community, offering impressions to residents and visitors alike of the quality of life available. It is Council's intent to encourage commercial growth that contributes to a vibrant and attractive community. As the current Code does not allow Sidewalk Sales due to public health and safety concerns, Council believes that these activities can greatly contribute to a pedestrian friendly community if they conform to specific public health, and safety requirements defined herein.

§10-1601. Sidewalk Sales and Displays. No person shall engage in the selling or display for sale of merchandise of any kind on, over or upon any sidewalk, without first applying for and obtaining a permit from the City of Reading Codes Enforcement Office and then operating within the terms and conditions of all applicable City ordinances. The Sidewalk Sale Permit enables the person or business to operate 52 sidewalk sales per calendar year.

§10-1602. Definitions. For the purpose of this article, the following terms shall have the following meanings:

ABUTTING PROPERTY -- Property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under the terms of this article.

CITY ENGINEER -- The Director of Public Works or his authorized representative.

COMMERCIAL CORE - is the zoning district defined as the downtown center for government services, offices, shopping, hotels, entertainment and cultural activity.

HEALTH OFFICER -- The Health Officer of the City of Reading Codes Enforcement Office or his authorized representative

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 article.

PEDESTRIAN WALKWAY -- That portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

PERSON -- Includes a partnership, corporation, association, trust, estate or other legally recognized entity, as well as an individual.

PUBLIC SERVICE FACILITY -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

SIDEWALK -- Any paved area between the curblin and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

SIDEWALK SALE - retail or wholesale selling of merchandise using racks, table or free-standing merchandise outside and/or adjacent to buildings and structures, and includes sales in areas such as sidewalks, walkways and parking lots. Sidewalk sales DO NOT include the sale and consumption of food and drink in open-air, cafe-style seating with tables and chairs.

STREET RIGHT-OF-WAY -- The entire right-of-way of a public highway, public alley or public road, including the designated sidewalk areas

§10-1603. Sidewalk Sale - Issuance of Permit; Display.

It shall be unlawful for any person, firm, corporation, transient merchant, church, club, charitable institution, hawker or peddler to vend, sell or dispose of or offer to vend, sell, dispose of or display, any goods, wares, merchandise, produce or vegetables on any public walk, street, alley or anywhere within the City of Reading without registering with and receiving a permit from the City Codes Enforcement Office.

The Codes Enforcement Office is hereby authorized to grant revocable permits for the use of the sidewalks for sidewalk sales in the Commercial Core Zoning District upon the following terms and conditions. Registration shall be on a permit form approved by the City Council. When the Codes Enforcement Office

has approved the issuance of a sidewalk sales permit, the applicant shall be issued a permit. The permit shall contain the information required on the application, the expiration date, and one of the photographs submitted with the application. The permit shall be carried by the applicant at all times when engaged in sidewalk sales and shall be exhibited for inspection to any person approached for purposes of sidewalk sales.

§10-1604. Permitting for Sidewalk Sales Outside the Commercial Core.

Applications for sidewalk cafes outside the Commercial Core zoning district shall be submitted to the Codes Enforcement Office in accordance with the regulations contained herein. Such applications shall be forwarded to City Council for approval.

§10-1605. Sidewalk Sale Prohibited Conduct. No vendor or person shall exhibit, display, offer for sale or sell any indoor furniture, appliances, mattresses or similar wares, or merchandise or place or allow any to stand or remain on the sidewalks in the City of Reading, unless they are set out for trash collection in accordance with the zoned trash collection schedule.

§10-1606. Sidewalk Sale Permit Term and Fees.

- A. The term of each sidewalk sale permit shall be specified on the permit which is issued and shall not exceed 52 events per year.
- B. The permit fee to be charged is \$250 per year.
- C. There shall be no prorating or rebate of the annual permit fee.

§10-1607. Sidewalk Sale Display Standards. The Codes Enforcement Office is hereby authorized to grant revocable permits for the use of the sidewalk for the display for sale of merchandise, flowers, floral arrangements and ornamental shrubbery not prohibited herein upon the following terms and conditions:

- A. No more than 52 sidewalk sales can occur during each calendar year.
- B. The permit and regulated activity shall be valid only during a single calendar year
- C. The permitted activity shall be conducted only as an accessory to a business establishment lawfully operating on the first floor of the premises, on the sidewalk in front of the principal place of business of such establishment and by the entity which operates such establishment. All sales shall be conducted within such establishment. No cash register or other facility for the exchange of

currency or otherwise receiving payment for goods and services shall be permitted on the sidewalk.

D. The applicant shall have the consent of the owner and lessee, if any, of the premises in front of which the permitted activity is to be conducted and the consent of each abutting property owner.

E. There shall be no less than eight feet from the curbline to the front of the nearest structure.

F. No sidewalk display shall be nearer than three feet zero inches to the curb, except that if the sidewalk is nine feet zero inches or more in width, then the distance from the curb shall be not less than 1/3 of the width of the sidewalk with a maximum of two rows.

G. The applicant shall at all times maintain free and clear from all obstruction an aisle not less than three feet in width providing access to any establishment fronting on said sidewalk.

H. No permanent structure may be affixed to the sidewalk or any building. The applicant shall be responsible for any damage caused to any sidewalk or public property.

I. The sidewalk use shall not interfere with access to any public service facility, create a nuisance or fire hazard.

J. At least one trash receptacle shall be provided by the business or person and the premise shall be kept letter free.

K. No outdoor lighting or live or mechanical music shall be permitted.

L. The sidewalk display shall be permitted only during the hours the business is open to the public or between the hours of 9 a.m. and 5 p.m.

M. The applicant shall agree to indemnify and save harmless the City of Reading, its officers, agents, attorneys and employees from and against any claim of loss, liability or damage by any person arising as a result of the applicant's operation of the sidewalk use.

N. The applicant shall obtain and maintain in full force and effect throughout the term of the permit a policy of general liability insurance, which such policy shall name the City of Reading, its officers, agents, attorneys and employees as additional insured, have a combined single limit of not less the \$1,000,000 and contain a provision prohibiting its cancellation except upon 20 days notice to the City of Reading. The applicant shall file with the Codes Enforcement Office, prior to the issuance of the permit, a certificate evidencing the requisite insurance.

O. The applicant shall file with the Codes Enforcement Office, prior to the issuance of the permit, the permit fee as set forth herein.

P. The permit fee must be made at time of application.

Q. Any other conditions required or prescribed by the Codes Enforcement Office shall be reasonable and necessary to protect the health, welfare and safety of the public, including the denial of the application.

R. The owner/operator must submit with the application the name and street address of the owner of the abutting properties if not the same person along with:

- (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
- (2) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.

§10-1608. Special Sidewalk Sales. Anything in this article to the contrary notwithstanding, the City of Reading Codes Enforcement Office may permit the selling and display for sale of merchandise on, over or upon the sidewalk at any location within the City for a period not to exceed seven days in conjunction with any organized sidewalk sales days open to all retail merchants within the a specific neighborhood or City block, as long as the affected merchants comply with the other terms of this ordinance and other applicable City ordinances.

§10-1609. Sidewalk Sale Application Requirements.

Each applicant for a permit under this article shall submit three copies of his application and plans for the sidewalk sale to the Codes Enforcement Office, who shall issue a permit upon compliance with the terms and conditions of this article. Application must be made within 14 business days prior to the intended start date. Applications for sidewalk sale permits shall include the following:

- A. The name and street address of the applicant.
- B. The name and street address of the owner of the business and owner of the underlying freehold and/or abutting property owner if not the same person and:
 - (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
 - (2) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting

property.

- C. The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.
- D. The name and street address of the operator, manager or other person responsible for the operation of the sidewalk sale.
- E. The name under which the sidewalk sale will be operated.
- F. A copy of the current City Business License and Zoning Permit
- G. A site plan drawn to a scale of 1/2 inch equals one foot, showing:
 - (1) The entirety of the sidewalk abutting the property of the owner;
 - (2) The frontage of the property proposed for the sidewalk sale;
 - (3) All abutting properties;
 - (4) All existing sidewalk features, including but not limited to trees, utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks and mailboxes;
 - (5) Any bus stops within 25 feet on either side of the proposed sidewalk sale area; and
 - (6) Detailed drawings of legible proportions showing the limits of the proposed sidewalk sale site, the design dimension and proposed location of all proposed temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed pedestrian walkway and the side and front elevations of the proposed sidewalk sale area.
- H. A copy or copies of the certificate or certificates of insurance required to be provided.

§10-1610. Sidewalk Sale - Review of Application.

- A. Before any permit is issued pursuant to this article, the plans submitted to the Codes Enforcement Office pursuant to this article shall be referred to and approved by the Public Works Director, Reading Police Department and Department of Fire and Rescue Services.
- B. The Codes Enforcement Office shall determine if the applicant has:
 - (1) Obtained the approval of the Public Works Director and Building Official for any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk sale. No such railing, flooring or other support or enclosure shall be considered an erection of, addition to or a structural alteration of a building or structure under applicable City Building Code unless such railing, flooring or other support or enclosure is permanently attached to such building or

structure.

- (2) Obtained the approval of the Historical Architectural Review Board (HARB) if the sidewalk sale is located within any area designated as part of an historic district and if the applicant proposes any facilities which are under the jurisdiction of the HARB. The HARB shall use the review criteria for such plans relating to a sidewalk sale's specific location, size and structure, for its compatibility of scale, design and alteration in the plans for a sidewalk sale approved by the HARB requires reapproval from the HARB. Once approval is granted by the HARB, the approved plans are valid and do not require annual reapproval. The HARB shall only review applications which have the written approval from the Public Works Director as specified herein.
 - (3) Complied with all rules, regulations and specifications of this article.
- C. The Codes Enforcement Office may impose any other restriction on the location, size or design of the sidewalk sale that, in his sole judgment, protects the health, safety and welfare of the public.

§10-1611. Conditions for Issuance of Permit.

- A. Upon approval by the Codes Enforcement Office of the plans submitted by the applicant and upon the applicant furnishing to the City of Reading the following, the Codes Enforcement Office shall issue a permit, valid through the end of the calendar year:
 - (1) A hold-harmless agreement executed by the applicant and indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the sidewalk cafe. Said hold-harmless agreement shall be subject to the approval of the City Solicitor.
 - (2) Proof of liability insurance in the amount of \$100,000 per individual and \$300,000 per occurrence.
- B. Sidewalk sales permits are not transferable. Changes in ownership/operation require reapplication for a permit.

§10-1612. Removal of Improvements.

- A. If the City incurs any costs in removing any equipment or improvements from a sidewalk sale for the following reasons: the establishment failed to remove equipment at the close of the business day, the establishment went out of business or the establishment failed to renew its permit, within 30 days of the close of the year, the City shall remove and store all equipment and bill

the property owner for the actual costs of labor, materials, equipment or any other item, service or expense incurred by the City to correct such violation, plus any additional administrative fees. The equipment removed shall remain in the City's possession until the bill from removal and any fines or fees are paid in full.

- B. Any bill for such removal of equipment undertaken pursuant to this chapter shall be billed to and paid by the property owner within 60 days. Upon failure of the property owner to pay the amounts due within 60 days, the City shall assess this uncollected debt on the property taxes of this building.

§10-1613. Permit Renewal.

A sidewalk sale permit may be renewed annually, upon review of the renewal application and complaint history, if any, which shall be provided by the Codes Enforcement Office, Reading Police Department, Department of Public Works, and Department of Fire and Rescue Services. Each agency shall provide to the Codes Enforcement Office copies of any inspection results, complaints filed and citations issued concerning the sidewalk sale under consideration. The renewal fee for the permit shall be as stipulated in §10-1606 above.

§10-1614. Written Notice of Violations; Suspension of Permit.

Upon finding by the Codes Enforcement Office that an applicant has violated any provisions of this article, the Codes Enforcement Office shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Codes Enforcement Office may take appropriate action, as necessary, to maintain the Pedestrian Walkway. The Codes Enforcement Office may suspend the applicant's permit issued pursuant to this article, as well as pursue prosecution in accordance with the requirements herein. The Codes Enforcement Office shall, in his/her sole judgment, give a violator reasonable time to repair any structural damage or physical violation of any provision of this article. An appeal before City Council shall be accorded if requested.

§10-1615. Violations and penalties; effect on eligibility for license.

- A. Whoever violates any provisions of this article shall, upon conviction thereof in a summary proceeding, be fined not less than \$200 and not more than \$1,000 for each offense, to be collected as other fines and costs are by law collectible, or imprisoned for not more than 90 days, or both. Each day during which a violation occurs shall constitute a separate offense.

- B. Any person who is convicted of a violation of any of the provisions of this article shall have his permit suspended for one full year and shall not be eligible for another permit until the expiration of one full year.
- C. Any person who fails to remove a sidewalk sales materials at the close of each business day, as provided for in §10-1615, shall not be eligible for a permit in any following year.
- D. Failure to observe any of the conditions set out herein is grounds for revocation of a permit. Prior to such revocation, the Codes Enforcement Office shall give 10 days' written notice to the permittee of his violation of or his failure to observe a general condition as set out above. If the permittee requests a hearing prior to the expiration of that ten-day notice period, the City Council shall hold a hearing to determine if the license should be revoked. The permittee may present evidence in his own behalf if he so desires. The decision in regard to revocation may be appealed to the City Council. If the permittee fails to request such a hearing, the revocation shall become effective upon the expiration of the ten-day notice period. If a permit granted under this section is revoked, all tables, chairs and other appurtenances used as a part of the sidewalk sale shall be immediately removed from the sidewalk.
- E. This article and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law.

§10-1616. Determination on Application.

The Codes Enforcement Office shall grant or deny an application for a permit pursuant to this article within seven days of its complete submission.

§10-1617. Reservation of Rights.

Neither the adoption of this article nor the granting of any permit pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the City of Reading with respect to streets and sidewalks, whether express or implied.

§10-1618. Penalties for Offenses

Any person who shall violate any of the provisions of this article shall be liable to prosecution and shall, upon conviction thereof, be liable to a fine that shall not exceed \$1000, imprisonment for not more than 15 days, or both such fine and imprisonment.