

AN ORDINANCE TO ENACT
CHAPTER 5, TITLE 3 OF THE CODE OF SHEPHERDSTOWN
AS THE PUBLIC SIDEWALK DINING ORDINANCE

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Title 3 of the Code of Shepherdstown is hereby amended by adding Chapter 5, entitled the “Public Sidewalk Dining Ordinance” to establish the requirements for dining within a legally demarcated area of a public sidewalk. Accordingly, Chapter 5, Title 3 of the Code of Shepherdstown shall read as follows:

TITLE 3

Chapter 5 – Public Sidewalk Dining Ordinance

Section 3-501 – Definitions:

As used in this Chapter, the following terms have the following meanings:

- (a) "Operator" shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the *R/C (Residential Commercial) or C (Commercial) Zoning Districts*, which possesses a valid State of West Virginia food vendor's permit, *a valid Town Business License* and has been issued a Public Sidewalk Dining permit by the Corporation of Shepherdstown's Planning and Zoning Department;
- (b) “Public Sidewalk Dining Area” shall mean a legally demarcated area of the public sidewalk designated by a site plan approved by the Corporation through the Planning and Zoning Department and located in the *R/C (Residential Commercial) or C (Commercial) Zoning Districts*, and which area is adjacent and contiguous to the Operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include non- intoxicating beer, wine or liquor contingent on proper licensure by the West Virginia Alcohol Beverage Control Administration.

Section 3-502 - Findings; Purposes:

The Town Council hereby finds as follows:

- (a) The purpose of these regulations is to facilitate outdoor dining with or without alcohol service within the Corporation of Shepherdstown's *R/C (Residential*

Commercial) or *C (Commercial) Zoning Districts* (as defined in Chapter 6 of the Planning & Zoning Ordinance) in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the Corporation of Shepherdstown (also referred to herein as “Corporation” and “Town”) by providing safe opportunities for outdoor dining as a use of the public right-of-way.

Section 3-503 – Powers, Rules, and Regulations:

- (a) The Corporation of Shepherdstown's Planning and Zoning Administrator is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all Public Sidewalk Dining Area permit applications on such forms and subject to such procedures as the Planning and Zoning Department may establish to either grant or deny such permits under this article;
- (b) Copies of such rules and regulations, as amended from time to time, shall be maintained by the Planning and Zoning Department, and shall be available to interested parties at all reasonable times, including via the Town's website.

Section 3-504 – General Provisions:

- (a) An Operator who serves non-intoxicating beer, wine, and/or liquor must comply with all guidelines, rules and regulations as related to Public Sidewalk Dining Areas promulgated by the West Virginia Alcohol Beverage Control Administration.
- (b) The Public Sidewalk Dining Area shall be located adjacent to the property of a permitted Operator and shall be under the responsible direction and control of that Operator;
- (c) The Public Sidewalk Dining Area may be open to patrons during hours of operation, but not before 7am or after 11pm;
- (d) All furniture and associated enclosures located on the public sidewalk/right-of-way shall not be attached or affixed to any poles, sidewalks/right-of-way or any other public facilities and must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way are strictly prohibited;

- (e) As authorized by state law, including, but not limited to, W. Va. Code § 8-12-5(4), (20) and (44), all partitions or fencing required for the demarcation, designation, or enclosure of the outdoor dining area on Town right-of-way shall be provided, installed and maintained by the Operator and at the discretion of the Town;
- (f) The Town shall have the absolute authority to determine when furniture and associated enclosures must be removed from the public sidewalk/right-of-way;
- (g) No Public Sidewalk Dining Area shall interfere with pedestrian or vehicular traffic or with access to parked vehicles and shall not reduce the open portion of public right-of-way/sidewalk to less than thirty-six (36) inches. Forty-eight (48) inches of unobstructed corridor space must be maintained between the outer dimension of the Public Sidewalk Dining Area (barrier) and the face of the curb in legal parking spaces. In order to achieve a continuous pedestrian walkway, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Public Sidewalk Dining Area;
- (h) A Public Sidewalk Dining Area permit shall not be issued for an area that would obstruct access within ten (10) feet of a fire hydrant, Fire Department standpipe connection, and fire escape, loading zone, bus stops or traffic signal stanchions;
- (i) Operation and maintenance of the Public Sidewalk Dining Area must comply in accordance with Section 3-102 Drinking in public places; illegal possession. It shall be unlawful for any person to: (a) Appear in a public place in an intoxicated condition. (b) Drink alcoholic liquor in a public place unless within the perimeters of a permitted outdoor dining area. (c) Drink alcoholic liquor in a motor vehicle on any street or in a public place;
- (j) In order to serve alcohol in a Public Sidewalk Dining Area, the legally demarcated area must be included in the floor plan for the licensed premises as approved by the West Virginia Alcohol Beverage Control Administration. Non-intoxicating beer, wine, and liquor shall be served and consumed only within the legally demarcated portion of the public sidewalk designated and permitted by the Town as a Public Sidewalk Dining Area. Patrons are not permitted to carry non-intoxicating beer, wine or liquor in or out of the Public Sidewalk Dining Area;

Section 3-505 – Application and Permit Process:

The Planning and Zoning Administrator is authorized to issue a Public Sidewalk Dining Permit, subject to the following conditions:

- (a) A Public Sidewalk Dining Area Permit shall be required prior to placing tables, chairs, or any other equipment on any public sidewalk. Permits issued hereunder shall be valid for one year from issue date, unless revoked prior to expiration. An application for a Public Sidewalk Dining Area Permit shall be accompanied by a \$95.00 administrative fee. An approved permit is valid for that one year only. Operators must reapply for each year and pay the administrative fee;
- (b) A completed Public Sidewalk Dining Area Permit application shall include: a site plan, drawn to scale showing the layout for the Public Sidewalk Dining Area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, bicycle racks, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, enclosures, aisles between tables; routes of ingress and egress; clearances between the seating area and the curb, a picture and/or description of the demarcation materials to be used, as well as any outdoor furniture and any such additional requirements of the Planning and Zoning Department with respect to type, style, or specifications of the Public Sidewalk Dining Area, including those requirements that may be subject to approval of the West Virginia Alcohol Beverage Control Administration. The design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act. Public Sidewalk Dining Areas shall not be allowed within ten (10) feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, bus stops or traffic signal stanchions. No permits will be issued for off-site seating (i.e. seating in front of another business);
- (c) The Planning and Zoning Administrator may approve, approve with conditions, or deny an application. The permit shall be posted at the Operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the Planning and Zoning Department;

Section 3-506 – Additional Requirements:

- (a) Prior to the issuance of a permit, if the applicant is serving non-intoxicating beer, wine or liquor, the applicant must agree, in writing, that it shall hold harmless, indemnify, and defend the West Virginia Division of Highways, the WV Alcohol Beverage Control Administration, the Corporation of Shepherdstown and its officers, agents, and employees, from and against all liability, injuries, deaths, losses, claims, suits, damages, judgments, costs and expenses, consequential or otherwise, including attorneys' fees and expenses, of any or all types arising out of, or related in any way to, the permitted Public Sidewalk Dining Area;
- (b) The applicant of a Public Sidewalk Dining Area permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner:
 - (1) Worker's Compensation insurance in at least the required statutory limits;
 - (2) The applicant shall maintain comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least one million dollars (\$1,000,000) coverage per each occurrence, and one million dollars (\$1,000,000) for any single injury; and shall name as additional insured the Corporation of Shepherdstown, its agents, officers, elected officials and employees;
 - (3) A copy of the certificates of insurance for the required policies for each type of insurance shall be furnished to the Corporation of Shepherdstown prior to the issuance of a Public Sidewalk Dining Area permit. The required insurance policies shall each provide that they shall not be changed or canceled during the life of the ~~Outdoor Dining~~ Public Sidewalk Dining Area permit until thirty days after written notice of such change has been delivered to the Town. Operators shall submit proof of General Liability Insurance when filing their renewal fee with the Corporation of Shepherdstown on an annual basis.

Section 3-507 – Denial or Revocation of Permit:

A Public Sidewalk Dining Area permit is a privilege granted to the Operator that may be revoked by the Town upon finding that the Operator has violated the Town's rules and regulations concerning ~~outdoor~~ sidewalk dining areas, any federal, state or

Town law applicable to the Public Sidewalk Dining Area or the operation thereof, including but not limited to, compliance with all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration, that the continued operation of the Public Sidewalk Dining Area poses a threat to the health, safety or welfare of the public, or that the Public Sidewalk Dining Area constitutes a public nuisance. The Town also shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improve the overall public health, safety and welfare. The Town additionally shall also have the right and power to prohibit the operation of a Public Sidewalk Dining Area at any time, because of the anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. The Planning and Zoning Administrator may suspend or revoke the Public Sidewalk Dining Area permit after providing at least three days' prior written notice, except in an emergency, to the Operator. Public Sidewalk Dining Areas must be visually appealing;

Section 3-508 – Penalty:

Any person, firm or corporation violating any provision of this article, shall be fined up to one-hundred dollars (\$100.00) per day. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Section 3-509 – Nondiscrimination Right to Limit or Deny Admission or Service:

No person shall be denied access or service to a Public Sidewalk Dining Area on the basis of race, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the Operator to limit access and admission to a Public Sidewalk Dining Area to only bona fide paying customers of that Operator's establishment who are behaving in a lawful manner.

Section 3-510 – Compliance with Federal, State, and Local Laws and Regulations:

- (a) The operation of a Public Sidewalk Dining Area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act and all provisions of applicable state and local laws. The operations of a Public Sidewalk Dining Area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration;

- (b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the Corporation, as set forth in Sections 3-102 and 7-112 of the Code of the Corporation of Shepherdstown, except that any permitted Public Sidewalk Dining Area Operator and patrons of permitted Operator's Public Sidewalk Dining Area shall be deemed to be exempt from said prohibition as set forth herein.

Section 3-511 – Effective Date:

Except as otherwise set forth herein, this Chapter shall become effective immediately on the date of the enactment; however, Operators are encouraged to adhere to the provisions herein as soon as practicable.

Section 3-512 – Evaluation of Provisions:

The Shepherdstown Town Council or its assigns shall evaluate the effectiveness and enforcement of this Chapter within six (6) months from the effective date, and may thereafter amend the Provisions herein as necessary and adopt any further rules and regulations regarding outdoor dining areas as deemed necessary.

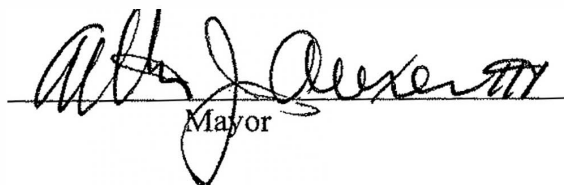
Section 3-513 – Severability:

If any part of provision of this Chapter or the application thereof to any person or circumstances is held invalid, the remainder of the Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

First Reading: April 12, 2022

Second Reading: April 19, 2022

Adopted: April 19, 2022


Mayor


Recorder