

**AN ORDINANCE REPEALING AND REPLACING ARTICLE 906
PROVIDING FOR OUTDOOR DINING PERMITS**

WHEREAS, The City of Morgantown has plenary power and authority over the public rights of way as provided by *W. Va. Code* § 8-12-5(1) and (4); and

WHEREAS, the West Virginia Alcohol Beverage Control Administration (WVABCA) licenses sales of nonintoxicating beer, wine, and liquor in outdoor dining spaces and outdoor street dining spaces; and

WHEREAS, The City of Morgantown intends to promote outdoor street dining, including the sale and consumption of alcoholic drinks at premises licensed by WVABCA;

NOW, THEREFORE, The City of Morgantown hereby ordains that Article 906 is repealed in its entirety and replaced as follows:

ARTICLE 906. OUTDOOR DINING.

906.01. Intent and Purpose.

The purpose of this article is to create a permit process by which private persons may use the public right-of-way for business purposes or other events in a manner designed to serve the public, to increase public enjoyment of the right-of-way, and to promote increased business and pedestrian traffic by offering safe and visually appealing opportunities for activities in public places, while also providing a local approval process for permits or licenses from the West Virginia Alcohol Beverage Control Administration when needed for outdoor dining.

906.02. Definitions.

Alcoholic beverages means alcoholic liquors as defined by W. Va. Code section 60-1-5(2); nonintoxicating beer as defined by W. Va. Code section 60-1-5(13); wine as defined by W. Va. Code section 60-1-5(22); and any other alcohol the sale and distribution of which is controlled or regulated by WVABCA.

Commissioner means the Commissioner of the West Virginia Alcohol Beverage Control Administration.

Director means the Director of Development Services of the City of Morgantown.

WVABCA means the West Virginia Alcohol Beverage Control Administration

HVAC means heating, ventilation, and air conditioning

Sidewalk Dining means an area of the public right-of-way that is designated for private use by a restaurant, café, bar or other establishment offering food and/or beverages that is in close proximity to the Sidewalk Dining area, and is (1) Outside and not served by an HVAC system for air handling services and use outside air; (2) Open to the air; and (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve except for a partial enclosure with up to three temporary or fixed walls when such seasonal partial enclosure is approved by the Director, and, for areas serving alcoholic beverages, by the Commissioner.

Outdoor Dining means an area outside of the public right-of-way made available for private use by a restaurant, café, bar or other establishment to serve food and/or beverages to entrants, which may include service of alcoholic beverages by licensees authorized to do so by the Commissioner, and which is (1) Outside and not served by an HVAC system for air handling services and use outside air; (2) Open to the air; and (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve except for a partial enclosure with up to three temporary or fixed walls when such seasonal partial enclosure is approved by the Director, and, for areas serving alcoholic beverages, by the Commissioner.

Outdoor Street Dining means an area of the public right-of-way that is closed to ordinary travel and use by the City Manager and which is made available for private use by a restaurant, café, bar or other establishment to serve food and/or beverages to entrants, which may include service of alcoholic beverages by licensees authorized to do so by the Commissioner, and which is (1) Outside and not served by an HVAC system for air handling services and use outside air; (2) Open to the air; and (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve except for a partial enclosure with up to three temporary or fixed walls when such seasonal partial enclosure is approved by the Director, and, for areas serving alcoholic beverages, by the Commissioner.

906.03. Permit required; conditions; effect.

A permit provided for in this Article is required to operate Sidewalk Dining, Outdoor Street Dining, Outdoor Dining only as required by the section regarding Outdoor Dining permits, or other activities regulated by this Article. Any such permit shall grant the recipient the right to provide the services identified in the area covered by the permit during the time the permit is valid, and the permit shall operate as the authorization of the City for open door access from private clubs to legally demarcated deck or other outdoor areas for any licensed private club pursuant to Title 175, Series 2, Section 4.10 of the West Virginia Code of State Rules. Permits for these activities are a privilege subject to the conditions of this Article and any other conditions stated in the permit, and they may be revoked by the City for noncompliance or other reasons identified in this Article or the permit.

906.04. Sidewalk Dining Permit.

(a) Permit required. Sidewalk Dining may only be conducted with a valid permit from the City (a “Sidewalk Dining Permit”). Each Sidewalk Dining Permit issued will be valid from January 1, or the date the application is approved, through December 31.

(b) Application; issuance. A Sidewalk Dining Permit may be issued only upon completion of an application form prescribed by the Director and shall be required prior to any private use of the public right-of-way. Each initial or modified application form shall be submitted with a nonrefundable administrative review fee of \$25.00. Renewal applications shall not require an administrative review fee.

(c) Application requirements. Applications for permits shall include the following information:

(1) Dimensions; obstructions. Applicants for a permit must submit the application required by the City, including a dimensioned plan showing the right-of-way and all existing public improvements and encroachments including but not limited to light posts, benches, planters, trash receptacles, fences, trees and tree grates, bicycle racks, and newspaper boxes. The diagram shall also include the location of the curb relative to the building to be served by the permit and the proposed location of all furniture and other equipment to be placed in the right-of-way. The applicant shall furnish all floor plans and approvals required by the City, including Health Department or West Virginia Alcoholic Beverage Control Administration approvals if applicable. The Director may issue a permit conditioned on the subsequent approval of other agencies, and the failure to have such agencies’ approval will not prevent review of an application. Any such conditional permit will become effective upon receipt of the necessary agency approvals. Outdoor street dining permits shall not be issued for an area that would obstruct access to a fire hydrant, Fire Department standpipe connection, fire escape, bus stop, loading zone, mail boxes, or traffic signal stanchions..

(2) Location. Proposed permit areas should be in close proximity to the Applicant’s business. For purposes of this subsection, “Close Proximity” means an available area within 150 feet of the Applicant’s business and under the Applicant’s control with the right of ingress and egress to the area. Areas under the Applicant’s control include areas on the public right-of-way that the City may authorize for use under a dining permit. Permit areas directly adjoining a business or property not owned or controlled by the Applicant will require consent by the owner of the adjoining business or property prior to issuance of a permit.

(d) Enclosure and boundary requirements. All equipment used to partition an area shall be sufficient to control access to the permitted area, must be removable by the permittee during non-operating hours, and must be of a design and construction acceptable to the City. For any permit with alcohol service, the equipment used to partition the permit area shall also be acceptable to WVABCA. Barriers enclosing the area should be sufficiently secure that they cannot be easily moved by an individual member of the public. Barriers may not be permanently affixed to the street, sidewalk, poles, or other public facilities without specific prior approval of the Director, which shall be included in the permit authorizing the area. The Director may approve permit areas without enclosures or barriers, so long as no alcohol will be served in the permit area. No equipment, furniture, or object may be placed in the permit area except those specifically described in the application and approved in the permit.

(e) Equipment and furniture in outdoor street dining permit area. All equipment and furniture placed in the permit area shall be acquired through the City, or, at the option of the

Director, acquired directly by the applicant after approval by the City. The design and placement of equipment and furniture tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act and any applicable Federal, State, or local law. Equipment and furniture shall follow the design standards in Table 906.01.1, if applicable.

(f) Alcohol service and consumption in permit area. The permittee shall ensure that any consumption and possession of alcoholic beverages in the area for which a permit has been issued complies with all applicable laws and regulations, including those of WVABCA. An area for which a permit has been issued, and which is in compliance with all WVABCA laws and regulations, shall be exempt from the prohibition on possession, consumption, or sale of alcohol in public places stated in Section 521.06 during the lawful hours of operation of the permitted area.

(g) License from WVABCA required. In order to serve any alcoholic beverages in a permit area, the designated area must be included in the floor plan for the licensed premises as approved by the WVABCA. All alcoholic beverages shall be served and consumed only on the enclosed or bounded portion of the public right-of-way designated as the permit area. Patrons may not carry any beverage regulated by the WVABCA out of the outdoor dining permit area, except as authorized by WVABCA in accordance with the license governing the premises where the beverage is sold.

(h) Health Department regulations. All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The permittee shall be responsible for posting the outdoor seating area as to any special Health Department requirements.

(i) Maintenance of permit area. All rights-of-way encompassed by the outdoor street dining permit shall be maintained by the permittee in a sanitary manner at all times. Food, trash, and recyclables shall be disposed of in appropriate containers on a regular basis during the day by the permittee. Permittees shall see that the public areas encompassed by their outdoor dining permit are kept clean throughout the day and at the end of each business day, so as not to have any food, scraps, or drink leftover remaining which would pose an attraction to animals or insects. Each permit holder shall wash, as needed, the public area to remove any food or drink residue that may attract animals and/or create a pedestrian slip hazard.

(j) Waste disposal; recycling. Permittees shall be responsible for properly emptying any public trash or recycling containers placed in the permit area by the City.

(k) Hours of operation. Outdoor dining permitted under this section may only occur during the hours of 8:00 a.m. to 11:00 p.m., or limited hours during that time period which may be specified in the permit issued for each premises. If a permittee serves any beverage regulated by the WVABCA in an outdoor dining permit area, all laws and regulations of the WVABCA regarding permitted days and hours of service shall be followed.

(l) Insurance requirements. The applicant for an outdoor dining 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) 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 \$1,000,000.00 per occurrence, and \$1,000,000.00 for any single injury; and (3) Prior to issuance of an outdoor dining permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City, the West Virginia Department of Transportation Division of

Highways, and – for permits authorizing service of any beverage regulated by WVABCA - WVABCA as additional insured parties; (4) The required insurance policies shall each provide that they shall not be changed or canceled during the life of the outdoor dining permit until 30 days after written notice of such change has been delivered to the additional insured parties.

(m) Permit a privilege; limitations and revocation. Outdoor dining is a privilege. The City shall have the right and power, acting through the City Manager, to prohibit the operation of an outdoor dining area at any time because of anticipated or actual problems and conflicts in the use of the right-of-way 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 right-of-way, or from demonstrations or emergencies occurring in the area. The City Manager may suspend or revoke an outdoor dining permit for any reason after providing at least three days' prior written notice to a permittee, and the City Manager may revoke an outdoor dining permit without notice in a situation determined by the City Manager to be an emergency. Any violation of the provisions of this section, any Federal, State, or local law, or of the specific conditions of any outdoor dining permit shall be cause for immediate revocation of the outdoor dining permit.

906.05. Outdoor Street Dining Permit.

(a) Permit required. Outdoor Street Dining may only be conducted with a valid permit from the City (a “Street Dining Permit”). Each Street Dining Permit issued will be valid from January 1, or the date the application is approved, through December 31, or for the specific date(s) stated on the permit.

(b) Application; issuance. A Street Dining Permit may be issued only upon completion of an application form prescribed by the Director and shall be required prior to any private use of the public right-of-way. Each initial or modified application form shall be submitted with a nonrefundable administrative review fee of \$25.00. Renewal applications shall not require an administrative review fee.

(c) Application requirements. Applications for permits shall include the following information:

(1) Dimensions; obstructions. Applicants for a permit must submit the application required by the City, including a dimensioned plan showing the right-of-way and all existing public improvements and encroachments including but not limited to light posts, benches, planters, trash receptacles, fences, trees and tree grates, bicycle racks, and newspaper boxes. The diagram shall also include the location of the curb relative to the building to be served by the permit and the proposed location of all furniture and other equipment to be placed in the right-of-way. The applicant shall furnish all floor plans and approvals required by the City, including Health Department or West Virginia Alcoholic Beverage Control Administration approvals if applicable. The Director may issue a permit conditioned on the subsequent approval of other agencies, and the failure to have such agencies' approval will not prevent review of an application. Any such conditional permit will become effective upon receipt of the necessary agency approvals. Outdoor street dining permits shall not be issued for an area that would obstruct access to a fire hydrant, Fire Department standpipe connection, fire escape, bus stop, loading zone, mail boxes, or traffic signal stanchions. When applicants propose to place tables and chairs without an enclosure in the street dining area, the Director may waive the requirement for a dimensioned plan identifying improvements and encroachments.

(2) Location. Proposed permit areas should be in close proximity to the Applicant's business. For purposes of this subsection, "Close Proximity" means an available area within 150 feet of the Applicant's business and under the Applicant's control with the right of ingress and egress to the area. Areas under the Applicant's control include areas on the public right-of-way that the City may authorize for use under a permit, including the area of the public right-of-way closed for outdoor street dining. Permit areas directly adjoining a business or property not owned or controlled by the Applicant will require consent by the owner of the adjoining business or property prior to issuance of a permit.

(d) Enclosure and boundary requirements. The area of the public right-of-way where the City has allowed outdoor street dining will be marked by the City and posted with sufficient barriers and/or personnel to demarcate the area. Permittees do not need to provide an enclosed area within the outdoor street dining area to obtain a permit. When an applicant proposes to establish an enclosed area within the outdoor street dining area, all equipment used to partition an area shall be sufficient to control access to the permitted area, must be removable by the permittee during non-operating hours, and must be of a design and construction acceptable to the City. For any permit with alcohol service, the equipment used to partition the permit area shall also be acceptable to WVABCA. Barriers enclosing the area should be sufficiently secure that they cannot be easily moved by an individual member of the public. Barriers may not be permanently affixed to the street, sidewalk, poles, or other public facilities without specific prior approval of the Director, which shall be included in the permit authorizing the area. No equipment, furniture, or object may be placed in the permit area except those specifically described in the application and approved in the permit.

(e) Equipment and furniture in outdoor street dining permit area. All equipment and furniture placed in the permit area shall be acquired through the City, or, at the option of the Director, acquired directly by the applicant after approval by the City. The design and placement of equipment and furniture tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act and any applicable Federal, State, or local law. Equipment and furniture shall follow the design standards in Table 906.01.1, if applicable.

(f) Alcohol service and consumption in permit area. The permittee shall ensure that any consumption and possession of alcoholic beverages in the area for which a permit has been issued complies with all applicable laws and regulations, including those of WVABCA. An area for which a permit has been issued, and which is in compliance with all WVABCA laws and regulations, shall be exempt from the prohibition on possession, consumption, or sale of alcohol in public places stated in Section 521.06 during the lawful hours of operation of the permitted area.

(g) License from WVABCA required. In order to serve any alcoholic beverages in a permit area, a license or permit from WVABCA authorizing service in the outdoor street dining area is required. All alcoholic beverages shall be served and consumed only on the enclosed or bounded portion of the public right-of-way designated as the outdoor street dining area. Patrons may not carry any beverage regulated by the WVABCA out of the outdoor street dining area, except as authorized by WVABCA in accordance with the license governing the premises where the beverage is sold.

(h) Health Department regulations. All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The permittee shall be responsible for posting the outdoor seating area as to any special Health Department requirements.

(i) Maintenance of permit area. All rights-of-way encompassed by the outdoor street dining permit shall be maintained by the permittee in a sanitary manner at all times. Food, trash, and recyclables shall be disposed of in appropriate containers on a regular basis during the day by the permittee. Permittees shall see that the public areas encompassed by their outdoor dining permit are kept clean throughout the day and at the end of each business day, so as not to have any food, scraps, or drink leftover remaining which would pose an attraction to animals or insects. Each permit holder shall wash, as needed, the public area to remove any food or drink residue that may attract animals and/or create a pedestrian slip hazard.

(j) Waste disposal; recycling. Permittees shall be responsible for properly emptying any public trash or recycling containers placed in the permit area by the City.

(k) Hours of operation. Outdoor dining permitted under this section may only occur during the hours of 8:00 a.m. to 11:00 p.m. or limited hours during that time period which may be specified in the permit issued for each premises. If a permittee serves any beverage regulated by the WVABCA in an outdoor dining permit area, all laws and regulations of the WVABCA regarding permitted days and hours of service shall be followed.

(l) Insurance requirements. The applicant for an outdoor dining 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) 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 \$1,000,000.00 per occurrence, and \$1,000,000.00 for any single injury; and (3) Prior to issuance of an outdoor dining permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City, the West Virginia Department of Transportation Division of Highways, and – for permits authorizing service of any beverage regulated by WVABCA - WVABCA as additional insured parties; (4) The required insurance policies shall each provide that they shall not be changed or canceled during the life of the outdoor dining permit until 30 days after written notice of such change has been delivered to the additional insured parties.

(m) Permit a privilege; limitations and revocation. Outdoor dining is a privilege. The City shall have the right and power, acting through the City Manager, to prohibit the operation of an outdoor dining area at any time because of anticipated or actual problems and conflicts in the use of the right-of-way 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 right-of-way, or from demonstrations or emergencies occurring in the area. The City Manager may suspend or revoke an outdoor dining permit for any reason after providing at least three days' prior written notice to a permittee, and the City Manager may revoke an outdoor dining permit without notice in a situation determined by the City Manager to be an emergency. Any violation of the provisions of this section, any Federal, State, or local law, or of the specific conditions of any outdoor dining permit shall be cause for immediate revocation of the outdoor dining permit.

906.06. Outdoor Dining Permit.

(a) Purpose and applicability. The provisions in this section shall apply to outdoor dining that occurs on private property incidental to an otherwise permitted use, and where allowed in compliance with applicable zoning code regulations. Whenever outdoor dining includes areas in

both public and private property, the provisions of this section and of the applicable section related to public property apply.

(b) Permit authorized; outdoor dining permitted. Outdoor Dining is permitted when in compliance with all applicable provisions of the Zoning Code and any other applicable provision(s) of the City Code. When any applicant seeks an Outdoor Dining permit to obtain approval for Outdoor Dining from WVABCA or another entity (an “Outdoor Dining Permit”), the City will review applications and may issue permits under this section. Each Outdoor Dining Permit issued will be valid from January 1, or the date the application is approved, through December 31, or for the specific date(s) stated on the permit.

(c) Standards. All permits issued pursuant to the terms of this section shall conform to all of the following requirements. No permit shall be issued that does not comply with these standards.

(1) The outdoor dining area shall not extend beyond the boundaries of the subject property, and shall not be located or utilized in a manner which causes an obstruction of a public walkway or interferes with the flow of pedestrian or other traffic.

(2) The proposed outdoor dining activity shall not interfere with the use of any public walkway by neighboring property owners and tenants.

(3) The proposed outdoor dining activity shall not unlawfully alter the associated indoor dining use of the subject property.

(4) The subject property shall have previously received all necessary zoning-related approvals and shall be in compliance with those approvals.

(5) A permit shall be issued only to the owner and operator of the eating establishment or restaurant that will provide the outdoor dining - private area.

(6) A permit shall not be transferable to any entity or person, and is valid only as to the original applicant, unless the Director gives prior written approval for the transfer and the transferee accepts all terms and conditions of the permit in writing.

(7) The outdoor dining area shall be kept in a good state of repair and maintained in a clean, safe, and sanitary condition.

(8) All temporary fencing, dividers, appurtenances, furnishings and furniture that occur with a permitted use under this section shall be reviewed and approved by the Director to ensure that they are in keeping with the aesthetic and architectural character of the area and with all approved design guidelines.

(9) The outdoor dining area shall be located in a manner that will not interfere with visibility, vehicular or pedestrian mobility, or access to City or public utility facilities. The determination of whether an incidental outdoor dining area or any part thereof interferes shall be made by the Director at the time of application based on the characteristics of each proposed site.

(10) The Director may place additional conditions upon the issuance of the permit to ensure the protection of the public walkway, the rights of all adjoining property owners, and the health, safety, and welfare of the public.

(11) The hours of operation for outdoor dining on private property shall be limited to the hours of operation for the associated indoor dining, unless otherwise authorized

(12) Permits and outdoor dining on private property areas shall conform with all other applicable City and other governmental requirements including, without limitation, zoning and design review, except as otherwise provided herein.

906.07. Private use permits.

The City Manager is authorized to issue permits for the use of public rights-of-way for business purposes other than outdoor dining to permit businesses with locations adjoining the public right-of-way to extend business operations into the right-of-way ("private use permits"), including conditions upon the time or manner in which the permitted area may be used, subject to the following conditions:

(a) A private use permit may be issued only upon completion of an application form prescribed by the City Manager or City Manager's designee and shall be required prior to placing goods or equipment on any public right-of-way. Each initial or modified application form shall be submitted with a nonrefundable administrative review fee of \$25.00. Renewal applications shall not require an administrative review fee. Permits issued hereunder shall be valid from January 1 through December 31. The permit fee for a nonpartitioned private use permit shall be \$50.00 for each year the permit is obtained. The permit fee for a partitioned private use permit shall be \$200.00 for each year the permit is obtained. Permit fees are fees charged for the City services necessarily provided to enforce the provisions of this article as to each permitted area and do not constitute payment for a license or rental of the area.

(b) The design and placement of all equipment shall comply with applicable requirements of the Americans with Disabilities Act and any applicable Federal, State or local law.

(c) The proposed use shall not unreasonably interfere with pedestrian or vehicular traffic or with access to parked vehicles, and in no event shall the uses permitted by a private use permit reduce the open portion of any sidewalk to less than four feet in width. The placement of items in the public right-of-way shall comply with visibility requirements of the Planning and Zoning Code.

(d) Prior to issuance of a permit, the applicant shall furnish to the City Manager a dimensioned plan showing the right-of-way and all existing public improvements and encroachments, including but not limited to light posts, benches, planters, trash receptacles, fences, trees and tree grates, bicycle racks and newspaper boxes. The diagram shall also include the location of the curb relative to the building to be served by the permit and the proposed location of all furniture and other equipment to be placed in the right-of-way. The applicant shall furnish all floor plans and approvals required by the City, including Health Department or West Virginia Alcoholic Beverage Control Administration approvals if applicable. Private use permits shall not be issued for an area that would obstruct access to a fire hydrant, Fire Department standpipe connection, fire escape, bus stop, loading zone, mail boxes, or traffic signal stanchions.

(e) The permit area must be adjacent to the business requesting a permit. No permits will be issued for off-site use (i.e. placement in front of a business other than the applicant's own).

(f) All equipment used to partition an area shall be sufficient to control access to the permitted area, must be removable by the permittee during non-operating hours, and must be of a design and construction acceptable to the City.

(g) All rights-of-way encompassed by the private use permit shall be maintained by the permittee in a sanitary manner at all times. Food, trash, and recyclables shall be disposed of in appropriate containers on a regular basis throughout the day by the permittee.

(h) Permittees shall be responsible for emptying any public trash containers placed in the permit area by the City.

(i) Permittees shall see that the public areas encompassed by their private use permit are kept clean throughout the day and at the end of each business day. Each permit holder shall wash, as needed, the public area to remove any food, drink or other residue that may attract animals and/or create a pedestrian slip hazard.

(j) No equipment shall be permanently attached or affixed to the sidewalk, poles or any other public facilities. No equipment shall be placed in the permit area except as specifically approved in the permit application.

(k) Uses permitted under this article may only occur during the hours specified in the permit issued for each premises.

(l) The applicant for a private use 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) 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 \$1,000,000.00 per occurrence, and \$1,000,000.00 for any single injury; and

(3) Prior to issuance of a private use permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City as an additional insured party.

(4) The required insurance policies shall each provide that they shall not be changed or canceled during the life of the private use permit until 30 days after written notice of such change has been delivered to the City.

(m) The permittee shall hold harmless, indemnify and defend the City and the West Virginia Department of Transportation, Division of Highways, from and against any and all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, consequential or otherwise, including reasonable attorneys' fees, which may in any way arise out of or be connected with the granting or use of a private use permit or from any act or failure to act by the permittee, its agents or employees.

(n) Private use of public space is a privilege. The City shall have the right and power, acting through the City Manager, to prohibit the operation of a private use permit area at any time because of anticipated or actual problems and conflicts in the use of the right-of-way 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 right-of-way, or from demonstrations or emergencies occurring in the area. The City Manager may suspend or revoke a private use permit for any reason after providing at least three days' prior written notice to a permittee, and the City Manager may revoke a private use permit without notice in a situation determined by the City Manager to be an emergency. Any violation of the provisions of this section, and Federal, State or local law, or of the specific conditions of any private use permit shall be cause for immediate revocation of the private use permit.

906.99. Penalty.

Any person, firm or corporation violating any provision of this article, shall be fined not less than \$50.00 nor more than \$500.00 for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

TABLE 906.01.1. DESIGN STANDARDS

The following design standards shall apply to private persons seeking an Outdoor Sidewalk Dining Permit or Outdoor Street Dining Permit. The Director may publish design guidelines demonstrating materials, equipment, and furniture that comply with these standards.

BARRIERS

(a) Outdoor Sidewalk and Street Dining Area barriers (fences, planter boxes, etc.) must be visually appealing and help to separate the dining area from the sidewalk. All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

(b) Barriers are required in the following instances:

(1) Required for full perimeter of outdoor sidewalk dining areas when the seating area extends more than two and a half (2 1/2) feet into the public right-of-way. A detectable barrier is required for the full perimeter (with the exception of the access openings).

(2) Required for full perimeter of all outdoor sidewalk dining areas when serving alcohol. State law requires that outdoor sidewalk dining areas, where alcohol is served or consumed, must be enclosed with only one opening to the sidewalk for access. Such access must face the main ingress and egress of the operator's establishment. All access openings must measure no less than thirty-six (36) inches in width and shall comply with applicable National Fire Protection Association (NFPA) Fire and Life Safety Codes.

(c) The following types of barriers are permitted: sectional fencing, planters, planter boxes, or combination thereof. Prohibited barrier styles include, but are not limited to chain-link, rope, chains, cyclone fencing, buckets, food containers, tires, tree stumps, wood pallets, chicken wire, plastic fencing, or similar appurtenances and materials not specifically manufactured for fencing or to be used for pedestrian traffic control.

(1) Sectional fencing (generally defined as rigid fence segments that can be placed together to create a unified fencing appearance) are permitted. Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be painted or stained.

(2) If a stanchion or other vertical supporting device is attached to the sectional fencing, the base must be flat and must measure no more than one-half (1/2) of an inch above the sidewalk surface. No domed bases for the stanchion or other vertical supporting device for the fencing. The base must not be a tripping hazard.

(3) All barriers shall have a minimum height of thirty-six (36) inches above the level of the sidewalk and maximum height of forty-eight (48) inches. Exceptions may be granted for barriers that include landscape (planting) materials or a combination of landscape materials and sectional fencing.

(4) Planters may be used in addition to or in place of other barrier designs. They may also be used in situations where no barrier is required.

A. All planters themselves must be a total height of thirty-six (36) inches above the level of the sidewalk. The plants (live) within the planters shall not exceed sixty (60) inches in height, measured from the surface of the sidewalk.

B. All planters must have plants contained within them. If plants within a planter die, the plants must be replaced or the planter removed from the public right-of-way.

(5) All barriers must be freestanding, without any permanent or temporary attachments to buildings, sidewalks, or other infrastructure, unless such attachments are specifically permitted by the Director in the permit.

TYPES OF FURNITURE

(a) Outdoor Sidewalk and Street Dining Area furniture must be visually appealing and must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. All furniture and fixtures must be maintained in a clean condition at all times and shall be of high quality, durable and of sufficiently sturdy construction. All furniture and fixtures shall be consistent and match each other by being visually similar design, construction, and color.

(b) All furniture other than tables, chairs, and umbrellas are prohibited. This includes but is not limited to serving stations, bar counters, shelves, racks, sofas, trash receptacles, and torches. Outdoor space heaters may be permitted as authorized by the Director and in accordance with any applicable law. Locations for outdoor space heaters must be located on original site plan on the Outdoor Dining Area Permit Application.

(1) Tables must be of metal (aluminum, steel, iron, or similar) or of wood construction and may be colored or of a natural unpainted material (i.e., wood, metal, etc.). Tables are not permitted to be of any plastic material.

(2) Square or rectangular tables are preferred, but not required for outdoor dining areas. All tables shall be consistent and match each other by being visually similar design, construction, and color.

(3) Chairs must be of metal (aluminum, steel, iron, or similar) or of wood construction and may be colored or of a natural unpainted material (i.e., wood, metal, etc.). Chairs are not permitted to be of any plastic material. All chairs shall be consistent and match each other by being visually similar design, construction, and color.

(4) Upholstered pillows or any other type of cushions for the furniture is permitted.

(5) Umbrellas must be of a material suitable for outdoor use and must be canvas-type. No plastic fabrics, plastic/vinyl/laminate fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor dining area, but this shall not prohibit outdoor dining areas existing under areas where fixed awnings or similar structures are attached to a building. Umbrella covers must be of one solid color.

(6) Signage, graphics or wording on the umbrellas is prohibited, except where the Operator's business name/logo is used.

(7) Square or Rectangular Umbrellas are preferred. Market-style or those designed specifically for patio or outdoor restaurant are preferred.

(8) All parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.

(9) When extended, the umbrella must measure at least eight (8) feet above the surface in order to provide adequate circulation space below. Any part of an umbrella used in the outdoor dining area may not exceed a height of ten (10) feet above the level of the sidewalk.

(c) The floor of any outdoor dining area should be uncovered sidewalk material. Prohibited sidewalk coverings include, but are not limited to carpet, platforms, raised decks, or any other

flooring material including but not limited to tile, nylon, vinyl, canvas, or any other covering that is intended to resemble turf are prohibited.

(d) All furniture and fixtures must be freestanding. At no time shall furniture and fixtures be secured to other permanent structures including, but not limited to trees, street signs, hydrants, or any other street infrastructure by means of ropes, chains, or any other devices.

This ordinance is effective upon adoption. Any permit issued pursuant to the prior version of this Article 906 shall remain valid in accordance with its terms until its expiration.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____