



OFFICE OF THE MAYOR
FRAMINGHAM, MA.

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FRAMINGHAM CITY COUNCIL

ORDER NO. 2019-098-001
REQUEST OF THE DOWNTOWN FRAMINGHAM INC.

UPON THE REQUEST OF DOWNTOWN FRAMINGHAM INC., THE CITY OF FRAMINGHAM, THROUGH THE FRAMINGHAM CITY COUNCIL, IT IS SO ORDERED:

That the City Council votes to adopt a Central Business District Sidewalk Usage Ordinance designed to activate downtown sidewalks through various uses to promote the use and enjoyment of the City's public space, enhance tourism within the City and will increase handicapped accessibility to storefront businesses in the Central Business District. The full text of the Ordinance follows this Order.

FIRST READING:

YEAS: Cannon, Giombetti, Grove, King, Richardson, Rossi, Shepard, Sisitsky, Steiner, Torres, Tully Stoll
NAYS: None
ABSTAIN: None
PASSED IN COUNCIL: OCTOBER 29, 2019

SECOND READING:

YEAS: Cannon, Giombetti, Grove, King, Richardson, Rossi, Shepard, Sisitsky, Steiner, Torres, Tully Stoll
NAYS: None
ABSTAIN: None
PASSED IN COUNCIL: NOVEMBER 7, 2019

A True Record, Attest:

11/8/19
Date Approved
Lisa A. Ferguson
Lisa A. Ferguson, City Clerk

12/6/19
Date Approved
Yvonne M. Spicer
Yvonne M. Spicer, Mayor

CITY OF FRAMINGHAM SIDEWALK BUSINESS USE ORDINANCE

Activation of downtown sidewalks through various uses, mainly sidewalk cafes, will promote the use and enjoyment of the City's public spaces; will enhance tourism within the City, and will increase handicapped accessibility to storefront businesses in the Central Business District.

ENABLING LEGISLATION

A. USE OF PUBLIC WAYS

A.1 The Mayor shall have the jurisdiction in relation to the use of public ways for any temporary obstruction or projection in, under or over the same. The Director of Public Works (DPW) shall also have the powers and perform the duties conferred or imposed by statute in relation to the use of parts of public ways for the storage and sale of merchandise.

A.2. Sidewalk usage by businesses shall be temporary in nature and designed so that the entire sidewalk business usage structure and its furniture, including but not limited to chairs, tables, fencing, bollards and planters, can be easily removed during periods of non-use. Furthermore, the City reserves the right to require the User to remove the sidewalk furniture if and when it determines it to be necessary.

B. PUBLIC PROCESS

B.1. Every owner/application (hereinafter "User") for a sidewalk café and usage will be subject to review and approval through the Board of License Commissioners and any other required associated approval authorities.

B.2. The power granted to the Board of License Commissioners shall be interpreted to mean that a Sidewalk Business Use License, Maintenance, and Indemnity Agreement will be granted only after a public hearing and endorsed by the members of the Board of License Commissioners with final approval by the Mayor.

B.3. Sidewalk usage must be appurtenant and contiguous to the main storefront. It may not extend beyond the frontage face of the storefront except through express, written permission of an adjacent storefront property owner. The City reserves the right to require that more than four (4) feet of sidewalk be made available for passersby during certain hours of the day, or days of the week in order to accommodate pedestrian traffic.

B.4. To prevent additional encroachment onto public space (and to contain the sale of alcohol within the cafe area), the sidewalk business usage area must be separated from the pedestrian walk space with a system of enclosure, such as decorative fencing with removable bollards.

B.5. No portion of a sidewalk usage area may be used for any purpose outside its requested intended use, which may include product display, café seating, entertainment, and signage. The hours of operation for the sidewalk business usage area shall be approved by the City of Framingham Board of License Commissioners and will be incorporated into Sidewalk Business Use License, Maintenance, and Indemnity Agreement.

C. COMPLIANCE WITH STATE AND LOCAL LAWS AND REGULATIONS

C.1. All sidewalk usage areas must comply with all applicable federal, state, and local laws and regulations, including Americans with Disabilities Act. Unobstructed public sidewalk clearance must be not less than four [4] feet in width at all points.

D. APPROVALS

D.1. Upon determination by the Licensing Coordinator that the project is within the pre-approved zones where sidewalk business use is allowed, the Department of Public Works shall have review responsibility for general use of a public way in areas under their jurisdiction.

D.2. The DPW will inform the User if an underground vault exists below the space where the proposed sidewalk furniture will be placed. In the event that there is an underground vault, the User shall not obtain a license agreement for the sidewalk usage until such time as the DPW is satisfied that there is no risk that the sidewalk usage structure will collapse.

D.3. The Inspectional Services Department shall have review responsibility for the placement of all sidewalk furniture and signage. The Inspectional Services Department shall inspect for compliance with accessibility per 521 CMR – Architectural Access Board Rules and Regulations.

D.4. It shall be the User's responsibility to provide to the Board of License Commissioners, before the scheduled public hearing, written proof that it has obtained all requisite permits, specifically the Departments of Public Works and Inspectional Services.

D.5. The User who is granted a Sidewalk Business Use License, Maintenance, and Indemnity Agreement shall bear all financial responsibility for any and all improvements necessary to the public space, both

within and surrounding the sidewalk usage area. The Sidewalk Business Use License, Maintenance, and Indemnity Agreement between the User and Mayor shall address liability, maintenance and trash removal concerns, and set forth the fair market value rental cost for the leasing of the public space.

E. LENGTH OF LICENSE

E.1. The temporary license term for the use of the public space shall be seasonal during business hours only from May 1 through October 30 of each year. This agreement may be renewed for this period in each successive year by way of payment of the annual fee, and provision of proof of liquor licensing and insurance, subject to the termination provisions of this agreement.

F. LICENSE FEE OF PUBLIC SPACE

F.1. The User understands that construction, maintenance, utilities and other amenities relative to this contract term of public space and operation of a sidewalk business usage area shall be the responsibility of the User. The rental fee for use of the public space shall be determined by the Board of License Commissioners. Said fee is subject to change on a yearly basis.

F.2. Licenses issued for sidewalk usage areas will require that the User adhere to all applicable rules, regulations and laws governing the use of public space, and the operation of the usage area. Permits issued relative to sidewalk usage areas will be subject to renewal on a yearly basis.

F.3. The City reserves the right to revoke the Sidewalk Business Use License, Maintenance, and Indemnity Agreement for any reason and at any time. The User may terminate this License at any time upon giving the City not less than 30 days written notice. Such notice shall indicate the date upon which the License is terminated and shall be submitted to the Licensing Coordinator. The User covenants and agrees to remove any furnishings and barriers if required to do so by the City.

G. ADMINISTRATION STANDARDS

G.1. Follow the process steps as dictated in the City of Framingham's Sidewalk Business User Guide.

G.2. The Board of License Commissioners shall have the power to set the fees.

G.3. Indemnification Standards: That the Applicant hereby covenants with the City to indemnify and save harmless the City against all claims and demands of all persons for damages, costs, expenses or compensation for, on account of, or in any way growing out of the use and occupancy by the Applicant,

his patrons, and or invitees of the licenses area, or by reason of any act or neglect of said Applicant, its officers, agents, and employees, or by any reason of any violation of any term or specification contained in this Agreement or in any license or permit necessary in the said use and occupancy of the Licensed Premises. The applicant will adhere to the City of Framingham's maintenance standards as set forth by the Department of Inspectional Services.

G.4. Insurance Language: The Applicant's ability to operate a sidewalk café or other use shall be conditioned upon the Applicant obtaining and maintaining liability insurance for the period covered by the license. The minimum amount of insurance shall be in the amount of One Million [\$1,000,000.00] Dollars per occurrence and Two Million [\$2,000,000.00] Dollars in the aggregate. The Certificate of Insurance shall name the City of Framingham as an additional insured, and the Original Certificate shall be provided to the Board of License Commissioners prior to obtaining any permits. Licensing Coordinator shall be named as the Certificate Holder.

G.5. Once the applicant has received all necessary City approvals, the License agreement for use of the public sidewalk space will be approved by the Board of License Commissioners and with final endorsement by the Mayor.