



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2022-1405, **Version:** 2

An ordinance to amend Section 13.32.165 of the Metropolitan Code of Laws to amend the requirements for sidewalk café permits including implementing a fee for the use of right-of-way, an insurance requirement related to the sale of alcoholic beverages, and allowing for the issuance of permits throughout Nashville and Davidson County.

WHEREAS, in order to assist restaurants in compliance with COVID-19 regulations and to expand outdoor dining options, the Council adopted Second Substitute Ordinance No. BL2020-403 on September 15, 2020; and

WHEREAS, this ordinance created Section 13.32.165.E of the Metropolitan Code of Laws, which temporarily extended the availability of a permit for a sidewalk café dining facility outside of downtown Nashville to the entire jurisdiction of the Metropolitan Government, provided that these facilities comply with all applicable requirements for a sidewalk café permit; and

WHEREAS, in addition, this provision allows a sidewalk café facility to sell beer and other alcoholic beverages if the requirements of all applicable laws, rules and regulations for the sale of beer and/or alcoholic beverages have been satisfied; and

WHEREAS, this subsection was originally set to expire on February 15, 2021. The subsection was subsequently extended by resolution to February 15, 2022 and is currently set to expire on November 15, 2022, unless extended by a resolution adopted by the Metropolitan Council; and

WHEREAS, it is in the best interests of the residents of Metropolitan Nashville and Davidson County that this sidewalk café program be made permanently applicable county-wide.

WHEREAS, in addition to allowing the sidewalk café program to be applicable county-wide, additional changes to modernize the program are appropriate, including collecting a fee for the use of the right-of-way, adding an insurance requirement for sidewalk cafes that serve alcoholic beverages, increasing requirements for the accessibility of sidewalks by pedestrians, and updating references to the Nashville Department of Transportation and Multimodal Infrastructure; and

NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 13.32.165 of the Metropolitan Code is amended by deleting the section in its entirety and replacing it with the following:

13.32.165 - Sidewalk café dining facilities.

- A. Sidewalk cafe dining facilities are authorized to be located within the public right-of-way, not including parking, unloading/loading, and travel lanes, subject to the rules and regulations of subsection D. Revisions in said regulations shall require the approval of the director of the Nashville Department of Transportation and Multimodal Infrastructure ("NDOT") and the approval of the metropolitan council by resolution.

- B. Any person who maintains and/or operates any sidewalk cafe dining facility within any public right-of-way without first obtaining a permit from the metropolitan government shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed the amount specified at Section 1.01.030 of the Metropolitan Code, and each day that such violation continues to occur shall be deemed a separate offense.
- C. Any person making application for a permit to operate a sidewalk cafe dining facility shall, in addition to filing the appropriate application as required by NDOT, pay to the metropolitan government a nonrefundable fee of one hundred dollars to cover the cost of processing such application and an annual fee per square foot for right-of-way use at a rate determined by NDOT. If a renewal of the permit is desired, an application for renewal must be made at least 30 days prior to the expiration of the existing permit and must be accompanied by the nonrefundable fee of one hundred dollar as well as the annual fee per square foot for right-of-way use.

D. Rules and Regulations.

1. Operation of sidewalk cafe dining facilities shall require a permit from NDOT. Such permits shall be available throughout the jurisdiction of Metropolitan Nashville and Davidson County. For the purposes of this section, a "sidewalk cafe dining facility" means an area adjacent to a street level restaurant or equivalent eating or dining establishment, located within the public right-of-way, not including parking, unloading/loading, and travel lanes, and used for dining, drinking and related activities. A sidewalk cafe dining facility may provide waiter or waitress services or may be self-service.
2. All permits issued pursuant to this section shall be for a period of one year, renewable annually, and must be posted on the premises. If an applicant is not the owner of the property abutting the requested right-of-way, such application must have written approval by the owner of said property. Both the applicant and the owner of the abutting property, if different from the applicant, are responsible for any damage to the public right-of-way arising out of operation of the sidewalk cafe dining facility, and must immediately restore the right-of-way upon request to the specifications of the director of NDOT.
3. Each application must be accompanied by a plan showing all proposed activities to be conducted upon the public right-of-way not including the parking, unloading/loading or travel lane, etc. and all items proposed to be placed upon said right-of-way. A description of the area proposed to be encumbered must accompany each application. No stakes, rods, support poles or holes for whatever purpose are allowed to be drilled in the public right-of-way. No permanent fixtures are permitted in the public right-of-way. No outside sandwich board signs are permitted in the right of way. The right-of-way used for sidewalk cafe must be maintained in a safe manner and disability accessible and free of pedestrian hazards.
4. The plan so presented at the time application is sought must include every activity proposed to be conducted upon the public right-of-way. For example, if food service is planned for the sidewalk area, the application must so state. If any entertainment or music is contemplated, the application must disclose this in detail. Anything not specifically included in an application will be considered to be excluded.
5. A minimum of five feet of sidewalk must be left clear for pedestrian traffic (measured from the edge of the encroachment to the curb or to any other obstruction, such as parking meters, signposts, etc.) and placement must not obstruct ingress or egress from vehicles parked at the curb. In cases where the sidewalk does not allow for five-feet of sidewalk clearance, the applicant must demonstrate via a minimum of four feet.
6. The area surrounding the sidewalk cafe dining location must be kept completely free of debris, trash or litter of any type. Such cleanup and maintenance shall be the joint responsibility of the applicant and

the property owner, if different from the applicant.

7. Sidewalk cafe dining facilities must not obstruct any doorway and must have 36" minimum access opening from the edge of the encroachment.
8. The applicant shall hold harmless and indemnify the metropolitan government from any and all liability resulting from personal injury or property damage resulting in any way from the operation of sidewalk cafe facilities, including court costs and attorneys' fees. Proof of insurance in an amount of not less than \$1,000,000 in a form acceptable to the metropolitan government from a company licensed to do business in the State of Tennessee must be furnished with the application.
9. The sale and consumption of beer and other alcoholic beverages at sidewalk cafe locations is permitted if the requirements of all pertinent laws, rules and regulations for the sale and consumption of beer and/or alcoholic beverages have been met prior to the filing of any application sought pursuant to these regulations. If beer and other alcoholic beverages are served at the sidewalk cafe, the applicant must provide proof of liquor liability insurance in an amount of not less than \$1,000,000 in a form acceptable to the metropolitan government from a company licensed to do business in the State of Tennessee must be furnished with the application.
10. Food preparation on the public right-of-way is prohibited.
11. Any permit issued pursuant to this section may be immediately canceled or suspended by the director of NDOT for any reason and at any time. The metropolitan government shall have the right, at any time and for any reason, with or without notice, to remove from the public right-of-way any and all items placed thereon pursuant to any permit issued under this section, and to dispose of same in any manner without liability to the permit holder or to any other party; provided, however, that the director of NDOT shall use best efforts to provide at least twenty-four hours' notice to any permit holder whose operations will be affected by the provisions of this section.

Section 2. That this ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

In September 2020, the Council enacted Second Substitute Ordinance No. BL2020-403 which, in part, temporarily allowed sidewalk café dining facilities within the public right-of-way throughout the jurisdiction of the Metropolitan Government. The purpose of the ordinance was to provide some relief to restaurants impacted by COVID-19 and the resulting social distancing/seating capacity requirements.

The portion of the bill that expanded sidewalk café dining facilities throughout the jurisdiction of the Metropolitan Government was originally set to expire on February 5, 2021, but was extended through February 15, 2022 pursuant to RS2021-734. This was extended until November 15, 2022 in January 2022 pursuant to RS2022-1306.

The ordinance under consideration, as substituted, makes changes to the existing Section 13.32.165 of the Metropolitan Code of Laws to remove the sunset date related to permitting sidewalk café dining facilities county-wide and also makes various amendments to the sidewalk café program.

Under the current law, any person who maintains or operates a sidewalk café must first obtain a permit. This permit requires a nonrefundable fee of one hundred dollars to cover the cost of processing the permit. This

ordinance would further add an annual fee per square foot of right-of-way use, at a rate determined by NDOT.

The current program would be amended to require that a minimum of five feet of sidewalk be left clear for pedestrian traffic. In addition to the existing insurance requirements, any sidewalk café serving beer and other alcoholic beverages must provide proof of liquor liability insurance. Additional provisions intended to allow for continued use and accessibility of the right-of-way by pedestrians would also be added.