ORDINANCE NO. 1429-15

AN ORDINANCE OF THE BOROUGH COUNCIL OF THE BOROUGH OF GETTYSBURG, ADAMS COUNTY, PENNSYLVANIA, AMENDING CHAPTER 13, LICENSES, PERMITS AND GENERAL BUSINESS REGULATIONS OF THE CODE OF ORDINANCES OF THE BOROUGH OF GETTYSBURG, FOR THE ENACTMENT AND ADOPTION OF REGULATIONS RELATIVE TO OUTDOOR DINING AREAS IN OR ADJACENT TO PUBLIC RIGHTS OF WAY AND CHAPTER 21 STREETS AND SIDEWALKS, TO DELETE AND REPEAL REQUIREMENTS RELATIVE TO RESTAURANTS LICENSED BY THE PENNSYLVANIA LIQUOR CONTROL BOARD AND TO MAKE AND TO INCORPORATE BY REFERENCE TO THE OUTDOOR DINING AREA REGULATIONS.

The Borough Council of the Borough of Gettysburg, Adams County, Pennsylvania, hereby enacts, adopts and ordains this ordinance, amending Chapters 13 and 21 of the Code of Ordinances of the Borough of Gettysburg, as follows:

SECTION 1: A new Part 11 in Chapter 13, Outdoor Dining Areas, is enacted, adopted and ordained as follows:

Part 11
OUTDOOR DINING AREAS

§13-1101. Purpose.

The purpose of this section is to permit and encourage outdoor dining areas in Lincoln Square and other areas of public access within the Borough where such outdoor dining is legally allowed and approved in order to provide vibrant enhancements to pedestrian-oriented business within the Borough.

This general statement of the purpose of this ordinance shall include, but is not limited to, the following specific purposes:

A. To encourage the establishment of outdoor dining areas as part of a pleasant and distinctive dining experience.

B. To ensure that adequate space will be provided for safe pedestrian travel and circulation through areas where outdoor dining areas are operated and to ensure adequate and safe access to adjoining properties and businesses.

C. To ensure the comfort, safety, and welfare of persons with disabilities, including, but not limited to those persons with disabilities related to mobility or vision.

D. To attract businesses and enhance revenue opportunities for businesses within the Borough.

§13-1102. Definitions.

As used in this Part, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

BOROUGH — The Borough of Gettysburg, Adams County, Pennsylvania.

BOROUGH COUNCIL — The Council of the Borough of Gettysburg, Adams County, Pennsylvania.

BUILDING LINE — The line, drawn parallel to a front, side or rear property line that depicts the closest distance of an existing building to said front, side or rear property line.

OUTDOOR DINING AREA — The utilization of unenclosed sidewalk space beyond the building line to accommodate and for the purpose of the serving of food and drink to patrons of an operating restaurant or food service business fronting on that space. This definition of outdoor dining area shall also include such areas used by restaurants, food service businesses and other food establishments for the outdoor sale of food to the general public. This definition of outdoor dining area is not intended to include any outdoor dining areas located entirely on the private property of the business which does not cause an encroachment or improper impediment of the public's proper use of the sidewalks, streets, alleys or other public rights-of-way within the Borough of Gettysburg.

PERSON — Includes, but is not limited to an individual, partnership, firm, corporation, limited liability company, joint venture, any other legal entity whatsoever or an unincorporated association.

PROPERTY LINE — The boundary of a designated parcel, tract or area of land.

SIDEWALK — An improved surface consisting of concrete, brick, macadam or other similar material which is reserved and used by the public for pedestrian travel within the Borough.

§13-1103. General Requirements.

1. An outdoor dining area shall be used for table service only, restricted to the use of sidewalks contiguous to a property line or building line a minimum of six (6) feet in width

from the building line to the street line, leaving a minimum of five (5) feet of usable, safe, clear passage area of the sidewalk for pedestrian use.

2. No building entrance or egress shall be blocked at any time. No outdoor dining area shall be permitted within five (5) feet of the cartway of any public street or alley.

3. An outdoor dining area shall be adjacent to the front property line or building line of any entrance. All tables and seating shall be contiguous to the property line and/or building line of the building.

4. An applicant for an outdoor dining area permit intending to serve alcoholic beverages shall obtain the appropriate liquor license and approvals from the Pennsylvania Liquor Control Board and shall comply with all regulations of and promulgated by the Pennsylvania Liquor Control Board and with the following specific requirements:

a. Except within the outdoor dining area as authorized by the Pennsylvania Liquor Control Board, no alcohol shall be served or consumed in or on any street, sidewalk, alley or other public right-of-way.

b. All alcoholic beverages shall be consumed from disposable or nondisposable plastic beverage containers provided to the consumer by the operator of the outdoor dining area.

c. No alcoholic beverage shall be transported by consumers, customers or patrons from the outdoor dining area. However, where customers or patrons are invited and allowed by the business operating the outdoor dining area to bring their own alcoholic beverages, the same may be transported by the patrons in sealed or capped containers to the outdoor dining area.

5. An outdoor dining area shall comply with provisions regulating alcohol consumption on public property as contained in Chapter 6, Part 2 of the Borough Code of Ordinances, of the Borough of Gettysburg, and in particular as contained in §6-203 of such regulations.

6. No outdoor dining area shall be permanently located within the sidewalk area by means of raised deck platforms, fences, walls or other structures or enclosed by fixed walls, except that such outdoor dining area boundaries may be delineated by the use of temporary barriers such as balustrades, cordons or railings. Any such temporary barriers shall be easy to remove and shall not be greater than three (3) feet in height. Under no circumstances shall temporary barriers, as authorized hereunder, be permitted in the identified pedestrian clear passage area, nor shall a temporary barrier be affixed to the sidewalk or to any permanent structure, except that it may be attached by removable clips or devices approved in advance by the Borough. Any temporary barriers shall be compliant with regulations promulgated under the Americans with Disabilities Act of 1990, as amended.

7. An outdoor dining area shall contain and use only removable tables and chairs and shall be unenclosed, but may contain and use umbrellas or other nonpermanent covers provided that such items do not interfere with or improperly impede pedestrian travel and circulation within the identified pedestrian clear passage area. No portion of an outdoor dining area or its facilities, appurtenances, planters, shrubs, tables, chairs or other materials shall be permitted in the pedestrian clear passage area as is required to be maintained pursuant to subsection 1. hereinabove.

8. No signs shall be hung or affixed to any portion of the outdoor dining area, except those signs that are in compliance with provisions of the Gettysburg Borough Sign Ordinance of 2010, as amended, Chapter 19, Part 1 of the Code of Ordinances of the Borough of Gettysburg and for which a permit has been issued by the Borough.

9. The operator of the outdoor dining area and permit holder shall remove the outdoor dining area and all of the chairs, tables and equipment associated with the use and operation thereof immediately following the cessation of use of the outdoor dining area whether due to seasonal or other factors such that outdoor dining area is not in use for any significant period of time.

§13-1104. Permit.

1. Any restaurant or food service business or provider intending to establish and operate an outdoor dining area is required to apply annually for and obtain a permit from the Borough. The annual permit shall expire at the end of the calendar year in which it is issued. An annual fee, in an amount to be established from time to time by resolution of the Borough Council, shall be paid with the filing of the application. The annual fee shall not be subject to proration or apportionment. Such application shall be made upon forms prepared and provided by the Borough and shall include the following:

a. The name and address of applicant.

b. The width of existing sidewalk immediately adjacent to property intended to be used for the proposed outdoor dining area.

c. Listing and proof of proper, current licenses for the operation of the food service using the proposed outdoor dining area.

d. If applicable, proof of a liquor license issued by the Pennsylvania Liquor Control Board reflecting the approval of the proposed outdoor dining area as the additional licensed premises for the service and consumption of alcoholic beverages.

e. The dimensions of the area of sidewalk in which the outdoor dining area is proposed.

f. A diagram to scale of actual intended location of equipment, tables and chairs for space on sidewalk and proposed outdoor dining area as well as the proposed customer or patron capacity of the outdoor dining area.

g. If applicable, the written consent of the property owner for operation of the outdoor dining area who is leasing the business property to the applicant.

h. A certificate of insurance demonstrating liability insurance coverage for the intended outdoor dining area use.

2. No action shall be taken on any application for a permit under this subsection until the application has been completed in its entirety, properly submitted to the Borough and the application fee has been paid in full by the applicant.

3. As a condition precedent to operating an outdoor dining area on the sidewalks or other public property or areas of the Borough, an applicant shall provide proof of general liability insurance which provides coverage on a primary and noncontributory basis to the Borough as an additional insured. The minimum amount of such general liability insurance coverage shall be set and may be modified from time to time by resolution duly adopted by the Borough Council. A satisfactory certificate of insurance confirming current liability coverage in at least the minimum amount must be filed with the Borough before any outdoor dining permit will be issued by the Borough.

4. Any applicant operating an outdoor dining area shall indemnify and hold harmless the Borough, its elected or appointed officials, its officers, employees and agents from and against any and all liability arising out of such person's operation of an outdoor dining area on the sidewalks or other public property or areas of the Borough.

5. The applicant shall maintain and operate an outdoor dining area in accordance with all Borough ordinances and in compliance with all state and federal laws, as well as the rules and regulations promulgated and adopted by the Borough which pertain to this use and operation of an outdoor dining area within the Borough.

6. The applicant shall remove the outdoor dining area and all of the chairs, tables and equipment associated with the use and operation thereof immediately after written notice if the Borough determines that the outdoor dining area is detrimental to the health, safety and general welfare of the Borough, its citizens, or the general public:

a. Due to pedestrian traffic changes, the outdoor dining area narrows the sidewalk to the extent that pedestrian traffic is unsafely and improperly impeded contrary to the regulations set forth herein;

b. The outdoor dining area interferes with the safe maintenance or installation of an underground utility structure;

c. The outdoor dining area is no longer being currently used as such;

d. The outdoor dining area has been temporarily or permanently closed for violation of any Borough, state or federal law and/or regulation; or

e. The outdoor dining area is operated in violation of any ordinance, rule or regulation of the Borough.

In the event that the applicant fails to remove the outdoor dining area immediately after written notice, the Borough may proceed to remove and restore the area and charge the applicant for the cost thereof. Should the outdoor dining area be removed by the Borough, the applicant shall be entitled to a return of the equipment, furnishings or appurtenances so removed after the payment of all costs due to the Borough and following the submission to the Borough of a written request for return of such property of the applicant. The responsibility for removal under the provisions of this subsection shall be the sole responsibility of the applicant without any obligation or cost assessable against the Borough.

7. Time Limit for Approval; Notice of Disapproval.

The Borough shall act upon the receipt of a properly completed permit application and shall notify the applicant within fifteen (15) days after the filing thereof. If the Borough disapproves the application, it shall, within fifteen (15) days after the date upon which the application was filed, by telephone call to the applicant at the number listed by the applicant on the application and shall further mail to the applicant, by certified mail, a written notice of its action stating with specificity the reason or reasons for the denial of the permit.

§13-1105. Penalties.

Any person convicted of violating this ordinance shall, upon conviction thereof, be sentenced to a fine of not more than six hundred ($600.00) dollars plus any costs incurred by the Borough. Whenever such person shall have been notified by the Borough, through its officials or by service of summons or prosecution, or in any other way, that such violation has been committed, each day that such person shall continue in such violation shall constitute a separate offense.

SECTION 2: Section 21-223.3 is deleted and revised to read as follows:

3. Outdoor dining areas shall obtain an annual permit and comply with the provisions in Part 11 of Chapter 13 of the Borough Code of Ordinances, Licenses, Permits and General Business Regulations, Outdoor Dining Areas.

SECTION 3: All remaining provisions of Chapters 13 and 21 of the Code of Ordinances of the Borough of Gettysburg shall remain in full force and effect unless otherwise repealed by this or any other ordinance. All other ordinances or parts of ordinances of the Borough of Gettysburg inconsistent herewith are hereby repealed.

SECTION 4: This ordinance shall take effect upon enactment.

THIS ORDINANCE DULY ENACTED, ADOPTED AND ORDAINED according to law this 11th day of May, 2015 at a duly advertised general monthly business meeting of the Borough Council of the Borough of Gettysburg.

BOROUGH OF GETTYSBURG

By: Michael J. Birkner
Michael J. Birkner
President of Borough Council

ATTEST:

By: Sara L. Stull
Sara L. Stull, Secretary

APPROVED this 11 day of May, 2015.

By: William E. Troxell
William E. Troxell, Mayor