

Proposed: 5/1/2023

RESOLUTION NO. 076-2023(PD), *First
Reading*

By Mayor Seren

A Resolution creating and making permanent the City of Cleveland Heights Shared Spaces Program; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the City of Cleveland Heights prides itself on its many business districts. The City has for many years permitted outdoor dining—both on private property and within the public right-of-way/on public property—as a way to support the business community and enliven spaces for residents and visitors; and

WHEREAS, beginning in March 2020, the COVID-19 pandemic forced all of us to re-examine places and spaces—how we interact with our neighbors and friends and how we work, live, and play; and

WHEREAS, on July 6, 2020, in response to the COVID-19 pandemic, Council, by way of Resolution No. 83-2020, authorized a Temporary Expansion Area (“TEA”) Program for the creation or expansion of outdoor dining, entertainment and retail areas; and

WHEREAS, in light of the COVID-19 guidelines and mandates imposed upon affected businesses through Orders issued by the Governor and Director of the Ohio Department of Health, the TEA Program authorized business to use private property such as private parking lots, as well as City-owned property, streets and other public rights-of-way, including on-street parking areas, sidewalks, and parklets to expand their facilities as a means to combat the financial loss to businesses whose operations were affected by said Orders; and

WHEREAS, Resolution No. 83-2020 provided a sunset date of November 1, 2020 for the TEA Program; and

WHEREAS, due to the continuing negative impacts of the COVID-19 pandemic, by Resolution No. 131-2020, Council extended the TEA Program until December 31, 2021; and

WHEREAS, in 2020 and 2021, the City issued a number of TEA permits, including for a pilot “parklet” along Cedar Road as a tool to help businesses survive the COVID-19 health crisis; and

WHEREAS, temporary outdoor dining facilities, parklets, and pedlets are creative and cost-effective ways to add outdoor seating and spaces; and

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WHEREAS, the pilot program was well-received, and in 2023, the City of Cleveland Heights desires to establish a permanent City-wide program (the "Shared Spaces Program"); and

WHEREAS, the City Council of the City of Cleveland Heights desires to clearly and articulately describe the parameters, administration, regulations, and processes of the Shared Spaces Program; and

WHEREAS, in order to permanently establish the Shared Spaces Program, a number of regulations found within the Codified Ordinances of the City of Cleveland Heights need to be suspended.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The Council of the City of Cleveland Heights hereby establishes a permanent, City-wide Shared Spaces Program to allow for the installation of a temporary outdoor-dining facility, parklet, or pedlet within the public right-of-way, on public property, or on private property (collectively defined herein as a "Shared Space").

SECTION 2. The intent of the Shared Spaces Program is to help the City's business community expand capacity by providing a streamlined permitting process for temporary outdoor dining, gathering, and activity. The program is not intended to support large exterior party venues or accommodate large gatherings. Installations for large events or one-time occurrences shall be submitted through the appropriate City special event process.

SECTION 3. Installation and operation of a Shared Space shall be no earlier than May 1st of each year and removed by no later than November 1st of each year.

SECTION 4. For the purposes of the Shared Spaces Program, the following definitions shall apply:

"Public Right-of-Way" shall mean an easement (privilege or right) for public travel. In Cleveland Heights, public rights-of-way take the form of sidewalks, streets, alleys, multipurpose paths, and other public spaces. "Public Property" shall include, but shall not be limited to public parking lots.

"Outdoor Dining Facility" shall mean new or expanded seating areas installed on the public right-of-way/public property (sidewalks, public parking lots, or parallel parking spaces) or on private property.

"Parklet" shall mean seating platforms that convert curbside parking spaces (or public right-of-way) into gathering or dining spaces.

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“Pedlet” shall mean public platforms that convert curbside parking spaces into safe, pedestrian walkways. These installations provide access around expanded or new outdoor dining facilities installed on the sidewalk.

“Temporary” shall mean all materials, furniture, barriers, and installations—whether on private property, in the public right-of-way, or on public property—are easily removed, are not affixed to the ground (excluding safety equipment such as wheel-stops bolted to the pavement), and are removed before November 1st of each year.

“Permanent” shall mean any installation—whether on private property, in the public right-of-way, or on public property—that is affixed to the ground, is not easily removed, and is intended to remain through all seasons. These permanent installations shall be reviewed through the Conditional Use approval process and are not eligible for a Shared Spaces Program permit.

SECTION 5. The Mayor and his/her designees, to include the Director of Planning and Development and his/her designees and the Director of Public Works and his/her designees (collectively, “Mayor”), are hereby authorized to administer the Shared Spaces Program.

SECTION 6. The process, rules, and regulations related to the Shared Spaces Program, including eligible applicants, site selection, public health and safety, liquor permits, design permits, the application, the review and approval process, the installation and inspection process, rules regarding operation and maintenance, and rules regarding removal/renewal and evaluation, shall be as follows, as well as included in the Shared Spaces Manual, attached as Exhibit A, as may be updated from time-to-time:

(A) Eligible applicants. Eligible applicants must have the organizational capacity to manage the installation and maintenance of a new or expanded outdoor space and may be, but are not limited to:

- Ground-floor business owners
- Property owners
- Non-profit and community-based organizations
- Special service districts
- Others, on a case-by-case basis

(B) Site and Design Standards for all Shared Spaces. All sites and/or Shared Spaces must:

- Be located within a commercially-zoned district
- Not interfere with the flow of pedestrian traffic
- Not block access to crosswalks, curb ramps, public utilities, waste collection receptacles, hydrants, alleys, manhole covers, ADA parking spaces, or driveways
- Utilize materials or elements no higher than three (3) feet in height that provide a sense of enclosure or create a boundary around the installation (e.g., planters, barrels, stantions, barriers, fences, etc.).

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- (If using rope or chain) Utilize bright colors to help low vision pedestrians see thin elements.
- Install rope, chain, or lights no lower than two (2) feet off the ground to prevent tripping hazards.
- Design electrical connections to buildings that do not impede pedestrian traffic.
- Not connect to City light poles.
- Place elements that cross or sit perpendicular to the walking path of the sidewalk no more than two (2) feet apart.
- Provide a minimum of three (3) feet of clearance around all hydrants and ensure furniture does not block hydrants from view.

(C). Site and Design Standards for Parklets and Pedlets. In addition to the criteria listed in (B) above, sites for parklets or pedlets must also:

- Be located in an unrestricted parking lane, parallel to the curb edge, adjacent to the sidewalk
- Not block existing street drainage patterns
- Be located at least one (1) 20-foot parking space away from the nearest intersection
- Not occupy more than four (4) parking spaces
- Not be located in or within 40 feet of a bus stop
- Not be located on streets with steep slopes
- Include a three (3)- to four (4)-foot inner buffer when adjacent to another parking space
- Include vertical elements or barriers such as planters, railings, or cables to help distinguish the parklet or pedlet from the moving and parked car traffic on the street.
- Include reflective elements and wheel stops on corner posts around the perimeter of installation in the street's parking lane.
- Have reflective vertical elements, such as flexible posts or bollards, that make them visible to traffic.
- Maintain clear, unobstructed sightlines to and from the street.
- Be ADA-compliant.
- Be buffered by a minimum of four (4) feet from adjacent parallel parking spaces and three (3) feet from adjacent diagonal or perpendicular parking spaces using a wheel stop.
- Provide at least three (3) feet of clear space, as long as a 5-foot-by-5-foot (5'x5') passing space is provided every 200 feet.
- Have a minimum one (1) foot buffer of space from the edge of the parking lane or 13 feet from the nearest lane line.
- Have a flush transition at the curb to permit easy access for people in wheelchairs or with other mobility issues and avoid any tripping hazards.
- Include a sign at the locations of all hydrants with "HYD" in white lettering on a red background.
- Ensure all ramps have slopes of no greater than 8% (1:12).

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- Ensure ramps have sufficient color contrast to be seen by people with limited visual ability.
- Have a surface constructed of a slip-resistant material with a minimum loadbearing weight of 100 pounds per sq. ft.
- Utilize barriers such as planters or railings to protect users.
- Provide sidewalk-facing edges that are open to pedestrians.
- Be constructed of durable, quality materials.

(D) **Types of Barriers.** Concrete barriers are preferred to separate the roadway with any parklet, pedlet, or temporary outdoor dining facility. Water-filled jersey barriers shall not be used to construct temporary outdoor dining facilities, parklets, or pedlets within the public right-of-way or on public property.

(E) **Ohio Uniform Food Safety Code.** All applicants wishing to install outdoor seating areas to support a restaurant operation must meet the Ohio Uniform Food Safety Code. This includes complying with building codes and regulations regarding sanitation, solid waste disposal, food and equipment storage, and dogs in outdoor dining areas.

(F) **Liquor Permits.** Restaurant and bar owners who wish to serve alcohol in their temporary expanded or new outdoor dining areas must comply with the State of Ohio's Division of Liquor Control regulations.

SECTION 7. The Mayor, as defined herein, shall create an application for the Shared Space Program, to be available on the City's website.

SECTION 8. The City of Cleveland Heights's Department of Public Works and Department of Planning & Development will review applications to: Determine if the application is complete; Determine if the application meets all requirements; and Review individual aspects related to the specific location and streetscape elements.

(A) **Shared Spaces in the Public Right-of-Way or on Public Property.** The Director of Public Works or his/her designee is designated to review and administratively approve applications for Shared Spaces within the public right-of-way or on public property and will coordinate review with the Planning & Development, Police, and Fire Departments, as applicable.

(B) **Shared Spaces on Private Property.** The Director of Planning and Development or his/her designee is designated to review and may administratively approve applications for Shared Spaces on private property and will coordinate review with the Public Works, Police, and Fire Departments, as applicable.

(C) **Applicants** will be notified in writing if their application is approved or denied. Notification of an application denial will state why the application has been denied and provide the applicant with information about how to appeal the denial determination.

SECTION 9. Approved applicants for installations within the public right-of-way or on public property will receive a construction permit and will be authorized to begin

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construction, installation, and/or use of the public right-of-way/public property. Approved applicants for installations on private property will receive a Conditional Use Permit and will be authorized to begin construction and installation on private property. Building permits may be necessary for either instance and would require approval from the Building Department after authorization by the Department of Public Works or Department of Planning & Development.

SECTION 10. Any participant must comply with the Terms and Conditions of the Shared Spaces Program, attached as Exhibit B, as may be updated from time-to-time.

SECTION 11. The Mayor may enter into a License Agreement with an applicant seeking to use public property, public right-of-way, or on-street parking as a Shared Space, a template of which is attached as Exhibit C, as may be updated from time-to-time.

SECTION 12. All appeals shall be submitted in writing. Appeals of Shared Spaces Program decisions must be sent via e-mail or certified mail to the Mayor.

SECTION 13. Upon completion of installation, the applicant shall request an inspection from the City. Prior to removal, City staff will evaluate the installation ensure installed materials remained safe and met program requirements.

SECTION 14. Applicants are solely responsible for the maintenance and upkeep of their installations. This includes all duties and costs related to keeping the installation clean and in good condition. Installation areas should be cleaned daily, furniture stowed or locked nightly (if appropriate), and any damage repaired promptly. Proper maintenance is a condition of the permission to install, and failure to conduct proper maintenance may result in the loss of authorization for the installation at the City's discretion.

SECTION 15. If a business desires to maintain a temporary installation for the next calendar year, a renewal application must be submitted by October 1st of the current year. If any changes to the previously approved site plan are proposed, a new complete application must be submitted for review and approval. Renewal applications must include payment of the annual application fee, a completed renewal form, an updated copy of liability insurance, and any support or permission documentation.

SECTION 16. Fees.

(A) The fee for a Shared Space within the public right-of-way or on public property shall be \$115 or as otherwise established by the Mayor.

(B) The fee for a Shared Space on private property shall be \$75 or as otherwise established by the Mayor.

(C) Applicants with installations in metered parking spaces must rent meter covers

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from the Department of Public Works for \$1.00 per cover and keep the meter covers in place for the duration of the installation.

(D) There shall be no additional fees in connection with a Shared Space.

SECTION 17. In order to allow for the administration of the Shared Spaces Program, the following Codified Ordinances regulations or requirements shall be waived or modified and replaced with the process, rules, and regulations contained in the Shared Spaces Manual:

- Part One (Administrative Code), Title One (General Provisions), Chapter 110 (City Property Disposition), Section 110.05 (Outdoor Dining on Public Property), (a) through (e) – to replace the regulations related to outdoor dining on public property with those listed above in Section 6 and contained within the Shared Spaces Manual.
- Part Three (Traffic Code), Title Three (Streets and Traffic Control Devices), Chapter 311 (Street Obstructions and Special Uses), Section 311.02 (Parades and Assemblages) – to permit assemblage within the public right-of-way or on public property to allow for the creation of a Shared Space that is approved by the Mayor, as defined herein, to replace the permit application process and timelines with a separate Shared Spaces application and process, and to modify the conditions by which Shared Space permit could be refused or cancelled.
- Part Three (Traffic Code), Title Seven (Parking), Chapter 351 (Parking Generally), Section 351.04 (Manner of Parallel Parking), (b)(2)A – to permit the temporary elimination of an angled parking space that is located on a state route necessary to create a Shared Space.
- Part Three (Traffic Code), Title Seven (Parking), Chapter 351 (Parking Generally), Section 351.11 (Obstructing Lane Access to Public Buildings) – to permit the placement of structures in the public right-of-way, public property, or on private property necessary to create a Shared Space.
- Part Three (Traffic Code), Title Nine (Pedestrians, Bicycles and Motorcycles), Chapter 371 (Pedestrians), Section 371.05 (Walking and Jogging on Roadways), (a) through (h) – to permit pedestrians to utilize Shared Spaces that occur in the public right-of-way.
- Part Five (General Offenses Code), Chapter 521 (Health, Safety and Sanitation), Section 521.05 (Playing Games in Streets), (a) through (b) – to permit the playing of games within Shared Spaces that occur in the public right-of-way.
- Part Five (General Offenses Code), Chapter 521 (Health, Safety and Sanitation), Section 521.07 (Unlawfully Using or Obstructing Fire Hydrants), (b) – to modify the required offset distance from a fire hydrant to three (3) feet for Shared Spaces.
- Part Eleven (Zoning Code), Title One (Administration), Chapter 1115 (Procedures), Section 1115.02 (Building Permit Required), (a) through (c) – to modify the approval process to follow the processes contained in the Shared Spaces Manual.
- Part Eleven (Zoning Code), Title One (Administration), Chapter 1115 (Procedures), Section 1115.08 (Conditional Uses; Submission Requirements and Procedures), (a) through (i) – to modify the approval process to follow the

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processes contained in the Shared Spaces Manual.

- Part Eleven (Zoning Code), Title One (Administration), Chapter 1115 (Procedures), Section 1115.12 (Schedule of Fees) – to waive the fees related to outdoor dining, conditional use permits, fences, among others, and replace them with the fees listed in Section 16 and within the Shared Spaces Manual.
- Part Eleven (Zoning Code), Title Three (District Regulations), Chapter 1131 (Commercial Districts), Section 1131.02 (Commercial Districts: Principal and Conditionally Permitted Uses), Schedule 1131.02(c)(6) – to replace any conditional use regulations with those provided above in Section 6 and within the Shared Spaces Manual.
- Part Eleven (Zoning Code), Title Three (District Regulations), Chapter 1131 (Commercial Districts), Section 1131.11 (Commercial Districts: Supplemental Regulations for Outdoor Display, Sales of Goods), (d) and (e) – to replace any supplemental regulations with those provided above in Section 6 and within the Shared Spaces Manual.
- Part Eleven (Zoning Code), Title Three (District Regulations), Chapter 1131 (Commercial Districts), Section 1131.14 (C-2X Multiple Use District), (a) through (i) – to replace the regulations with those provided above in Section 6 and within the Shared Spaces Manual.
- Part Eleven (Zoning Code), Title Seven (Conditional Use Regulations), Chapter 1153 (Supplemental Standards for Conditional Uses), Section 1153.03 (Specific Area, Width and Yard Regulations), Schedule 1153.03(29) – to replace the regulations with those provided above in Section 6 and within the Shared Spaces Manual.
- Part Eleven (Zoning Code), Title Seven (Conditional Use Regulations), Chapter 1153 (Supplemental Standards for Conditional Uses), Section 1153.05 (Supplemental Regulations for Specific Uses), (p) – to replace the regulations with those provided above in Section 6 and within the Shared Spaces Manual.
- Part Eleven (Zoning Code), Title Nine (Supplementary Regulations), Chapter 1165 (Additional Regulations Governing Uses), Section 1165.07 (Exterior Lighting Requirements), (b) – to replace the regulations with those provided above in Section 6 and within the Shared Spaces Manual.
- Part Thirteen (Building Code), Title Three (Local Provisions), Chapter 1321 (Fences), Section 1321.01 (Permit Required; Fee), (a) through (b) – to waive the fees related to a fence permit for Shared Spaces. Such permit shall be issued by the Zoning Administrator as part of the Shared Space application process.

SECTION 18. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 19. It is necessary that this Resolution become immediately effective as an emergency measure for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to meet seasonal deadlines. Therefore, provided it receives the affirmative vote of five (5) or more members elected or appointed to this Council, this Resolution shall take effect

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and be in force immediately upon its passage; otherwise it shall take effect and be in force from and after the earliest time allowed by law.

MELODY JOY HART
President of the Council

ADDIE BALESTER
Clerk of Council

PASSED:

Presented to Mayor: _____

Approved by Mayor: _____

KAHLIL SEREN
Mayor