

Proposed: 09/18/2023

ORDINANCE NO. 150-2023(PD), *First
Reading*

By Mayor Seren

An Ordinance amending various sections of Chapters 110, 311, 351, 371, 521 and 1321 of the Codified Ordinances to facilitate a permanent Shared Spaces Program within the City; 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 and 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, the TEA Program was very well-received was therefore extended on several occasions in relation to the pandemic; and

WHEREAS, at the Mayor’s request, the City Administration developed a Shared Spaces Program and Manual in 2022-23 to guide the permitting and regulation of such facilities and spaces; and

WHEREAS, in 2023, Council adopted Resolution 103-2023 to authorize a Shared Spaces Program for the 2023 outdoor dining season through November 1, 2023, in accordance with the Shared Spaces Program and Manual, and now wishes to establish a permanent program (the “Shared Spaces Program”), necessitating amendments to the Codified Ordinances of the City of Cleveland Heights need to be amended; and

ORDINANCE NO. 150-2023(PD)

WHEREAS, those portions of the Zoning Code that are necessary to be amended are contained in Ordinance No. 127-2023 and are being reviewed per Chapter 1119 of the Zoning Code; and

WHEREAS, the portions of the Codified Ordinances that are not within the Zoning Code need to be amended as a separate legislation.

BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga,
State of Ohio, that:

SECTION 1. This Council hereby introduces amendments to Chapters 110, 311, 351, 371, 521 and 1321 of the Codified Ordinances of the City of Cleveland Heights, as set forth in **Exhibit A** attached hereto.

SECTION 2. Notice of 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 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for the introduction of the proposed zoning amendments to be effective at the earliest time possible so that said amendments can be timely considered and acted upon by the Planning Commission for the benefit of the City and its residents. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect 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

Exhibit A to Ordinance XX-2023
PROPOSED CODE AMENDMENTS:
SHARED SPACES

September 18, 2023

**PART ONE – ADMINISTRATIVE CODE
TITLE ONE – GENERAL PROVISIONS**

**CHAPTER 110
City Property Disposition**

...

110.05 OUTDOOR DINING ON PUBLIC PROPERTY.

The Mayor is hereby authorized to administratively approve requests for outdoor dining on sidewalks or other public right of way provided the following conditions are met:

(a) Such outdoor dining may only be conducted in conjunction with, and under the same management and exclusive control of, a restaurant located in a building contiguous to the public right of way upon which outdoor dining is proposed to be conducted.

(b) The outdoor dining shall not interfere with the flow of pedestrian traffic. At least five (5) feet of unobstructed sidewalk must be maintained, although more may be required in areas of high use.

(c) Outdoor dining shall be limited to no more than six tables and twenty-four chairs.

(d) No alcohol may be sold or consumed on the outdoor dining premises without the specific legislative authorization of this Council and the approval of the Ohio Department of Liquor Control.

(e) All agreements for outdoor dining shall be approved in writing by the Mayor, Director of Law, and Director of Planning and Development, and shall contain the following terms as well as others deemed necessary by the Mayor and Director of Law:

(1) The agreement shall set forth the hours of operation and the term of the agreement, which may be automatically renewable each season unless terminated by either party. A detailed description of the location of furniture and other improvements/objects shall be included.

(2) The agreement shall require the restaurant owner or other responsible party to keep the outdoor dining area clean and sanitary and to remove all tables and chairs each evening for storage.

(3) The agreement shall require the responsible party to indemnify and hold the City harmless from any liability or damages caused by the outdoor dining and to provide an insurance policy in an amount approved by the Director of Law with the City being named as an additional insured.

(4) The agreement shall provide that it may be terminated by the Mayor at any time without notice if he deems that the use is creating a nuisance or interfering with the use of the public right of way, or that the property is needed for municipal purposes.

(f) This section applies only to outdoor dining on public property, with outdoor dining on private property being governed by the provisions of the Zoning Code. Shared Spaces, whether on public or private property, shall be governed by the provisions set forth in the Shared Spaces Manual, as may be updated from time-to-time.

...

PART THREE – TRAFFIC CODE

TITLE THREE – STREETS AND TRAFFIC CONTROL DEVICES

CHAPTER 311 Street Obstructions and Special Uses

...

311.02 PARADES AND ASSEMBLAGES.

No person, group of persons or organization shall conduct or participate in any parade, procession or assemblage upon any street or highway, or block off any street or highway, park or any other public area, without first obtaining a permit from the Director of Public Safety, with the exception of Shared Spaces, which shall be governed by the regulations set forth in the Shared Spaces Manual, as may be updated from time-to-time.

Applications for such permits shall be made on such forms as may be prescribed and shall contain such information as is reasonably necessary to a fair determination of whether a permit should be issued. Applications shall be filed not less than five days before the time intended for such parade, procession or assemblage.

The permit may be refused or cancelled if the resultant conditions would unreasonably hinder the movement of traffic or would require the diversion of sufficient police officers or firemen so as to deprive the Municipality of normal police and fire protection, or would be reasonably likely to provoke disorderly conduct, create a disturbance or threaten the safety of residents, by reason of the number of persons to participate in such parade, the nature or subject matter of the parade, the area in which the parade will proceed or be located, and all other relevant factors.

The permit or any order accompanying it may limit or prescribe reasonable conditions, including the hours, the places of assembly and of dispersal, the route of march or travel and the streets, highways or portions thereof which may be used or occupied.

...

PART THREE – TRAFFIC CODE

TITLE SEVEN – PARKING

CHAPTER 351 Parking Generally

...

351.04 MANNER OF PARALLEL PARKING.

...

(b) (1) This subsection does not apply to streets or parts thereof where angle parking is lawfully permitted. However, no angle parking shall be permitted on a state route unless an unoccupied roadway width of not less than twenty-five feet is available for free-moving traffic.

(2) A. No angled parking space that is located on a state route within a municipal corporation is subject to elimination, irrespective of whether there is or is not at least twenty-five feet of unoccupied roadway width available for free-moving traffic at the location of that angled parking space, unless the municipal corporation approves of the elimination of the angled parking space. The temporary elimination of an angled parking space that is located on a state route necessary to create a Shared Space shall be permitted as part of the Shared Spaces Program.

B. Replacement, repainting or any other repair performed by or on behalf of the municipal corporation of the lines that indicate the angled parking space does not constitute an intent by the municipal corporation to eliminate the angled parking space.

...

351.11 OBSTRUCTING LANE ACCESS TO PUBLIC BUILDINGS.

No person shall park or stand any vehicle or place any other obstacle in any lane, alley, privately owned public parking lot, driveway or service area, in such a manner as to obstruct the free passage of public safety vehicles or any other vehicle passing through or over such area, except for Shared Spaces, which shall follow the regulations set forth in the Shared Spaces Manual, as may be updated from time-to-time.

...

PART THREE – TRAFFIC CODE

TITLE NINE – PEDESTRIANS, BICYCLES AND MOTORCYCLES

CHAPTER 371 **Pedestrians**

...

371.05 WALKING AND JOGGING ON ROADWAYS.

- (a) Where a sidewalk is provided and its use is practicable, no pedestrian shall walk along and upon an adjacent roadway.
- (b) Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.
- (c) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk only on the left side of the roadway.
- (d) Except as otherwise provided in Sections 313.03 and 371.01, any pedestrian upon a roadway shall yield the right of way to all vehicles upon the roadway.

(ORC 4511.50)

- (e) When a sidewalk is available for the purpose of walking, but is not adequate for the purposes of jogging, running or other similar pedestrian activities, a person may jog, run or perform a similar pedestrian activity upon the travelled portion of a roadway, in accordance with the provisions of this section.
- (f) A person using a roadway for the purpose of jogging, running or the performing of a similar pedestrian activity shall perform such activity as close as practicable under existing road conditions to the outside curb or the curbline of the roadway. Such person shall perform the activity only on the left side of the roadway.
- (g) A person using a roadway for the purpose of jogging, running or other similar pedestrian activity, shall yield the right of way to vehicles lawfully operating thereon, and to vehicles and pedestrians having the right of way at street intersections.
- (h) No person shall jog, run or perform similar pedestrian activities upon a street or highway during the period commencing one-half hour after sunset and concluding one-half hour before sunrise, unless such person shall wear reflective clothing and/or a reflective device sufficient to allow such person to be discernible at a distance of at least 500 feet to such person's front and rear.
- (i) For the Shared Spaces Program, the above shall be superseded by the regulations contained in the Shared Spaces Manual, as may be updated from time-to-time.

PART FIVE – GENERAL OFFENSES CODE

CHAPTER 521 Health, Safety and Sanitation

...

521.05 PLAYING GAMES IN STREETS.

(a) No person shall fly a kite or play any game on any street, lane or alley, except as part of a Shared Space. However, nothing in this section shall prohibit the Safety Director from designating certain streets or sections thereof for limited periods of time for playground purposes under proper supervision.

(b) Whoever violates this section is guilty of a minor misdemeanor.

...

521.07 UNLAWFULLY USING OR OBSTRUCTING FIRE HYDRANTS.

(a) No person, unless authorized by the City, or except in case of fire, shall tamper with, turn on, or use water from any fire hydrant, valve box, stop cock, pipe, apparatus or other fixture for supplying water, or in any way to use water therefrom for private use.

(b) No person shall in any manner obstruct any fire hydrant by placing or permitting to exist any material, article or equipment in front thereof, from the curb line to the center of the street, or to within five feet from either side thereof. Shared Spaces shall follow the regulations set forth in the Shared Spaces Manual, as may be updated from time-to-time.

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

PART THIRTEEN – BUILDING CODE

TITLE THREE – LOCAL PROVISIONS

CHAPTER 1321 **Fences**

1321.01 PERMIT REQUIRED; FEE.

- (a) No person shall construct any fence on a residential property without first obtaining a permit therefor from the Zoning Administrator and paying a fee of fifty dollars (\$50.00). No person shall construct any fence on a commercial property without first obtaining a permit therefor from the Zoning Administrator and paying a fee of eighty dollars (\$80.00).
- (b) The permit fee shall be doubled in those cases where a person constructs or starts to construct a fence without first obtaining a permit.
- (c) There shall be no fee for a fence in conjunction with a Shared Space.

1321.02 PLACEMENT; BARBED WIRE FENCES.

- (a) Fences shall be constructed or erected in compliance with the provisions of the Zoning Code. For any fence as part of a Shared Space, the regulations set forth in the Shared Spaces Manual, as may be updated from time-to-time, shall apply.
- (b) No person shall construct or erect any barbed wire fence except an industrial type whereby not more than three (3) strands of barbed wire may be placed on the top of a fence other than a barbed wire fence provided the strands are not less than seventy-two (72) inches above the ground and are canted or angled toward the property the fence surrounds.