

**COMMISSIONERS ORDINANCE NO. O-2023-009**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AMENDING SECTION 93.63 OF THE CODE OF ORDINANCES CONCERNING OUTDOOR DINING AND/OR DRINKING UPON CITY SIDEWALKS AND/OR RIGHTS-OF-WAY AND PROVIDING A PENALTY FOR THE VIOLATION THEREOF.**

BE IT ORDAINED BY THE CITY OF NEWPORT, KENTUCKY, as follows:

**SECTION I**

That Sections 93.63 of the Code of Ordinances shall be and are hereby amended to read as follows:

**SECTION 93.63 OUTDOOR DINING AND/OR DRINKING UPON CITY SIDEWALKS AND/OR RIGHTS-OF-WAYS**

(A)(1) Tables and chairs used for outdoor dining and/or drinking shall be permitted upon City sidewalks and rights-of-way located within the Central Business District, Riverfront Development Zones and Central Business District Fringe Zones and upon outdoor patios or other clearly defined areas established for such use located within the Shopping Center Zone, in front of or alongside and placed up against the building of any establishment holding a valid occupational license for the sale of serving food and/or beverages and providing seating for such purposes, only upon the issuance of a Permit Agreement with the City authorizing such activity based upon the terms and conditions as set forth therein, so long as the same shall not obstruct, impede or endanger the free flow of pedestrian traffic. Such Permit Agreement shall limit the time of usage to no later than midnight, local time, every evening of every day of the week.

(2) The transfer of any existing Permit Agreement to new management or ownership at the same location may be permitted upon review and submission of a new application for its continuance.

~~(2) (3) Such activity for establishments licensed to sell alcoholic beverages shall also be restricted to the Central Business District, Central Business District Fringe Shopping Center and Riverfront Development Zones.~~ Outdoor dining and/or drinking may be permitted within any Residential Zone of the City pursuant to the provisions set forth in subsections (5), (6), and (7) hereof.

~~(3) (4)~~ The City shall assess an annual fee of \$50 \$100 for the initial issuance and renewal of any Permit Agreement.

(5) Such activity for any establishment located within any Residential Zone of the City applying for an initial Permit Agreement (those in existence or being renewed at

the time of the passage hereof shall be considered as continuing in nature) may be permitted under the following conditions: The requesting establishment shall first be required to make application for the appropriate Permit Agreement. Thereafter, the City shall conduct a public sentiment survey on a form created and provided by the City Licensing Department and sent to the owners/occupiers for all real property located within a seventy-five (75) foot radius of the applicants location. Within thirty (30) days thereof, the application and all returned public sentiment surveys shall be reviewed, and a determination to grant or deny based thereon shall be made by the City with the applicant advised accordingly. If approved, the Permit Agreement shall be issued immediately. If denied, the reasons shall be set forth in the notification to the applicant. All owners/occupiers of real property responding to the public sentiment survey shall be notified of the determination. If approved, any aggrieved owner/occupier for any real property responding to the public sentiment survey expressing any objection thereto may appeal the issuance to the Code Board for review within ten (10) days of the date of the notification.

(6) Any Permit Agreement issued to any establishment located within any Residential Zone of the City shall be subject to annual review before renewal and payment of the annual fee associated therewith. All other Permit Agreements shall automatically renew upon payment of the annual fee and continue in existence until surrendered or revoked.

(7) All such Permit Agreements issued to any establishment located within any Residential Zone of the City shall limit the time of usage to no later than 9:00 p.m. Sunday through Thursday and 10:00 p.m. on Friday and Saturday. However, such time frame may be extended based upon the results of the public sentiment survey of the owners/occupiers of all real property located within the seventy-five (75) foot radius as set forth in subsection (5) hereof, however, in no circumstance shall it exceed 12:00 a.m. (midnight).

(B) (8) Initial applications for such Permit Agreements in all permitted Zones shall be made to the City License Inspector/Alcoholic Beverage Control Administrator or designee, and approved/reviewed for approval or denial by the City Manager. Any initial application denied may be appealed to the City's Code Enforcement Board for approval. Any such existing Permit Agreement may be suspended or revoked, for cause, upon hearing before the City Manager City's Code Enforcement Board.

(C) (9) Any applicant may appeal the denial of any initial application or any licensee may appeal the suspension or revocation of any existing Permit Agreement made by the City's Code Enforcement Board within 30 days to the Circuit Court as provided by law.

(D) (10) Any commercial building located within any zone of the City having permitted outdoor dining and/or drinking hereunder may install acceptable awnings upon the front and side façade of the building which abuts any City sidewalk, the construction of which may encroach upon any City rights-of-way and would otherwise

be prohibited. Such awning shall be subject to guidelines and restrictions set forth in provisions promulgated by Executive Order with regard thereto. The owner or occupant of any such commercial building shall first be required to obtain the requisite building permit from the City prior to any awning installation.

(11) City sidewalks and rights-of-way shall be defined and determined as set forth in Section 93.75 of the Code of Ordinances.

(12) Any permit holder found to be in violation of any of the terms and conditions set forth in the issued Permit Agreement shall be subject to a civil fine upon citation before the Code Enforcement Board and upon the finding of any such violation, shall be subject to a civil fine not to exceed \$100 for the first offense; \$200 for the second offense and suspension and/or revocation for the third or subsequent offense.

## SECTION II

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, published and be effective upon publication.

PASSED: 1<sup>st</sup> Reading: July 24, 2023

PASSED: 2<sup>nd</sup> Reading: August 31, 2023

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MAYOR THOMAS L. GUIDUGLI, JR.

ATTEST:

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TIFFANY MYERS, CITY CLERK