

**Council Member Anane introduced the following, which was approved:**

**ORDINANCE 5.22.22 (As Amended 03/21/2022)**

**AN ORDINANCE AMENDING CHAPTER 375 (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE REGULATION OF SIDEWALK AND OUTDOOR CAFES**

*The City of Albany, in Common Council convened, does hereby ordain and enact:*

**Section 1.** Subdivision m (Sidewalk or outdoor cafe) of subsection 6 (Accessory uses) of section 375-303 (Use-specific standards) of Article III (Use regulations) of Chapter 375 (Unified Sustainable Development Ordinance) of Part II (General Legislation) of the Code of the City of Albany is hereby amended to read as follows:

- (m) Sidewalk or outdoor café.
  - (i) Cafes located within 300 feet of a residential district shall not be open for business before 8:00 a.m. and shall close by 11:00 p.m.
  - (ii) Where Subsection (6)(m)(i) above does not apply, sidewalk or outdoor cafes located in nonresidential zoning districts shall not be open for business before 6:00 a.m. and shall close by 2:00 a.m., unless Article II (Zoning Districts) establishes different hours of operation for nonresidential uses, in which case the provision of Article II shall apply.
  - (iii) Sidewalk or outdoor cafes shall not use music or noise amplification devices, and no music or entertainment of any type is permitted outdoors.
  - ~~(iv) — No outdoor cooking of any type is permitted in sidewalk or outdoor cafes.~~
  - ~~(v)~~ (iv) For sidewalk or outdoor cafes occupying a City property or right-of-way:
    - A. A revocable sidewalk right-of-way privilege must be obtained pursuant to § 375-505(18), ~~or, if the City has not yet implemented the revocable street privilege procedure, then a sidewalk cafe permit must be obtained pursuant to Chapter 303 of the City Code.~~
    - B. All fixtures, except for a canopy, awning, or shade sail, and furnishings must be of a temporary nature, and must be brought in and stored or stacked and secured during nonoperational hours.
    - C. No objects, except a retractable awning, canopy, shade sail, and lighting fixtures, may be permanently attached to the exterior.
    - D. All planters, railings and fences must be temporary, unless allowed otherwise by license from or other agreement with the City, and must not exceed a height of four feet.

~~E.~~ No additional signage shall be permitted to be affixed to a cafe's temporary structures or accessories.

~~FE.~~ At least four Each business under this paragraph (iv) operating within outdoor space on public property must maintain five feet ~~or 50% of the total~~ clear along the sidewalk width, whichever is larger, shall remain free of all ~~obstructions to allow~~ for pedestrian passage. This measurement is made from the outermost point of the permanently affixed portion of the café to, at a maximum, a distance of five feet beyond the ~~unobstructed~~ inner edge of the curb, excluding brick or grass carpets, United States mailboxes, fire hydrants, bus shelters, and street trees, ~~and other fixed objects~~. The Chief Planning Official or Corporation Counsel may require that a larger space be left unobstructed if necessary to accommodate anticipated pedestrian volume in that location, to ensure compliance with federal requirements and standards under the American with Disabilities Act and state requirements and guidance issued by the New York State Liquor Authority relating to the Outdoor Expansion of Licensed Premises, or for any other purpose as deemed necessary by the Chief Planning Official or Corporation Counsel.

~~G-F~~ The area shall be cleaned, kept refuse-free, and no large containers for trash shall be placed on the café premises.

~~H-G.~~ Public property shall not be altered in any way during the term of the revocable street right-of-way privilege. At the expiration of the term of the permit, all City-owned property shall be returned to the City in good condition, except for damage by the elements. The Chief Planning Official or Corporation Counsel may require the property owner to obtain and maintain liability insurance protecting the City from loss or damage based on Corporation Counsel's evaluation of potential risk to the City.

(vi) An outdoor café may occupy a portion of an adjoining lot or parcel, provided that:

A. The adjoining lot in question is located in a zoning district where the use that the café is serving is a conditional or permitted use.

B. If the adjoining property is under ownership separate from the establishment being served, a lease or other agreement shall be in place for use of the area accommodating the outdoor café.

C. The outdoor café space is buffered by protective barriers and landscaping where necessary to protect patrons from vehicular traffic, as determined by Chief Planning Official upon consultation with the Division of Traffic Engineering.

**Section 2.** This ordinance shall take effect immediately.

**APPROVED AS TO FORM THIS  
10<sup>TH</sup> DAY OF FEBRUARY, 2022**

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**Corporation Counsel**

**To:** Danielle Gillespie, City Clerk

**From:** Martha Mahoney, Esq., Assistant Corporation Counsel  
Brett Williams, Esq., Senior Assistant Corporation Counsel

**Re:** Common Council Legislation  
Supporting Memorandum

**Date:** February 10, 2022

**Sponsor:** Council Member Anane

**ORDINANCE 5.22.22 (As Amended 03/21/2022)**

**TITLE**

AN ORDINANCE AMENDING CHAPTER 375 (CITY OF ALBANY UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO SIDEWALK AND OUTDOOR CAFES

**GENERAL PURPOSE OF LEGISLATION**

This legislation has two general purposes.

First, the purpose of this legislation is to make permanent the expansion of patio or outdoor seating opportunities made available to outdoor and sidewalk cafés in the City of Albany (“City”) under the City’s 2021 Extended Patio & Outdoor Café Program (“Program”), a program designed to assist local eateries by providing safe and socially distanced dining options.

The Program was initially established as a temporary program authorized under the Café Permit Expansion State of Emergency Declaration (Emergency Order 315-5) issued by Mayor Sheehan on June 5, 2020, and subsequently renewed thereafter, during the pendency of the COVID-19 public health crisis, pursuant to the Mayor’s authority under N.Y. Exec. Law § 24(1)(G)(i). The Café Permit Expansion State of Emergency Declarations made such additional seating and dining opportunities available to outdoor and sidewalk cafés by lifting certain city requirements related to street-level dining set forth under the City’s Unified Sustainable Development Ordinance (“USDO”), while also maintaining compliance with applicable federal and state law requirements under the American Disabilities Act and New York State Liquor Authority.

In light of the rapidly changing circumstances presented by the COVID-19 public health crisis and the success in vaccination rates in New York State, on June 23, 2021, former-Governor Cuomo announced the expiration of the COVID-19 State Disaster Emergency Declaration (Executive Order No. 202) on June 24, 2021. Pursuant to Ordinances 20.71.21 and 28.92.21, adopted by the Common Council on July 8, 2021, and September 20, 2021, respectively, which allowed for the temporary extension of the Program, it is appropriate for the Common Council to make permanent a critical city program, such as the City’s Extended Patio & Outdoor Café Program, that was created in response to the global pandemic to alleviate the financial and operational challenges faced by businesses, and that will continue to serve a need and alleviate a significant burden on businesses and its patrons far beyond the expiration date of the public health state of emergency. Making permanent the City’s Extended Patio & Outdoor Café Program is essential to the City’s ability to cope with and recover from the economic strain resulting from the unprecedented public health emergency presented by the COVID-19 pandemic and emerging variants.

Consequently, it is advisable to continue the Program by making the appropriate changes to the USDO, to permanently remove those provisions relating to the regulation of outdoor and sidewalk cafés that were suspended in the City’s Café Permit Expansion State of Emergency Declarations, Ordinance No. 20.71.21, and Ordinance No. 28.92.21, and the suspensions of which made possible the City’s Extended Patio & Outdoor Café Program.

Second, the purpose of this legislation is to enhance the vibrancy and walkability of the City’s commercial districts by allowing the use or reuse of non-restaurant or bar or tavern uses, such as automobile-oriented uses, or other compatible uses, with outdoor café spaces where they adjoin neighboring business establishments.

#### **NECESSITY FOR LEGISLATION AND CHANGES TO EXISTING LAW**

Ordinance No. 28.92.21, which temporarily extended the Program, expired on January 15, 2022. Common Council approval is required to make the Program permanent by repealing and amending certain provisions of the USDO.

Further, sidewalk and outdoor cafés are permitted as an “accessory use” pursuant to USDO §§ 375-302.1 (Permitted Use Table); 375-303(6)(m) (Sidewalk and Outdoor Cafés). However, pursuant to USDO § 375-602 (Definitions), an “accessory use” must be “located on the same lot as the principal structure or principal use served, except as otherwise expressly authorized by provisions stated in this USDO.” The proposed change would authorize sidewalk and outdoor cafés to be located on an adjoining lot provided they meet the terms proposed to be added as a part of this legislation.

#### **FISCAL IMPACTS**

To be determined.

**Passed by the following vote of all the Council Members elected voting in favor thereof:**

Affirmative – Adams, Anane, Balarin, Farrell, Flynn, Frederick, Keegan, Kimbrough, Love, Robinson, Romero, and Zamer

Affirmative 12 Negative 0 Abstain 0

\_\_\_\_\_  
Clerk of the Common Council

\_\_\_\_\_  
President of the Common Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

I, Danielle Gillespie, City Clerk and Clerk of the Common Council, do hereby certify that Ordinance 5.22.22 was passed at a meeting of the Albany Common Council on April 4, 2022.

In Affirmation thereof, I hereto set my hand and affix The Seal of the City of Albany this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

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Clerk of the Common Council