

**MEMORANDUM**

**TO:** Carlton Williams. Commissioner, Department of Streets

Ralph DiPietro. Acting Commissioner, Department of Licenses and Inspections

**FROM:** James C. Kellett, Esq. Deputy City Solicitor

**DATE:** February 10, 2022

**RE:** Joint Regulation Regarding the Licensure and Operation of Streeteries on Authorized Portions of the Right-of-Way

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I have reviewed the attached Joint Regulation Regarding the Licensure and Operation of Streeteries on Authorized Portions of the Right-of-Way and find them to be legal and in proper form. In accordance with Section 8-407(a) of the Philadelphia Home Rule Charter, you may now forward the proposed amendments to the Department of Records where they will be made available for public inspection.

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James Kellet, Deputy City Solicitor

**CITY OF PHILADELPHIA**

**DEPARTMENT OF LICENSES AND INSPECTIONS**

**DEPARTMENT OF STREETS**

**JOINT REGULATION REGARDING THE LICENSURE AND OPERATION OF  
STREETERIES ON AUTHORIZED PORTIONS OF THE RIGHT-OF-WAY**

**WHEREAS**, Bill No. 210776 (approved December 8, 2021) amends Title 9 of the Philadelphia Code to authorize dining in the parking lane of the Right-of Way and permit the licensing of Streeteries; and

**WHEREAS**, Bill No. 210776 authorizes the Department of Licenses and Inspections (“L&I”) and Department of Streets (“Streets”) to promulgate regulations governing standards and procedures for the operation of Streeteries and the issuance and enforcement of said licenses;

**NOW THEREFORE**, L&I and Streets hereby adopt the following regulation regarding the operation of Streeteries and standards and procedures for the issuance and enforcement of Streeteries Licenses, as follows:

**Section 1. Definitions**

- A. Right-of-Way (ROW) – Right-of-Way shall have the meaning provided by Section 11-701(dd) of the Philadelphia Code.
- B. Streeteries - Occupancy of a parking lane portion of the Right-of-Way for outdoor dining operations, including but not limited to all furniture, structures, platforms, and protective barriers associated with such operations.
- C. Streeteries Structure - a structure, shelter, or enclosure located in the parking lane with at least two enclosed sides and an overhead covering, which may or may not have a platform base.

## **Section 2. Applicability of Regulation**

This regulation shall apply to the issuance of any Streebery License pursuant to Section 9-215 of The Philadelphia Code and contains requirements that supplement the requirements set forth in Section 9-215 which are designed to protect public safety and the orderly, safe and efficient use of the right-of-way by pedestrians and vehicles. A Streebery license may only be issued in connection with a location authorized by law.

## **Section 3. Streebery License – Issuance, Amendment, Renewal, Closure**

A. Issuance: The Department of Licenses and Inspections (L & I) will not issue Streebery license unless all requirements of The Philadelphia Code Section 9-215 and these regulations are met.

1. All applications should be submitted online to the Department of Licenses and Inspections or in person at the Permit and License Center of the Municipal Service Building using an application form available at the Center.
2. The application shall be made by the property owner, the business owner, or their designee.
3. The application must include proof of Streets Department approval and Art Commission approval (as provided in Section 6).
4. The application must identify the eating establishment in connection with which the license is to be obtained, and include a certification that the eating establishment is primarily engaged in the business of food preparation on the premises for sale to customers substantially for on-premises consumption.
5. The application must include a certification that the property owner of the abutting property or the property owner's designee has consented in writing to the Streebery.

6. The application must include a Certificate of Insurance and a Security Bond as provided in Section 5 of these regulations.
7. The application must include an attestation to agreement to the Insurance, Indemnification and Removal requirements of Section 9-215(7) of The Philadelphia Code and of these regulations.
8. Applicant must hold a valid food license for the location where the Streeterly will be located. The applicant must provide food license number, number of indoor and outdoor seats, and number of plumbing fixtures on the application. If the number of seats in the Streeterly changes the type of food license required, the Licensee is responsible for applying for a new food license with the Health Department prior to beginning Streeterly operations.
9. Applications for a Streeterly License in which the proposed Streeterly includes a Streeterly structure or any other feature (electrical, hvac, etc.) which requires a permit under The Philadelphia Code must include a copy of the approved permit(s).
10. The application shall include proof of public notice of Streeterly application, as required under Section 9-215(4)(a)(.4) of the Code, via posting of the official form approved by the Department of Licenses and Inspections and a photograph submitted thereof in the following manner:
  - a. The official form shall be downloaded from the Department of Licenses and Inspections website or obtained from the Permit and License Center of the Municipal Services Building.

- b. The Public Notice shall be visibly posted on a front-facing window or the front door of the business subject to the application.
  - c. The Public Notice shall be posted at least ten (10) days, but no more than thirty (30) days, prior to application for a Streeery License.
  - d. The Public Notice shall remain in place until the Streeery License is either issued or denied by the Department of Licenses and Inspections.
  - e. The application shall include a photograph demonstrating compliance with this requirement.
- B. Amendment: If a licensee wants to change the dimensions or other physical aspects of the Streeery, as approved by the Streets Department, a new Streets Department approval is required and a proposed amendment to the Streeery license must be submitted.
- C. Renewal: A Streeery License must be renewed annually. To renew a Streeery License, licensees must meet all requirements of The Philadelphia Code, as well as including:
- 1. Certification that the Streeery is operating in accordance with any issued approval(s) and that any structure remains in good repair;
  - 2. Provide proof of insurance; and
  - 3. Pay the annual license fee.
- D. Closure: It is the responsibility of the licensee to close out any license the licensee no longer wants to maintain. Non-renewal is not the same as closure of the license.
- 1. Holding an active or expired Streeery License constitutes agreement to the provisions of these regulations, including all requirements and waivers. Any licensee who does not agree to the terms of these regulations must cease operations in the Right-of-Way and close out the establishment's license.

2. If after license closure an operator intends to restart operation of a Streeterly, a new license must be obtained.

**Section 4. License Fees**

- A. Application Fee: A non-refundable fee of \$200.00 must be paid at the time of application submission. The application fee payment shall be credited toward payment of the first annual license fee payment.
- B. Annual License Fee: The annual license fee for the calendar year is \$2,200.00, based on the projected costs for administering and enforcing the Streeteries program.

**Section 5. Insurance and Bonding.**

- A. Insurance Required: A one million dollar (\$1,000,000.00) comprehensive general liability insurance policy in which the City is named as additional insured.
- B. Bond Required: A security bond in the amount of Sixty Thousand Dollars (\$60,000) for the cost of any potential removal of the Streeterly and restoration of the Right-of-Way by the City.

**Section 6. Streets Department Approval**

- A. Pursuant to The Philadelphia Code Section 9-215, prior to applying to the Department of Licenses and Inspections for a Streeterly License the applicant must first have the approval of the Streets Department, based upon a demonstration that a plan proposed for the Streeterly meets the requirements of Section 9-215 and these regulations.
- B. Art Commission Approval. Pursuant to Section 3-910 of the Home Rule Charter, the Art Commission must approve the design of any Streeterly, pursuant to any standards established by the Commission. The Streets Department will not approve a Streeterly unless the Art Commission has approved the Streeterly design.

C. Documentation Requesting Streets Department Approval: An Application for Requisite Approval form must be submitted to the Streets Department. Completion of the application will require the following:

1. Identification of the exact location of the proposed Streeterly and explanation of why that location is authorized by law for licensing of a Streeterly. This will include either (a) identification as a location within the boundaries described in Section 9-215(3) of the Code; of (b) an ordinance authorizing the proposed location as suitable for a Streeterly, subject to compliance with the Code and this Regulation.
2. A site plan that demonstrates that the Streeterly will meet the standards set forth in Code Section 9-215 and this Regulation, including
  - a. A document showing the dimensions of the proposed Streeterly boundaries, including those of proposed crash barriers, and showing that the Streeterly will only be located in the parking lane portion of the right-of-way directly abutting the restaurant in connection with which the license is obtained. Such document shall also show the width of the parking lane in which the Streeterly will be located and the width of the travel lanes that will remain upon placement of the Streeterly.
  - b. A document reflecting the boundaries of the proposed Streeterly in reference to fire hydrants, cross-walks, traffic signals and any other relevant appurtenances of the right-of-way with respect to which standards are established in Section 8 of these regulations.
  - c. A document showing and explaining how the accessibility standards of these regulations will be met.

- d. A document identifying underground utility access points and showing that the Streeterly will not violate the requirements of these regulations concerning such access points.
  - e. A document identifying the location of heating elements, what type of heating element(s) will be utilized, and their fuel source(s), any electrical connections, and the location of generators.
  - f. Proposed configuration of furniture.
  - g. Stormwater drainage clearance required by these regulations.
  - h. A document showing that, where a platform is utilized, it is connected to the curb, level with the sidewalk, and has a method of access underneath the platform surface to allow for cleaning and removal of waste.
  - i. Where an alternative barrier is proposed, a document demonstrating how such barriers will be weighted down and protected from movement.
3. Any documents identified by the Art Commission as necessary for Art Commission review as described at Section 6(B) of these regulations.
- D. A Streeterly may only be installed on a State or Federal street or highway where the Pennsylvania Department of Transportation has delegated authority to the City to permit such activity on the street or highway identified.
- E. The Streets Department shall issue a Notice of Requisite Approval when it approves a Streeterly. The Notice must be submitted to L & I as part of the Streeterly License application.



## **Section 7.     Streeterly Structures**

- A. Permitting and Licensing Requirements: A Streeterly structure, as defined in this regulation, shall be subject to the requirements of this regulation, the Philadelphia Building Construction and Occupancy Code and, Code Bulletin B-2201. Where a conflict exists, the provisions of Code Bulletin B-2201 shall govern.
- B. Building Permit Required: A building permit is required for any Streeterly structure. Structures are subject to the following permitting and licensing requirements.
1. An approved building permit must be submitted with a new or amended Streeterly license application that proposes use of a Streeterly structure.
  2. A building permit application shall be submitted in accordance with standard application procedures established by the Department of Licenses and Inspections.
  3. All structures must be installed by a contractor licensed in accordance with Section 9-1000 of the Philadelphia Code.
  4. The structure shall be subject to inspections required by Sub-Code A of the Philadelphia Building Construction and Occupancy Code. The permit holder shall be responsible to request required inspections.
  5. Streets Department Approval.
- C. Existing Temporary Streeterly Structures: Existing structures that were permitted and inspected under temporary conditions prior to the effective date of these regulations, and that otherwise meet the requirements and conditions for Streeterly Structures established in of Section 9-215, these regulations, and Code Bulletin B-2201 shall be permitted to remain, provided the following information is submitted with a Streeterly license application by May 1, 2022:

1. A copy of the building permit;
2. A copy of the Certificate of Approval demonstrating that the structure passed inspection;
3. A sealed statement from a PA licensed design professional affirming that the structure meets all requirements and conditions for Streeery Structures established under Section 9-215, these regulations, and Code Bulletin B-2201, and that the structure is maintained in good condition; and
4. Streets Department Approval.

#### **Section 8. Operational Requirements**

- A. Posting of the Streeery License: A copy of the license shall be posted at the establishment in a conspicuous place so that it is clearly visible to the public from the exterior and shall be readily available for inspection by the City.
- B. Indoor Service Required: The licensee shall maintain at least three (3) tables for indoor service during the operational hours of a Streeery.
- C. Placement Requirements:
  1. All components of a Streeery, including all furniture, structures, platforms and protective barriers, must conform to plans approved in the licensing process.
  2. A Streeery may only be installed in a parking lane that is at least seven (7) feet wide.
  3. No portions of a Streeery, including all furniture, structures, platforms or protective barriers associated with any Streeery, shall:
    - a. extend more than six (6) feet from the curb into the cartway.

- b. reduce the width of the space reserved as travel lanes to less than twelve (12) feet or be located in a travel lane of any type, including a bicycle lane, unless located as part of a closure of an entire street.
- c. extend to within 15 feet from a fire hydrant.
- d. extend to within (40) inches from any other Fire Department connection.
- e. extend to within five (5) feet of a manhole, water inlet, other utility access point, or ventilation apparatus for any above or below -ground utility structure.
- f. extend to within (2) feet from cellar doors.
- g. extend to within twenty (20) feet from a cross walk, pedestrian street-crossing curb cut, or any transit stop.
- h. extend to within thirty (30) feet from any flashing signal, stop sign, yield sign, or traffic-control signal.

D. Accessibility Requirements: A Streeterly must comply with the Americans with Disabilities Act (“ADA”), including:

- 1. Seating. A Streeterly must provide at least one (1) accessible table, or 5% of the available seating space, whichever is greater.
  - a. Table height shall be between 28” and 34”.
  - b. Unobstructed knee clearance between the ground or deck and table shall be a minimum of 27” in height, 30” in width, and extend a minimum of 19” under the table.
  - c. A clear floor area of 30” by 48” shall be provided at the accessible seating area, which may include the knee clearance area. The slope of a clearance area shall not exceed 1:48 (2%).

- d. If a counter is provided, the accessible portion shall be a minimum of 60” in length.
2. Accessible Route. An accessible route between the sidewalk and accessible seating area shall be provided and adhere to the following:
- a. The platform deck or the access to the seating area shall be flush with the adjacent sidewalk without a horizontal or vertical separation greater than ½”. Vertical separations between ¼” and ½” high shall be beveled with a slope not steeper than 1:2 (50%).
    - i. Exception- a vertical separation exceeding ½” shall be permitted where serviced by a ramp complying with the ADA Standards, including being beveled with a clear landing area of at least 5’ at the top and bottom of the ramp.
  - b. The running ground slope (parallel to the curb) shall not exceed 1:20 (5%) and the cross slope (perpendicular to the curb) shall not exceed 1:48 (2%).
  - c. The accessible route shall maintain a minimum width of 36” and be free of obstacles.
  - d. A circular wheelchair turning space a minimum of 60” in diameter or a T-shaped space compliant with the ADA Standards shall be provided. A turning space may include designated clearance areas.
3. Crash Barrier Protection:
- a. Every side of the Streetery except for the curbside must be protected by crashworthy barriers, which is either:
    - i. a water-filled jersey barrier at least eighteen (18) inches wide by thirty-two (32) inches tall by seventy-two (72) inches long; or

- ii. a barrier which, by written certification of a design professional, provides an equivalent level of protection, approved by the Streets Department.
- b. Crashworthy barriers must be connected, where feasible. Where infeasible, there shall be no more than two (2) inches between barriers.
- c. No portion of a crashworthy barrier may protrude into a travel lane or onto a sidewalk.
- d. Destroyed, damaged, or otherwise compromised barriers shall be replaced, and the approved barrier layout restored, immediately upon such damage.

4. Stormwater Drainage:

No platform or other portion of a Streeterly shall impede street or sidewalk stormwater drainage. Any platform or other framing shall be adequately open or provided with minimum drainage openings to ensure compliance with this provision.

5. Bathrooms and Handwashing Facilities.

- a. A Streeterly must be compliant with requirements of The Philadelphia Code for access to bathrooms, handwashing facilities and other applicable plumbing fixtures based upon the total occupant load of indoor and Streeterly dining areas and seats. Nothing in this regulation shall supersede the minimum requirements of the Philadelphia Plumbing Code.
- b. Access to plumbing fixtures is inclusive of all patrons and does not include facilities provided for exclusive use by employees.
- c. At least two (2) water closets and two (2) lavatories must operate for up to one hundred fifty (150) patrons, except that one (1) water closet and (1) lavatory shall

be permitted for an eating establishment in a space that was occupied by any restaurant prior to the adoption of Section 9-215 of the Code and that accommodates no greater than twenty-five (25) patrons, inclusive of indoor and outdoor dining. For capacities that exceed 150, refer to Section 403 of the Philadelphia Plumbing Code.

6. General Maintenance: It is the responsibility of the licensee to ensure that the Streeterly is maintained and operated in a clean and safe manner including but not limited to:
  - a. No food preparation, plastic food displays, food storage, or refrigeration apparatus shall be permitted in the public Right-of-Way.
  - b. Trash storage must comply with Section PM-308 of the Philadelphia Code; if a dumpster is utilized, a dumpster license is required.
  - c. The food establishment and adjacent Right-of-Way must be illuminated to allow clear passage within and through the sidewalk areas, and oriented to prevent glare on surrounding areas.
  - d. A Streeterly, including any structure, must be reasonably secured from trespass during non-operational hours.
7. Signage: No sign, other than a sign guiding ingress or egress, may be displayed on or adjacent to a Streeterly.
8. Furniture and Appurtenance Placement:
  - a. Tables, chairs, umbrellas, and other moveable furniture must be placed indoors or secured to the ground during non-operating hours.
  - b. Moveable furniture must be labeled with the food establishment or business name in a place where it is easily identifiable and readable.

- c. Umbrellas shall be of fire-retardant material and canopy shall be a maximum of six (6) feet in diameter.

9. Heating:

- a. No open flames, even if covered, are allowed as part of a Streeterly.
- b. No propane may be used in a Streeterly.
- c. All heating elements used must be approved for outdoor use and installed in accordance with manufacturer's installation instructions and in compliance with the Philadelphia Fire Code.
- d. All portable gas-fired heaters must comply with all provisions of The Philadelphia Code Fire Code Section 603.4.2.
- e. All heating elements must be placed a minimum of five (5) feet from any building and all combustibles, except for electrical heaters which may be placed at least three (3) feet from combustibles.

10. Electrical Connections:

- a. Electrical connections may not exceed circuit amperage.
- b. Wiring running across the sidewalk or overhead is prohibited.
- c. All cords and electrical wiring must be properly secured within the Streeterly and may not encroach upon the path of travel or seating areas.
- d. Any plug-in electrical fixtures, or electrical equipment, must be powered by a portable generator, unless wiring is installed in underground conduit, permanently connected to the main electrical panel of the Licensee's property, and approved and inspected under an electrical permit issued by L&I.

11. Compliance with All Other Codes and Regulations:

- a. All Streetery operations must also comply with all other applicable federal, state, and local laws, including The Philadelphia Code and any regulations promulgated thereunder, including but not limited to Title 6 (“Health Code”).
  - b. Issuance of a Streetery License does not give a licensee authority to operate in a location and manner which is otherwise prohibited by Law.
- E. Hours of Operation: A Streetery shall only be operated for business between the hours of 7 a.m. and 10 p.m. Sunday through Thursday and 7 a.m. and 11 p.m. on Friday and Saturday.
- F. Excess Seating: The number of Streetery dining seats for an establishment may not exceed the total number of dining seats located in the interior dining locations of the restaurant.

**Section 9. Removal.**

- A. In accordance with Code Section 9-215(6)(b) all Streetery Structures must be removable within 48 hours of notices or less.
- B. If a Streetery Structure is determined by the City to be creating a hazard to life or property, removal or all or part of the Streetery, or other remedial action, may be ordered to take place immediately.
- C. Inclement Weather. When the weather forecast calls for inclement weather, including but not limited to high winds, the Streetery structure must be removed in advance of the severe weather. Removal in such circumstances is the responsibility of the licensee.
- D. Other bases for Removal: An order of removal or other remedial action may be given for any of the reasons provide in Code Section 9-215(7)(c).



E. An order to remove a Streeterly or any portion thereof, given verbally to a person responsible for the eating establishment at the time of such order, shall have the same and full effect as a subsequent written order. Written notice to remove may be delivered by hand, posting, mail, or electronic mail.

**Section 10. Penalty**

Failure to follow any of the requirements of Code Section 9-215 or this regulation shall constitute a violation of The Philadelphia Code and is subject to the maximum penalty set forth in Section 9-215(9) thereof.

**Section 11. Effective Date**

This Regulation relating to the licensure and operation of Streeteries shall take effect pursuant to Section 8-407 of The Philadelphia Home Rule Charter, but not earlier than March 8, 2022.