

**COMMITTEE OF THE WHOLE, 6:45 PM
TUESDAY, JULY 11, 2017
COUNCIL CHAMBERS, TO HEAR PRESENTATION
FROM FAIRNESS PARKERSBURG**

**AGENDA FOR PARKERSBURG CITY COUNCIL,
TUESDAY, JULY 11, 2017, 7:30 PM
SECOND FLOOR, COUNCIL CHAMBERS
MUNICIPAL BUILDING**

- I. CALL TO ORDER – Council President, JR Carpenter
- II. ROLL CALL
- III. MINUTES - City Council meeting June 27, 2017
- IV. REPORTS FROM STANDING OR SPECIAL COMMITTEES
- V. MESSAGE FROM THE EXECUTIVE
- VI. PUBLIC FORUM – Council agenda items for this evening.
- VII. RESOLUTIONS
 1. Resolution requesting a budget revision within the CDBG budget by increasing the Emergency Home Repair Program line item by approximately \$8,000.00; and increasing Single Family Owner Occupied Rehab Program by approximately \$5,000.00. (Sponsored by Councilmen Reed, Kuhl, Mercer, McCrady, and Barber)
- VIII. ORDINANCE, FIRST READING:
 2. An ordinance creating and regulating outdoor dining on public sidewalks in the Central Business District. (Sponsored by the Public Works Committee of City Council.)
- IX. PUBLIC FORUM – other matters not on this agenda.
- X. ADJOURNMENT

PARKERSBURG, W. VA., June 27, 2017

The Council of the City of Parkersburg met in regular session Tuesday, June 27, 2017 at 7:30 PM in the Council Chambers on the second floor of the Municipal Building at One Government Square, Parkersburg, and joined in the Lord's Prayer and Pledge of Allegiance prior to the beginning of the meeting.

The meeting was called to order by Council President, JR Carpenter, who presided over the meeting. The Clerk noted those members attending as Dave McCrady, Sharon Kuhl, Bob Mercer, Eric Barber, John Reed, Zach Stanley, Jeff Fox, and JR Carpenter. Councilman Mike Reynolds was absent.

MINUTES – Mr. Stanley moved, seconded by Mr. Fox, to approve the regular minutes from the meeting held June 13, 2017, and the motion was adopted by unanimous vote.

REPORTS FROM STANDING OR SPECIAL COMMITTEES – there were no reports.

MESSAGE FROM THE EXECUTIVE – Mayor Tom Joyce announced that 85 cars had been tagged in our City that had out of state license plates, or other reasons, and they have 30 days to make them compliant.

Mayor Joyce also announced his appointment of Mr. Ryan Barber, the City's Federal Projects Coordinator, to the Wood County Emergency Food and Shelter Program, Board of Directors.

At this time, Wood County Delegate, John Kelly, recognized Wood County Sheriff, Steve Stephens; Rick Woodyard, 911 Director; and Mr. Larry Fought – all who have stepped forward to educate our citizenry and prepare our citizens to know about drugs and their misuse in our community. He presented them with a citation from the WV Legislature and thanked them for their hard work. Delegate Kelly also announced that House Bill 2428 provides \$24,000,000.00 for treatment programs in West Virginia.

PUBLIC FORUM for items on the agenda this evening: Mr. David Wells, 37th Street, Vienna, appeared before Council telling them he is in the planning stages of putting a fundraiser together for the purpose of using music to fight bullying in Wood County Schools. He wants to do a jazz and wine festival, and he is thinking about Point Park location, or perhaps downtown Market Street. He is asking for support for the resolution this evening concerning allowing wine and beer at Point Park, and Mr. Santer told Council that Mr. Wells does not require anything from Council if he decides on Market Street.

Mr. Jon Barker, Summers Street, asked for Council's support for the rezoning ordinance this evening on Virginia Avenue.

RESOLUTION

The clerk presented a resolution appointing Mr. Robert Wright, 3401 Avery Street, to the Parkersburg Utility Board for a one-year term to expire June 13, 2018.

MOTION – Ms. Kuhl moved, seconded by Mr. Reed, to adopt the resolution, and the motion was adopted by unanimous vote.

RESOLUTION

RESOLUTION TO ALLOW FOR THE TEMPORARY LIFTING OF CITY PARKS RULES AND REGULATIONS TO ALLOW BEER/WINE AT POINT PARK SEPTEMBER 30, 2017

WHEREAS, events in our Central Business District create opportunities for the general public to observe and/or experience positive changes; and

WHEREAS, events in our parks allow small businesses or citizens an opportunity to entertain the general public, and sometimes hold fundraisers for purposes that are pleasing to our community; and

WHEREAS, occasionally these events intend to serve beer and/or wine, provided the organizers obtain all the necessary permits from the Mid-Ohio Valley Health Department and the WV Alcohol and beverage Control Administration; and

WHEREAS, the City Council wishes to allow for the vending and responsible consumption of beer and/or wine at an event as follows:

- Point Park on Saturday, September 30, 2017 for a Wine and Jazz festival by Mr. David Wells, as a fundraiser concerning the social well-being of youth in Wood County Schools.

MOTION – Mr. Reed moved, seconded by Mr. Stanley, to adopt the resolution, and the motion was adopted by unanimous vote.

ORDINANCE, FINAL READING:

AN ORDINANCE TO REZONE

PARKERSBURG CORPORATION TAX MAP 82, PARCELS 37 AND
38, AND THE ABUTTING PORTION OF ALLEY FROM EXISTING
R-4 TO A B-2 ZONE

CASTO & HARRIS, INC., SPENCER, WV RE-ORDER NO. 12275-13

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that the following parcels of real estate situated in the City of Parkersburg, Wood County, West Virginia, be designated as a Business (B-2) Zone:

Being situated in the City of Parkersburg, County of Wood, State of West Virginia, and being more particularly described as follows:

The intent of this description is to rezone the property conveyed to Jon Barker, (tracts 2 and 3), and a portion of the unnamed 10 feet wide alley, lying to the south of the said (tracts 2 and 3), in deed book 1235, page 869 recorded in the office of the Clerk of the County Commission of Wood County, West Virginia, currently zoned R-4 to B-2. The above described property also being part of Lot 3 of Hutchinson's Grove (deed book 71, page 67).

This description was prepared by Randy A. Sheppard, Professional Surveyor No. 860, and is based on instruments of record. Reference is being made to a plat attached hereto and made part of this description.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that in accordance with the provisions of Article 1345 of the Codified Ordinances of the City of Parkersburg, the zoning of said parcels shall be designated as C-216 and shall be set forth verbatim as adopted and approved by the Ordinance in the bound book entitled, "Official Zoning Map Changes" kept by the City Clerk.

MOTION – Mr. Reed moved, seconded by Mr. Stanley, to adopt the ordinance on final reading, and the motion was adopted by unanimous vote.

PUBLIC FORUM – for other matters: Mr. Roger Wilson, Walker, WV, spoke in favor of the non-discrimination ordinance; Cammy Murray, Sherwood Drive, spoke in favor of the nondiscrimination ordinance; Jeanne Peters, Vienna, WV, spoke in favor of the nondiscrimination ordinance; Dave Holbert, Waverly, spoke against the nondiscrimination ordinance; Pastor Janice Hill, Oak Street, spoke in favor of the nondiscrimination ordinance.

MOTION – Mr. Fox moved, seconded by Mr. Mercer, to resolve into the Committee of the Whole to hear a presentation from Faimess Parkersburg on Tuesday, July 11, 2017 at 6:45 PM, and the motion was adopted by majority vote with all members voting "yes" with the exception of Mr. McCrady and Ms. Kuhl, who voted "no".

The Committee is in recess, the meeting ended at 8:15 PM.

Cristina Sheppard

City Clerk

Council President

RESOLUTION

Be it resolved by the City Council of the City of Parkersburg that the 2017-2018 Consolidated One Year Action Plan for the use of Community Development Block Grant (CDBG) and HOME Investment Partnership Grant funds be approved as follows:

| | Updated Budget | Original Budget Estimate |
|--|----------------------|--------------------------|
| City of Parkersburg - Community Development Block Grant Program | | |
| FY 17-18 CDBG Allocation | \$ 757,064 | \$ 748,882 |
| Projected FY17-18 CDBG Program Income | \$ 7,500.00 | \$ 7,500.00 |
| Total | \$ 764,564.00 | \$ 756,382.00 |

CDBG Projects and Activities

| | | |
|--|----------------------|----------------------|
| I. Improvements to Community Infrastructure and Public Facilities | | |
| a. Riverfront Park - Section 108 Loan Repayment (Interest Only) | \$ 76,855.00 | \$ 76,855.00 |
| b. Neighborhood Partnership Program | \$ 20,000.00 | \$ 20,000.00 |
| c. YMCA Childcare Expansion Project | \$ 20,000.00 | \$ 20,000.00 |
| d. Family Crisis Intervention Center - Rental Assistance Program | \$ 10,000.00 | \$ 10,000.00 |
| e. Circles Campaign - Children's Program | \$ 10,000.00 | \$ 10,000.00 |
| f. St. Mary/Dudley Avenue Streetscape Enhancement Project | \$ 150,000.00 | \$ 150,000.00 |
| g. Schools to Pools Program | \$ 1,000.00 | \$ 1,000.00 |
| h. 16th and Covert Fire Station - Section 108 Loan Repayment | \$ 20,000.00 | \$ 20,000.00 |
| II. Enhancement of Public Services | | |
| a. COPE Police Program | \$ 75,000.00 | \$ 75,000.00 |
| b. Code Enforcement Officer | \$ 49,000.00 | \$ 49,000.00 |
| III. Housing Programs | | |
| a. Minor Home Repair Program | \$ 100,000.00 | \$ 100,000.00 |
| b. Emergency Home Repair Program | \$ 28,709.00 | \$ 20,527.00 |
| IV. Economic Development | | |
| a. SW Resources Expansion Project | \$ 50,000.00 | \$ 50,000.00 |
| b. Small Business Incubator/Co-Working Space Project | \$ 5,000.00 | \$ 5,000.00 |
| V. General Administration | | |
| | \$ 149,000.00 | \$ 149,000.00 |
| Total | \$ 764,564.00 | \$ 756,382.00 |

| | | |
|--|----------------------|----------------------|
| Parkersburg-Wood County HOME Consortium Program | | |
| FY17-18 HOME Allocation | \$ 242,510.00 | \$ 237,310.00 |
| Program Income (2nd Half of FY 2016-2017) | \$ 120,000.00 | \$ 120,000.00 |
| Total | \$ 362,510.00 | \$ 357,310.00 |

HOME Investment Partnership Grant Fund Project and Activities

| | | |
|--|----------------------|----------------------|
| I. First-time Homebuyers Program (SHOP) | \$ 50,000.00 | \$ 50,000.00 |
| II. Community Housing Development Organization | \$ 85,000.00 | \$ 85,000.00 |
| III. Single-Family Owner-Occupied Rehabilitation Program | \$ 74,510.00 | \$ 69,310.00 |
| IV. Down Payment Assistance Program | \$ 100,000.00 | \$ 100,000.00 |
| V. Children's Home Society - Tenant Based Rental Assistance (TBRA) Program | \$ 20,000.00 | \$ 20,000.00 |
| IV. General Administration | \$ 33,000.00 | \$ 33,000.00 |
| Total | \$ 362,510.00 | \$ 357,310.00 |

| | | |
|-----------------------------|------------------------|------------------------|
| Total HUD Allocation | \$ 1,127,074.00 | \$ 1,113,692.00 |
|-----------------------------|------------------------|------------------------|

Sponsored by:

* Highlighted columns indicate the programs that were adjusted.

Notice is hereby given by the City of Parkersburg that The Fiscal Year (FY) 2017 budget for the Department of Housing and Urban Development has been now been enacted, thus the proposed Annual Action Plan for the FY2017 program has been prepared and updated to reflect final appropriation amounts. The Annual Action Plan for FY2017 outlines how the City intends to expend the projected \$764,564.00 in Community Development Block Grant (CDBG) funds and \$362,510.00 in HOME Investment Partnerships Program funds (HOME).

**ORDINANCE CREATING AND REGULATING OUTDOOR DINING ON PUBLIC
SIDEWALKS WITHIN THE CENTRAL BUSINESS DISTRICT IN THE CITY OF
PARKERSBURG**

WHEREAS, it is the intent of the City of Parkersburg to facilitate outdoor dining within the City's Central Business District (CBD), as defined by the plat attached hereto, in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the City of Parkersburg; and

WHEREAS, it is the intent of the City of Parkersburg to provide safe and visually appealing opportunities for outdoor dining as a use of the public right-of-way, and to expedite the approval of such facilities while ensuring that the public use of the sidewalks will not be significantly impaired by such dining.

NOW BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that the following be amended to reflect the following changes.

1. Article 1327.02 (411) – Delete Definition #470 (Sidewalk Café).
2. Article 1327.02 (328A) – New Definition
Amending section to define Operator of Outdoor Dining Area

OPERATOR – a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the Central Business District, which possesses a valid State of West Virginia food vendor's permit and has been issued an Outdoor Dining Area permit by the City's Development Department.

3. Article 1327.02 (328B) – New Definition
Amending section to define Outdoor Dining Area

OUTDOOR DINING AREA – a confined area of the public sidewalk designated by a site plan approved by the City through the Development Department and located in the Central Business District, and which area is adjacent to Operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include non-intoxicating beer contingent on proper licensure by the West Virginia Alcohol Beverage Control Administration.

NOW BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that Article 1367 of Chapter 7 of the Municipal Code of the City of Parkersburg is hereby created to read as follows:

ARTICLE 1367 - Outdoor Dining Areas on Public Sidewalks

1367.01 - Purpose.

The purpose of these regulations to facilitate outdoor dining within the City's Central Business District (as defined by Article 1350.02) in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the City of Parkersburg by providing safe and visually appealing opportunities for outdoor dining as a use of the public right-of-way.

1367.02 - Powers, Rules & Regulations

The City of Parkersburg's Development Director is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all Outdoor Dining Area permit applications on such forms and subject to such procedures as the Development Department may establish to either grant or deny such permits under this article. Copies of such rules and regulations, as amended from time to time, shall be maintained by the Planning Division, and shall be available to interested parties at all reasonable times, including via the City's website.

1367.03 - Compliance with Federal, State and Local Laws and Regulations

(a) The operation of an Outdoor Dining Area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act, all provisions of state and local building and fire codes, as well as all state and local health laws and regulations regarding the service and preparation of food. The operations of an Outdoor Dining Area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration (WVABCA). Nothing in this article shall be intended to alter or abridge any applicable federal, state and local laws or the Operator's responsibility to comply with all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration.

(b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the City, as set forth in Article 521.05 of the Municipal Code of the City of Parkersburg, except that any permitted Outdoor Dining Area Operator and patrons of permitted Operator's Outdoor Dining Area shall be deemed to be exempt from said prohibition during the hours of operation of said Operator and only within the confines of said area.

1367.04 - Nondiscrimination/Right to limit or deny admission or service

No person shall be denied access or service to an Outdoor Dining Area on the basis of race, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the Operator to limit access and admission to an Outdoor Dining Area to only bona fide paying customers of that Operator's establishment who are behaving in a lawful manner.

1367.05 - Definitions

(a) "Operator" shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the Central Business District, which possesses a valid State of West Virginia food vendor's permit and has been issued an Outdoor Dining Area permit by the City's Development Department.

(b) "Outdoor Dining Area" shall mean a confined area of the public sidewalk designated by a site plan approved by the City through the Development Department and located in the Central Business District, and which area is adjacent to Operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include non-intoxicating beer contingent on proper licensure by the West Virginia Alcohol Beverage Control Administration.

1367.06 - Application and Permit Process

The Development Director is authorized to issue permits for the use of public sidewalks for restaurant tables, chairs, and similar or related equipment for the purpose of serving food and non-intoxicating beer to the public, subject to the following conditions.

(a) An Outdoor Dining Area permit shall be required prior to placing tables, chairs, or any other equipment on any public sidewalk. Permits issued hereunder shall be valid from January 1 through December 31 of said calendar year, unless revoked prior to expiration, and may be renewed on an annual basis. An application for an Outdoor Dining Area permit shall be accompanied by a \$50 administrative fee. An annual renewal permit fee of \$25 shall be assessed for an existing Outdoor Dining Area permit. Any Outdoor Dining Areas that do not project more than two and one-half feet into the sidewalk from the line of the abutting property are still required to complete an Outdoor Dining Area permit application but all administrative fees will be waived.

(b) Any Operator holding a valid existing permit for a particular Outdoor Dining Area that continues to utilize that Outdoor Dining Area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such Operator shall pay the annual renewal permit fee, complete all renewal paperwork and comply with any other renewal requirements of the Development Department, within thirty (30) days of the commencement of the succeeding permit term. If the Operator fails to meet all renewal requirements within the thirty (30) days, then the Operator's permit shall be deemed to have expired.

(c) A completed Outdoor Dining Area permit application shall include: a site plan, drawn to scale showing the layout for the Outdoor Dining Area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, bicycle racks, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, enclosures, aisles between tables; routes of ingress and egress; clearances between the seating area and the curb, a picture and/or description of the barrier/landscape materials to be used, as well as any outdoor furniture

and any such additional requirements of the Development Department with respect to type, style, or specifications of the Outdoor Dining Area, including those requirements that may be subject to approval of the West Virginia Alcohol Beverage Control Administration.

The design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act. Outdoor Dining Area shall not be allowed within ten feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, mail boxes, bus stops or traffic signal stanchions. No permits will be issued for off-site seating (i.e. seating in front of another business).

(d) After reviewing the application and site plan, the Development Director shall determine if the proposed Outdoor Dining Area, consistent with the requirements of this article, is reasonable, promotes pedestrian and retail friendly vitality, and that there is no less than thirty-six inches remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic, while promoting the overall public health, safety, and welfare. Thereafter, the Development Director may approve, approve with conditions, or deny an application. The permit shall be posted at the Operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the Development Department and West Virginia Alcohol Beverage Control Administration.

(e) If serving non-intoxicating beer, a conditional permit will be granted for the outdoor dining area until the operator submits documentation from the West Virginia Alcohol Beverage Control Administration giving the operator approval for serving non-intoxicating beer within the Outdoor dining area. At that time, a final permit will be issued.

(f) The issuance of an Outdoor Dining Area permit does not grant or imply vested rights to use the area by the Operator but instead is a privilege granted to the Operator. The City retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The City shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improve the overall public health, safety and welfare. The City shall also have the right and power to prohibit the operation of an outdoor dining area at any time, because of the anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. The Development Director may suspend or revoke the Outdoor Dining Area permit after providing at least three days' prior written notice, except in an emergency, to the Operator.

1367.07 - General Provisions for Outdoor Dining Areas

(a) The Outdoor Dining Area shall be located adjacent to the property of an existing and lawful establishment of a permitted Operator and shall be under the responsible direction and control of that Operator.

(b) The Outdoor Dining Area may be open to patrons during hours of operation, but not before 7 a.m. or after 11 p.m. In the event a permitted Operator intends to serve non-intoxicating beer in

an Outdoor Dining Area, all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration regarding permitted days and hours of service shall be followed.

(c) All furniture and associated enclosures located on the public sidewalk/right-of-way shall not be attached or affixed to any poles, sidewalks/right-of-way or any other public facilities and must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way are strictly prohibited.

(d) As authorized by state law, including, but not limited to, W.Va. Code § 8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on City right-of-way shall be provided, installed and maintained by the Operator and at the discretion of the City.

(e) The City shall have the absolute authority to determine when furniture and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) No Outdoor Dining Area shall interfere with pedestrian or vehicular traffic or with access to parked vehicles and shall not reduce the open portion of public right-of-way/sidewalk to less than thirty-six inches. Thirty-six inches of unobstructed corridor space must be maintained between the outer dimension of the Outside Dining Area (barrier) and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. In order to achieve a continuous pedestrian walkway, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Outdoor Dining Area.

(g) An Outdoor Dining Area permit shall not be issued for an area that would obstruct access within ten feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, mail boxes, bus stops or traffic signal stanchions.

(h) The Outdoor Dining Area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food and litter. Food scraps and containers shall be disposed of in appropriate refuse containers on a regular basis during the day by the Operator. Sweeping of refuse or food scraps into tree grates or other nearby areas is strictly prohibited. Each operator shall wash, as needed, the public area to remove any food or drink residue.

(i) All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The Operator shall be responsible for posting the outdoor dining area as to any special Health Department requirements.

(j) Operation and maintenance of the Outdoor dining area must comply in accordance with Article 509 – Disorderly Conduct and Peace Disturbance of the Municipal Code of the City of Parkersburg and all other code provisions and regulations of the City of Parkersburg.

(k) In order to serve non-intoxicating beer in an Outdoor Dining Area, the designated area must be included in the floor plan for the licensed premises as approved by the West Virginia Alcohol

Beverage Control Administration. Non-intoxicating beer shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the City as an Outdoor Dining Area. Patrons are not permitted to carry non-intoxicating beer in or out of the Outdoor Dining Area.

(l) Smoking is prohibited within any outdoor dining area.

1367.08 - Design Standards

Barriers

(a) Outdoor Dining Area barriers (fences, planter boxes, etc.) must be visually appealing and help to separate the dining area from the sidewalk. All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

(b) Barriers are required in the following instances:

(1) Required for full perimeter of outdoor dining areas when the seating area extends more than 2 ½ feet into the public right-of-way. A detectable barrier is required for the full perimeter (with the exception of the access openings).

(2) Required for full perimeter of all outdoor dining areas when serving alcohol. State law requires that outdoor dining areas, where alcohol is served or consumed, must be enclosed with only one opening to the sidewalk for access. Such access must face the main ingress and egress of the operator's establishment. All access openings must measure no less than 36 inches in width.

(c) The following types of barriers are permitted; sectional fencing, planters, planter boxes or combination thereof. Prohibited barrier styles include, but not limited to chain-link, rope, chains, cyclone fencing, buckets, food containers, tires, tree stumps, wood pallets, chicken wire, plastic fencing or similar appurtenances and materials not specifically manufactured for fencing or to be used for pedestrian traffic control.

(1) Sectional fencing (generally defined as rigid fence segments that can be placed together to create a unified fencing appearance) are permitted. Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be painted or stained.

(2) If a stanchion or other vertical supporting device is attached to the sectional fencing, the base must be flat and must measure no more than one-half (1/2) of an inch above the sidewalk surface. No domed bases for the stanchion or other vertical supporting device for the fencing. The base must not be a tripping hazard.

(5) Umbrellas must be of a material suitable for outdoor use and must be canvas-type. No plastic fabrics, plastic/vinyl/laminate fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor dining area. Umbrella covers must be of one solid color.

(6) Signage, graphics or wording on the umbrellas is prohibited, except where the Operator's business name/logo is used.

(7) Square or Rectangular Umbrellas are preferred. Market-style or those designed specifically for patio or outdoor restaurant are preferred.

(8) All parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.

(9) When extended, the umbrella must measure at least 8 feet above the surface in order to provide adequate circulation space below. Any part of an umbrella used in the outdoor dining area may not exceed a height of 10 feet above the level of the sidewalk.

(c) The floor of any outdoor dining area should be uncovered sidewalk material. Prohibited sidewalk coverings include, but are not limited to carpet, platforms, raised decks, or any other flooring material including but not limited to tile, nylon, vinyl, canvas, or any other covering that is intended to resemble turf are prohibited.

(d) All furniture and fixtures must be freestanding. At no time shall furniture and fixtures be secured to other permanent structures including, but not limited to trees, street signs, hydrants, or any other street infrastructure by means of ropes, chains, or any other devices.

1367.09 - Additional Requirements

(a) Prior to the issuance of a permit, the applicant must agree, in writing, that it shall hold harmless, indemnify, and defend the West Virginia Division of Highways, the City of Parkersburg and its officers, agents, and employees, from and against all liability, injuries, deaths, losses, claims, suits, damages, judgements, costs and expenses, consequential or otherwise, including attorneys' fees and expenses, of any or all types arising out of, or related in any way to, the permitted Outdoor Dining Area.

(b) The applicant of an Outdoor Dining Area permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner.

(1) Worker's Compensation insurance in at least the required statutory limits;

(2) The applicant shall maintain comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least one million dollars

(\$1,000,000) coverage per each occurrence, and one million dollars (\$1,000,000) for any single injury; and shall name as additional insured the City of Parkersburg, its agents, officers, elected officials and employees.

(3) A copy of the certificates of insurance for the required policies for each type of insurance shall be furnished to the City of Parkersburg prior to the issuance of an Outdoor Dining Area permit. The required insurance policies shall each provide that they shall not be changed or canceled during the life of the Outdoor Dining Area permit until thirty days after written notice of such change has been delivered to the City. Operators shall submit proof of General Liability Insurance when filing their renewal fee with the City of Parkersburg on an annual basis.

(c) The authorization and privilege granted by a permit approved under this section shall be terminated due to the Operator's failure to comply with the City's rules and regulations concerning outdoor dining areas, any federal, state or local laws, any unabated nuisances or whenever the City desires to use the affected public right-of-way for any public purpose. In the event the City shall have a public need for use of the right-of-way or the property affected by the right-of-way, the City may terminate the use of such right-of-way by written notification to the applicant for the removal of any encroachments, and the Operator shall cease use of the right-of-way unless and until such time the City has no public need for use of the right-of-way. Said removal shall be completed by the date specified in the notice and shall be accomplished by the applicant without cost to the City. If the applicant fails or neglects to remove the encroachment within the time specified, the City shall have the right to remove the encroachment, at the expense of the Operator, and shall not be liable to the Operator for any loss, financial or otherwise, or damage to the encroachment or personal property within the encroachment area.

1367.10 - Denial or Revocation of Permit

(a) An Outdoor Dining Area permit is a privilege granted to the Operator that may be revoked by the City upon finding that the Operator has violated the City's rules and regulations concerning outdoor dining areas, any federal, state or City law applicable to the Outdoor Dining Area or the operation thereof, including but not limited to, compliance with all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration, that the continued operation of the Outdoor Dining Area poses a threat to the health, safety or welfare of the public, or that the Outdoor Dining Area constitutes a public nuisance.

(b) An applicant who has been denied a permit, or an Operator whose permit has been revoked, may appeal to the Wood County Circuit Court, as set forth in WV Code §8A-9-1, et seq.

1367.11 - Penalty

Any person, firm or corporation violating any provision of this article, shall be fined up to fifty dollars (\$50) per day. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.