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CITY OF MOUNT RAINIER, MARYLAND

ORDINANCE NO. 1-2016

(Drafted by: Councilmember Tracy Loh)
Introduced by: Councilmember Tracy Loh

Amending Chapter 7, Licenses and Permits, of the *Mount Rainier Code* to include sidewalk cafes and to revise the provisions for occupancy license inspections and for the issuance, denial, suspension, and revocation of non-residential and residential rental occupancy licenses.

WHEREAS, the Council desires to revise the Purpose and Policy and Definitions set forth in *Mount Rainier Code* Sections 7-102 and 7-103 to include sidewalk cafes in order to protect the health, safety, and welfare of businesses and residents in public spaces serving commercial areas of the City of Mount Rainier; and

WHEREAS, the Council desires to revise the provisions for occupancy license inspections and for the issuance, suspension, denial, and revocation of non-residential and residential rental occupancy licenses for the protection of the health, safety, and welfare of all citizens of the City of Mount Rainier and the occupants of these premises;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOUNT RAINIER, MARYLAND, the *Mount Rainier Code* is amended as follows:

**MOUNT RAINIER CODE
CHAPTER 7, LICENSES AND PERMITS**

Section 7-102. Purpose and policy

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E. Sidewalk cafes. Businesses in the City of Mount Rainier may establish sidewalk cafes in public spaces of the City. The Mayor and City Council of the City of Mount Rainier has the gravest responsibility for the protection of the health, safety, and welfare of all the citizens of said City and the environment on the public right of way.

E-F. Overall. As a result of section 7-102. A-~~DE~~, it is declared to be the policy of the Mayor and City Council of the City of Mount Rainier that all businesses; home occupations; non-residential premises; rental dwelling units; sidewalk cafes; and hotel, motel, and tourist units shall be licensed and regulated in such a manner as to ensure the health, welfare, and safety of those persons

operating a business in, residing in, or visiting Mount Rainier, and that permits shall be required for certain activities, as set forth below.

Section 7-103. Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter.

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I. Non-residential premises. Any building or structure or portion of a building or structure used for any type of business activity including any ~~public hearing or structure~~ and charitable or religious institutions ~~including such as~~ churches and the like, professional services, industrial activity, commerce or trade, sales, manufacturing or repairing of any item or thing or the storage of any part or thing used in any of the activities described above. Does not include governmental buildings (e.g., City, County, School, M-NCPPC, State, Federal, Post Office).

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N. Person. A corporation, limited liability company, partnership, association organization, or any other entity as well as individuals. It also shall include an administrator, trustee, receiver, personal representative, guardian or conservator appointed according to law.

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U. Sidewalk café. An outdoor seating area that is located on or partially on the public right-of-way and is restricted to patrons of the business to which the café is attached.

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Section 7-105. Occupancy License

A. Occupancy License Required

1. Non-residential. All tenants of non-residential premises which are rent for occupancy and all owner occupants of non-residential premises shall secure from the City a non-residential occupancy license, which shall be issued for a period of one (1) year. A license shall be required for each individual business that is an occupant in the premises. All businesses allowing residential use must meet approved zoning requirements allowing residential use in a commercially zoned area as mandated by Prince Georges County.

2. Residential. Before the owner or agent thereof of any dwelling, rental facility, dwelling unit, rooming unit, or tourist facility within the confines of the City of Mount Rainier shall rent, lease, or otherwise let said dwelling unit, or facility and permit it to be occupied, he/she must secure from the City ~~an~~ a residential occupancy license.

a. Said residential occupancy license shall contain the name of the owner of the property, his/her address, and his/her telephone number, emergency contact, and email address. Said occupancy license shall also specify the exact location of the premises for which the license is issued.

b. All residential occupancy licenses shall be issued to the owner of the premises containing said residential unit or units and shall be issued for a period of one (1) year.

B. Inspections; Issuance; Renewal

1. Inspections. All non-residential and residential premises for which an occupancy license is required shall be inspected as needed, but not less than every two (2) years, by the Code Enforcement Officer for compliance with Chapter 3A. Standards for Property Maintenance in accordance with the International Code Council (ICC), International Property Maintenance Code (IPMC), and the City Charter and Code.

2. In order to maintain a valid occupancy license, there must be no uncorrected violations of the property maintenance code during the license term.

3. Should the inspection reveal property maintenance code or other violations of the Mount Rainier Code, then the Code Enforcement Officer shall issue a written Notice of Violation in accordance with Section 3A-107 to the applicant within five (5) days, specifying each violation and the code section it violates. The applicant shall have not more than thirty (30) days to correct such violations. Within such period, the Code Enforcement Officer shall have the authority to extend the time for correcting such violations at the request of the applicant upon a showing that a good faith effort has been initiated to correct such violations and that they cannot be corrected within the established period. All violations notices shall contain information regarding the appeals process. Extension requests must be made in writing by the owner of the property prior to the due date. The Code Official shall grant or deny an extension in writing within five (5) days of the extension request for no more than 60 days from the initial due date.

4. Failure of an applicant to correct all violations within the thirty-day period or the time allowed by the Code Enforcement Officer, if it has been extended, shall result in the application for an occupancy license being denied until all property maintenance code violations have been corrected.

3. ~~5.~~ Issuance. Before the City Manager shall issue an rental occupancy license, the following criteria shall have been met:

a. A Code Official shall conduct a rental inspection and ensure there are no existing violations of the building, life safety, and property maintenance standards of the City of Mount Rainier and the IPMC.

b. The license applicant has certified that the premises have no existing violations of applicable health, life safety, fire, building, plumbing, and zoning laws and ordinances of the State of Maryland and Prince George's County.

c. For residential rental occupancy licenses, the license applicant has complied with all applicable provisions of the Annotated Code of Maryland, Environment Article, Title 6, Subtitle 8, Reduction of Lead Risk in Housing, as amended or has submitted evidence that the rental facility is not subject to the provisions of that subtitle.

d. The tenant or owner-occupant of said nonresidential premises shall remit the required occupancy license fee as established by the City of Mount Rainier. The owner of said residential premises shall remit the required occupancy license fees as established by the City of Mount Rainier.

e. There are no unpaid real or personal property taxes or fines for municipal infractions or Commercial District Management Authority fees for the premises or for any business or activity conducted therein by the tenant or owner-occupant of nonresidential premises or by the owner of residential premises.

f. Within five (5) years preceding the application, there have been no convictions for prostitution or trafficking in controlled substances on the premises while the applicant has had control of the premises.

4. 6. Renewal. All occupancy licenses shall be renewable upon payment of appropriate fees and compliance with the provisions of this Chapter. Application for the renewal of an existing license shall be made at least thirty (30) days prior to the expiration date.

C. Suspension or Revocation; Expiration; Reinstatement

1. The City's Code Enforcement Officer shall have the authority, based upon complaints or other reliable evidence of violations, to conduct periodic inspections of any licensed property to determine if it continues to be in compliance with the requirements for a non-residential or residential occupancy license. At any time that the Code Enforcement Officer shall determine that any such premises does not comply with all of the provisions of all applicable laws, he/she shall give written notice within five (5) days to the owner, agent, or occupant thereof to render compliance within a reasonable period of time thirty (30) days, unless otherwise extended by the Code Enforcement Officer for good cause shown. If such compliance is not provided, the Code Enforcement Officer ~~may~~ shall suspend or revoke the occupancy license for the premises in accordance with Section 7-107 and/or may issue municipal infraction citations with a penalty fine for the violations. Failure by the owner and/or the license holder to allow entry for an inspection after reasonable notice, or the failure by the owner and/or license holder to require as a term of the rental agreement that the tenant shall allow the City entry for such an inspection, shall be sufficient reason to deny or revoke any rental license. See also Section 3A-106.

2. A license may be suspended immediately and without a hearing upon written notice to the owner or agent of the property if the City Code Enforcement Office determines that there are violations of the Property Maintenance Code or other applicable law in the rental facility or in any rental unit or business premises which pose a serious threat to the life, safety, property or health of the tenants of the rental facility or any rental unit or of the tenants or occupants of the business premises ("serious violations"). Appeals from a suspension of a license for a serious violation may be made as set forth in Section 7-107.C.

3. When a license has been suspended or revoked or an application for a license has been denied, it shall be unlawful for the owner of the rental premises or the business premises to rent, lease, let for occupancy, or use any rental unit or space in the premises until a license has been issued, reissued or reinstated.

~~2:~~ 4. In the event that an occupancy license is allowed to expire by fault of the owner or occupant of the premises due to the failure to pay the required fees within twenty (20) business days from the date of the written notification of payment due, without a reasonable cause, a reinstatement fee shall be imposed as established herein. Property may be subject to reinspection prior to reinstatement of an occupancy license, and all fees may be reimposed.

~~3:~~ 5. In the event that an occupancy license is revoked for cause, the occupancy license must be reinstated and a fee paid as established herein, and all codes of the City of Mount Rainier must be met before the property may again be rented, occupied and/or any business or activity conducted therein.

Manager
~~4:~~ 6. The City shall have the authority to suspend, deny or revoke a license, after notice a hearing in accordance with Section 7-107, upon the City finding that any rental dwelling unit or units on a single property are or have been creating a public nuisance.

~~5:~~ 7. For a single-family home having at least one rental unit, a public nuisance shall include, but not be limited to, a rental property at which the following has occurred:

a. Four incidents in twenty-four months of criminal activity or the presence of a controlled dangerous substance or drug paraphernalia on the property, which is reasonably attributable to the occupants of the property;

b. Two incidents in twenty-four months of drug-related crimes such as the presence of stolen property, theft, robbery, or prostitution or of any felony; or

c. Four noise violations or three violations of the applicable occupancy limit imposed by any governmental agency in twenty-four months.

~~6:~~ 8. For any property with multi-family housing used as rental units, the number of incidents/violations that would qualify the property as a public nuisance shall be as follows:

a. If there are fewer than ten (10) rental dwelling units, the number of incidents/violations outlined in subsection (5) (a-c) above is applicable.

b. If there are ten (10) to fifty (50) rental dwelling units, the number of incidents/violations that would qualify the property as a public nuisance shall be determined by adding one (1) to the number of incidents/violations outlined in subsection (5) (a-c) above.

c. If there are more than fifty (50) rental dwelling units, the number of incidents/violations outlined in subsection (5) (a-c) during a twenty-four month period that would qualify the property as a public nuisance shall be more than six (6) incidents/violations in any one category in subsection (5) (a-c) or a cumulative total of twenty (20) incidents/violations.

~~6:~~ 9. In considering whether a property constitutes a public nuisance under this Chapter, the City may consider the history of the property prior to the enactment of this Amendment. The City may consider allowing a rental license that has been revoked or denied pursuant to this subsection to be renewed or reissued for a property only upon showing by clear and convincing evidence that the condition(s) creating the public nuisance will not re-occur. The City may issue a provisional

rental license to a property unit that previously constituted a public nuisance with reasonable conditions to assure the property does not become a public nuisance.

7. 10. Code Enforcement shall attempt to notify the landlord and/or property owner of any new incident/violation on the landlord's property that could qualify as contributing to a public nuisance. The notice shall contain a warning that the rental license for the property may be revoked, within five (5) days of the alleged nuisance.

Section 7-106. Permits

L. Permit required for sidewalk café.

1. Businesses that wish to establish sidewalk cafes must obtain a permit from the City, in addition to all applicable food, beverage, and health department licenses for the business required by County and State agencies.

2. The City Manager may issue a City permit for a sidewalk café to premises that have a current and valid city business or occupancy license. Sidewalk cafes must show that the café area will not block or unduly impede pedestrian access to a sidewalk or other public space. The sidewalk café permit will be valid for one year.

3. The applicant will submit:

a. A copy of the rental (lease) agreement if someone other than the owner of the property is the permittee.

b. A copy of a valid certificate of occupancy for the establishment.

c. Before the City permit for a sidewalk café is issued, a public liability insurance policy covering all use of public space by the permittee.

d. Three (3) 8 x 10 photographs showing front view and views from the right and left of the entire space proposed for the café, including area immediately surrounding the café space.

e. Fifteen (15) copies of the site plan drawing, to scale, indicating:

i. The amount of public surface space to be used by the café (square footage).

ii. Configuration of all café elements, including tables, chairs, umbrellas, railings, or other fixtures.

iii. All existing conditions on the adjacent sidewalk, including tree spaces.

iv. Dimension from adjacent roadway curb(s) to the property line.

v. Dimension from adjacent roadway curb to outer edge of sidewalk café.

vi. Dimension from edge of sidewalk café to the nearest street intersection.

vii. Elevation view(s) of any footing details required to construct the sidewalk café.

viii. Clearly identified restaurant entrance.

ix. Sidewalk café entrances (2 required by fire code), if a barrier will be used.

x. Distance between tables (3 feet for ADA compliance, but 4 feet preferred).

xi. Elevation views of tables, chairs and any other objects to be placed on the public space.

xii. Total seating (number of tables and chairs) and total square footage.

4. Approval of the Mixed Use Town Center committee verifying compliance with the guidelines of the Mixed Use Town Center Plan is required for all sidewalk cafes in the Mixed Use Town Center zone. The applicant must submit this approval with the permit application.

Section 7-109. Violations; Fines

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C. Occupancy rental licenses

1. Non-residential premises.

a. No premises to which any of the terms of this Chapter are applicable shall be occupied by any person unless a valid occupancy license shall have been issued and the same remains in full force and effect therefor.

b. Any such premises for which a valid occupancy license shall not have been issued or for which said license shall have been revoked shall be vacated immediately.

2. Residential premises. No premises to which any of the terms of this Chapter are applicable shall be occupied by any person or persons other than the owner thereof and members of his/her immediate family unless a valid occupancy license shall have been issued and the same remains in full force and effect therefor.

3. The fine for operating without a valid occupancy rental license shall be ~~\$100~~ \$250 for the first violation, ~~\$200~~ \$500 for each day that the violation continues, ~~\$200~~ \$1,000 for repeat violation in same one-year period. ** as amended*

4. Any person or owner who willfully violates the provisions of this Chapter by allowing a rental dwelling unit to be occupied without a rental license shall be guilty of a misdemeanor and subject to imprisonment for thirty (30) days and/or a fine of one thousand dollars (\$1,000.00). Willfully shall mean at a minimum that the person so charged has been tendered, mailed, or left three (3) written communications from a Code Enforcement Officer putting him/her on notice that he/she is violating this Chapter and more than forty-five (45) days after the initial notice he/she continues to violate this Chapter, and he/she has not availed him/herself of the appeal provisions, or has received an adverse ruling upon such appeal. A criminal citation shall be referred to the police department.

[Ordinance signature page follows.]

THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF MOUNT RAINIER THIS 1st DAY OF MARCH, 2016.

Attest:

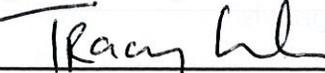


Larry Hughes, City Manager

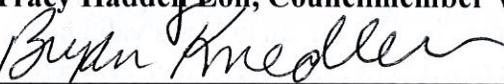
Malinda Miles, Mayor



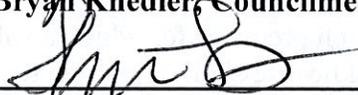
Jesse Christopherson, Councilmember Ward 1



Tracy Hadden Loh, Councilmember Ward 1



Bryan Knedler, Councilmember Ward 2



Shivali Shah, Councilmember Ward 2

Explanatory Note

Underlining indicates language added to existing law.

~~Strikethrough~~ indicates language that is deleted from existing law.