



CITY OF DURHAM | DURHAM COUNTY  
NORTH CAROLINA



**Date:** October 15, 2012

**To:** Thomas J. Bonfield, City Manager

**Through:** Keith Chadwell, Deputy City Manager

**From:** Steven L. Medlin, AICP, City-County Planning Director

**Subject:** City Code Amendment - Outdoor Seating Permits

**Summary.** The proposed amendments to City Code Sections 54-26, 54-110, and 54-149(e) will revise the existing Sidewalk Seating permit provisions to create a new Outdoor Seating Permit process. The proposed regulations will apply to eating establishments, restaurants, and private clubs in the Downtown Design and Compact Design zoning districts that wish operate an outdoor seating area located on city maintained public rights-of-way, city sidewalks, public alleys, and/or pedestrian ways.

**Recommendation.** Staff recommends approval of the City Code amendment.

**Background.** As a result of the efforts of the public and private sector to revitalize Downtown Durham and the surrounding business corridors over the last two decades, there has been significant business development within the Downtown Design and Compact Design zoning districts in Durham. One industry in particular that has seen significant development in this area are restaurant and bar businesses. In an effort to enhance the experience of their patrons, several restaurants and bars have begun to offer an outdoor sidewalk seating option for their patrons. This option includes food and adult (alcoholic) beverages.

Since 1982 the City has had a sidewalk seating ordinance (City Code Sec. 54-110). The ordinance predates the public mobility and accessibility requirements of the Americans with Disabilities Act, and does not provide for the serving and consumption of adult beverages on City maintained sidewalks and public rights of way. Since 2010, the City has been in discussions with individual restaurateurs, Downtown Durham, Inc., the NC Department of Transportation and the local and state Alcohol Beverage Control (ABC) law enforcement officials to revise Sec. 54-110 in a manner that fulfills the desires of restaurant and bar owners and their patrons for an enhanced dining and drinking experience, while addressing the practical and legal concerns of the ADA and ABC regulations as well as local ordinances and provisions of Durham's Comprehensive Plan. The proposed revisions to City Code Sections 54-26, 54-110 and 54-149(e) provide a clear and practical framework to regulate the outdoor seating on City maintained public sidewalks, alleys and rights of way.

**Issues.** On May 31, 2012, staff held a public meeting on the first public draft of the proposed regulations, originally referred to as Outdoor Dining Permits. The public feedback from that meeting focused on a request to expand the applicability of the proposed Outdoor Dining Permit to bars and nightclubs. Proponents suggested that, if permitted, bars and nightclubs would follow the same standards as restaurants and eating establishments, and would be subject to the same enforcement process. The permits could be revoked for violations of the proposed regulations. Pursuant to the policy direction from the City Council at their October 4, 2012 Work Session staff has revised the proposed amendment to expand the applicability to bars and nightclubs (referenced as private clubs per state statute), and renamed the process as the Outdoor Seating Permit (in recognition that it applies to more than just dining). In addition, the existing City Code Sec. 54-141, which addresses the means to revoke permits, is also included as Attachment B for reference.

The proposed amendment would become effective three months after adoption. This delayed effective date will allow time for current establishments that have outdoor seating areas to comply with the new regulations and apply for the required permit.

The Planning Department will be responsible for administering the proposed Outdoor Seating Permit process. The initial three month compliance period is expected to be the peak time in terms of anticipated staff workload. However, overall this additional sustained workload will impact the department's staffing and progress on the approved work program in future fiscal years.

**Fiscal Impact.** The application requirements for the proposed Outdoor Seating Permit process include payment of a processing fee to be determined by the City Council. The proposed fees, which are included in a separate agenda item, will help offset the anticipated administrative costs of processing the applications. An initial application fee of \$250 is proposed, along with an annual renewal fee of \$100. Since this is a new process, it is yet unknown whether those fees will be adequate to cover the administrative costs associated with the processing of Outdoor Seating Permit applications. The fees may be re-evaluated in the future if it is determined that they are not commensurate with the staff effort involved in the process.

## **Attachments**

**Attachment A,** Ordinance to Amend Provisions of the Code of Ordinances Regulating Outdoor Seating Permits

**Attachment B,** Code of Ordinances Sec. 54-141