

AN ORDINANCE TO AMEND PROVISIONS OF THE CODE OF ORDINANCES REGULATING OUTDOOR DINING PERMITS

WHEREAS, the Durham City Council wishes to amend a certain provision regarding Outdoor Dining Permits in the City Code of Ordinances to better promote the community's health, safety, and welfare;

NOW, THEREFORE, be it ordained that Sec. 54-26, *Definitions*, Sec. 54-110, *Sidewalk Seating Permit*, and Sec. 46-149(e), *Possession and Consumption of Beer and Wine is Permitted*, are amended to make the following changes:

SECTION 1

Modify Sec. 54-26, *Definitions*, to add the following definitions:

EATING ESTABLISHMENT. An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments shall include businesses that are referred to as restaurants, cafeterias, or cafes, but that do not qualify as a restaurant as that term is defined within this section. Eating establishments shall also include lunchstands, grills, snack bars, fast-food businesses, and other establishments, such as drug stores, which have a lunch counter or other section where food is sold to be eaten on the premises.

EATING ESTABLISHMENT OPERATOR. The person, firm or corporation operating an eating establishment and associated outdoor dining area. As used in this section, this definition includes each and every owner, and each and every manager if different from the owner(s), of the eating establishment and associated outdoor dining area.

OUTDOOR DINING AREA. An area on a public sidewalk, public alley or pedestrian way whereon tables, chairs, benches, and other furnishings are placed for dining purposes.

PEDESTRIAN WAY. An improved walk or passageway on public property or right-of-way intended for use by pedestrians, but not adjacent to any city street.

PUBLIC ALLEY. A strip of land, typically no more than 20 feet in width, on public property or right of way, that is set aside primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

RESTAURANT. An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall not be less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people.

RESTAURANT OPERATOR. The person, firm or corporation operating a restaurant and associated outdoor dining area. As used in this section, this definition includes each and every owner, and each and every manager if different from the owner(s), of the restaurant and associated outdoor dining area.

SECTION 2

Modify Sec. 54-110, *Sidewalk Seating Permit*, by deleting its existing language and replacing as follows:

Sec 54-110. Outdoor Dining Area.

- (a) **Permit issued by manager.** The city manager or his or her designee may issue permits for outdoor dining areas pursuant to this section on city maintained public rights of way, city sidewalks, public alleys and pedestrian ways in the design districts as depicted on the City's official zoning map.
- (b) **Application.** Any eating establishment or restaurant desiring to operate an outdoor dining area shall, before the issuance of a permit, prepare and file an application with the city manager or his or her designee which shall contain the following information:
- (1) The name, address, and telephone number of the eating establishment or restaurant desiring to operate an outdoor dining area;
 - (2) The name, address and telephone number of each of the eating establishment's or restaurant's operators;
 - (3) The type of food, beverage, and other products to be sold and served at the outdoor dining area;
 - (4) The hours of operation of the eating establishment or restaurant and the proposed hours of operation of the outdoor dining area;
 - (5) A scaled drawing or site plan showing the proposed outdoor dining area boundary and surrounding streetscape details covering six feet on either side of the frontage of the associated eating establishment or restaurant, including but not limited to property lines, sidewalks, curb lines, lighting, trees including tree size, tree grates, planters, street signs, bicycle parking, benches, bus stops, and fire hydrants. The drawing shall show the section of sidewalk, public alley or pedestrian way to be used for the outdoor dining area and the section to be kept clear for pedestrian use, and depict the proposed materials and placement of tables, chairs, barriers, and other furnishings on the sidewalk, public alley or pedestrian way.
 - (6) Evidence of a valid insurance policy that will indemnify the city for any damage to the sidewalk or public alley, and for any damages for which the city might incur liability because of property damage or personal injury arising out of the use of the sidewalk, public alley or pedestrian ways for dining purposes. The minimum liability limit of the policy shall be one million dollars (\$1,000,000).
 - (7) An indemnity statement, approved by the city attorney, whereby the eating establishment or restaurant owners agree to indemnify and hold harmless the city and its officers, agents and employees from any claim arising from the operation of the outdoor dining area.
 - (8) A copy of all permits and licenses issued by the state or the city, including health permits, all applicable ABC permits and business licenses, necessary for the operation of the eating establishment or restaurant, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the city for exterior alterations or improvements to the eating establishment or restaurant.
 - (9) A sworn statement describing all criminal, civil or administrative charges against the eating establishment's or restaurant's operators of any laws, regulations or ordinances, as well as the disposition of said charges, during the three years immediately preceding the date of the permit application.

- (10) Such additional information as may be requested by the city manager or his or her designee to determine compliance with this section.
- (11) A fee as provided in the city fee schedule to cover the cost of processing and investigating the application and issuing the permit.

(c) Issuance of Permit. No permit for the operation of an outdoor dining area may be issued unless the application is complete and unless the following requirements are met:

- (1) The outdoor dining area must be associated with an operating eating establishment or restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities and other customer convenience facilities as the eating establishment or restaurant. The outdoor dining area must be operated under the same name as the eating establishment or restaurant and may not be open or be operated at any time when the eating establishment or restaurant is not open for business.
- (2) The operation of the outdoor dining area must be clearly incidental to the associated eating establishment or restaurant business. The seating capacity of the outdoor dining area may not constitute more than 25 percent of the total seating capacity of the associated eating establishment or restaurant. Upon showing for good cause by the applicant, the City Manager reserves the right to allow the seating capacity of the outdoor dining area to constitute up to 40 percent of the total seating capacity of the associated eating establishment or restaurant.
- (3) Tables, chairs, barriers, and other furnishings, as shown in the drawing or plan submitted with the permit application, may be placed on the sidewalk, public alley or pedestrian way, but must be located in such a manner so that a minimum six-foot-wide unobstructed pedestrian corridor shall be provided at all times through the sidewalk or pedestrian way. The outdoor dining area shall not block access to public amenities such as bicycle racks, street furniture, trash receptacles, dumpsters, and way finding or directional signs.
- (4) The eating establishment or restaurant seeking to operate the outdoor dining area must be located at street level and must front on and open onto the sidewalk, public alley or pedestrian way proposed for the outdoor dining area. An unobstructed pedestrian corridor of a minimum of four feet straight out must be maintained between any eating establishment or restaurant entrance and the pedestrian corridor.
- (5) When any portion of the proposed outdoor dining area is located within a public alley, the name, address and telephone number of all property owners contiguous to the public alley at issue.
- (6) The outdoor dining area may not extend beyond the sidewalk, public alley or pedestrian way frontage corresponding to the property line of the eating establishment or restaurant. However, outdoor dining areas may locate in front of adjacent properties with the written permission of the current adjoining property and business owner; a copy of such agreement must be filed and maintained as current with the application.
- (7) The outdoor dining area may be located adjacent to the building or next to the curb, provided there is at least two feet of clearance between the dining area and the curb (three foot clearance if adjacent to on-street parking). A minimum clearance of four feet shall be maintained between the outdoor dining area and edge of driveways, alleys, and handicapped ramps. At street intersections, the outdoor dining area may not extend within sight triangles. At bus loading and unloading areas, additional clearances may be required.
- (8) Wider pedestrian corridors or increased clearances may be required where warranted by pedestrian traffic or other circumstances or to comply with the North Carolina Building Code, Americans with Disabilities Act, or other laws.

- (9) The tables, chairs, barriers, and other furnishings used in the outdoor dining area shall be of a type that is easily movable. These items shall not be permanently affixed to the sidewalk, public alley or pedestrian way and must remain within the designated boundaries as delineated by city-installed sidewalk markers.
- (10) Except as elsewhere permitted, the operation or furnishing of the outdoor dining area shall involve no permanent alteration to or encroachment upon any street, sidewalk, public alley or pedestrian way or to the exterior of the associated eating establishment or restaurant.
- (11) No tents or cash registers are permitted within the outdoor dining area. No electrical cords may be run from the eating establishment, restaurant, or a city receptacle to the outdoor dining area.
- (12) Except as required by subsection (d)(4) below, signage in the outdoor dining area shall conform to the applicable signage standards provisions of the UDO.
- (13) There can be no more than two umbrellas per table. Umbrellas must be fixed so as to leave a clear height of seven feet from the sidewalk surface. Umbrellas are not allowed within vehicular sight triangles.
- (14) Furniture must be made of durable material, and no plastic or unfinished wood furniture is permitted.
- (15) The application has been reviewed and a certificate of appropriateness has been issued by the Historic Preservation Commission or designee if applicable.

(d) Alcoholic beverages. Notwithstanding the provisions of Sec. 46-149, alcoholic beverages may be served at outdoor dining areas provided the following requirements are met:

- (1) The outdoor dining area shall be part of a standard restaurant as that term is defined in G.S. §18B-1000 and shall otherwise be authorized, permitted or licensed under state laws and the city code to serve and sell alcoholic beverages for on-premise consumption.
- (2) The portion of the outdoor dining area where alcohol is or may be served shall be delineated by clearly visible barriers and shall not have more than two designated points of ingress and egress.
- (3) The outdoor dining area must be included as part of the premises for which an ABC permit for a restaurant, as defined in G.S. §18B-1000, is issued, pursuant to G.S. §18B-1001, for the purpose of applying and enforcing state laws regarding the sale and consumption of alcoholic beverages on-premises.
- (4) Signs shall be posted, visible at all designated exit points from the outdoor dining area, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises. The restaurant operators shall be responsible for insuring that no alcohol is served or consumed outside the designated area.
- (5) None of the restaurant's operators shall have committed:
 - (e) a felony within the three years immediately preceding the date of the permit application;
or
 - (f) any alcoholic beverage or controlled substance offense within the two years immediately preceding the date of the permit application.

For purposes of this section, a person has committed an offense when he has been found guilty, has entered a plea of guilty or nolo contendere, and judgment has been entered against him, whether or not said judgment is final; or been found responsible or accepted responsibility with any civil or administrative body.

- (e) Operation, Appearance, and Maintenance Requirements.** An outdoor dining area shall be operated in such a manner to comply with the following requirements:
- (1) Outdoor dining is limited to the area approved by the city as specified on the permit application.
 - (2) No more patrons than can be accommodated by the actual seats provided in the outdoor dining area may occupy the outdoor dining area. This does not include patrons travelling through the outdoor dining area to enter or exit the eating establishment or restaurant.
 - (3) Except for planters and pots, all furniture, barriers and associated furnishings, including but not limited to umbrellas, signage, table top candles, and other accessory items, shall be removed from the sidewalk, public alley or pedestrian way at closing and stored inside the eating establishment or restaurant, unless otherwise provided in the approved permit. In addition, planters, pots, furniture, associated furnishings, and barriers used in the operation of the outdoor dining area must be removed within twenty-four (24) hours of notice from the city. If such items are not removed upon twenty-four (24) hours notice, the city shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The city shall also have the right to remove such items immediately in emergency situations.
 - (4) Eating establishment or restaurant operators shall keep the outdoor dining area clean of all litter as required by Sec 26-123 of the Durham City Code.
 - (5) Umbrellas and other outdoor dining area furniture shall be kept clean and in good repair.
 - (6) Compliance with all conditions required for issuance of an outdoor dining area permit shall be maintained while operating pursuant to the permit.
 - (7) The city shall not be responsible for damage to outdoor dining area tables, chairs, barriers, furnishings and accessories of any kind under any circumstances.
 - (8) The eating establishment or restaurant owners shall be responsible for repairing any incidental damage to any city property resulting from the operation of the associated outdoor dining area. Any repair work shall be in accordance with applicable federal, state, and local laws, regulations and standards.
- (f) Reservation of rights.** The city reserves the right to require any outdoor dining area established pursuant to this section to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the city, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the city.
- (g) Transfer and expiration.** The permit shall not be transferable. A permit shall expire as stated on the permit, but no more than 12 months after its issuance. The permit may be revoked pursuant to section 54-141.

SECTION 3

Modify Sec. 46-149(e) as follows:

- (e) *Possession and consumption of beer and wine is permitted.*
- (1) Possession and consumption of beer and wine is permitted within the boundaries and during the event hours of any public, community-sponsored function or celebration being conducted

within a public street or other publicly owned area pursuant to a written permit issued by the city manager. This permit may also allow the sale, service, and distribution of beer and wine on designated public streets and areas reserved for the event, subject to all applicable ABC regulations. Prior to the issuance of such a permit, the city manager must establish the boundaries of the event and temporarily close the streets within the boundaries. The city manager may impose on the entity seeking the permit reasonable requirements to ensure that the sale, distribution, service, possession or consumption of beer and wine does not extend beyond the boundaries of the function or celebration.

- (2) Possession and consumption of beer and wine is permitted within the boundaries of an outdoor dining area being operated pursuant to and in compliance with the provisions of Sec. 54-110.

SECTION 4

Effective Date

These amendments are effective three (3) months after adoption. All previously issued sidewalk seating permits are hereby revoked, however, all affected sidewalk seating permit holders shall have three months to submit a new outdoor dining permit pursuant to this subsection and conform their seating arrangements to the terms of the amendments.