

**AN ORDINANCE RELATING TO SIDEWALK DINING;  
AMENDING SECTION 46-86 OF THE CITY CODE OF HENDERSONVILLE**

Be it ordained by the City Council of the City of Hendersonville:

1. Section 46-86 of the Code of Ordinances of the City of Hendersonville, concerning regulations for sidewalk dining in the central business district is hereby amended to read as follows:

Sec. 46-86. Exception; sidewalk dining in the central business district.

- (a) *General.* Notwithstanding any other provisions of this code to the contrary, sidewalk cafes or sidewalk dining shall be permitted in the central business district as indicated on the official zoning map of the city and shall be subject to such regulations as are set forth in this section.
- (b) *Permit required.* No restaurant owner may operate a sidewalk café without first obtaining a permit from the city manager in accordance with the requirements of this article. As used in this section, the term city manager includes his authorized representative.
- (c) *Application.* Any restaurant owner desiring to operate a sidewalk café shall prepare and file an application with the city manager which shall contain the following information:
  - (1) The name, addresses, and telephone number of the restaurant desiring to operate a sidewalk café.
  - (2) The name, address, and telephone number of the restaurant operator.
  - (3) The type of food, beverage, or food product to be sold and served at the sidewalk café.
  - (4) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk café.
  - (5) A drawing or site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk café, and the section to be kept clear for pedestrian and fire lane use, and depicting the proposed placement of tables, chairs, barricades, umbrellas, trash receptacles, and other furnishings on the sidewalk or pedestrian way.
  - (6) A description and images, drawings and other illustrative graphics of the barricades to be used (if any) around the sidewalk café and of the furniture to be used, i.e. tables, chairs, umbrellas, etc.
  - (7) ~~(6)~~ Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee and the city from all claims for damages to property and bodily injury, including death, which may arise from operation under or in connection with the permit. Such insurance shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city. Such insurance shall afford minimum limits of \$500,000.00 aggregate annually.

- (8) ~~(7)~~ A copy of all the permits and licenses issued by the county, state, or the city, including health and ABC permits and business licenses, necessary for the operation of the restaurant business, 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 or other governmental authority, for exterior alterations or improvements to the restaurant.
  - (9) ~~(8)~~ A sworn statement describing any violation by the restaurant operator of any laws, regulations, or ordinances relating to the possession, sale consumption, or transportation of intoxicating beverages or controlled substances during the five years immediately preceding the date of the permit application.
  - (10) ~~(9)~~ Such additional information as may be requested by the city manager or his designee in order to determine compliance with this section.
  - (11) ~~(10)~~ An annual fee ~~in the amount of \$35.00~~ equal to \$0.50 per sq.ft. of sidewalk café area to cover the cost of processing and investigating the application, ~~and~~ issuing the permit and additional maintenance for dining areas.
- (d) *Issuance of permit.* No permit for the operation of a sidewalk café may be issued unless the application is complete and the following requirements are met:
- (1) The sidewalk café must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, rest room facilities, and other customer convenience facilities as the restaurant. The sidewalk café must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.
  - (2) The operation of the sidewalk café must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk café may not be more than 50 percent of the interior seating capacity of the associated restaurant.
  - (3) The placement of tables, chairs and other furnishings as shown in the drawing submitted with the site plan must be done in such a manner that at least five feet of unobstructed space remains on the sidewalk or pedestrian way for the passage of pedestrians. No fire exits or lanes may be blocked and such must remain clear at all times. The pedestrian passage may not be used for the display of merchandise or for portable signs otherwise authorized pursuant to subsection 46-81(e).
  - (4) The restaurant seeking to operate the sidewalk café must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk café. The placement of tables, chairs, and other furnishings may not extend beyond the sidewalk or pedestrian way frontage of the associated restaurant, with the following exception: tables, chairs, and other furnishings ~~tables, chairs, and other furnishings~~ café furnishings and barricades may extend up to eight feet onto adjacent property frontage in either or both directions with the written permission (provided at the time of application) of the occupant of the adjacent property.
  - (5) The tables, chairs and other furnishings used in the sidewalk café shall not be anchored and shall be of a type of street furniture that is easily movable. Café furnishings other than tables, chairs, trash receptacles and umbrellas are not approved for use in sidewalk café areas. Café furnishings must be constructed of metal (aluminum, steel, wrought iron, etc.). Commercial umbrellas must be made with outdoor fabric and a metal or commercial grade plastic stand and must be free of logos or other signage.

- (6) Except as elsewhere permitted by the Code, the operation or furnishing of the sidewalk café shall involve no permanent alteration to or encroachment upon any street, sidewalk, or pedestrian way or to the exterior of the associated restaurant.
  - (7) Each sidewalk café shall provide adequate trash receptacles for its patrons within the perimeter of the barricades. At the end of each business day and during operating hours, the operator shall remove all trash and debris of any sort from the area within the barricade and between it and the curb. In addition, the operator shall remove from the sidewalk alongside and abutting properties any trash or debris originating as a result of the operation of the sidewalk café.
  - (8) Tables, chairs and other furnishings that remain on the sidewalk at times when the business is not in operation shall be secured in a manner that allows clear access from the street equal to or exceeding half of the frontage of the associated restaurant.
  - (9) The leading edge of sidewalk café barricades must be perpendicular to the sidewalk direction and be a minimum height of 3' and maximum height of 4'2". The barrier must be detectable by the visually impaired. Sidewalk café barricade stanchions/posts must not be a tripping hazard. If a stanchion or other vertical element is attached to a base, that base must be flat and must measure no more than 1" above the sidewalk surface. Sidewalk café stanchions/posts must be constructed of metal (aluminum, steel, wrought iron, etc.), wood (wood must be painted or stained) or commercial grade planters. Commercial planters used as vertical support posts may not exceed 3' in height and vegetation within the planter may not exceed 6' from ground level. Sidewalk café railings must be steel chain coated with black plastic, heavy duty black plastic chain, heavy duty black rope or black velour rope.
  - (10) The sidewalk in and around the sidewalk café area must be kept clean and unblemished. Spills and stains from general use must be removed on a weekly basis. Café furnishings and barricades must be cleaned and properly maintained at all times. Café furnishings and barricades must receive regular maintenance of fit and finish as required by the nature of the material being used. Damaged or deteriorating furnishings, barricades or elements of either must be repaired or replaced in a timely manner. All planters must contain live plants in healthy condition.
- (e) *Alcoholic beverages.* Notwithstanding any other provisions of this Code, alcoholic beverages may be served in approved sidewalk cafes provided that the following requirements are met:
- (1) The sidewalk café shall be part of a restaurant and shall otherwise be authorized, permitted, or licensed under the state law and this Code to serve and sell alcoholic beverages for on-premises consumption.
  - (2) The sidewalk café must be included as part of the premises for which an ABC permit is issued pursuant to state law, for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages.
  - (3) Signs shall be posted, visible at all exit points from the sidewalk café, that it is unlawful to remove alcoholic beverages from the premises.
  - (4) The restaurant operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or

controlled substances for the three years preceding the commencement of the sale of alcoholic beverages at the sidewalk café.

- (5) No outdoor bar is allowed within the sidewalk café, nor shall outdoor preparation of alcoholic beverages be permitted except that unfortified wine may be decanted or beer poured at a table as part of a meal.
- (f) *Denial.* A permit may be denied if it is found that the application does not demonstrate compliance with this section and/or that the granting of the permit would not be in the public interest. Any applicant denied a permit to operate a sidewalk café shall receive a written statement outlining the grounds on which the denial is based. The applicant may appeal the denial of the permit to city council within 15 working days after the date of the written denial, and city council may take such action as it shall find necessary. The finding and determination of city council shall constitute final action by the city.
- (g) *Terms and transfer.* Permits for a sidewalk café issued in accordance with the provisions of this article shall be issued for the period beginning July 1 or thereafter and expiring June 30 of each year. If a permittee discontinues the restaurant operation or the sidewalk café, no refund of the permit fee shall be made. Permits issued pursuant to this section shall not be transferable or assignable. Permits may prohibit operation of sidewalk cafes during special events and contain other conditions and restrictions as may be necessary to protect the public health, safety and welfare.
- (h) *Permit suspension.* The city manager may suspend a permit issued pursuant to this section if he finds one or more of the following conditions exist:
- (1) Violation of any provision of the county health department regulations or of this section.
  - (2) Violation of any law, regulation, or ordinance regarding the possession, sale, transportation, or consumption of intoxicating beverages or controlled substances.
  - (3) Operation of the restaurant or sidewalk café in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the café area clean and free of refuse.
  - (4) Operation of the restaurant or sidewalk café in violation of any city, county or state law, ordinance, or regulation.

Such permit suspension shall take effect immediately upon delivery of a citation to the restaurant operator or, in his absence, the person with supervisory authority over the operation of the restaurant. The City Manager shall designate a period of time for the suspension to be in effect up to 45 days from the date of violation, and shall include the length of the suspension in the notice of suspension. In designating a suspension period pursuant to this section the City Manager shall consider the factors set forth in this subsection (h) and subsection (i) below.

Such decision of the city manager may be appealed to the city council by written notice thereof filed with the city clerk within fifteen days of the date of receipt of notice of suspension.

- (I) *Permit revocation.* The city manager may revoke a permit issued pursuant to this section if he finds that the restaurant operator has:
- (1) Deliberately misrepresented or provide false information in the permit application.
  - (2) Violated any provision of the county health department regulations or of this section.
  - (3) Violated any law, regulation, or ordinance regarding the possession, sale, transportation, or consumption of intoxicating beverages or controlled substances.
  - (4) Operated the sidewalk café in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the café area clean and free of refuse.
  - (5) Failed to maintain any health, business or other permit or license required by law for the operation of a restaurant business.
  - (6) Fails to consistently maintain the sidewalk café in a neat and trash free manner.
  - (7) Operated the restaurant or sidewalk café in violation of any city, county or state law, ordinance, or regulation. In the event the city manager determines good grounds exist for the revocation of a permit issued under this section, he shall provide the restaurant operator a notice to show cause, stating with particularity the grounds therefore, why the sidewalk café permit should not be revoked. The restaurant operator shall be provided an opportunity for a hearing, following which the city manager shall render an order in writing. The restaurant operator may appeal any such order by filing a written appeal with the city clerk within 15 days of receipt thereof. City council shall conduct a hearing on the appeal and render its decision thereon. The finding and determination of city council shall constitute final action by the city.

[Key: deletions are ~~struck through~~; additions are underlined]

2. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 1-6 of the City Code of Ordinances.
3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
4. If any section, subsection, paragraph, sentence, clause phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
5. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions or otherwise cure and existing violations.

This ordinance shall be in full force and effect beginning with the new permit year on July 1<sup>st</sup>, 2018.

Adopted this sixth of February, 2018.

Attest:

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Barbara G. Volk, Mayor, City of Hendersonville

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Tammie K. Drake, MMC, City Clerk

Approved as to form:

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Samuel H. Fritschner, City Attorney