

Ordinance #23-0100 – 6

ORDINANCE AMENDING CHAPTER 74, ARTICLE X ENTITLED “SIDEWALK CAFES”

BE IT ORDANINED by the Mayor, and Winston-Salem City Council as follows:

Section 1. Sec. 74-292. Sidewalk cafe; permit applications. is hereby amended to read as follows:

“Sec. 74-292. Sidewalk cafe; permit applications.

- (a) *General.* Notwithstanding any other provisions of this Code to the contrary, sidewalk cafes shall be permitted at such locations and subject to such regulations as are set forth in this article.
- (b) *Permit required.* No restaurant may extend its dining operations into a sidewalk or pedestrian way without first obtaining a permit therefor in accordance with the requirements of this article.
- (c) *Application.* Any restaurant operator desiring to operate a sidewalk cafe shall prepare and file an application with the office of business inclusion and advancement which shall contain all of the following information:
 - (1) The name, address and telephone number of the restaurant owned or operated.
 - (2) The name, address and telephone number of the restaurant operator. If a restaurant is operated by a person, firm, or corporation who is not the owner, the application shall be submitted by both, jointly.
 - (3) The types of food and beverages to be sold or served at the sidewalk cafe.
 - (4) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk cafe.
 - (5) A site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk cafe and the section to be kept clear for pedestrian use, and depicting the proposed placement of tables, chairs, barricades and other furnishings within the sidewalk or pedestrian way.
 - (6) Evidence of insurance and a statement of indemnity as required by this article.
 - (7) A copy of all permits and licenses issued by the State of North Carolina, Forsyth County, or the city necessary for the operation of the restaurant business or for the construction or alteration thereof, or a copy of the application for such permit if no permit has been issued. No sidewalk cafe permit shall be approved until all other required permits and licenses have been obtained.

- (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.
 - (9) Such additional information as may be requested by the office of business inclusion and advancement to determine compliance with this article.
 - (10) A permit application fee of \$100.00.
- (d) *Issuance of permit.* No permit for the operation of a sidewalk cafe may be issued unless the application is complete, and the following requirements are met:
- (1) The restaurant to which the sidewalk cafe is associated must be located within the central business or pedestrian business zoning districts.
 - (2) The sidewalk cafe must share the same management and same food preparation facilities as the restaurant to which it is associated. The sidewalk cafe 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. Sidewalk cafes may operate at any time between the hours of 6:00 a.m. and 1:00 a.m. Sunday through Wednesday, and 6:00 a.m. to 2:00 a.m. on North Carolina state holidays, Thursday, Friday, and Saturday. At the end of each business day the restaurant operator shall clean and remove all refuse from the sidewalk cafe area.
 - (3) The operation of the sidewalk cafe must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk cafe may not constitute more than 50 percent of the interior seating capacity of the restaurant.
 - (4) The placement of tables, chairs, and other furnishings, as shown on the site plan must leave five feet of unobstructed space (in the case of a sidewalk, as measured from the street-side edge of the sidewalk, and in the case of a pedestrian way, as measured from the edge of the pedestrian way farthest from the sidewalk cafe) on the sidewalk or pedestrian way for the passage of pedestrians. Fire exits or lanes and wheelchair ramps must remain free of obstructions at all times.
 - (5) The restaurant seeking to operate a sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for such sidewalk cafe. The placement of tables, chairs, and other furnishings may not extend beyond the sidewalk or pedestrian way frontage of the associated restaurant unless permission of the abutter to do so has been granted to the restaurant operator in writing and filed with the office of business inclusion and advancement.
 - (6) In the event that any local, state, ~~or~~ federal law, or regulation requires the area designed for the sidewalk cafe be physically separated from the remaining sidewalk or pedestrian way by a barricade, then such barricade must be constructed of materials of a finished quality, including, but not limited to, wrought iron, planters, picket fences, or velvet ropes. No signs shall be placed on the barricades. Amplified or live music emanating from the restaurant operation, or the sidewalk cafe shall not be able to be heard further than 50 feet from the barricades or the perimeter of the sidewalk cafe in

the absence of a barricade. Additionally, any barricade installed or erected on or after June 1, 2023, must be constructed of materials and maintained in a manner that always provides at least seventy-five percent (75%) transparency or visibility through the barricade from all sides of the barricade, except that side which consists of the building itself. Any barricade established prior to June 1, 2023, will not be required to be installed or erected in compliance with the seventy-five percent (75%) transparency or visibility requirement unless and until over twenty-five percent (25%) of the existing barricade is renovated, modified, demolished, or upgraded in any manner, at which point the repaired, installed, or erected barricade must meet the transparency or visibility requirement set forth herein.

- (7) The tables, chairs, barricades, and other furnishings used in the sidewalk cafe shall be of a type that is easily removed from the public right-of-way. If the permit is revoked, table, chairs, barricades, and other furnishings used in the operation of the sidewalk cafe must be removed within 24 hours' notice from the city, and if not so removed, 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 any and all such items immediately in emergency situations. The city shall not be responsible for damage to such barricades or furnishings under any circumstances.
- (8) Except as elsewhere permitted, the operation or furnishing of the sidewalk cafe shall not involve any permanent alteration to or encroachment upon any sidewalk or pedestrian way. The restaurant operator of the sidewalk cafe shall be responsible for repairing any incidental damage to public improvements resulting from its operation.
- (e) *Inspection/release/indemnity/insurance.* The restaurant owner, as a condition to receiving a sidewalk cafe permit, must sign an agreement that contains the following:
 - (1) A statement accepting the sidewalk cafe area "AS IS";
 - (2) A statement releasing and forever discharging the city, its officers, agents and employees, from any and all claims, demands, expenses, costs and liabilities of any kind or nature directly or indirectly related to any personal injury, including death, and/or property damage arising out of the granting of a permit pursuant to this article, except those claims that were proximately caused by the negligence of the city or of a city employee acting within the scope of his employment with the city;
 - (3) A statement agreeing to indemnify, defend and hold harmless the city, its officers, agents and employees from and against any and all claims, demands expenses, costs and liabilities of any kind or nature to the extent proximately caused by the intentional, negligent or reckless acts or omissions of the restaurant operator, its agents, officers, employees or guests; and
 - (4) Evidence that the restaurant operator has secured commercial general liability insurance to protect the restaurant against any and all claims, demands expenses, costs and liabilities of any kind or nature directly or indirectly related to any personal injury, including death, and/or property damage to the extent proximately caused by the negligent acts or omissions of the restaurant operator, its employees, officers or

agents. The insurance shall also include coverage for liquor liability, explosion, collapse, and underground hazards, where applicable. This insurance shall provide bodily injury limits of not less than \$1,000,000.00 for each occurrence and property damage limits of not less than \$1,000,000.00 for each occurrence. All insurance required under this subsection shall be written with a company licensed to do business in North Carolina. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date except upon 30 days advance written notice to the city. Certificates of insurance for all of the insurance coverages described herein shall be submitted with the application and maintained for the duration of the ~~side-walk~~ sidewalk cafe permit, and any renewals thereof.

- (f) *Malt beverages and unfortified wine.* The consumption of malt beverages, unfortified wine, and other alcoholic beverages in compliance with all state and local laws and regulations shall be permitted in a sidewalk cafe, and this shall be an exception to the general prohibition of such consumption on street rights-of-way provided in sections 38-6 and 38-9 of the City Code.
- (g) *Issuance of permit; denial.* The office of business inclusion and advancement shall examine the application and determine whether all of the requirements stated in this article for the issuance of a permit have been satisfied. If all such requirements have been satisfied, then the office of business inclusion and advancement shall issue the permit. If the permit is denied, the applicant shall be provided with the reasons therefor in writing, and the permit application fee shall not be refunded.

Except as otherwise provided herein, the permit shall remain valid for one year unless revoked, rescinded, or withdrawn. If all of the information contained within the application, site plan and insurance agreement ~~remains~~ remain valid and there are no changes, the application and permit may be renewed for one additional year based upon the prior year's application provided the permit holder provides: (i) an updated insurance certificate; and (ii) copies of any additional permits that will need to be updated. A permit may be renewed in this manner a total of three times before the permit holder has to submit a new application. Permits renewed in this manner shall not be issued until the permit holder pays the requisite permit renewal fee of \$25.00 (per renewal).

- (h) *Permit revocation.* The office of business inclusion and advancement may revoke a permit issued pursuant to this article if it is determined that the restaurant operator has:
- (1) Misrepresented or provided false information in the permit application.
 - (2) Violated any provision of this article, Forsyth County Health Department regulations, or ABC regulations.
 - (3) Violated any law, regulation or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances.
 - (4) Operated the sidewalk cafe in such 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 sidewalk cafe area clean and free of refuse at end of each business day.
 - (5) Failed to maintain any health, business or other permit or license required by law for the operation of the restaurant associated with the sidewalk cafe.

- (6) Failed to comply with the insurance requirements of this section or any other conditions upon which the permit or any renewals thereto was issued.
- (7) Operated the sidewalk cafe in violation of any city, county or state law, ordinance, or regulation. Before the revocation of a permit, the office of business inclusion and advancement shall notify the permit holder of its intent to revoke the permit and the reasons therefor. The permit holder shall have ten days from receipt of such notice to file ~~an~~ a written appeal of the proposed revocation, along with a statement of the grounds for the appeal, with the assistant city manager for public works or his designee, who shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the assistant city manager for public works or his designee shall notify the permit holder in writing of his decision and the reasons therefor. The decision of the assistant city manager for public works shall be final.
- ~~After the hearing, the assistant city manager for public works or his designee shall notify the permit holder in writing of his decision and the reasons therefor.~~
- (i) *Reservation of rights.* The city reserves the right to require any sidewalk cafe established pursuant to this article 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; 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; and to remedy a public nuisance or to protect the public health, safety, or welfare.
- (j) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this article shall:
- (1) Be issued for the period beginning July 1 or thereafter and expiring June 30th of the subsequent year. ~~Any permit issued between January 1, 2014 and June 30, 2014 shall remain effective until June 30, 2015 provided the applicant pays an additional fee of \$65.00 by September 30, 2014. Otherwise, said applicant will have to pay the full \$100.00 permit fee to have the permit extended to June 30, 2015. If a permittee discontinues the restaurant operation or the sidewalk cafe, no refund of the permit fee shall be made.~~
- (2) Be in addition to the annual privilege license required pursuant to chapter 34 of the City Code.
- (3) Not be transferable or assignable.
- (k) A violation of section 74-292, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00."

Section 2. This ordinance shall become effective upon adoption.