

# Application for SIDEWALK CAFÉ

Division of Planning • 331 S Franklin Street, Rocky Mount NC 27802 • 252-972-1172

ROCKY MOUNT  
DEVELOPMENT SERVICES  
THE CENTER OF IT ALL



Restaurant Name:		Telephone:	
Address:			
Street Address:			
Applicant Mailing Address:			
City:	State:	Zip Code:	Daytime Telephone:
Applicant Email Address:			
Hours of Operation of Restaurant:			
Hours of Operation of Café:			
NOTE: <i>Operating hours are to be no later than 11:00 p.m. Sunday through Thursday, and 12:00 midnight on Fridays and Saturdays.</i>			

- Attach a drawing or site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk café, the section for pedestrian use (this area must be at least four (4) feet from any obstruction), and the proposed placement of tables, chairs, and other furniture on the sidewalk or pedestrian way.
- Attach evidence of insurance or other form of security. Commercial general liability insurance or other form of security against general liability must be maintained on the operation of the sidewalk café. Coverage may be under the policies or plans applicable to the establishment generally. The limits of such coverage shall not be less than \$1,000,000 combined single limits include contractual liability insurance or security extending to any obligations arising from the indemnity agreement in connection with this application.
- Sign and return the attached indemnity agreement.
- Attach a copy of all permits and licenses issued by the State and/or the City of Rocky Mount, including health and ABC permits, 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 for exterior alterations or improvements to the restaurant.
- Submit payment of \$100.00 fee for initial application or \$25.00 fee for renewals. Permits must be renewed annually.

*(Do not write below this line. For office use only.)*

Application Number: _____	Date Received: _____	Staff Initials: _____
Authorized Signature: _____		Date: _____
Fee of \$ _____ paid on ____/____/____		Staff Initials _____

CITY OF ROCKY MOUNT

SIDEWALK CAFÉ

RELEASE, INDEMNITY, ACKNOWLEDGEMENT AND ASSUMPTION OF RISK

IN CONSIDERATION of the undersigned’s being issued a City of Rocky Mount permit to operate a sidewalk café, and related activities, (the “Activity”), the undersigned, for itself, himself/herself, his/her heirs, executors, administrators, personal or legal representative, or successors and assigns (collectively the “Undersigned”) hereby agrees to:

(i) RELEASE, WAIVE, FOREVER DISCHARGE and COVENANT NOT TO SUE the City of Rocky Mount, its elected officials, officers, employees, and agents (collectively the “City”) with respect to any and all claims, losses, damages, or liability (present and future), on account of injury to the Undersigned’s person or property, including injury resulting in death, arising out of, or in any way connected with, the Undersigned’s participation in the Activity, including, without limitation, to the extent permitted by law, any claim, loss, liability, or damage related (directly or indirectly) to acts or omissions (negligent or otherwise) of the City; and

(ii) INDEMNITY, DEFEND and HOLD HARMLESS the City from and against any and all claims, losses, liability, and damages (present or future) and all costs, charges, and fees (including reasonable attorneys fees) related thereto, arising out of, or in any way connected with the Undersigned’s participating in the Activity or connected with the participation of anyone else in the Activity under the Undersigned’s auspices or with Undersigned’s implied or express consent.

The Undersigned understands that participation in the Activity involves the risk of injury or death, and by executing this Release, Indemnity, Acknowledgement and Assumption of Risk (this “Release”), the Undersigned acknowledges and assumes all risk of injury or death resulting from participation in the Activity.

The Undersigned further agrees that if any term of provision of this Release, or the application thereof, to any person or circumstance shall, to any extent, be deemed invalid or unenforceable, the remainder of this Release, or the application of such term or provision, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Release shall be valid and enforceable to the fullest extent permitted by law.

The Undersigned has carefully read this Release and has executed the same voluntarily adopting the word “SEAL” after its, his, her name as the Undersigned’s seal.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature (SEAL)

\_\_\_\_\_  
Name (Print)

ORDINANCE AMENDING THE CITY CODE  
OF THE CITY OF ROCKY MOUNT TO  
PERMIT SIDEWALK DINING IN THE  
CENTRAL CITY

BE IT ORDAINED by the City Council of the City of Rock Mount:

**Section 1.** Chapter 19, entitled “Streets, Sidewalks and Certain Other Public Places”, of the City Code of the City of Rocky Mount is amended to add a new Article VII which shall read as follows:

**Article VII. Sidewalk Dining**

**Sec. 19-130 Sidewalk Dining Permitted**

Any restaurant located in the central city area may serve food and beverages on adjacent city sidewalks and pedestrian ways upon the issuance of a sidewalk café permit and pursuant to the provisions of this article.

**Sec. 19-131 Definitions**

The following words, terms and phrases, which used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

*Central City Area* means the city center of Rocky Mount as shown on a map on file with the City Clerk of the City.

*City* means the City of Rocky Mount, North Carolina

*City manager* means the City Manager of the City or his or her designee.

*Pedestrian way* means an improved public walk or passageway intended for use by pedestrians and adjacent to a restaurant, but not adjacent to any city street.

*Person* means an individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

*Planning Director* means director or department head for the department of planning and development for the city (also referred to as the director).

*Restaurant* means an establishment substantially engaged in the business of regularly and customarily preparing and serving meals, primarily to be eaten on the premises, including establishments such as restaurants, cafeterias, cafes, lunch stands, grills, snack bars, fast food businesses, and other establishments, such as drug stores, which have a lunch counter or other sections where food is sold to be eaten primarily on the premises. 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.

*Restaurant operator* means the person operating a restaurant and its associated sidewalk café. As used in this article, this definition includes the owner, operator, or manager of the restaurant and associated sidewalk café, whether as property owner or a lessee or a tenant of the property on which the restaurant is located.

*Sidewalk* means that portion of the public way between the curb line of a public street and the adjacent property line of a restaurant that is reserved for and intended for the use of pedestrians.

*Sidewalk café* means that area or portion of the sidewalk or pedestrian way immediately adjacent to an operating restaurant in which food and beverages prepared in the restaurant are served to members of the public, and which is operated under the same name and by the same restaurant operator as the adjacent restaurant pursuant to a sidewalk café permit issued by the City.

### **Sec. 19-132 Application for Permit**

Any person desiring to operate a sidewalk café shall complete and return to the Planning Director's office an application for a sidewalk café, together with the application fee established by the city council.

### **Sec. 19-133 Issuance of Permit**

The Planning Director shall issue a permit for a sidewalk café as soon as reasonably possible and in any event within thirty (30) days from the date a completed application was submitted unless the Planning Director finds in writing:

- (a) The correct application fee has not been tendered to the city, and, in the case of a check, or bank draft, not honored with payment upon presentation; or
- (b) That the operation of the sidewalk café as proposed by the application, if permitted, would not comply with all applicable laws, including, but not limited to, this article and the city's building, zoning, and health regulations; or
- (c) The applicant has failed to answer or falsely answered a question(s) or request for information on the application form provided.

### **Sec. 19-134 Regulation Governing the Operation of Sidewalk Café**

Sidewalk cafés shall be operated in accordance with the following regulations:

- (a) 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, restroom 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. Sidewalk cafés may not be operated earlier than 7:00 a.m. or later than 11:00 p.m. Sunday through Thursday and 12:00 midnight on Fridays and Saturdays.
- (b) 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 fifty (50) percent of the interior seating capacity of the associated restaurant.
- (c) The placement of tables, chairs, and other furnishing as shown in the drawing or site plan submitted with the application must be done in such a manner that at least four (4) feet of unobstructed space (as measured from the building face) remains on the sidewalk or pedestrian way for the passage of pedestrians. All fire exits or lanes must remain open and

- clear at all times, no table, chair, or any other obstruction may be placed therein. All applicable regulations pursuant to the Americans with Disabilities Act must be met.
- (d) The restaurant operating the sidewalk café must front on and open onto the sidewalk or pedestrian way of 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 or bar. With the written consent of the adjoining property owners and tenants, if any, the sidewalk café may extend onto the sidewalk or a pedestrian way abutting such adjoining property, but in no event shall the sidewalk café extend beyond any alleyway or vehicular entrance.
  - (e) The barricades, tables, chairs and other furnishing used in the sidewalk café shall not be anchored or permanently attached to the sidewalk in any way and shall be of a material that is easily movable.
  - (f) Unless expressly authorized by the City in writing the operation or furnishings of the sidewalk café shall involve no permanent attachments to, or alteration or encroachment upon, any street, sidewalk or pedestrian way, or to the exterior of the restaurant.
  - (g) The operation of the sidewalk café shall at all times be in accordance with the requirements of this article. At the direction of the Planning Director any improperly placed or improperly sized furniture or barricade shall be removed.
  - (h) Each sidewalk café shall provide adequate trash receptacles for its patrons within the perimeters 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, and in addition shall remove from the sidewalk alongside and abutting properties any trash or debris originating as a result of the operation of the sidewalk café.
  - (i) Any alcoholic beverages permitted under state law to be sold in the associated restaurant may be sold in the sidewalk café.

### **Sec. 19-135 Permit Revocation**

The city manager may revoke a permit issued pursuant to this section, if he or she finds that the restaurant or restaurant operator has:

- (a) Deliberately misrepresented or provided false information in the permit application;
- (b) Violated any law, regulation, or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances;
- (c) 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; including failure to keep the sidewalk café area clean and free of refuse and trash;
- (d) Failed to maintain any health, business, ABC, or other permit or license required by law; or
- (e) Operated the restaurant or bar or sidewalk café in violation of this ordinance or of any city, county, state, or federal law, ordinance, or regulation.

Any applicant whose permit is revoked under this article shall receive a statement, in writing, outlining the reasons for denial of the permit. The applicant may appeal the denial of the permit to the city manager within fifteen (15) working days after the date of the written denial. The determination of the city manager shall be final.

### **Sec. 19-136 Reservation of Rights**

The city reserves the right to require any sidewalk café established pursuant to this article upon not less than five (5) days written notice, or upon such shorter time as required by the circumstances, to cease part or all of its operation in the sidewalk café 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.

### **Sec. 19-137 Term, Transfer, and Renewal**

Sidewalk café permits shall:

- (a) Be issued for a period not to exceed one (1) year and shall expire on June 30th of each year. Permits may be renewed annually upon the payment of the renewal fee established by the city council provided the sidewalk café continues to be operated in compliance with this article. The right of appeal for the denial of a permit renewal shall be the same as for a permit revocation.
- (b) Be in addition to any other licenses required pursuant to the city code.
- (c) Not be transferable or assignable.
- (d) Be subject to site inspection prior to initial permit issuance as well as annual permit renewal.

### **Sec. 19-138 Severability**

In the event that any provision of this article, or any part thereof, or any application thereof to any person or circumstance, is for any reason held to be unconstitutional or otherwise invalid or ineffective by any court of competent jurisdiction on its face, or as applied, such holding shall not affect the validity or effectiveness of any of the remaining provisions of this article, or any part thereof, or any application thereof to any person or circumstance or of said provision as applied to any other person or circumstance. It is hereby declared to be the legislative intent of the city council that this article would have been adopted had such unconstitutional, invalid, or ineffective provisions not been included herein.

## **Section 2**

1. All ordinances or clauses of ordinance in conflict herewith are hereby repealed.

This ordinance is in effect from and after the date of its adoption.

Introduced: \_\_\_\_\_

Adopted: \_\_\_\_\_