

ORDINANCE NO. (2022) 346

AN ORDINANCE TO REVISE CERTAIN REQUIREMENTS OF THE RALEIGH CITY CODE OF ORDINANCES REGARDING PRIVATE USE OF PUBLIC STREETS AND SIDEWALKS FOR OUTDOOR SEATING.

WHEREAS, N.C. Gen. Stat. § 160A-296, and the City of Raleigh Charter, Article II, Sec. 2.14 (14) and (15), grant the City the authority to regulate use of public sidewalks and streets under the City's control, including the regulation of private business activity within those sidewalks and streets; and

WHEREAS, the City Council desires to establish an on-going outdoor seating program to permit eligible businesses and restaurants to use public sidewalks and on-street parking spaces for outdoor seating purposes to increase economic vitality and commerce in business areas and to create additional outdoor seating areas for use by the general public; and

WHEREAS, the City Council finds that amending Raleigh City Code of Ordinances to provide for the on-going use of designated public sidewalks and on-street parking spaces for outdoor seating areas is in the public interest and advances the general welfare of the people and businesses of the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH THAT:

Section 1. The provisions of City of Raleigh Ordinance No. (2020) – 92, as they may be extended, shall expire at 11:59 p.m. on March 31, 2022.

Section 2. The City Manager is hereby authorized to develop and adopt guidelines, standards and rules for the use of *outdoor seating areas* located on public sidewalks and on-street parking spaces. These guidelines, standards and rules may include, but are not limited to, restrictions on the use of such areas, insurance, indemnification, and other requirements to protect the City from liability, and other requirements that would be customary in a municipal curbside management program, including a streamlined application process. The City Council authorizes the City Manager or designee to apply these guidelines, standards, and rules to any street or that are owned in fee or through easements and maintained by the City.

Section 3. Section 12-1041 of the City of Raleigh Code of Ordinances is deleted in its entirety and replaced with the following:

Sec. 12-1041. - Outdoor Seating Within Public Sidewalks and Streets.

(a) **Definitions.** The following terms shall have the following meanings as used in this section.

Applicant shall mean any *person* or entity that has applied for an *outdoor seating area* permit.

Outdoor seating shall refer to the private or public use of City-maintained sidewalks and streets for the purpose of outdoor seating area for use by patrons of a business or organization adjacent to the sidewalk or street, and/or for use by the general public.

Outdoor seating area shall mean the designated *outdoor seating area* located on a City-maintained sidewalk or street that has been permitted for use as provided in this section.

Outdoor seating guide or Guide shall mean the guidelines, standards and rules adopted by the City Manager that contain the requirements that must be met to obtain and maintain an *outdoor seating area* permit.

Parklet shall mean a platform authorized by the City to be placed within a designated *outdoor seating area* for *outdoor seating* purposes to be used by the general public at designated times.

Permittee shall mean any *person* or entity issued a permit by the City to operate an *outdoor seating area* adjacent to a public sidewalk or street maintained by the City or the North Carolina Department of Transportation.

Streeter shall mean a platform authorized by the city to be placed within a designated *outdoor seating area* for *outdoor seating* purposes to be used by patrons of a business or organization located adjacent to that area, and for use by the general public at designated times.

(b) Permit required.

- (1) Except as may be provided elsewhere within City Code, no *person* may use a City-maintained sidewalk or street as an *outdoor seating area*, nor place thereon any platform, tables, chairs, furniture, seating materials or other similar items, unless issued an *outdoor seating area permit* in conformance with this section, and the *Outdoor Seating Guide*, as may be amended.

(c) Eligibility; application review.

- (1) Any *person* or entity that operates a legally established business or organization that is adjacent to a City-maintained sidewalk or street may apply to the City for temporary use of a portion of the sidewalk or street as an *outdoor seating area* in accordance with this section and the *Guide*. The application, and applicable fees, shall be submitted to the City, along with any supporting documentation, which will then be reviewed by the City Manager or designee for compliance with this section and the *Guide*.

(d) Agreement; permit.

- (1) An *outdoor seating area* permit is a revocable license issued to an eligible *permittee* to use a portion of a City-maintained sidewalk or street for

temporary purposes as set out herein and does not convey an interest in property, public sidewalks, streets or related infrastructure. The City Manager or designee is authorized to execute an agreement approving a permit for an *outdoor seating area*, and issue, suspend or revoke such permit for same based upon any or all of the following factors:

- a. The accuracy and completeness of the application and supporting materials, and the extent to which they comply with the requirements of this section and the *Guide*.
- b. A violation of this section, or failure to comply with requirements of the *Guide*, any outdoor seating area agreements, applicable laws and regulations.
- c. Concerns relating to hours of operation, traffic flow, parking, and public safety.
- d. Such other information the City Manager or designee reasonably believe may or may not be in the public interest, public safety, and general welfare.

(2) Once approved, the permit shall be made available for inspection upon request, and shall state on its face, at minimum, the following:

- a. The legal name, address, phone number, and email address of the permittee and its authorized representative.
- b. The approved outdoor seating area location and area, approved hours of operation, and permit commencement and expiration dates.
- c. Any additional information the City Manager or designee deems necessary.

(e) Denial of Application; reconsideration.

(1) If an application is denied, the City shall notify the *applicant* electronically using the e-mail address provided by the *applicant* stating the reasons for denial. Within thirty (30) days of such notice, the *applicant* may submit a revised application with supplemental information for reconsideration. The payment of a new application fee is not required if the revised application and material are submitted within thirty (30) days from receipt of the notice of denial.

(f) Operation and use.

(1) A *permittee* of an *outdoor seating area* shall:

- a. Comply with this section, the *Guide*, all rules, regulations, and laws, State and federal, including but not limited to, those related to alcohol service and consumption, and ensure that no alcohol is served or consumed outside the permitted *outdoor seating area* except as otherwise allowed by law.

- b. Not place any items within the *outdoor seating area* unless they comply with this section and the *Guide*.
- c. Use the *outdoor seating area* only for the seating of its patrons and/or the general public in accordance with the restrictions of the permit and *Guide*.
- d. Ensure that no items are permanently affixed to the street, sidewalk, trees, public or private property.
- e. Not operate outside the area designated in the permit.
- f. Timely remove snow, ice and other debris from the *outdoor seating area* and adjacent sidewalk for the safety of their users.
- g. Ensure that the *outdoor seating area* platform and furniture are in good working order, kept clean, well-maintained, in good repair and working order, made of commercial grade materials, and suitable and safe for commercial use.
- h. Ensure that the *outdoor seating area* provides for adequate access in compliance with the American Disabilities Act, with adequate access determined in the City's sole discretion.
- i. Ensure that any and all permittee patrons using the *outdoor seating area* act in an orderly, safe, and non-disruptive manner so as to not pose a safety risk to traffic or pedestrians; and if such conduct occurs, permittee shall have an affirmative duty to immediately address such conduct and notify applicable authorities.

(g) Design standards exception.

(1) Notwithstanding the provisions of this section and the *Guide*, the City Manager or designee may waive compliance with the design standards stated within this section and the *Guide* for permit approval if the City Manager or designee finds that:

- a. The applicant has submitted a completed *outdoor seating area* application with supporting materials but is unable to comply with the design standards due to conditions that are peculiar to the sidewalk, street, or property, and not from those that are common to the neighborhood or the general public; the permittee can substantially comply with the design standards in this section and the *Guide* and the issuance of a permit is consistent with the spirit, purpose and intent of this section and the *Guide*, such that public safety is adequately protected; and such waiver does not violate State or federal laws or regulations or any other provisions of the City Code.

- b. Provided that the City Manager or designee may require the applicant or permittee to bring the *outdoor seating area* within full compliance with this section and the *Guide* within six (6) months of issuance of a permit under this subsection;

(h) Non-conforming existing permits.

- (1) Notwithstanding the provisions of this section and the *Guide*, permits for *outdoor seating areas* issued by the City prior to the effective date of this section which substantially comply with the requirements and standards in this section and the *Guide* may continue in full force and effect provided that:
 - a. continued use of the outdoor seating area under the existing permit is consistent with the spirit, purpose and intent of this section and the *Guide*, and all applicable regulations and laws;
 - b. public safety and traffic mobility are adequately protected and provided for; and
 - c. the permittee of the non-complying outdoor seating area shall bring same into full compliance with this section and the *Guide* no later than July 1, 2022 (which may include obtaining a design standards exception as outlined in this section).

(i) Exemptions.

- (1) Except for design standards stated within the *Guide*, the City shall be exempt from compliance with the application, permit, indemnification and insurance requirements of this section and the *Guide* as they may relate to use of *outdoor seating areas* for City sponsored or co-sponsored parklets, outdoor events, races, festivals, or concerts.

(j) Additional Requirements for NCDOT Streets.

- (1) In addition to the requirements set out herein, when an *outdoor seating area* is to be used for sidewalk dining activities for serving food and beverages from a restaurant abutting right of way maintained by the North Carolina Department of Transportation (“NCDOT”), the *applicant* and/or *permittee* shall, in addition to complying with this section and the *Guide*, obtain approval from NCDOT and comply with the provisions of N.C.G.S. § 136-27.4, as may be amended, and all requirements, rules, regulations, and laws related thereto. To the extent an *applicant* seeks a permit under this section adjacent to a NCDOT-maintained street, then the term *City-maintained sidewalk and street* as used herein shall be construed to mean NCDOT-maintained sidewalk and street.

(k) Duration and fees.

- (1) Each *outdoor seating area* permit shall state the hours and dates of operation consistent with this section and the *Guide*. No application shall be accepted for review unless accompanied with an application fee payable to the “City of Raleigh” in accordance with the City of Raleigh Fee Schedule to cover the cost of processing and investigating the application and supporting materials. If an application or supporting materials are revised within thirty (30) days of initial submission, then an additional application fee shall not be required. If a substantial amount of information is required to be submitted for review after the 30-day period, then an additional application fee may be assessed. If an application meets necessary requirements, an encumbrance fee shall be paid to the City for the temporary use of the *outdoor seating area* in accordance with the City of Raleigh Fee Schedule. Permits are issued on an annual basis concurrent with the City’s fiscal year. Once issued, a permit shall be valid from the date of issuance through 11:59 p.m. of the subsequent June 30.
- (2) A *permittee* may apply to renew its permit as provided for herein and the *Guide*

(l) Notices of violation.

- (1) Any Police Officer, or the City Manager or designee may issue a **notice of violation** assessing civil penalties for the violation of any provision of this section or the *Guide*. The notice shall be issued in writing and shall set forth with reasonable specificity the basis for the violation and civil penalty. The notice shall be served by registered or certified mail, or by personal service using the address listed on the permit. When service is made by registered or certified mail, a copy of the notice may also be sent by first class mail. Service shall be deemed sufficient if the first-class mail is not returned by the Post Office within ten (10) days after the mailing. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty.
- (2) The notice of violation shall contain a time period by which the violation must be corrected. From and after the date specified in the notice, each subsequent day that the violation continues in existence shall constitute a separate and distinct offense subject to additional civil penalties.

(m) Enforcement; violations; penalties; suspension.

- (1) Except as may be provided otherwise herein, non-compliance with this section or the *Guide* shall be considered a violation and may subject the *outdoor seating area* permittee to penalties and the permit to suspension and/or revocation. Violations of any of the provisions of this section or the *Guide* shall result in the following civil penalties:
 - a. First offense in any twelve-month period: \$100.00.
 - b. Subsequent offenses in any twelve-month period: \$500.00.
- (2) If a violation of this section or the *Guide* occurs twice in any twelve-month period, any *outdoor seating area* permit may be suspended for thirty (30)

days. If a violation occurs three (3) or more times in any twelve-month period, then the *outdoor seating area* permit *shall* be suspended for twelve (12) months.

- (3) If the any civil penalty assessed herein is not paid within thirty (30) days after the penalty decision becomes final, as provided herein, the City may recover the penalty, together with all costs allowed herein and by law, by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt.

(n) Other Remedies.

- (1) In addition to civil penalties, permit suspension and revocation, a violation of this section or the *Guide may* also be enforced through injunctive or other equitable relief, or a combination of remedies.

(o) Appeals.

- (1) A *permittee* aggrieved under this section may appeal any decision to the City Manager within fifteen (15) calendar days after the *permittee* is notified in writing of a violation. An appeal must be made in writing and *shall* contain the reasons supporting the appeal and any evidence that may support. The *person* appealing *may* review the evidence that is the basis of any suspension, revocation, or violation during the City's normal business hours. The City Manager or designee *shall* review the information provided and *shall* issue a *written* decision determining whether a violation has occurred.
- (2) After receiving a determination from the City Manager or designee, the party aggrieved *may* appeal to the *City Council* within twenty-one (21) calendar days after the decision of the City Manager or designee was deposited in the U.S. Mail addressed to the party aggrieved at the address on file. The scope of the *City Council's* review *shall* be limited to whether competent evidence supports the *written* decision of the City Manager or designee. If the *City Council* finds that competent evidence supports the decision, then the civil penalty, administrative fee, suspension or revocation *shall* not be disturbed.

(p) Assignment Prohibited; Effect of Ceasing Business Operations.

- (1) An *outdoor seating area* permit is not transferrable or assignable and is specific to the *permittee's* business or organization as shown on the permit. Any change in the ownership of the *permittee's* business or organization after permit issuance shall cause the permit to be immediately invalid and require the subsequent owner to apply for a new permit. A change in ownership shall mean acquisition of more than ten (10) percent of the stock in a publicly traded corporation; any change in the ownership of shares in a privately held corporation; sale of all or part of a sole proprietorship; any change in the membership of any form of limited liability organization; or any substantial change to the *permittee's* business entity as reflected with the North Carolina Secretary of State's Office.

(2) The *permittee* shall notify the City when its business operations cease or there has been a change in ownership as provided herein. If the permittee's business operations cease, or the *outdoor seating area* is not used for the permitted purpose for thirty (30) calendar days or longer, then the permit shall automatically terminate and all materials such as platforms, furniture and like items shall be removed from the *outdoor seating area*. If *permittee* fails to cause such items to be so removed, then the City may remove the items as provided herein.

(q) Removal; discontinuance; costs.

(1) Should the City Manager or designee find that:

a. any and all materials in the outdoor seating area, including but not limited to platforms and furniture, should be removed due to violations of this section or the non-compliance with the Guide, then the permittee shall remove such items as directed by the City; should the materials not be removed within a reasonable time, then the City may remove the items, repair and restore the sidewalk or street to their pre-permit conditions; permittee shall be responsible for any and all costs related to the removal, storage, repair, of the materials; such costs shall be a lien upon permittee's property, collectible in the same manner that taxes are collected, or by civil action;

or

b. circumstances warrant the immediate removal of any and all materials in the outdoor seating area such as the platform, furniture, and related items due to exigent reasons of public safety or general welfare, then such items shall be immediately removed by the permittee at the direction of the City; if such items are not timely removed as directed, then the City may remove and dispose of such items at no expense or liability to the City.

Section 4. A new subsection (4) to Section 5-2035(b) of the City Code of Ordinances shall be added to read as follows:

“(4) The provisions of this section shall not be applicable to the construction and/or *installation* of wood frame structures, such as a *Streeter* or *Parklet*, as contemplated and defined in Section 12-1041, as amended, within the public street right of way for temporary use and that are approved by the *City* and not inconsistent with the N.C. Building Code.”

Section 5. The codifier of the City Code is directed to italicize any amended text within this ordinance that is a defined term within Part 14, Chapter 1 of the City Code.

Section 6. If this ordinance or application thereof to any *person* or circumstance is held invalid, such invalidity shall not affect other provision or applications of the ordinance which can be

given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 7. The provisions of this ordinance shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued prior to the effective date of this ordinance.

Section 8. This ordinance shall be enforced as provided in the City of Raleigh City Code of Ordinances and in any manner allowed by law.

Section 9. This ordinance shall become effective April 1, 2022.

ADOPTED: March 15, 2022

EFFECTIVE: April 1, 2022

DISTRIBUTION: City Manager – Adams-David, Hayward
City Attorney – Tatum, Poole, Tanoury, Hargrove-Bailey
City Clerk – Smith, Taylor
Special Events – Schoenfeld
Transportation – Moore, Kallam
Transcription Services – Taylor

This ordinance was prepared by the Raleigh City Attorney's Office.