

APPLICATION TO OPERATE A SIDEWALK CAFÉ IN THE CENTRAL BUSINESS OR PEDESTRIAN BUSINESS ZONING DISTRICT

Return this application and a receipt from the City Revenue Office showing payment of a thirty-five dollar (\$35.00) processing fee to the Development Office, City Hall, Suite 158, 101 N. Main Street, Winston-Salem, NC 27101. (336-727-8040)

Restaurant Name and Address: _____
Restaurant Owner (s): _____ Restaurant Operator (s): _____
Name: _____ Name: _____
Address: _____ Address: _____
Telephone: _____ Telephone: _____

(If the restaurant is operated by a person, firm or corporation who is not the owner, this application must be filled out jointly.)

Types of Food and Beverage To Be Served: _____

Hours of Operation: Restaurant: _____ Sidewalk Café: _____

Please attach the following support documents.

Site Plan - Show the section of the sidewalk to be used for the sidewalk café and section to be kept clear for pedestrian use. Provide proposed placement of tables, chairs, barricades and other furnishings within the sidewalk or pedestrian way.

Certificate of Insurance - Comprehensive general liability insurance with the City of Winston-Salem named as an additional insured. Required coverage limits are described in Sec. 74-292 (e) of the City Code.

Licenses and Permits - Copies of those licenses and permits issued by the State of North Carolina, County of Forsyth and City of Winston-Salem necessary for the operation of the restaurant business.

Insurance Agreement – Complete and sign (including corporate secretary attestation). See Attachment.

Violations - 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.

Indemnity - I have read the Winston-Salem City Code of Ordinances Sec. 74-291 and 74-292 and understand that if I am granted a permit, I must abide by the provisions of said ordinance and agree to indemnify and hold harmless the City, its officers, agents and employees against any loss or expense for damages arising out of or in consequence of the granting of this permit.

Application Submitted by: _____
Restaurant Owner Restaurant Operator

Date: _____

For Staff Use Only

Received in Development Office by: _____
Name/Date

Reviewed by:

Street Division: _____ Approved _____ Denied _____
Inspections Divisions: _____ Approved _____ Denied _____
Risk Management: _____ Approved _____ Denied _____

This Application for a Sidewalk Café is: _____ Approved _____ Denied

Deputy City Manager: _____ Date: _____

pc: _____ (Ward Council Member)

Attachment

THIS INSURANCE AGREEMENT (hereinafter, this "Agreement"), entered into this ____ day of _____, 20__, by and between the **CITY OF WINSTON-SALEM**, a North Carolina municipal corporation (hereinafter, the "City") and _____, (hereinafter "Restaurant").

IN CONSIDERATION of receiving a permit to operate a sidewalk cafe at _____, Winston-Salem, NC, the Restaurant hereby agrees as follows:

In General. The term of this Agreement shall coincide with the Restaurant's Permit to provide a sidewalk café pursuant to §§ 74-291 and 292 of the City's Code of Ordinances.

Release. The Restaurant hereby releases and forever discharges the City, its agents and employees from any and all claims and demands for personal injury and property damage, including attorney's fees, arising out of the performance of these services.

Indemnity. The Restaurant shall indemnify, defend and hold harmless the City, its agents and employees from and against any and all claims and demands of any kind or nature, directly or indirectly caused by, arising out of, or related to the intentional or negligent acts or omissions of the Restaurant or its agents, employees or sub-contractors in the performance of these services.

Insurance. During the performance of the services described herein, the Restaurant shall maintain the following insurance policies and comply with the following requirements:

(1) Commercial General and Liquor Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, personal injury liability protection including coverage relating to serving alcoholic beverages, social host liability, employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and with property damage limits of not less than \$1,000,000 for each occurrence.

(2) The Restaurant will provide an original, signed Certificate of Insurance, evidencing such insurance and such endorsements as prescribed herein, and shall have it filed with the Risk Manager, City of Winston-Salem before the sidewalk café opens for business. The Restaurant shall furnish the City of Winston-Salem thirty days written notice of any changes or cancellation of the policy. The City of Winston-Salem shall be named as an additional insured in the General and Liquor Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage is primary to any other coverage the City of Winston-Salem may possess. Should the Restaurant fail to provide acceptable evidence of current insurance within seven days of written notice at any time during the Permit Term, the City of Winston-Salem shall have the absolute right to terminate this Contract and Permit without any further obligation to the Contractor.

IN WITNESS WHEREOF, the parties have caused this to be executed by their duly authorized representatives on the day and the year first above written.

ATTEST:

CITY OF WINSTON-SALEM:

(SEAL)

Renée P. Henderson, City Secretary

ATTEST:

RESTAURANT

(SEAL)

_____, Secretary

_____ (Seal)

_____, _____

Winston-Salem Codes

ARTICLE X. SIDEWALK CAFES

Sec. 74-291. Definitions.

The following definitions shall apply within this article:

Pedestrian way means an improved walk or passageway, not adjacent to any city street, intended for use by pedestrians.

Restaurant means an establishment engaged in the business of regularly selling food, customarily, but not exclusively, to be eaten on the premises, including businesses that are commonly referred to 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 section where food is sold. This definition does not include food vendors covered under Article IX of this Code.

Restaurant operator means a person, firm, or corporation who owns or operates a restaurant and any associated sidewalk cafe.

Sidewalk means that portion of a public street between the curb line, or the lateral lines of a roadway if there is no curb, and the adjacent property line or street right-of-way line that is intended for the use of pedestrians.

Sidewalk cafe means that portion of the dining operation of a restaurant that extends into the sidewalk or pedestrian way pursuant to a permit authorized by this article.

(Ord. No. 4301, § 1, 10-26-98; Ord. No. 4490, § 10, 3-22-04)

Sec. 74-292. Permit; application.

- (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 development office which shall contain 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.
 - (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 development office to determine compliance with this article.
 - (10) A permit application fee of \$35.00 to recover the cost of processing and investigating the application and issuing the permit.

(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 10:00 p.m., Sunday through Thursday, and 6:00 a.m. to 11:00 p.m. on North Carolina state holidays, 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 development office.
- (6) In the event that any local, state or federal law or regulation requires the area designed for the sidewalk café 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 planted on the barricades. Amplified or live music emanating from the restaurant operation or the sidewalk café shall not be able to be heard further than 50 feet from the barricades.
- (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) **Indemnity; insurance.** In consideration for the granting of the permit, the restaurant operator agrees to indemnify and hold harmless the city, its officers, agents, and employees against loss or expense including attorney's fees, by reason of the liability imposed by law upon the city, for damage because of bodily injury, including death, at any time resulting therefrom, sustained by any person or persons, or on account of damage to property arising out of or in consequence of the granting of a permit pursuant to this article. The restaurant shall agree to such indemnity on the application for the permit.

The restaurant operator shall secure and maintain comprehensive general liability insurance protection including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection covering the indemnification of the city by the restaurant operator. This insurance shall provide bodily injury limits of not less than \$1,000,000.00 for each occurrence and not less than \$1,000,000.00 in the aggregate, and with property damage limits of not less than \$500,000.00 for each occurrence and not less than \$500,000.00 in the aggregate. All insurance required under this agreement 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 or binders for all of the insurance coverages described herein shall be submitted with the application for the permit. If only binders are submitted with the application, the restaurant operator shall submit to the city's risk administrator, department of risk management, certificates of insurance for all of the insurance coverages described herein within 30 days after a permit is granted and, with respect to certified copies of any amendments, and/or renewals, promptly thereafter.

- (f) **Malt beverages and unfortified wine.** The consumption of malt beverages and unfortified wine 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 right-of-way provided in section 38-6 of the City Code.
- (g) **Issuance of permit; denial.** The development office 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 development office 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.
- (h) **Permit revocation.** The development office 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) Operated the sidewalk cafe in violation of any city, county or state law, ordinance or regulation. Before the revocation of a permit, the development office 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 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.
- (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 January 1 or thereafter and expiring December 31 of each year. 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 this Code.
 - (3) Not be transferable or assignable.

(Ord. No. 4301, § 1, 10-26-98; Ord. No. 4392, § 1, 4-16-01; Ord. No. 4490, § 10, 3-22-04)
Secs. 74-293--74-299. Reserved.



**DEVELOPMENT OFFICE
Permit Payment Form**

Date: _____

Applicant Name: _____

- Exhibition Show Permit (\$50.00) Account Number: 0172-42401
- Foot Peddler Permit (\$25.00) Account Number: 0172-42402
- Pushcart/Mobile Food Unit Permit (\$75.00) Account Number: 0172-42403
- Sidewalk Dining Permit (\$35.00) Account Number: 0172-42404

Business License Yes No N/A (Expiration Date: _____)

NOTE: If vendors will be present at an Exhibit Show permit holder must obtain a blanket Business License to cover all vendors, or each vendor must have his/her own individual Business License. Contact the City's Business License Office at 747-6954 for more information.