

**REGULATIONS AND REQUIREMENTS RELATING TO OUTDOOR DINING
FACILITY LICENSES ISSUED FOR CITY RIGHT OF WAY
IN THE B-1 BUSINESS DISTRICT IN THE CITY OF HARRISONBURG, VA**

The following regulations and requirements shall be applicable to any license issued by the City Council for an outdoor dining facility located in the City right of way in the B-1 business district of the City of Harrisonburg, Virginia:

1. *Purpose.* The outdoor dining regulations and requirements as set forth herein are designed to permit outdoor dining areas accessory and incidental to lawfully existing dining establishments in the B-1 business district as established and regulated by the City of Harrisonburg Zoning Ordinance. Said outdoor dining facilities shall be located on public property immediately adjacent to the lawfully existing dining establishment and in a location where it is determined to be appropriate by these regulations and requirements and all applicable related ordinances to promote and protect the public health, safety and general welfare. These general purposes shall include, among others, the following specific purposes:

A. To insure that adequate space will be provided for pedestrian circulation through areas where outdoor dining facilities are established and to insure adequate access to adjoining properties and businesses.

B. To encourage establishment of outdoor dining facilities as one means of developing a pleasant and distinctive shopping atmosphere.

2. *Definitions.* As used in these regulations and requirements, the following terms shall have the meanings indicated:

OUTDOOR DINING FACILITY – The extension of the services of an existing restaurant preparing and serving foods for consumption within an existing building, to the extent that food is permitted to be served and consumed at the tables placed on the public sidewalk adjacent to and within the confines of the frontage of that portion of the building in which the restaurant is situated. An outdoor dining facility may contain readily removable tables and chairs, but shall be otherwise unenclosed by fixed walls and open to the air except for umbrellas (which shall contain no advertisements or signage) or other nonpermanent covers (which also shall contain no advertisements or signage) provided such covers do not interfere with pedestrian circulation.

3. *License required.* Any person, firm, limited liability company or corporation may operate an outdoor dining facility within the B-1 business district of the City of Harrisonburg, VA on a public sidewalk or pedestrian right of way adjacent to an existing restaurant operated by such person, firm, limited liability company or corporation upon obtaining a revocable license from the City Council. Such license shall be revocable at the pleasure of the City Council for any reason and nothing contained in said license or in these regulations or requirements shall be construed to relieve such

person, firm, limited liability company or corporation from liability for negligence on their part. The license issued by City Council is issued pursuant to Section 15.2-2009 of the Code of Virginia, 1950, as amended. The license as issued cannot be transferred, assigned or assumed by any other person, firm, limited liability company or corporation.

4. *Application procedures; requirements and fee.* Each applicant for a license shall submit a written application on the form provided by the City's Department of Community Development, together with a nonrefundable fee of one hundred dollars (\$100.00), to the City Treasurer. No applications will be accepted without the fee, along with the insurance certificate and drawings as required below. The application shall state the name and address of the applicant, the property owner if other than the applicant, the person preparing the development plat and the written authorization of the owner of the property to submit the application if the applicant is not the owner.

The following information shall be shown on all development plans submitted with the application: (i) The applicant's entire property and the adjacent sidewalk or pedestrian right of way to be used; (ii) The design, number and location of all temporary structures proposed, including tables, chairs, planters and other equipment as well as lighting, electrical outlet and heating element locations, if any; (iii) Capacity of existing restaurant and proposed outdoor dining facility; (iv) Proposal for providing adequate unobstructed pedestrian circulation (which at a minimum shall be five (5) feet in width as measured from the curb or the outside property line of the existing pedestrian right of way); (v) All plans shall be drawn to scale to include all dimensions of the proposed outdoor dining area; and (vi) Name, title and seal, if applicable, of the person who prepared the development plan.

Prior to the issuance of a license by the City Council, the development plans and application shall be reviewed by the City's Department of Community Development, Public Works, Fire Department and Police Department, which shall approve or recommend modification of the plans within twenty (20) business days of the submission of the application with attached plans. After the expiration of the twenty (20) day period the application for the issuance of a license shall be placed on the agenda of the next regular meeting of the City Council.

The City Council may issue a license for an outdoor dining facility with any terms and conditions that they may deem appropriate and which license when issued shall be at the pleasure of the City Council and may be revoked at any time and for any reason. In addition prior to the issuance of any license for an outdoor dining facility, the applicant shall furnish the following: (i) Sign an agreement to repair any damage caused to the sidewalk, pedestrian right of way or any public utility in the operation of the outdoor dining facility at the expense of the applicant; (ii) Sign an agreement indemnifying and holding the City harmless against loss, including costs and expenses, resulting from injury to person(s) or property as a direct result of the operation of the outdoor dining facility or for injury to person(s) or property occurring on the premises occupied by the outdoor dining facility; and (iii) The applicant shall provide a certificate of insurance as evidence or the required policy to the City and naming the City as an additional insured, in the amount not less than one million dollars (\$1,000,000.00).

An outdoor dining facility authorized and operated pursuant to a license issued by the City Council shall comply with all of the following rules, regulations and

specifications and any additional conditions as set forth in the license as issued by the City Council:

1. The applicant and/or operator shall fully comply with all plans submitted and approved by the City Council in issuing the license.

2. The outdoor dining facility shall not be open any later than the regular operating hours of the existing dining establishment.

3. The area of the operation shall be kept clean and free of litter. Ashtrays shall be provided if the operator and/or applicant permit smoking. Sidewalks shall be kept clean daily and closed trash receptacles, including smoker's outposts, shall be provided as approved by the City Manager or his designee.

4. Music and any other form of entertainment are prohibited, unless approved by City Council.

5. The operator shall maintain an area for pedestrian movement free of any obstruction a distance of five (5) feet or greater from the curb or outside edge of the pedestrian right of way.

6. The operator shall provide that tables, chairs and other materials do not interfere with these required open areas and pedestrian traffic. Chairs next to the pedestrian walkway shall be placed at a ninety-degree angle so as not to obstruct the pedestrian walkway.

7. The operator shall comply with all the requirements, ordinances and state statutes as they relate to the Health Department and any other applicable ordinances, regulations or statutes.

8. The operator shall comply with all of the requirements, regulations and statutes as they relate to any ABC license the operator may possess.

9. The operator shall also comply with any other applicable ordinance of the City of Harrisonburg, VA.

5. Notice of violation; failure to comply. Upon the finding of the City Manager, or his designee, that an applicant has violated any provision or condition of its license, these regulations and requirements or any other applicable City ordinance or state statute, the City Manager or his designee shall give notice, in writing, to the applicant to correct said violation. Upon failure to immediately correct said violation, the City Manager shall bring the matter to the attention of the City Council at its next regular meeting to request the revocation of the applicant's license. The applicant shall be notified of said request and shall be entitled to a hearing before the City Council prior to any revocation of the license.

OUTDOOR DINING FACILITY LICENSE

WHEREAS, _____ has applied for an outdoor dining facility license to use the city sidewalk for outdoor dining at _____, in the B-1 business district; and

WHEREAS, said application is complete, the fee has been paid and the application has been reviewed by all necessary city departments;

NOW, THEREFORE, the City Council issues this revocable outdoor dining facility license to _____ for the use of the city sidewalk for outdoor dining at _____.

This license is conditioned on the licensee complying with all of the terms and conditions of its license application, the regulations and requirements relating to outdoor dining facility licenses that were adopted by the City Council on _____, 2008 and any other special conditions required by the City Council which are set forth in this license. The license application (along with all of the supporting documents submitted by the applicant) and the regulations and requirements relating to outdoor dining facility licenses and made a part of this license and incorporated herein by reference.

SPECIAL CONDITIONS AND REGULATIONS ASSOCIATED WITH THIS LICENSE: _____

_____.

THIS LICENSE CANNOT BE TRANSFERRED, ASSIGNED OR ASSUMED BY ANY OTHER PERSON, FIRM, LIMITED LIABILITY COMPANY OR CORPORATION.

Approved by City Council and issued this _____ day of _____, 20____.

MAYOR

Atteste:

CLERK OF CITY COUNCIL