

State of South Carolina}
County of Pickens}
City of Liberty}

Ordinance 2021-07

AN ORDINANCE

To adopt: Projections and Obstructions in Streets and Sidewalks to establish an “Outdoor Café Ordinance and Permit” of the Official Code of the City of Liberty

WHEREAS, the City of Liberty desires to further the economic development of the City; and

WHEREAS, the Liberty City Council believes allowing dining and displays on City owned sidewalks and plazas enhances the economic development of the City; and

WHEREAS, the Liberty City Council further believes it is in the best interest of the City, business owners, and patrons of the City to have adopted policies on how to handle requests for using public property for private businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LIBERTY, SOUTH CAROLINA, to adopt and incorporate the attached rules, regulations, and permit guidelines governing the applicability of outdoor cafés.

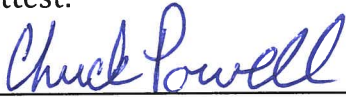
First Reading: August 10, 2021

Second Reading: September 13, 2021



Brian Petersen, Mayor

Attest:



Chuck Powell, Mayor Pro Tem

OUTDOOR CAFÉS

Sections

- 1 - Purpose and applicability
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SECTION 1 -PURPOSE AND APPLICABILITY.

The provisions of this chapter shall apply to conforming businesses within a non-residential district for the establishment, operation and maintenance of outdoor dining areas and cafés located on sidewalks and public plazas. The purpose of this chapter is to promote the general economic development and atmosphere of the City of Liberty’s Central Business District and other areas of the city for the benefit of all businesses and citizens located there, and no rights of individuals or individual businesses are created in this chapter. The city shall have broad discretion to grant, modify, or revoke permits issued pursuant to this chapter in the interests of improving public health, safety, and welfare.

SECTION 2 - DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATOR. The person authorized by the city to enforce this chapter.

DESIGN REQUIREMENTS. The standards adopted with this chapter that guide design and materials in encroachment areas.

ENCROACHMENT. Stands, tables, umbrellas, chairs, displays, signs, banners, awnings, flags, objects related to the business or other items for sale on the public right-of-way, sidewalk, or common area on public property.

OUTDOOR CAFÉ. The business of providing food and beverage service with chairs and tables on sidewalks and plazas, adjacent to a business licensed to operate as an eating establishment where food and/or other refreshments are served.

PERMITTEE. The recipient of an encroachment permit under the terms and provisions of this chapter.

PLAZA. Any outdoor area which is owned or controlled by the city, which is open to the general public, but which is not a sidewalk or street.

SIDEWALK. An area of the public right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property lines and which is reserved for pedestrian traffic, but not including street crossings.

SECTION 3 - PERMIT REQUIRED.

(A) It shall be unlawful for any person to create, establish, operate maintain or otherwise be engaged in the business of running an outdoor café, including, but not limited to placing any items upon the sidewalks or public property, in the city unless he or she shall hold a currently valid permit issued under the terms of this chapter.

(B) Permits shall be issued only to validly licensed businesses that wish to set up signs, tables, and chairs or other objects related to their business on the public sidewalk or plaza.

SECTION 4 - APPLICATION FOR PERMIT.

(A) Application for the permit required by this chapter shall be made with the city's Building Official's office in a form deemed appropriate by the city. Such application shall include but not be limited to the following information:

(1) Name, home and business address and telephone number of the applicant, and the name and address of the owner of the business if other than the applicant;

(2) Name, home address, and telephone number of a responsible person whom the city may notify or contact at any time concerning the applicant's encroachment;

(3) A copy of a valid business license to operate a business establishment adjacent to the public property which is subject to the application;

(4) (a) Each permittee of an outdoor café permit shall furnish a certificate of insurance evidencing commercial general liability insurance with limits of not less than \$600,000 per occurrence, \$1,000,000 in the aggregate combined single limit, for bodily injury, personal injury and property damage liability. The insurance shall provide for 30 days prior written notice to be given to the city if coverage is substantially changed, canceled or non-renewed;

(b) The City of Liberty shall be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the operation of an outdoor café.

(5) The permittee shall indemnify, defend and hold the city harmless from any loss that results directly or indirectly from the permit issuance or the operation of the outdoor café;

(6) (a) If alcoholic beverages will be served at the outdoor café, the permittee shall provide proof of liquor liability insurance for the outdoor café, with limits of not less than \$1,000,000 in such type as shall be acceptable to the city;

(b) The policy(ies) may require additional amounts if deemed necessary by the city's insurance carrier;

(7) A sketch, to scale of the proposed location, showing the layout and dimensions of the existing public area and adjacent private property; and

(8) Photographs, drawings, or manufacturers' brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects related to business.

(B) No later than 15 days after the filing of a completed application, the applicant shall be notified by the administrator of the decision on the issuance or denial of the permit.

(C) Application for a permit shall be made at the Building Official's Office within 48 hours of written notice for failure to obtain a permit, or as soon thereafter as city offices are open. Where the same owner, occupant or person responsible has been given notice for the same

violation at the same location within the previous 180 days, such requirement of written notice may be waived and legal proceedings commenced immediately.

(D) The city's Building Inspector, Zoning Administrator, Fire Marshal, or other such designee's as named by the city will inspect all outdoor cafés after permits have been issued and the café is in operation. Any violations of the provisions of these rules and regulations, or any deviation from approved plans or willful omissions of the application will result in citations being issued to the operator and/or revocation of permittee's outdoor café permit.

SECTION 5 - PROHIBITED ACTS.

(A) No merchant, vendor, business, or property owner shall:

(1) Place any items for sale or other equipment, tables or chairs on any portion of the public property other than directly in front of his or her existing place of business without written consent of adjacent landowners or businesses. In no event shall such items be placed in the landscaped areas or extend beyond the authorized 25 feet from each side of the applicant's business;

(2) Block or restrict the pedestrian passageway to less than four and one-half feet in width, or block ingress or egress to or from any building. In areas of congested pedestrian activity, the city is authorized to require a wider pedestrian path as circumstances dictate. Also, no items shall be placed so as to block any driveway, crosswalk, bus stop, counter service window, or block visibility within an intersection. The plaza encroachment is limited to the first 25 feet from the building into the common area of the plaza. Where the city has installed a permanent structure such as a planter, light pole or other device, the permittee shall make accommodation for the required clearance for pedestrian passage;

(3) Sublicense the encroachment area;

(4) Place objects around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier;

(5) Use tables, chairs, umbrellas and any other objects of such quality, design, materials, and workmanship which are not authorized by the city;

(6) Use umbrellas or decorative material which is not fire-retardant, pressure-treated or manufactured of fire resistive material;

(7) Fail to secure permission of the landlord where a building has multiple occupants;

(8) Permit patrons not wearing shirts and shoes at all times;

(9) Vend or display without the insurance coverage specified;

(10) Permit vending machines, carts, or objects for the sale of goods in an outdoor café;

(11) Sound or permit the sounding of any device on the public property which produces a loud noise or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device in violation of the noise regulations of the City of Liberty Code of Ordinances.

(12) Store, park or leave any stand or items of merchandise overnight on any street, sidewalk, except tables and chairs, which may be kept in the permitted area at the permittee's risk;

(13) Store, park or leave any vehicle, er truck or trailer within the encroachment area;
or

(14) Permit smoking within outdoor cafés.

(B) The encroachment permit is a temporary license, which may be denied, suspended or revoked for any conduct which is contrary to the provisions of this chapter or for conduct of the business in any manner as to create a public nuisance or constitute a danger to the operator's or the public's health, safety or welfare. No property right is created by this chapter, and the decision of the city shall be final.

SECTION 6 - LIGHTING.

Lighting for outdoor cafés may be utilized if approved by the administrator.

(A) Any such lighting shall complement the existing building and outdoor café design.

(B) Lighting shall not cause a glare to passing pedestrians or vehicles.

(C) Electrical wires shall not be permitted to access the outdoor café area.

(D) Possible lighting sources include tabletop candles or low wattage battery operated fixtures.

(E) Additional lighting may be attached to the permittee's adjacent establishment provided permittees obtains all necessary approvals for such lighting from the city and the Architectural Review Board, if applicable.

SECTION 7 - OUTDOOR HEATERS.

Outdoor heaters may be utilized upon the approval of the Building Official and Fire Marshal.

SECTION 8 - FORM AND CONDITIONS OF PERMIT.

The permit required by this chapter shall be issued on a form deemed suitable by the city. In addition to naming the permittee and any other information deemed appropriate by the city, the permit shall contain the following conditions:

(A) Each permit shall be effective for one year, from March 1 to February 28, subject to annual renewal, unless revoked or suspended prior to expiration;

(B) The permit issued shall be personal to the permittee only and shall not be transferable in any manner;

(C) The permit may be suspended by the city when necessary to clear the public property for public safety for a community or special event authorized by a permit issued by the city;

(D) The city may require the temporary removal of items within the encroachment area when street, sidewalk, common area or utility repairs necessitate such action;

(E) The permit shall be specifically limited to the area shown on the plat diagram attached to the permit application. As a condition of approval, the city may reduce and otherwise reconfigure the proposed area and the number of requested chairs, tables, and items within the encroachment;

(F) The encroachment area within and surrounding the outdoor café must be maintained in a clean, neat and sanitary condition at all times and shall be policed routinely by the

permittee to ensure removal of all wrappings, litter, debris and food therefrom. Daily sanitary cleaning of the outdoor café is required. Sidewalks within and adjacent to the outdoor café must be washed down and cleaned on a daily basis. The permittee shall not wash garbage cans or any other container, or other personal property of any nature on the sidewalks. All cleaning must be performed in accordance with applicable federal and state regulations;

(G) No advertising is permitted (except for the posting of prices) on any stand or item, except to identify the name of the product;

(H) Permanent structures on the sidewalk or plaza are not permitted;

(I) No tables or chairs or any parts of the business shall be attached, chained or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area in a manner which causes or threatens to cause injury to any person or damage to public or private properties. No additional outdoor seating authorized under article shall be used for calculating seating requirements pertaining to location of, application for or issuance of an ABC license for any establishment, or be used as the basis for computing required seating for restaurants and dining rooms, or is grounds for claiming exemption from such requirements under the provisions of any city ordinance or state law;

(J) The issuance of a permit does not grant, infer, or imply vested rights to use the area by the permittee. The city retains the right to deny the issuance of a permit or the renewal permit for any reason;

(K) Table, chairs, umbrellas and any other objects provided shall be maintained with a clean and attractive appearance and shall be kept safe and in good repair at all times;

(L) The city retains the right to suspend the privilege of using glass containers within the encroachment area during major festivals and events and when streets are closed. The use of glass containers will be revoked if an incident jeopardizes the health, safety and welfare of customers or the general public. Any violation of state or local laws will also result in a revocation of this privilege. Repeated offenses may result in revocation or denial of the encroachment permit;

(M) The serving and consumption of alcoholic beverages on city sidewalks and public property is limited to beer and wine. The serving and consumption of alcoholic beverages in sidewalk encroachments pursuant to this chapter is limited to patrons seated at tables;

(N) It is unlawful to consume alcoholic beverages within the encroachment area not purchased at permittee's establishment; and

(O) The city may require the posting or placement of the permit and relevant notices to facilitate the administration and enforcement of this chapter.

SECTION 9 - DENIAL, SUSPENSION, RETRACTION OR REVOCATION OF PERMIT; REMOVAL OF PROPERTY BY CITY.

(A) The city may deny, retract, revoke, or suspend a permit issued under this article at any time for any business authorized in the city if it is found that:

(1) Any necessary business or health permit has been suspended, revoked or cancelled;

(2) The permittee does not have insurance in force which is correct and effective in the minimum amount described in this chapter;

(3) Changing conditions of pedestrian or vehicular traffic causing congestion or changes of property conditions necessitating removal of an encroachment exist;

(4) The permittee has failed to correct violations of this chapter or the permit upon receipt of the city's notice of the violation delivered in writing to the permittee;

(5) The permittee has failed to take positive actions to prohibit violations from reoccurring;

(6) The permittee has failed to make sufficient modifications upon receipt of the city's notice to make such modifications delivered in writing to the permittee.

(B) Tables, chairs and other vestiges of the business may be removed by the city's Public Works Department and a reasonable fee charged for labor, transportation and storage, should the permittee fail to remove the items within 36 hours of receipt of the city's final notice to do so for any reason provided under this chapter. If the action is taken based on division (A) or (B) of this section, the action shall become effective upon receipt of such notice and the permittee shall have four hours to remove the items.

(C) Notice of denial or revocation. Upon denial or revocation, the city shall give notice of such action to the applicant or the permittee, in writing, stating the action which has been taken and the reason therefore. The action shall be effective upon giving such notice to the permittee.

(D) Appeals. The permittee shall have the right to appeal the decision of the city to the City Council within five working days from the receipt of notice. An appeal does not stay the denial, suspension, or revocation of the permit. The hearing shall be held as soon as possible, but may not be longer than 30 working days from the date of notice of the request. The permittee or applicant may be represented by an attorney and may present witnesses, affidavits and any relevant documentary evidence. Formal rules of evidence shall not apply. The City Council shall notify the permittee or applicant of the determination in writing. The City Council shall have the discretion to designate the duties of this section to an experienced hearing officer.

SECTION 10 - PENALTY.

Any person violating any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with City of Liberty Code of Ordinances, Each day any violation of this chapter shall continue shall constitute a separate offense.