



# City of Charleston

## Outdoor Dining Rules and Regulations

### **Guidelines for Outdoor Dining**

The City of Charleston is pleased to offer restaurants in the Central Business District the option of utilizing the public sidewalks as outdoor dining areas. Outdoor dining gives restaurant patrons an amenity that has become increasingly popular in other cities.

These guidelines provide standards for the use of outdoor dining areas in the Central Business District in order to facilitate an enjoyable outdoor dining experience in the district, to maintain a quality appearance in the keeping with the historic character of the district, to prevent disruption during outdoor dining activities in the district, to protect neighboring commercial and residential uses from any adverse impacts from such outdoor dining, to create consistencies among operators with respect to regulation and operation of outdoor dining areas, and to promote the general health, safety and welfare of the public as a whole. While the City encourages the use of outdoor dining areas when permitted, restaurant operators must be mindful of these important considerations.

The City of Charleston permits outdoor dining through an administrative permitting process authorized by Chapter 102 Article 7 of the City Code, which is attached hereto.

For forms, contact the **Planning Department at 304-348-8105**, download from the City's web page at <http://www.cityofcharleston.org/government/city-departments/planning>, or visit in person at the City Service Center at 915 Quarrier Street, Suite 1. Please contact the planning Department for questions or requests for additional information.

These rules and regulations are subject to change by the Planning Department, and some changes may apply retroactively. Any updates will be available at the Planning Department, the City Clerk's Office and the City's web page.

### **Rules**

An outdoor dining area may include the use of the sidewalk in front of the adjacent property only when permission is given from the adjacent property owner in writing and is submitted as part of the application for an outdoor dining area permit. If beverages regulated by the WVABCA are to be served, a copy of the WVABCA license must be submitted that shows approval for outdoor consumption and inclusion of the adjacent outdoor dining area into the floor plan of the licensed premises.

The City requires at least 42 inches of unobstructed corridor space between the outer dimension of the Outside Dining Area and the curb or nearest obstruction, to ensure a clear pedestrian passageway along the sidewalk. In order to achieve a continuous pedestrian walk way, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Outdoor Dining Area.

An unobstructed clearance of 42 inches must be maintained between a fire hydrant and any furniture or enclosures of an Outdoor Dining Area.

The Outdoor Dining Area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food and litter.

Noise emanating from the outdoor dining area must violate of the City's noise ordinance at any time. An Operator shall prevent unreasonable levels of noise to emanate from the Outdoor Dining area where such noise is of such intensity or duration that it disturbs the quiet, peace or repose of neighboring commercial or residential occupants.

### **Design Guidelines**

All furniture and fixtures shall be commercial grade, high quality, durable, attractive and must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

All furniture and fixtures within an outdoor dining area shall be consistent in color, style and type and must be complimentary in both appearance and quality to the historic district.

All furniture or other items, other than tables, chairs, umbrellas, serving stations, commercial patio heaters, or similar furniture necessary and appropriate for outdoor dining and pre-approved by the Planning Department, is prohibited.

### **Enclosures –Service of Beverages Regulated by the WVABCA**

Enclosures are optional and are only required when serving beverages regulated by the WVABCA. Operators desiring to serve beverages regulated by the WVABCA in an enclosed Outdoor Dining Area are required to obtain approval from the WVABCA prior to the issuance of an Outdoor Dining Area Permit by the City. Enclosures must be 32 inches high and cannot be easily climbed over or under. Enclosures must also be sufficiently transparent and may not exceed 42 inches in height in order to maintain visible street level activity.

Partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on City right-of-way shall be provided, installed, maintained and removed by and at the discretion of the City, shall remain property of the City, and no other partitions or fencing shall be permitted absent a finding by the Planning Department that the City is unable to provide said partitions or fencing, and that the proposed partitions or fencing are consistent with applicable standards for uniform aesthetics, design, installation, maintenance and removal.

### **Umbrellas**

Umbrellas must be fully contained within the outdoor dining area and may not encroach upon pedestrian passageways outside of the dining area.

Fabric or canvas is a suitable material as opposed to plastic or vinyl. Additionally, umbrellas may not contain signage, wording, logos, drawings, pictorial or photographic representations.

## **ARTICLE VII– Outdoor Dining**

### **Sec. 102-271- Planning Department rules and regulations under article**

The City of Charleston Planning Department is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all Outdoor Dining Area permit applications and to either grant or deny such permits under this article. Copies of such regulations, as amended from time to time, shall be maintained by the Planning Department, posted on the City's website and filed in the City Clerk's office, and shall be available to interested parties at all reasonable times.

### **Sec. 102-272 - Compliance with federal, state and local laws and regulations**

(a) The operation of an Outdoor Dining Area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act, all provisions of state and local building and fire codes, as well as all state and local health laws and regulations regarding the service and preparation of food. The operations of an Outdoor Dining Area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration (WVABCA). Nothing in this article shall be intended to alter or abridge any applicable federal, state and local laws or the Operator's responsibility to comply with all code provisions and regulations of the WVABCA.

(b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the City, as set forth in Section 78-211(b) of the Municipal Code of the City of Charleston, except that any permitted Outdoor Dining Area Operator and patrons of permitted Operator's Outdoor Dining Area shall be deemed to be exempt from said prohibition during the hours of operation of the Outdoor Dining Area and only within the confines of said area.

### **Sec. 102-273- Nondiscrimination/Right to limit or deny admission or service**

No person shall be denied access or service to an Outdoor Dining Area on the basis of race, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the Operator to limit access and admission to an Outdoor Dining Area to only bona fide paying customers of that Operator's establishment who are behaving in a lawful manner.

### **Sec. 102-274 - Definitions**

(a) *Operator* shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the Central Business District (CBD), as shown on the City of Charleston's Official Zoning Map, that possesses a valid State of West Virginia food vendor's permit and serves at a minimum both lunch and dinner, and has been issued an Outdoor Dining Area permit by the City's Planning Department.

(b) *Outdoor Dining Area* shall mean a confined area of the public sidewalk designated by a site plan approved by the City through its Planning Department and located in the Central Business District (CBD), as shown on the City of Charleston's Official Zoning Map, where, if abutting a street, the street abutting the sidewalk is posted at a speed limit of 25 mph or less, and which area is adjacent to Operator's

building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include any beverage regulated by the WVABCA contingent on proper licensure by the WVABCA.

**Sec. 102-275 - Permit Process**

(a) An applicant for an Outdoor Dining Area permit shall file an application with the City of Charleston Planning Department on such forms and subject to such procedures as the Planning Department may establish. An application for an Outdoor Dining Area permit shall be accompanied by a \$50 administrative fee for a non-partitioned outdoor dining area, and a \$500 administrative fee for a partitioned outdoor dining area and shall include: a site plan, drawn to scale showing the layout for the Outdoor Dining Area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, aisles between tables; and if applicable, enclosures; routes of ingress and egress; clearances between the seating area and the curb; and any such additional requirements of the Planning Department with respect to type, style, or specifications of the Outdoor Dining Area, including those requirements subject to the approval of the WVABCA.

(b) After reviewing the application and site plan, the Planning Department shall determine if the proposed Outdoor Dining Area, consistent with the requirements of this article, is reasonable, promotes safe pedestrian and retail friendly vitality, and that there is adequate space remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic, while promoting the overall public health, safety and welfare. Thereafter, the Planning Department may approve, approve with conditions, or deny an application. The approved plan and permit shall be posted at the Operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the Planning Department.

(c) The Outdoor Dining Area permit term shall be for one calendar year, unless revoked prior to expiration, and may be renewed on an annual basis. An annual administrative fee of \$25 for a non-partitioned outdoor dining area, and \$500 for a partitioned outdoor dining area, shall be assessed for renewal of an existing Outdoor Dining Area permit; provided said administrative fee shall be waived in 2013 for any operator who was permitted in 2012.

(d) Any Operator holding an valid existing permit for a particular Outdoor Dining Area that continues to utilize that Outdoor Dining Area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such Operator shall pay the applicable annual renewal administrative fee, complete all renewal paperwork and comply with any other renewal requirements of the Planning Department, within thirty (30) days of the commencement of the succeeding permit term. If the Operator fails to meet all renewal requirements within the thirty (30) days, then the Operator's permit shall be deemed to have expired.

(e) The issuance of an Outdoor Dining Area permit does not grant or imply vested rights to use of the area by the Operator, but instead is a privilege granted to the Operator. The City retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The City shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improving the overall public health, safety and welfare.

**Sec. 102-276 - Standards for outdoor dining areas**

(a) The Outdoor Dining Area shall be located adjacent to the property of an existing and lawful establishment of a permitted Operator and shall be under the responsible direction and control of that Operator.

(b) The Outdoor Dining Area may be open to patrons between the hours of 7:00 a.m. and 11:00 p.m. daily, but said Outdoor Dining Area may only be open while the kitchen associated with such establishment is open and operating such that it is capable of serving food to patrons. In the event a permitted Operator intends to serve any beverage regulated by the WVABCA in an Outdoor Dining Area, all code provisions and regulations of the WVABCA regarding permitted days and hours of service shall be followed.

(c) All furniture or other personal property located on the public sidewalk/right-of-way by Operator must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way by Operator are strictly prohibited.

(d) As authorized by state law, including, but not limited to, W. Va. Code §§ 8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on City right-of-way shall be provided, installed, maintained and removed by and at the discretion of the City, shall remain property of the City, and no other partitions or fencing shall be permitted absent a finding by the Planning Department that the City is unable to provide said partitions or fencing, and that the proposed partitions or fencing are consistent with applicable standards for uniform aesthetics, design, installation, maintenance and removal.

(e) The Planning Department shall have the authority to determine when furniture, personal property and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) At least 42 inches, of unobstructed corridor space must be maintained between the outer dimension of the Outside Dining Area and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. In order to achieve a continuous pedestrian walk way, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Outdoor Dining Area.

(g) An unobstructed clearance of 42 inches, must be maintained between a fire hydrant and any furniture or enclosures of an Outdoor Dining Area.

(h) The Outdoor Dining Area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food and litter.

(i) In order to control litter, the use of disposable plates and utensils is prohibited.

(j) In accordance with Sec. 78-212 of the Municipal Code of the City of Charleston, noise from an Outdoor Dining Area which unreasonably disturbs neighboring commercial or residential occupants is prohibited.

(k) In order to serve any beverage regulated by the WVABCA in an Outdoor Dining Area, the designated area must be included in the floor plan for the licensed premises as approved by the WVABCA. Any beverage regulated by the WVABCA shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the City as an Outdoor Dining Area. Patrons are not permitted to carry any beverage regulated by the WVABCA out of the Outdoor Dining Area.

(l) Smoking is prohibited within any outdoor dining area.

**Sec. 102-277 - Additional Requirements**

(a) Prior to the issuance of a permit, the applicant must agree, in writing, that it shall indemnify, defend, and save harmless the City, its officers, agents, and employees, from and against all liability, claims, suits, damages, losses, costs, attorneys' fees and expenses of any or all types arising out of, or related in any way to, the permitted Outdoor Dining Area.

(b) The applicant shall maintain such general liability insurance with at least \$1,000,000 coverage per each occurrence and shall ~~the~~ name as additional insured the City of Charleston, its agents, officers, directors and employees. A copy of said insurance policy shall be furnished to the City of Charleston.

(c) The authorization and privilege granted by a permit approved under this section shall be terminated due to the Operator's failure to comply with any federal, state or local laws, any unabated nuisances or whenever the City desires to use the affected public right-of-way for any public purpose. In the event the City shall have a public need for use of the right-of-way or the property affected by the right-of-way, the City may terminate the use of such right-of-way by written notification to the applicant for the removal of any encroachments, and the Operator shall cease use of the right-of-way unless and until such time the City has no public need for use of the right-of-way. Said removal shall be completed by the date specified in the notice and shall be accomplished by the applicant without cost to the City. If the applicant fails or neglects to remove the encroachment within the time specified, the City shall have the right to remove the encroachment, at the expense of the Operator, and shall not be liable to the Operator for any loss, financial or otherwise, or damage to the encroachment or personal property within the encroachment area.

**Sec. 102-278 – Denial or Revocation of Permit**

(a) An Outdoor Dining Area permit is a privilege granted to the Operator that may be revoked by the City upon finding by the Planning Department that the Operator has violated any federal, state or City law applicable to the Outdoor Dining Area or the operation thereof, including but not limited to, compliance with all code provisions and regulations of the WVABCA, that the continued operation of the Outdoor Dining Area poses a threat to the health, safety or welfare of the public, or that the Outdoor Dining Area constitutes a public nuisance.

(b) An applicant who has been denied a permit, or an Operator whose permit has been revoked may appeal the denial or revocation to the City of Charleston Board of Zoning Appeals (BZA). The provisions of Article 31 of the City of Charleston Zoning Ordinance shall apply. Such appeal may be made in writing within thirty (30) days following the decision appealed from, on forms available at the Planning Department, and shall set forth the basis on which the person contests the decision. Within ten (10) days of receipt of the appeal by the BZA, the BZA shall set a date and time for a public hearing. The public hearing shall be held within forty-five (45) days of receipt of the appeal to the BZA. The BZA shall conduct a public hearing on the appeal and may: deny the appeal and uphold the original order, requirement, decision or determination; grant the appeal and overturn the original order, requirement, decision or determination; or, issue an order which denies part of the appeal and grants part of the appeal. The BZA shall make written findings of fact and conclusions of law on which the BZA based its decision. The decision of the BZA may be appealed by either party, within thirty (30) days, to the Kanawha County Circuit Court, as set forth in WV Code §8A-9-1, et seq.

**Sec. 102-279 – Penalty**

Any Operator who violates any provision of this article shall, upon conviction, be fined up to \$500 per day. Each day any violation of this article shall continue shall constitute a separate offense.