

COMMON COUNCIL



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I, Kari J. Van Diest, Deputy Clerk of the Common Council, hereby certify on this 24th day of April, 2013, that the following Ordinance is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 9th day of April 2013.

AN ORDINANCE TO REPEAL CHAPTER 26, ARTICLE III, DIVISION 2 OF THE WINCHESTER CITY CODE PERTAINING TO SIDEWALK CAFES

WHEREAS, sidewalk cafes on the Loudoun Street Mall are regulated in Chapter 26, Article III, Division 2 of the Winchester City Code; and

WHEREAS, such cafes are also regulated in Section 18-7 of the Winchester Zoning Ordinance, along with other uses of sidewalks in both the Primary and Secondary Downtown Assessment Districts; and

WHEREAS, these two separate sets of regulations contain conflicting requirements; and

WHEREAS, there is a separate Ordinance under consideration to amend Section 18-7 of the Winchester Zoning Ordinance to clarify and centralize such regulations within the Zoning Ordinance; and

WHEREAS, the separate Ordinance to clarify and centralize such regulations within the Zoning Ordinance has been recommended for approval by the Old Town Development Board at its January 3, 2013 meeting and the Planning Commission at its February 19, 2013 meeting.

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Winchester, Virginia, that Chapter 26, Article III, Division 2 of the Winchester City Code is hereby repealed.

CHAPTER 26

STREETS AND SIDEWALKS

- Art. I. In General, §§26-1 - 26-27
- Art. II. Street Excavations, §§26-28 - 26-32
- Art. III. Loudoun Street Mall, §§26-33 - 26-37
 - Division 1. Generally, §26-33
 - ~~Division 2. Sidewalk Cafes, §26-34 - 26-37~~

ARTICLE III. LOUDOUN STREET MALL

DIVISION 1. GENERALLY

SECTION 26-33. SPECIAL PROVISIONS RELATING TO LOUDOUN STREET MALL.

- (a) The Loudoun Street Mall shall extend one-way south, between Piccadilly Street and Boscawen Street and Boscawen Street and Cork Street, and it shall be unlawful for any person to operate, drive, ride, push, or park any vehicle thereon. The operation and use of bicycles, skateboards, scooters, and roller skates, to include in-line skates, is prohibited. This subsection shall not apply to:
 - 1. Motor vehicles, other than tractor-trailers, having a gross weight of less than twenty-four thousand (24,000) pounds and using the Mall between the hours of 6:00 A.M. and 11:00 A.M. and 4:00 P.M. and 6:00 P.M. of any day for commercial pickup, commercial delivery, and utility or maintenance services.
 - 2. Passenger vehicles crossing the mall in a westerly direction between the alley on the north side of the Presbyterian Church and Winchester Parking Authority Lot No. 8 for the purpose of discharging and receiving passengers from the Presbyterian Church pre-school.
- (b) The chief of police or his designee may issue a special use permit for vehicles using the Loudoun Street Mall for funerals, Sunday morning church services, weddings, other special events, construction, city maintenance and repair work.
- (c) No vehicles permitted to use the Loudoun Street Mall shall be driven or operated at a speed in excess of ten (10) miles per hour, and all such vehicles shall be driven or operated one-way south, except as provided in (a)(2), above.
- (d) A violation of this section through the use of a motor vehicle shall constitute a Class 4 misdemeanor. A violation of this section through the use of a bicycle, a skateboard, a scooter, or roller skates (to include in-line skates) shall be punishable as a civil penalty in an amount not to exceed \$50.
(Ord. No. 2011-09, 5-10-11)

State Law Reference-- Code of Virginia, §46.2-904

DIVISION 2. SIDEWALK CAFES

SECTION 26-34. — PERMIT REQUIRED.

No person, firm, association, partnership, or corporation shall operate a sidewalk café on Loudoun Street Mall without benefit of a written permit issued by the City, and any such person, firm, association, partnership, or corporation who violates this Section shall be guilty of a violation of Section 15.2-2107 of the Code of Virginia, 1950, as amended, as is in effect on September 14, 1999, and punished as therein provided, said Virginia Code Section being incorporated herein by reference. As used herein, the phrase “sidewalk café” shall mean any group of tables, chairs, benches, and suitable decorative devices maintained upon the surface of Loudoun Street Mall for the purpose of selling food, refreshments, and beverages of all kinds to the general public as an extension of a restaurant licensed under the Regulations of the State Health Department and operating contiguous to the Loudoun Street Mall. (Ord. No. 036-99, 12-14-99)

SECTION 26-35. — APPLICATION FOR SIDEWALK CAFÉ PERMIT.

Any restaurant licensed under the Regulations of the State Health Department and operating contiguous to the Loudoun Street Mall may apply to the Director, Old Town Development Board, for the permit described in Section 26-34 on forms provided for the purpose. In addition to the completed form, the applicant shall also provide the following items in order to file a complete application:

1. A fee in the amount of Ten Dollars (\$10.00) is required for all annual café permit applications.
2. Cafes will be assessed an annual operating fee based on occupancy limits as follows:
 - (a) The amount of Two Hundred Dollars (\$200.00) is required for all cafés with an occupancy limit of 45 or more persons.
 - (b) The amount of One Hundred Fifty Dollars (\$150.00) is required for cafés with an occupancy limit between 35-44 persons.
 - (c) The amount of Seventy Five Dollars (\$75.00) is required for cafés with an occupancy limit of 34 or less persons.
3. A Certificate of Appropriateness from the Winchester Board of Architectural Review certifying that the applicant’s design for café structures, furnishings, signage and placement of same meet the requirements enforced by that Board. The applicant must submit to the said Board a site plan indicating the location of the proposed café, a sealed sketch depicting the layout of tables, chairs, signage, etc. The area of the café must be delineated by an approved enclosure, may extend no wider than the applicant’s storefront, and may not extend into the Loudoun Street Mall area from the storefront more than fifteen (15) feet, or less if necessary to maintain an emergency lane at least sixteen (16) feet wide down the center of the Mall.

- ~~4. Evidence showing that the applicant has obtained a license to operate as a restaurant from the State Health Department and the City of Winchester, and that all of the applicant's tax obligations to the City, to expressly include real or personal property tax, business license tax, and meals tax, have been satisfied and are current.~~
- ~~5. A signed agreement, on a form approved by the City Attorney, in which the applicant agrees to hold the City, its officers, agents, and employees, harmless from any claims for damages to person or property growing out of any activity with the applicant's activities conducted in connection with the permit herein described or caused by the operation or location of the café on the City's property. The applicant shall also provide a Certificate of Insurance, which shall be currently maintained throughout the term of the permit, indicating that the City is an additional insured on a policy of liability insurance issued to the applicant by an insurance company licensed to do business in Virginia with a single limit of not less than \$1,000,000.00.~~
- ~~6. If alcoholic beverages are to be sold by the applicant, the applicant must also provide evidence that it has a valid license for same issued by the Virginia Alcoholic Beverage Control Board, and that it specifically meets that Board's requirements for "outside terraces or patio dining area". As a continuing condition of the permit herein described, the applicant must post a sign stating that "the drinking of alcoholic beverages or carrying of an open container that contains alcoholic beverages is unlawful and prohibited outside the delineated area of the Sidewalk Café". (Ord. No. 036-99, 12-14-99; Ord. No. 2009-40, 01-12-10)~~

~~SECTION 26-36. — SAME — PERMIT TERM; CONDITIONS.~~

~~Any permit issued pursuant to this Division shall be non transferable and shall be valid from January 1st through December 31st of each year, or for any part thereof. The application fee will remain the same regardless of the date received, and the fee will not be refunded or pro-rated based on the date of the application. Upon expiration or revocation of any such permit, the restaurant must apply for a new permit to continue operation of a sidewalk café, and must complete all of requirements listed in Section 26-35 of this Code in order to do so. (Ord. No. 036-99, 12-14-99)~~

~~As a condition of obtaining and keeping such a permit for the full one-year term specified above, the restaurant is deemed to have agreed to the following terms and conditions:~~

- ~~1. All cafes will be of such design so as to be easily removed for special events, snow removal, emergency access, or other circumstances which require that Loudoun Street Mall be cleared of all such cafes, as determined by City Council or by the Chief of Police. A directive from the Chief of Police or the City Council to clear the area of all furniture, fixtures, decorations, etc., connected with the café operation shall be promptly complied with by the restaurant without question and without unnecessary delay, and the area shall remain cleared of such material until directed otherwise by City Council or the Chief of Police.~~
- ~~2. The use of concrete furniture, chairs, benches, planters, or any other such items is expressly prohibited.~~
- ~~3. The entire area delineated for the sidewalk café must be maintained in a neat and orderly fashion, whether or not the area is actually in use. When in use, the area shall~~

~~be periodically cleaned throughout the business day, and, especially, at the end of each business day. All food shall be provided by waiter or waitress service, unless self-service operations are approved as a part of the permit. Extensions or enlargements of the area delineated for the café beyond those described in the restaurant's application are expressly prohibited.~~

- ~~4. All furniture, fixtures, decorations, etc. connected with the operation of the café shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance to patrons.~~
- ~~5. The café shall operate only when the restaurant to which a permit has been issued is allowed to operate. In addition, the restaurant shall be responsible to see to it that patrons of both the café and the restaurant violate no laws of the State or Ordinances of the City, to expressly include the City's Noise Ordinance, during such hours of operation. A business holding a permit shall have the right to limit access and occupancy to only bona fide paying customers, and shall have the same right to deny access or service in the café area as it enjoys in its own premises; Provided, However, that no person shall be denied access or service in a sidewalk café purely on the basis of race, religion, national origin, sex, age or physical disability. (Ord. No. 036-99, 12-14-99)~~

~~SECTION 26-37. — SAME; REVOCATION AND APPEAL.~~

~~The permit issued under this Division shall be revoked by the City Manager, by letter to the restaurant sent ordinary first-class mail or hand-delivered to the address shown on the permit, upon receipt of competent evidence of the following:~~

- ~~1. Evidence that any of the requirements for application described in Section 26-35 of this Code are not being maintained during the term of the permit, including, but not limited to, withdrawal of the Certificate of Appropriateness or evidence that the café is being operated outside its terms; revocation or suspension of the restaurant's Health Department license or its ABC Board license (where applicable); lapse or cancellation of the restaurant's liability insurance; and failure to remain current as to all City tax obligations, especially the Meals Tax;~~
- ~~2. Evidence that any of the conditions of the permit as listed in Section 26-36 of this Code are being violated, especially including, but not limited to, evidence that the behavior of café patrons or other aspects of the café operation are generating violations of either State or City Code, particularly the Noise Ordinance.~~

~~The restaurant may appeal the decision of the City Manager to the City Council by noting such an appeal to the City Manager, in writing, within ten (10) calendar days, but the permit shall remain revoked while such appeal is pending. Upon receipt of the written notice that such an appeal has been lodged, the City Manager shall cause the matter to appear on the Agenda for the next scheduled meeting of the Common Council, whether regular or special, and the Council shall either affirm the City Manager's decision or restore the permit at that time. The determination of Council shall be final and unappealable. (Ord. No. 036-99, 12-14-99; Ord. No. 2011-21, 10-11-11)~~

Ordinance No. 2013-09

ADOPTED by the Common Council of the City of Winchester on the 9th of April, 2013.

Witness my hand and the seal of the City of Winchester, Virginia.

*Kari J. Van Diest, CMC
Deputy Clerk of the Common Council*