



TOWN OF MOREHEAD CITY
Application for
Public Sidewalk Occupancy Permit
For Sidewalk Cafe (Along NCDOT ROW)

Approved by: _____ Permit #: _____ Date: _____

Name of Restaurant: _____ Application Date: _____

Address: _____ Email: _____

Mailing Address: _____ Phone: _____

Are you a corporation? Yes No If yes, what is the State of Incorporation? _____

If a corporation, please list the name and address of the President or Chairman and the name of the local manager; if an entity, list the name and address of the individual authorized to bind the entity in contract.

Name and Title: _____ Phone: _____

Address: _____ Email: _____

City, State, Zip: _____ Local Manager _____

Application Type: Revision to Existing Application Initial Application Annual Renewal

Dimensions and Area of Sidewalk to be Occupied: Length (feet): _____ X Width (feet): _____ = Area (Sq. Ft.): _____

Number of Tables: _____ Size: _____ If different sized tables are to be used, please identify number of each

of Tables: _____ Size: _____ # of Tables: _____ Size: _____ # of Tables: _____ Size: _____

Number of Chairs: _____ Type(s): _____

Number of Umbrellas: _____ Height of Each: _____
 (minimum 7' measured from sidewalk to bottom of umbrella)

Type and Height of Barricade (required for two or more tables): _____

Describe how and/or where the sidewalk furnishings will be stored when not in operation:

Operation Schedule: Day(s): _____ Hour(s): _____

Do you wish to serve alcohol in the sidewalk dining area? Yes No

If yes, the sidewalk cafe must be included as part of the premises for which an ABC permit is issued pursuant to NCGS 18B-1001 for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages and must also comply with Article 2-2.5(D) of the Morehead City Unified Development Ordinance.

By signing the application, you understand that:

1. It is the responsibility of the outdoor dining/sidewalk cafe owner/manager to assure the dining area is kept clean. This includes cleaning the sidewalk daily and assuring that trash and debris from the sidewalk cafe/outdoor dining area is contained so as to prevent a public nuisance. Failure to keep the area clean and/or free of trash will result in the revocation of the permit.
2. The outdoor dining/sidewalk cafe may be required to be removed during emergency conditions and special events.
3. Permission to use the sidewalks is at the discretion of the City and is subject to cancellation at the sole discretion of the City.

Applicant's Signature/Date

ATTACHMENTS TO BE INCLUDED WITH APPLICATION

1. **A DRAWING OR SITE PLAN (include dimensions) showing the section of the sidewalk or pedestrian way to be used for the sidewalk cafe and the proposed placement of tables, chairs, umbrellas, and barricades. Identify the section for pedestrian use (this area must be at least four feet (4') in width or five feet (5') in width for operations along state rights-of-way, clear of any obstructions). Include photos/diagrams of furniture and barricade. Note: Must meet ADA and Fire Code requirements for aisle widths and the sidewalk dining area must allow for food servers without the use of additional right-of-way.**
2. **EVIDENCE OF INSURANCE or other form of security. Commercial general liability insurance or other form of security against general liability must be maintained on the operation of the sidewalk cafe. Coverage may be under the policies or plans applicable to the establishment, generally. The limits of such coverage shall not be less than \$1,000,000, combined single limits include contractual liability insurance or security extending to any obligation arising from the indemnity agreement in connection with this application.**
3. **EXECUTED INDEMNITY AGREEMENT.**
4. **COPY OF ALL PERMITS AND LICENSES issued by the State and/or Morehead City, including health and ABC permits and privilege licenses necessary for the operation of the restaurant, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the City for any structural or exterior alterations or improvements to the building.**
5. **SWORN STATEMENT describing any violation by the restaurant operator of any laws, regulations, ordinances relating to the possession, sale consumption or transportation of intoxicating beverages or controlled substances during the five (5) years immediately preceding the date of the permit application. If no such violations have occurred, please provide sworn statement to that effect.**

SIDEWALK CAFE INDEMNITY AGREEMENT

In consideration of the Town of Morehead City's granting use of its public sidewalks to User, the User, on its own behalf, and on behalf of its parent companies, subsidiary and affiliate companies, members, officers, officials, shareholders, partners, employees, officers, agents, contractors, heirs, successors, assigns, and anyone else associated in any way with User, agrees to insure, protect, indemnify and save harmless the Town, its officers, council members, officials, managers, agents and employees, as well as the North Carolina Department of Transportation (NCDOT), where applicable, from and against all loss, claims, demands, actions, causes of action, suits, debts, sums of money, promises, damages, proceedings, costs, expenses, damages, and liabilities, of every kind, in law or in equity, including without limitation any that are in favor of User, its officers, council members, officials, managers, agents, employees, invitees, licensees, or any and all third parties, on account of personal injuries or death or on account of property damages arising out of User's use of the Town's or NCDOT's sidewalks or other public areas and facilities, which result from the intentional or negligent acts or omissions of User, its officers, officials, shareholders, members, partners, employees, officers, agents, contractors, invitees, licensees, heirs, successors, assigns or any person acting for User or for whom User is responsible. The provisions of this section shall include indemnification of all losses, damages, awards, costs and expenses, including the Town's or NCDOT's attorney's fees and costs of defense. Nothing herein shall be deemed to waive or in any way limit any rights, defenses, or immunities of the Town or NCDOT. User shall maintain commercial general liability insurance, including independent contractors liability coverage when applicable, and broad form property damage insurance in the minimum amount of \$1 million per occurrence limit, general aggregate limit of \$2 million covering the public areas utilized by USER, and those policies shall name the Town of Morehead City and the North Carolina Department of Transportation, where applicable, as an additional insured. If User sells or serves or authorizes the serving of alcoholic beverages on the Town's sidewalks or other public areas, the insurance coverage shall include liquor liability insurance protecting against claims arising out of the sale or distribution of alcoholic beverages in such areas. If any policy is written on a claims-made form, User shall purchase the claims-made reporting endorsement extending the period for reporting claims under the policy for at least a period of thirty-six (36) months beyond the User's last use of the sidewalks or other public areas of the Town or NCDOT's right-of-way, or any portion thereof.

SIGNATURE: _____

DATE: _____

NOTARY STATEMENT

Sworn to (or affirmed) and subscribed before me, this the _____ day of _____, 20____.

NAME (PRINTED): _____

SIGNATURE: _____

My Commission Expires: _____

Requirements for Sidewalk Cafes in Morehead City

Effective February 11, 2014

Application. Any restaurant desiring to operate a sidewalk cafe shall prepare and file an application with the city manager or his designee, which shall contain the following information:

- (a) The name, address and telephone number of the restaurant desiring to operate a sidewalk cafe.
- (b) The name, address and telephone number of the restaurant operator.
- (c) The type of food, beverage or food product to be sold and served at the sidewalk cafe.
- (d) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk cafe.
- (e) A drawing or site plan showing the section with dimensions of sidewalk or pedestrian way to be used for the sidewalk cafe, and the section with dimensions to be kept clear for pedestrian use, and depicting the proposed placement and dimensions of tables, chairs, umbrellas, barricades, and other furnishings on the sidewalk or pedestrian way and any proposed openings or ingress/egress points to and from the outdoor dining area. The site plan shall be accompanied by photos or drawings of all components of the outdoor dining space to include type of furniture, umbrellas and type and dimensions of barricades.
- (f) Evidence of adequate insurance or other forms of security to hold the city and its taxpayers harmless from claims arising out of the operation of the sidewalk cafe, as determined by the city manager. The North Carolina Department of Transportation must be listed as an additional insured if the sidewalk cafe is located adjacent to a state right-of-way.
- (g) An indemnity statement approved by the city attorney, whereby the restaurant operator agrees to indemnify and hold harmless the city and its officers, agents, and employees from any claim arising from the operation of the sidewalk cafe. The North Carolina Department of Transportation must also be included in the indemnity statement for any sidewalk cafe operation located adjacent to a state right-of-way.
- (h) A copy of all permits and licenses issued by the state or the city, including health and ABC permits and business licenses, necessary for the operation of the restaurant business. 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 (5) years immediately preceding the date of the permit application. Such additional information as may be requested by the city manager or his designee to determine compliance with this section. A fee as provided in the Morehead City's fee schedule to cover the cost of processing and investigating the application and issuing the permit.

Issuance of permit. No permit for the operation of a sidewalk cafe may be issued unless the application is complete and unless the following requirements are met:

- (a) The sidewalk cafe must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities and other customer convenience facilities as the restaurant.
- (b) The sidewalk cafe must be operated under the same name as the restaurant and may not be opened or operated at any time when the restaurant is not open for business.
- (c) The operation of the sidewalk cafe must be clearly incidental to the associated restaurant business.
- (d) The seating capacity of the sidewalk may not be more than fifty (50) percent of the interior seating capacity of the associated restaurant.
- (e) The placement of tables, chairs and other furnishings, as shown in the drawing submitted with the site plan, must be done in such a manner not to extend more than five (5) feet from the property line, provided that at least four (4) feet of unobstructed space remains on the sidewalk or pedestrian way for the passage of pedestrians. Tables, chairs, and other furnishings associated with a sidewalk cafe located along a state right-of-way must be placed a minimum of six feet from any travel lane in such a manner that at least five (5) feet of unobstructed space remains clear for the passage of pedestrians that complies with the Americans with Disabilities Act. Trees, poles, signs, sandwich board signs, planters, benches, hydrants, trash receptacles, tree grates, etc. are all considered obstructions. Provided however, a tree grate shall not be considered an obstruction if:
 1. The owner of the sidewalk cafe pays the full cost of installing a tree grate approved as complying with the Americans with Disabilities Act as an acceptable surface for pedestrians and wheelchairs; and
 2. The owner maintains the grate so that it provides a smooth and level surface for passage.
- (f) The area designated for the sidewalk cafe shall be physically separated from the remaining sidewalk by visible, continuous barricades with a height of at least thirty-six (36) inches and no more than forty-two (42) inches. The barricades must be constructed of materials of a finished quality, including but not limited to planters, picket fences or velvet ropes.
 1. Although a wide variety of styles and designs are permitted to be used for outdoor dining barricades, metal or wood sectional fencing is encouraged due to its portability and its inability to be shifted by patrons or pedestrians.
 2. Bases for the vertical supporting device of a barricade shall be flat and measure no more than 1/2 inch above the sidewalk surface in order to not become a tripping hazard.

Issuance of permit (Continued). No permit for the operation of a sidewalk cafe may be issued unless the application is complete and unless the following requirements are met:

3. Planters may be used in addition to or in place of other barricade designs provided the planter does not exceed a height of 36 inches above the level of the sidewalk and the plants may not exceed a height of 108 inches (8 feet) above the sidewalk. The planter should be in unobstructed sidewalk space. Planters with artificial plants, dead plants, only ground cover (i.e. mulch, dirt, etc.) and planters that are empty must be removed.

4. Barricades must be freestanding and easily removable.

i. Any access opening within the barrier must measure no less than 44 inches in width and should clearly distinguish the sidewalk cafe area from the sidewalk or pedestrian way.

(g) The restaurant seeking to operate the sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk cafe. The placement of tables, chairs and other furnishings may not extend beyond the sidewalk or pedestrian way frontage of the associated restaurant. Two (2) or more tables must be contained within visible barricades. The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for a sidewalk cafe operation shall not be greater than forty-five (45) miles per hour.

(h) 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. Tables, chairs, barricades and other furnishings used in the operation of the sidewalk cafe shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilation area, or ramp necessary to meet accessibility requirements under the Americans with Disabilities Act and must be removed within twenty-four (24) hours of notice from the city. If such items are not removed upon twenty-four (24) hours' notice, 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 such items immediately in emergency situation. The city shall not be responsible for damage to the public sidewalk cafe barricades and furnishings under any circumstances.

(i) Except as elsewhere permitted, the operation or furnishing of the sidewalk cafe shall not involve any permanent alteration to or encroachment upon any street, sidewalk or pedestrian way or to the exterior of the associated restaurant. The owner of the sidewalk cafe shall be responsible for repairing any incidental damage to public sidewalks resulting from the operation of the sidewalk cafe.

(j) The sidewalk cafe shall only be open when the restaurant is open. After such hours, the furnishings of the sidewalk cafe shall be removed. No person shall consume alcoholic beverages in a sidewalk cafe after such hours.

(k) *Alcoholic beverages.* Notwithstanding the provisions of section 10-38 of the Code of Ordinances, alcoholic beverages may be served and consumed at sidewalk cafes providing the following requirements are met:

1. The sidewalk cafe shall be part of a standard restaurant and otherwise be authorized, permitted or licensed under the state law and city codes to serve and sell alcoholic beverages for on-premise consumption.

2. The portion of the sidewalk cafe where alcohol is or may be served shall be enclosed by clearly visible barricades and shall have not more than (2) points of ingress or egress.

3. The sidewalk cafe must be included as part of the premises for which an ABC permit is issued pursuant to G.S. 18B-1001 for the purposes of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages.

4. Signs shall be posted, visible at all exit points from the sidewalk cafe, that it is unlawful to remove alcoholic beverages in open and unsealed containers from the premises.

5. The restaurant operator shall not have violated any law, regulation or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the five (5) years preceding the commencement of the sale of alcoholic beverages at the sidewalk cafe.

(l) *Denial.* A permit may be denied if it is found that the granting of the permit would not be in the public interest. Any applicant denied a permit to operate a sidewalk cafe shall receive a written statement, outlining the grounds on which the denial is based. The applicant may appeal the denial of the permit to the city council within fifteen (15) working days after the date of the written denial and the city council may take such corrective action as it shall find necessary. The findings and determination of the city council shall be final.

(m) *Permit revocation.* The City manager may revoke a permit issued pursuant to this section, if he finds that the restaurant operator has:

1. Deliberately misrepresented or provided false information in the permit application.

2. Violated any provision of the Morehead City codes or county health department 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 a 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.

5. Failed to maintain any health, business or other permit or license required by law for the operation of a restaurant business. Before the revocation of a permit, the city manager shall notify the permit holder of his intent to revoke the permit and the reasons therefore and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the city manager shall notify permit holder in writing of the decision and the reasons therefore. A decision of the city manager to revoke permit may be appealed to the city council in accordance with the provision of this Ordinance.

Issuance of permit (Continued). No permit for the operation of a sidewalk cafe may be issued unless the application is complete and unless the following requirements are met:

- (n) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this section shall:
 - 1. Be in addition to the annual privilege license.
 - 2. Not be transferable or assignable.
- (o) *Furniture and fixtures.* A wide range of furniture styles, colors and materials are permitted, however smaller, space-efficient furniture is recommended.
 - 1. All furniture and fixtures must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion or chipped or peeling paint.
 - 2. All furniture and fixtures must be maintained in a clean condition at all times.
 - 3. All furniture and fixtures must be durable and of sufficiently sturdy construction as not to blow over with normal winds.
 - 4. Furniture and fixtures shall not be secured to trees, lampposts, street signs or any other street infrastructure whether during restaurant operating hours or at times when the restaurant is closed.
 - 5. Furniture other than tables, chairs and umbrellas is prohibited in sidewalk cafes.
 - 6. Tables
 - a. The size and shape of tables strongly affects the functionality of an outdoor dining area.
 - b. Square or rectangular tables are encouraged because they fit flush against a building's wall and can permit more useable surface area for patrons while at the same time, leave more space available for pedestrians.
 - c. Smaller, space-efficient tables are encouraged over larger tables.
 - d. Tables may be colored or of a natural material. Plastic tables shall not be permitted unless covered with a tablecloth.
 - 7. Chairs
 - a. Chairs may be colored or of a natural unpainted material and may be upholstered. White plastic or fluorescent chairs are not permitted.
 - b. All chairs used within a particular establishment's outdoor seating area must match each other by being of visually similar design, construction and color.
 - c. Seating capacity is limited to 50% of the interior seating capacity of the associated restaurant.
 - 8. Umbrellas
 - a. Umbrellas that are appropriately designed and sized are permitted.
 - b. Umbrellas must be free of advertisements and be contained within the outdoor dining area with the lowest dimension, including fringe and other ornamentation, being at least seven (7) feet above the sidewalk surface and no higher than ten (10) feet above the level of the sidewalk.
 - c. Umbrellas and other shading devices shall not infringe on the free movement of pedestrians along the sidewalk.
 - d. Umbrella colors must blend appropriately with the surrounding built environment and are recommended to be of one solid color.
 - e. Market style umbrellas are encouraged.
 - f. Umbrella covers must not be made of a rigid material.
 - 9. Fixtures - Misters and Gas Heaters
 - a. Misters for cooling and Gas Heaters for heating shall be permitted.

Terms Defined:

Pedestrian Way. An improved walk or passageway intended for use by pedestrians, but not adjacent to any city street.

Restaurant. An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises, including businesses that are 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 to be eaten on the premises. This definition does not include food vendors selling food as part of a festival or nonprofit event. In accordance with G.S. 18B-1000(6), the gross receipts from food and nonalcoholic beverages at sidewalk cafes located along state rights-of-way shall not be less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. Restaurants located along state rights-of-way shall also have a kitchen and an inside dining area with seating for at least thirty-six (36) people.

Restaurant operator. The person, firm or corporation operating a restaurant and associated sidewalk cafe. As used in this section, this definition includes the owner and manager, if different from the owner of the restaurant and associated sidewalk cafe.

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