

## **ORDINANCE**

**TITLE: AN ORDINANCE TO AMEND THE CITY CODE OF ORDINANCES BY AMENDING CHAPTER 10 - BUSINESSES BY ADDING ARTICLE V “OUTDOOR DISPLAYS AND CAFES” AND VARIOUS PROVISIONS RELATING THERETO**

**WHEREAS**, The City of Simpsonville has an existing Code of Ordinances; and

**WHEREAS**, The City wishes to encourage open space for the enjoyment of the public, for pedestrian traffic, outdoor entertainment, special events and the like; and

**WHEREAS**, The Mayor and Council believe that it is advisable to establish a process by which licenses and permits may be obtained for the use of public spaces and to adopt regulations with regard thereto; and

**WHEREAS**, the Mayor and City Council have reviewed the proposed amendment and have determined that it is in the best interest of the City to adopt it;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIMPSONVILLE, SOUTH CAROLINA, AS FOLLOWS:**

Section 1: That the Code of Ordinances, Chapter 10, Businesses, be amended by adding a new article, Article V, “Outdoor Displays and Cafes,” which article shall read as follows:

### **ARTICLE V. - OUTDOOR DISPLAYS AND CAFES**

#### **Sec. 10-251. - Purpose and applicability of article.**

The provisions of this article shall apply to conforming businesses within a nonresidential district for the establishment, operation and maintenance of outdoor displays and dining areas located on sidewalks and public plazas. The purpose of this article is to promote the general economic development and atmosphere of the DO-TC Town Center zoning district and other areas for the benefit of all businesses and citizens located there, and no rights of individuals or individual businesses are created in this article. The City Administrator and Director of Public Works shall have broad discretion to grant, modify or revoke permits issued pursuant to this article in the interests of improving and protecting the public health, safety and welfare.

**Sec. 10-252. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrator* means the city administrator or city personnel designated by the city administrator to enforce this article.

*Design requirements* means the standards adopted with this article that guide design and materials in encroachment areas.

*Encroachment* means stands, tables, umbrellas, chairs, benches, signs, objects related to the business, or other items on the public right-of-way, sidewalk or common area on public property.

*Outdoor cafe* means the business of providing food and beverage service with chairs, 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* means the recipient of an encroachment permit under the terms and provisions of this article.

*Plaza* means any landscaped 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* means that area of the public right-of-way between the curblines or the lateral lines of a roadway and the adjacent property lines and which is reserved for pedestrian traffic, but not including street crossings.

**Sec. 10-253. - Penalty.**

Any person violating any provision of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with Sec. 1-9 of this Code of Ordinances. Each day any violation of this article shall continue shall constitute a separate offense.

**Sec. 10-254. - 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 cafe, or to place any items upon the sidewalks or public property, in the city, unless he shall hold a currently valid permit issued under the terms of this article.
- (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.

**Sec. 10-255. - Application for permit; fee.**

- (a) Application for the permit required by this article shall be made with the city in a form deemed appropriate by the city administrator. 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 the subject of the application.
  - (4) Proof of current liability insurance, issued by an insurance company licensed to do business in the state, protecting the licensee and the city from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the encroachment permit. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advance written notice to the city. The policy shall be a minimum of \$250,000, or higher if deemed necessary by the administrator.
  - (5) A sketch, to scale, of the proposed location, showing the layout and dimensions of the existing public area and adjacent private property.
  - (6) Proof of any required ABC license, health permits or other state permits for the business involved.
  - (7) Photographs, drawings or manufacturers' brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects related to the business.
- (b) Not later than 15 days after the filing of a completed application for a temporary encroachment permit, the applicant shall be notified by city staff of the decision on the issuance or denial of the permit. An annual fee shall be due and payable as fixed from time to time by the administrator. This fee is in addition to the business license fee required for operation within the city. Only new permits shall be prorated on a quarterly basis. No fees shall be charged for encroachments solely for the purpose of beautification, but all other provisions of this article shall apply.
- (c) Application for a permit shall be made 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 requirements of written notice may be waived and legal proceedings commenced immediately.

**Sec. 10-256. - 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 that directly in front of his existing place of business without the written

consent of adjacent landowners and 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 six feet in width (as measured at all points from the sidewalk and extending up to fifteen feet above the sidewalk), or block ingress or egress to or from any building. In areas of congested pedestrian activity, the administrator is authorized to require a wider pedestrian passageway, as circumstances dictate. Also, no items shall be placed so as to block or impede any driveway, crosswalk, bus stop, counter service window or block visibility within an intersection.
  - (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, except within a plaza, without the written approval of the administrator.
  - (5) Use tables, chairs, benches, umbrellas and any other objects of such quality, design, materials and workmanship which are not authorized by the administrator. Objects in a plaza must meet design requirements set forth for that public space.
  - (6) Use umbrellas which are not fire-retardant, pressure-treated or manufactured of fire-resistive material if larger than ten feet by ten feet.
  - (7) Fail to secure permission of the landlord where a building has multiple occupants.
  - (8) Utilize the area for commercial activity in any way without the insurance coverage specified.
  - (9) 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.
  - (10) Fail to pick up, remove and dispose of all trash or refuse left by the business or its patrons on the public right-of-way.
  - (11) Store, park or leave any stand or items of merchandise overnight on any street or sidewalk, except for tables and chairs, which may be kept in the permitted area at the permittee's risk.
  - (12) Store, park or leave any vehicle, truck or trailer within the encroachment area.
- (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 article or for conduct of the business in such a 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 article, and the decision of the administrator shall be final.

#### **Sec. 10-257. - Form and conditions of permit.**

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

- (1) Each permit shall be effective for up to three years, from May 1—April 30, subject to annual renewal, unless revoked, suspended or retracted prior to expiration. When a permit is invalidated, the prorated fee for any full quarter year remaining shall be refunded. No fees will be refunded for periods of suspension.
- (2) The permit issued shall be personal to the permittee only and shall not be transferable in any manner.
- (3) The permit may be suspended by the administrator when necessary to clear the public property for public safety for a community or special event authorized by a permit issued by the city.
- (4) The administrator may require the temporary removal of items within the encroachment area when street, sidewalk, common area or utility repairs necessitate such action.
- (5) 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 area.
- (6) The encroachment area covered by the permit shall be maintained in a neat and orderly appearance at all times, and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day.
- (7) No advertising is permitted, except for the posting of prices, on any stand or item, except to identify the name of the product.
- (8) No tables or chairs or any other 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 this 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 as grounds for claiming exemption from such requirements under the provisions of any city ordinance or state law.
- (9) The issuance of a permit does not grant or imply vested rights to use of the area by the permittee. The city retains the right to deny the issuance of a permit or the renewal of a permit for any reason.
- (10) Tables, chairs, benches, 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.
- (11) 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.
- (12) The service and consumption of alcoholic beverages on city sidewalks and public property is authorized to the extent provided for in each individual permit issued, but not otherwise. The service and consumption of food, nonalcoholic beverages and alcoholic beverages in

sidewalk encroachments pursuant to this article is limited to patrons seated at tables. No encroachment permit shall authorize either the service or consumption of alcoholic beverages between the hours of 11:00 p.m. and 10:00 a.m.

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

**Sec. 10-258. - Denial, suspension, retraction or revocation of permit; removal of property by city.**

- (a) Grounds for denial, suspension, retraction or revocation; removal of property by city. The administrator 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 canceled.
  - (2) The permittee does not have insurance in force which is correct and effective in the minimum amount described in Sec. 10-255(a)(4).
  - (3) Changing conditions of pedestrian or vehicular traffic causing congestion or changes of property conditions necessitating removal of the encroachment. Such decision shall be based upon findings of the administrator that the minimum six-foot pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety or general welfare of pedestrians or vehicular traffic.
  - (4) The permittee has failed to correct violations of this article or conditions of the permit upon receipt of the administrator'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 modifications upon receipt of the administrator's notice to make such modifications delivered in writing to the permittee.
  - (7) The permittee's business license has been revoked, suspended, or is lapsed, in which case the permit issued pursuant to this article is automatically and immediately revoked.

Tables, chairs and other vestiges of the business may be removed by the department of public works, 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 administrator's final notice to do so for any reason provided for under this article. If the action is taken based on subsection (a)(2) or (3) of this section, the action shall become effective upon the receipt of such notice and the permittee shall have four hours to remove the items.

(b) Notice of denial or revocation. Except in the case of revocation pursuant to Sec. 10-258(a)(7), upon denial or revocation, the administrator shall give notice of such action to the applicant or the permittee, in writing, stating the action which has been taken and the reason therefor. The action shall be effective upon giving such notice to the permittee.

(c) Appeals. The permittee shall have the right to appeal the decision of the administrator to the City Administrator within five working days from receipt of notice. An appeal does not stay the denial, suspension, or revocation of the permit. The hearing shall be held within two working days from the date of notice of the request, if the city administrator is available or as soon thereafter as

the city administrator shall be available. 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 administrator shall notify the permittee or applicant of the determination in writing. The city administrator shall have the discretion to designate the duties of this section to an experienced hearing officer.

Section 2. Authorization. The Mayor, the City Administrator, and the City Clerk, for and on behalf of the City, acting jointly or individually, are fully empowered and authorized to take such further action as may be reasonably necessary to effect the amendments authorized by this Ordinance in accordance with the conditions herein set forth.

Section 3. Severability. The provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 4. Repeal of Conflicting Ordinance. All ordinances, orders, resolutions and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

Section 5. Effective Date of the Ordinance. This ordinance shall become effective upon final approval by Council after second reading and signing by the Mayor.

**DONE in Regular Meeting duly assembled this \_\_\_\_\_ day of \_\_\_\_\_ 2019.**

SIGNATURE OF MAYOR:

\_\_\_\_\_  
Janice Curtis

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Phyllis Long  
City Clerk

\_\_\_\_\_  
David W. Holmes  
City Attorney

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_