



Public Works Department
1004 S. Glenburnie Road
New Bern, N.C. 28560
(252) 639-7501

CITY OF NEW BERN SIDEWALK CAFÉ PERMIT APPLICATION PACKET

This packet of information includes the City of New Bern's Administrative Order 1.6 as well as the City of New Bern's Code of Ordinances Chapter 66 Section 66-70 which governs the process to obtain a sidewalk café permit from the City of New Bern.

Below is a checklist of the required documents that must be submitted for your request to be reviewed.

Please complete this form and submit with your application packet.

Checklist	
<input type="checkbox"/> Scaled Drawings	<input type="checkbox"/> Tax ID#
<input type="checkbox"/> Evidence of Insurance	<input type="checkbox"/> Fee Payment
<input type="checkbox"/> Signed Release of Liability and Hold Harmless Agreement	
<input type="checkbox"/> Signed sworn Statement	
<input type="checkbox"/> Copies Permits and Licenses	
<input type="checkbox"/> ABC Permit	<input type="checkbox"/> Other

I have reviewed and understand Administrative Order 1.6 and the New Bern Code of Ordinances Chapter 66 Section 66-70, and as part of my permit application, I understand I must comply with all provisions therein.

Signature: _____

Date: _____

**CITY OF NEW BERN
ADMINISTRATIVE ORDERS
OF THE CITY MANAGER**

ADMINISTRATIVE ORDER 1.6
TO: All City Employees, Residents of the City of New Bern, & Interested Parties
FROM: Mark A. Stephens, PE, City Manager
SUBJECT: Sidewalk Café Policy
New Administrative Order

Purpose:

The City of New Bern’s Sidewalk Café Policy is designed to provide guidance to restaurants owners and operators interested in obtaining a Sidewalk Café Permit from the City of New Bern.

Any person interested in applying for a Sidewalk Café Permit should read and must comply with all provisions of Chapter 66 Section 66-70 of the City of New Bern Codified Ordinances.

Eligibility: To be considered for a sidewalk café, the establishment must meet the definition of a restaurant based on G.S. § 18B-1000(6), which states the following:

“Restaurant – An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people.”

In addition, the sidewalk must be wide enough to allow for continued pedestrian traffic and meet ADA standards for pedestrian traffic.

- The City of New Bern staff will determine the eligibility status of applicant's structure

Application Process:

The Sidewalk Café Permit request is initiated by the owner or tenant of the restaurant.

Step 1: The owner/operator should complete the City of New Bern's Sidewalk Café Permit Application (Enclosed) to include applicable fees for the sidewalk café permit. The applicant will need to provide following documentation:

- 1) Existing ABC permit (Modified ABC permit that includes sidewalk café to be supplied up issuance of sidewalk café permit.)
- 2) Scaled drawing/sketch of the sidewalk café area including roping, building location, doorway entries, etc. should be submitted.
 - a. The minimum ADA requirements for sidewalks are 36 inches (3 feet).
 - b. Barriers delineating boundaries of the sidewalk café must meet the following minimum standards.

Temporary enclosures for outdoor seating shall consist of heavy duty metal outdoor stanchion posts that are easily moveable. They are to be joined using ropes, adjustable belts or appropriate chains. The stanchions must include a base that is as unobtrusive as possible but still provides reliable support. Alternative enclosures may be considered on a case by case basis at the discretion of the City.

****Barriers are only required for sidewalk cafés where alcoholic beverages will be served****



- 3) Evidence of insurance (See Section C(7) of Section 66-70 of enclosed ordinance)
- 4) The Release of Liability and Hold Harmless Agreement (Enclosed)

- 5) Sworn Statement (Enclosed)
- 6) If applicant is not the owner, tenant must provide a letter from the owner authorizing the sidewalk cafe.
- 7) Submit application and all supporting documentation and Commercial Inspections-Building Compliance Fee of \$150 to the Public Works Department, 300 Pollock St.

The Commercial Inspections-Building Compliance Fee is set according to the City of New Bern Schedule of Fees and Charges Effective July 1, 2011.

Step 2: Application reviewed by appropriate City of New Bern staff to include Public Works staff to discuss ADA requirements, drawings, furniture placement, and efforts to designate the specific area as a sidewalk café.

Step 3: City staff will install sidewalk markers to clearly identify the sidewalk café's designated boundaries as delineated by the drawings provided.

Step 4: If applicant meets all requirements, permit issued

- The City Manager has the discretion to approve or deny any request.

How to contact the City of New Bern?

Citizens interested in Sidewalk Café Permits should contact the City of New Bern Public Works Department at (252) 639-7501.

Approved by:

Date

Mark A. Stephens, PE, City Manager

Sidewalk Café Permit Application

Please type or print in ink.

Please complete and provide the following requested information.

- 1) Restaurant Name (Legal entity and/or D-B-A):

Address: _____

Telephone Number: _____

- 2) Name of Operator:

Address: _____

Telephone Number: _____

- 3) Current and Valid Tax ID: _____

- 4) Food, Beverages, and/or Food Products to be sold (Attach Menu):

- 5) Hours of Operation of Restaurant

a) Number of seats and/or persons can restaurant serve

b) Hours of Operation of Café

- 6) A scaled drawing or site plan detailing the section of sidewalk or pedestrian way to be used for the sidewalk café, the section for pedestrian use (must be free of obstructions and at minimum 36 inches (3 feet), and the proposed placement of tables, chairs, and other furnishings on the sidewalk or pedestrian way.

- a) Barriers delineating boundaries of the sidewalk café must meet the following minimum standards.

Temporary enclosures for outdoor seating shall consist of heavy duty metal outdoor stanchion posts that are easily moveable. They are to be joined using ropes, adjustable belts or appropriate chains. The stanchions must include a base that is as unobtrusive as possible but still provides reliable support. Alternative enclosures may be considered on a case by case basis at the discretion of the City.

****Barriers are only required for sidewalk cafés were alcoholic beverages will be served****



- 7) Evidence that the applicant has obtained and will maintain a general liability and workers compensation insurance policy in the amount of one million dollars (\$1,000,000) for the operation of a sidewalk cafe which names the city as an additional insured.
- 8) 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.
- 9) Copy of all permits and licenses issued by the State and/or the City of New Bern, including health and ABC permits and business licenses, necessary for the operation of the restaurant business, 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 exterior alterations or improvements to the restaurant.
- 10) 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. If no such violations have occurred, please provide sworn statement to that effect.

Applicant Signature: _____ Date: _____

CITY OF NEW BERN STAFF USE ONLY

Completed Application to include:

Scale Drawings _____

Tax ID# _____

Insurance Verification _____

Fee Payment Received _____

Signed Indemnity _____

Sworn Statement _____

Initial Inspection _____

Final inspection _____

Copies Permits and Licenses _____

ABC Permit _____

Other _____

This permit application has been approved for one of the following: ___ sidewalk café without alcohol / ___ sidewalk café with alcohol subject to applicant agreeing to following all City ordinances including the AMEND CHAPTER 66 “STREETS, SIDEWALKS AND OTHER PUBLIC PLACES” OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

City Manager Signature: _____

Date: _____

RELEASE FROM LIABILITY AND HOLD HARMLESS AGREEMENT

CITY OF NEW BERN: OPERATION OF SIDEWALK CAFÉ LOCATED AT

(Common name and address of restaurant)

In consideration of the sum of \$1.00, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by _____
(Full corporate name, hereinafter referred to as “Applicant”), and in consideration of the issuance of the permit herein applied for, Applicant hereby agrees as follows:

To the fullest extent permitted by law, the Applicant shall release, defend, indemnify, keep and save harmless the City, its agents, officials, and employees from and against any and all claims, damages, losses, costs, responsibility or liability for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether agents, officials, or employees of the City or third persons, and to all property proximately caused by, incident to, resulting from, arising out of or occurring in connection with the Applicant’s use or occupancy of the City’s sidewalks or pedestrian ways as may be permitted pursuant to this application (or by any person acting for the Applicant or for whom the Applicant is alleged to be in any way responsible), whether such claim is based in whole or in part on contract, tort (including alleged active or passive negligence or participation in the wrong) or upon an alleged breach of any duty or obligation on the part of the City, its agents, officials or employees.

The provisions of this agreement shall include any claims for equitable relief or for damages (compensatory or punitive) against the City, its agents, officials, and employees, including alleged injury to the business of any claimant, and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the City, its agents, officials, and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorney’s fees by reason of the assertion of any such claim against the City, its agents, officials or employees. The Applicant shall maintain during the life of the sidewalk café permit insurance covering the Applicant’s liability assumed under this agreement.

The Applicant expressly understands and agrees that any insurance protection required as a condition to the issuance of the permit herein applied for, or otherwise provided by the Applicant, shall in no way limit the Applicant's responsibility to release, indemnify, keep and save harmless and defend the City as herein provided.

By executing this release and indemnity, Applicant expressly accepts those portions of the City's sidewalks or pedestrian ways to be used in the operation of the sidewalk café in their present condition. Applicant agrees to undertake any repairs to said sidewalk that may be necessary for the safe operation of a sidewalk café. Applicant further agrees that it shall have no claim against the City for failure to repair or maintain those portions of sidewalks or pedestrian ways used in the operation of the sidewalk café, or for any damages to the same by the City, however caused.

The intention of the Applicant is that this release and indemnity be incorporated into any permit for the operation of a sidewalk café issued to it pursuant to Section 66-70 of the Code of Ordinances of the City of New Bern and this application. It is further the intention of the Applicant that this release and indemnity be broadly construed and applied in favor of the City.

This the ____ day of _____, 20____.

(Full Corporate Name of Applicant)

Federal Tax I.D. #

By: _____
President or Manager (Signature)

Approved as to Form:

City Attorney

NORTH CAROLINA

CRAVEN COUNTY

SWORN STATEMENT

I, _____, the _____
(insert President or Manager) of _____ (insert full
corporate name) being first duly sworn, depose and say that:

_____ (insert full corporate name) is the
owner and operator of the restaurant commonly known as _____
located at _____, New Bern, North Carolina.

_____ (insert full corporate name) has not
violated any laws, regulations, and/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 its permit application dated _____,
20____, and has not been convicted of any such violations.

Full Corporate Name

By: _____
President or Manager

Sworn to and subscribed before me this _____ day of _____, 20_____.

Notary Public

(SEAL)

My Commission Expires: _____

AN ORDINANCE TO AMEND CHAPTER 66 “STREETS, SIDEWALKS AND OTHER PUBLIC PLACES” OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

SECTION 1. That Article III “Obstructions” of Chapter 66 “Streets, Sidewalks and Other Public Places” of the Code of Ordinances of the City of New Bern be and the same is hereby amended by adding Section 66-70 “Sidewalk cafes.” as follows:

“Sec. 66-70. Sidewalk cafes.

(a) *Definitions.* The following definitions shall apply in this section:

(1) *Alcoholic beverage* means any beverage containing at least one-half of one percent (0.5%) alcohol by volume including, but not limited to, malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(2) *Pedestrian way* means an improved walk or passageway intended for use by pedestrians, but not adjacent to any city street.

(2) *Restaurant* means any 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, cafes, grills and other establishments that have a food counter where food is sold.

(3) *Restaurant operator* means the person, firm, or corporation operating a restaurant and associated sidewalk café. This definition includes the owner, and manager if different from the owner, of the restaurant and associated sidewalk café.

(4) *Sidewalk* means 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.

(b) *Sidewalk café permit generally.* The city manager or his designee may issue permits for the serving of food and beverages on the city sidewalks and pedestrian ways.

(c) *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.

(1) The name, address, and telephone number of the restaurant desiring to operate a sidewalk cafe.

(2) The name, address, and telephone number of the restaurant operator.

(3) A current and valid Tax ID.

(4) The type of food, beverage, or food product to be sold and served at the sidewalk cafe. If alcoholic beverages are to be sold, the type of such alcoholic beverages.

(5) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk cafe.

(6) A scaled drawing or site plan showing the following:

a. The section of sidewalk or alley to be used;

b. The section to be kept clear for pedestrian use; and

c. The proposed placement of the tables, chairs and other furnishings on the sidewalk or alley. If modifications of the original drawing or site plan are desired by either the city or the applicant, a new drawing must be submitted and approved by the city manager or his designee.

(7) Evidence that the applicant has obtained and will maintain a general liability and workers compensation insurance policy in the amount of one million dollars (\$1,000,000) for the operation of a sidewalk cafe which names the city as an additional insured.

(8) 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.

(9) 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, 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 exterior alterations or improvements to the restaurant.

(10) 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.

(11) Such additional information as may be requested by the city manager or his designee to determine compliance with this section.

(12) A fee as provided in the City of New Bern fee schedule to cover the cost of processing and investigating the application and issuing the permit.

(d) *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:

(1) 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. The sidewalk cafe must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.

(2) The operation of the sidewalk cafe must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk cafe may not be more than fifty (50) percent of the interior seating capacity of the associated restaurant. In addition, no more patrons than can be accommodated by the actual seats provided in the sidewalk cafe can occupy the area of the sidewalk cafe.

(3) All furnishings used for sidewalk use pursuant to this section:

a. Shall comply with the American with Disabilities Act pertaining to pedestrian travel;

b. Shall not be at any location which obstructs underground utility access points, ventilation areas, meters, accessible ramps or other facilities provided for physically challenged persons, a building access or exit, or any emergency access or exit way;

c. Shall not extend beyond the sidewalk or pedestrian-way frontage of the associated restaurant.

(4) The restaurant seeking to operate the sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk cafe.

(5) Tables, chairs, and other furnishings utilized for sidewalk cafes shall be of a type that can be easily removed from the public right-of-way. Tables, chairs, and other furnishings used in the operation of the sidewalk cafe 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. These items shall not be permanently affixed to the sidewalk and must remain within the designated boundaries as delineated by city-installed sidewalk markers. The city shall also have the right to remove such items immediately in emergency situations. The city shall not be responsible for damage to public sidewalk cafe furnishings under any circumstances.

(6) 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.

(7) No person shall operate a sidewalk cafe later than 11:00 p.m. After such hour, the area of the sidewalk cafe shall be open to the public and shall not be considered part of the premises of the restaurant. Any person consuming alcoholic beverages in a sidewalk cafe after such hour shall be subject to

the provisions Section 46-5 of the city code.

(8) The approved site plan for the sidewalk cafe must be posted conspicuously within the place of business at all times.

(9) All restaurants operating a sidewalk cafe shall keep the approved site area clean.

(10) The restaurant seeking to operate the sidewalk café shall meet other reasonable conditions that may be necessary as determined by the city manager or his designee.

(11) Alcoholic beverages may be served at sidewalk cafes provided the following additional requirements are met:

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

b. 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 two (2) points of ingress and egress.

c. The sidewalk cafe must be included as part of the premises for which an ABC permit for a restaurant, as defined in G.S. § 18B-1000(6), is issued, pursuant to G.S. § 18B-1001, for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages on-premises.

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

e. 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.

f. The applicant shall obtain and maintain an insurance policy in the amount of one million dollars (\$1,000,000.00) for liquor liability, and shall name the city as additional-insured.

(e) *Denial or revocation of sidewalk café permit.*

(1) The city manager or his designee may deny or revoke a permit, pursuant to this section, if he finds that the granting or continuation of the permit would not be in the public's interest or if he finds that the operator of the business or establishment has:

a. Made a deliberate misrepresentation or provided false information in the application;

- b. Used the sidewalk or alley in such a manner as to create a public nuisance or constitute a hazard to the public health, safety, or welfare;
- c. Failed to keep the sidewalk or alley clean and free of refuse;
- d. Failed to maintain any health, business or other permit or license required by law for the operation of the business or establishment;
- e. Violated any of the terms of this ordinance, or violated any law, regulation, or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances;
- f. Failed to maintain the amount and type of insurance required herein; or
- g. Failed to uphold the terms of the permit.

(2) The applicant may appeal the denial of the permit to the board of aldermen within fifteen (15) working days after the date of the written denial and the board of aldermen may take such corrective action as it shall find necessary. The findings and determination of the board of aldermen shall be final.

(3) Before the revocation of a permit, the city manager shall notify the permit holder of his intent to revoke the permit and the reasons therefor 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 the permit holder in writing of this decision and the reasons therefor. A decision of the city manager to revoke a permit may be appealed to the board of aldermen in accordance with the provisions of subsection (2) herein.

(f) *Reservation of rights.* The city reserves the right to require any sidewalk café established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the city, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the city. The city further reserves the right to amend, alter, or change the permit as provided for in this article upon further review and consideration for reasons of public safety, adopted public policy, or operational concerns without any costs to the city. In such event, the city manager or his designee will notify the applicant by certified mail of amendments to the permit. These amendments will require issuance of a new permit within the time period specified in the notice. If the new permit is issued prior to the expiration of the original permit that is being amended, the fee shall be waived for the amended permit. Failure to comply with the amended permit pursuant to this section will result in automatic termination of the sidewalk café permit.

(g) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this section shall:

- (1) Be issued for the period beginning July 1 and expiring June 30 of each year and in all

events will automatically expire on June 30 but may be renewed on a year-to-year basis;

- (2) Be in addition to the annual privilege license required pursuant to the city's fee schedule;
- (3) Not be transferable or assignable;
- (4) Specifically provide whether the sale and consumption of alcohol is permitted under the permit; and
- (5) Be subject to site inspection prior to initial permit issuance as well as annual permit renewal. If such zoning permit is approved, a fee shall be levied for each separate annual issuance of the permit in accordance with the city's adopted fee schedule."

SECTION 2. This ordinance shall be effective as of April 1, 2012.