

Ordinance to Amend and Reenact Chapter 34 Article III Entitled, “Encroachments Into Public Streets and Other Public Ways, Places or Property” to Add a New Section 34-87 and to Add a New Article VI Entitled, “Outdoor Seating Administrative Encroachments,” Pertaining to Administrative Encroachments for Outdoor Seating in Public Rights-of-Way.

BE IT ORDAINED by the Council of the City of Hampton, Virginia, that Chapter 34 of the City Code of the City of Hampton entitled “Streets and Sidewalks” is amended and reenacted to read as follows:

Chapter 34 – STREETS AND SIDEWALKS

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ARTICLE III. - ENCROACHMENTS INTO PUBLIC STREETS AND OTHER PUBLIC WAYS, PLACES OR PROPERTY

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Sec. 34-87 – Administrative approval of certain encroachment applications.

(a) *Pursuant to its authority under section 15.2-2009 of the Code of Virginia, as amended, the city council hereby authorizes the city manager or her designee, upon application to the department of public works, to administratively approve encroachments into public rights-of-way and other public places for outdoor seating subject to the terms and conditions of Article VI of this chapter.*

(b) *If an application for an outdoor seating encroachment does not meet all of the criteria of Article VI, then the city manager or her designee is prohibited from administratively approving the encroachment application. The applicant may then follow the procedure set forth in section 34-86 for the encroachment to be considered by city council.*

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ARTICLE VI. – OUTDOOR SEATING ADMINISTRATIVE ENCROACHMENTS

Sec. 34-122. – Outdoor seating permit; 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:

30 **ABC.** *The Virginia Department of Alcoholic Beverage Control.*

31 **ADA.** *The Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008,*
32 *42 U.S.C. §§ 12101, et seq.*

33 **Director of community development.** *The director of the community development*
34 *department and his authorized designees.*

35 **Director of public works.** *The director of the department of public works and his*
36 *authorized designees.*

37 **Establishment.** *Any business properly licensed and lawfully located in the Phoebus*
38 *Business (PH-1), Downtown Business (DT-1), or Downtown Waterfront (DT-2) zoning districts.*

39 **Operator.** *The person or entity that operates an Establishment.*

40 **Outdoor seating.** *Any group of tables, chairs, or other seating fixtures and all related*
41 *appurtenances maintained within the public sidewalk or other right-of-way when located*
42 *adjacent to an Establishment having the same Operator. Further, outdoor seating shall be*
43 *temporary in nature, shall not be permanently affixed so as to extend below the sidewalk or*
44 *other right-of-way, must not involve penetration of the sidewalk surface or be attached to any*
45 *building, and shall be readily removable without damage to the surface of the sidewalk or other*
46 *right-of-way.*

47 **Sec. 34-123. – Outdoor seating permit: requirements.**

48 (a) *Permit required; enforcement.*

49 *Outdoor seating may encroach into the public sidewalk or right-of-way only upon*
50 *issuance of an outdoor seating permit and encroachment agreement as provided for in this*
51 *article. No other use of the area devoted to the outdoor seating shall be permitted, except*
52 *normal use as a public sidewalk during the hours that the outdoor seating is not operated. It*
53 *shall be the responsibility of the director of public works to enforce the provisions of this*
54 *article.*

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56 (b) *Application requirements.*

57 (1) *Application for an outdoor seating permit shall be made to the director of public*
58 *works on such application form and subject to such written procedures as the*
59 *director may establish. Application for an outdoor seating permit shall be made*
60 *by the Operator of an Establishment that is located at street level adjacent to*
61 *the proposed outdoor seating area. The application shall be signed by the*
62 *Operator of the Establishment and by the owner of the property on which the*
63 *Establishment is located if the property owner is not the Establishment*
64 *Operator.*

(2) The following documents and information shall be submitted with the application for an outdoor seating permit:

- (i) A plan with dimensions showing the layout and arrangement of the proposed outdoor seating area, including its overall dimensions, aisle widths, access to the adjacent building, and the locations and dimensions of chairs, tables, umbrellas, barriers, outdoor heating devices, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area;
- (ii) A plan with dimensions and photographs showing the following sidewalk conditions and features located within the boundaries of the proposed outdoor seating area and within 10 feet of the outdoor seating area's boundaries: location of the adjacent improved street right-of-way, existing sidewalk paving material and width measured from the building to the face of the curb and from the proposed outdoor seating to the face of the curb; the locations of tree wells, sidewalk grates, benches, bus passenger shelters, mailboxes, newspaper boxes, lampposts, traffic signal poles, traffic and parking signs, parking meters, wheelchair ramps, driveways, fire hydrants, trash receptacles and similar sidewalk features or obstructions; and the boundaries of any existing adjacent outdoor seating;
- (iii) The number of water closets and lavatories provided in the existing Establishment and the seating capacity of the proposed outdoor seating area.
- (iv) Photographs or other graphic representations, together with specifications, which depict the design, materials, and colors of chairs, tables, umbrellas, barriers, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area; and
- (v) Such additional information as the director of public works may require as needed to determine compliance with the provisions of this article.

(3) Application fee.

A nonrefundable application fee of \$100.00 shall accompany each application for an outdoor seating permit.

(c) Encroachment agreement; liability insurance and indemnity.

Prior to approval of any outdoor seating permit, the applicant shall submit:

- (1) An executed encroachment agreement, incorporating all terms and conditions imposed by city staff and in a form approved by the city attorney or her designee, which shall include but not be limited to provisions regarding insurance and indemnification as may be required by the risk manager; and

(2) A certificate of liability insurance in such amounts and such coverages as may be required by the risk manager, naming the City of Hampton as an additional insured in a form satisfactory to the risk manager.

(d) Fees and taxes to be paid.

All City of Hampton fees and taxes required by law and applicable to the Establishment, or to the property on which the Establishment is located, shall be paid in full and all required city licenses shall be current prior to approval of an outdoor seating permit.

Sec. 34-124 – Outdoor seating permit; review process.

(a) After a complete application, including all required materials as set forth in section 34-123, is submitted, the director of public works shall respond to the applicant within 30 days by forwarding any comments and identifying any deficiencies in the application or by acting upon the application after consultation with the director of the department of community development. The director of public works may approve the outdoor seating permit, approve the outdoor seating permit with conditions, or deny the outdoor seating permit.

(b) Standards for application review.

Approval of an outdoor seating permit shall be granted only if:

(1) The proposed outdoor seating complies with the City of Hampton Pedestrian Amenity Design Standards;

(2) The Establishment is properly licensed and lawfully located in the Phoebus Business (PH-1), Downtown Business (DT-1), or Downtown Waterfront (DT-2) zoning districts;

(3) The proposed outdoor seating complies with the uniform statewide building code and all applicable provisions of federal, state, and local law, including this article;

(4) Adequate space will remain in the public sidewalk or right-of-way area to facilitate safe and convenient circulation of pedestrian traffic and compliance with the ADA; and

(5) The proposed outdoor seating will not unreasonably interfere with the normal use of city property by the city or general public, and does not present a safety, health, or environmental hazard.

(c) Availability of approved permit on the premises.

If approved, the outdoor seating permit and related materials as set forth in section 34-123(b) shall be available on the premises of the Establishment at all times and shall be provided to representatives of the city upon request.

Sec. 34-125. - Outdoor seating permit; changes to approved permit.

No material change to an approved outdoor seating permit shall be made without prior written approval by the director of public works after consultation with the director of community development, provided that the director of public works may modify an approved permit if he finds there is a public need relative to use of the adjacent sidewalk area or right-of-way.

Sec. 34-126. – Outdoor seating permit; duration and transferability.

(a) An outdoor seating permit shall be valid until the time the Establishment ceases operation, the permit is suspended, or the permit is revoked.

(b) An outdoor seating permit shall not be transferable to another Operator or location.

Sec. 34-127. – Outdoor seating permit; enforcement, revocation and suspension.

(a) Any encroachment granted pursuant to this article is a license merely and shall be revocable at the pleasure of the city council.

(b) Administrative revocation of approved permit by the director of public works.

(1) The director of public works shall have the authority to revoke an approved outdoor seating permit if any of the following occurs:

(i) The applicant has misrepresented facts or provided false information in the outdoor seating permit application;

(ii) The outdoor seating area is operated in violation of the terms or conditions of the outdoor seating permit, City of Hampton Pedestrian Amenity Design Standards, ABC regulations, or the encroachment agreement;

(iii) The outdoor seating area or the Establishment is operated in violation of the zoning ordinance, city code, or other applicable federal, state or local law;

(iv) The outdoor seating area constitutes a public nuisance or a hazard to the public health, safety, or welfare of the public, or is endangering the life or property of others.

(v) The Establishment has delinquent taxes, unpaid fees, or has not maintained all licenses necessary for operation of the Establishment and outdoor seating area; or

(vi) The director of public works determines that there is a public need relative to the portion of the sidewalk occupied by or otherwise affected by the outdoor seating, including but not limited to work in the sidewalk area.

(2) The director of public works shall provide written notice to the Operator and owner of the property where the Establishment is located setting forth the effective date of the revocation and the grounds therefor. Such revocation shall not be appealable. Upon revocation, the applicant may elect to follow the procedure set forth in section 34-86 for a new encroachment application to be considered by city council.

(3) In the case of revocation of an outdoor seating permit on grounds other than specified in subsection (b)(1)(vi) of this subsection, the Operator of the outdoor seating shall not be permitted to re-apply for an administrative outdoor seating permit to operate an outdoor seating area for the same Establishment within one year of revocation.

(c) Administrative suspension of an approved permit by the director of public works.

(1) The director of public works shall have the authority to suspend an approved outdoor seating permit for a period of up to 30 days, or such longer period as may be necessary, if any of the conditions of section 34-127(b)(1) occurs.

(2) The director of public works shall provide written notice to the Operator setting forth the effective date of the suspension, the length of the suspension, and the grounds therefor.

(3) The director of public works may reinstate an outdoor seating permit if the director is satisfied that the grounds for the suspension have been abated.

Sec. 34-128. – Outdoor seating permit; marking of outdoor seating area for inspection.

After approval of an outdoor seating permit and prior to initial occupancy of any area approved for use for outdoor seating, the Operator of the outdoor seating shall mark the corners of the approved outdoor seating area in a conspicuous but non-permanent manner on the sidewalk surface and shall notify the director of public works for inspection and approval of the same.

218 **Sec. 34-129. – Outdoor seating permit; design standards.**

219 (a) *The City of Hampton Pedestrian Amenity Design Standards is declared to be a part of*
220 *this article and to have the same force and effect as if it were fully set forth and*
221 *described herein. The City of Hampton Pedestrian Amenity Design Standards shall be*
222 *kept in the office of the department of community development and public works and*
223 *may be amended by from time to time with the joint approval of the directors of the*
224 *departments of community development and public works.*

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226 (b) *Every outdoor seating area shall be designed and operated in compliance with the*
227 *City of Hampton Pedestrian Amenity Design Standards.*

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229 **Sec. 130. - Reserved.**