

**TOWN OF WYTHEVILLE**

**LICENSE REGULATIONS**

**FOR**

**OUTDOOR DINING/  
OUTDOOR FURNITURE**



**Adopted June 11, 2018**

## **SECTION 1. GENERAL PURPOSE**

- 1.1 The Open Air Dining/Outdoor Furniture regulations are intended for the public right-of-way in Downtown Wytheville. The Open Air Dining/Outdoor Furniture regulations are designed to allow and encourage open air dining on the public right-of-way fronting pedestrian-oriented ways where such use is appropriate. The goals of the regulations are as follows:
  - 1.1.a To promote economic development in Downtown and create destinations for all residents;
  - 1.1.b To promote open air dining and to encourage outdoor seating as an amenity which promotes Downtown as a pedestrian area;
  - 1.1.c To preserve and enhance the character of Downtown and to promote the most desirable use of public property;
  - 1.1.d To ensure that adequate clearance is maintained for pedestrians adjacent to open air dining areas/outdoor furniture areas to preserve the fundamental purpose of the public right-of-way; and
  - 1.1.e To establish administrative and enforcement procedures for these license regulations that are effective, efficient and enforceable.

## **SECTION 2. APPLICABILITY**

- 2.1 To be eligible for an Open Air Dining/Outdoor Furniture License, restaurants and businesses must meet the following criteria:
  - 2.1.a Restaurant/businesses must be located in the Business District B-2DT Downtown Zoning District as shown on the Official Zoning Map for the Town of Wytheville.
  - 2.1.b Restaurants are required to meet the following requirements:
    - 2.1.b.1 Restaurants shall provide an assigned restaurant staff employee to monitor the open air dining area and clean up the open air dining tables should patrons not do so. Emptying of the restaurant's trash and recycling containers is the responsibility of the licensee.
  - 2.1.c The open air dining must be associated with a host restaurant located on private property adjacent to the proposed license area.
  - 2.1.d The restaurant must not be delinquent in meals, personal property or real estate taxes or business license obligations and must not be the subject of a current Zoning Ordinance violation.

### **SECTION 3. DEFINITIONS**

For the purposes of these regulations, the following definitions apply:

- 3.1 Downtown: the area of Town classified as Business District B-2DT Downtown Zoning District on the Official Town Zoning Map.
- 3.2 Licensee: the owner or operator of the host restaurant/business to whom the Town Manager, or his designee, grants the ability to have an open air dining facility/outdoor furniture. (The license does not run with the land.)
- 3.3 Open Air Dining: an open air dining facility with a license to operate on public property. No portion of an open air dining area shall be used for any purpose other than dining or related circulation. All open air dining areas and the required adjacent host restaurant shall meet all ADA requirements (including restroom facilities within the restaurant).
- 3.4 Obstruction: Public infrastructure improvements such as traffic signal poles, sign poles, light poles, planting areas, tree grates, trees, trash receptacles, benches, bike racks, parking meters, etc., that may impede the flow of pedestrian traffic.

### **SECTION 4. OPERATIONAL REQUIREMENTS - ALL OPEN AIR DINING FACILITIES**

- 4.1 To be granted a license, the applicant must agree to meet the following operational requirements:
  - 4.1.a The open air dining may remain open only so long as all regular menu items served by the establishment are available to patrons.
  - 4.1.b Open air dining shall be allowed until 12:00 a.m. Patrons may not be served food or beverage after 12:00 a.m. but may remain to complete meals served prior to 12:00 a.m. In case of a restaurant without wait service, the food must be purchased prior to 12:00 a.m.
  - 4.1.c Patrons may consume alcoholic beverages in these dining areas that have been prepared within the host restaurant in compliance with state ABC regulations. Patrons must be seated in the dining area to be served alcoholic beverages.
  - 4.1.d The licensee shall not permit persons other than patrons or employees of the establishment to enter the premises or to congregate therein, other than those patrons seated at tables provided by the establishment.
  - 4.1.e Smoking shall not be allowed in the open air dining areas.

- 4.1.f In the event a public safety official determines that the open air dining area should be closed earlier than the normal closing time for reasons of crowd control, unruly behavior either within the establishment or in nearby areas, or for other reasons related to preservation of public safety or public order, the operator shall comply or the Open Air Dining License may be revoked.
- 4.1.g Outdoor furnishings shall be removed in the case of special events or inclement weather as designated by the Town and specified in the license agreement. This shall be applicable if the open air dining/outdoor furniture license area falls within the event footprint. The licensee will be responsible for removal of all furniture and fencing prior to the event as specified in the license agreement.
- 4.1.h The restaurant operator shall not allow persons awaiting entry into the establishment or open air dining area to form lines on the sidewalk that impede the flow of pedestrians.
- 4.1.i The restaurant operator shall comply with all fire, building, zoning, alcoholic beverage control and health regulations in the operation of the open air dining license area and the main restaurant.

## **SECTION 5. GENERAL OPEN AIR DINING/OUTDOOR FURNITURE AREA REQUIREMENTS**

Requirements apply to all open air dining/business, unless noted otherwise in specific open air dining categories herein.

- 5.1 **Building Façade:** The host restaurant/business façade must be structurally sound and in good repair.
- 5.2 **Size:** The scale, proportion and overall design of the open air dining/outdoor furniture area shall be reviewed by Town Staff to ensure the open air dining/placement of outdoor furniture is compatible with the adjacent building, the street block face and the overall goals of the Comprehensive Plan and the Downtown Master Plan. The size of the open air dining area must maintain clearances as outlined in each section from obstructions that may impede the flow of pedestrian traffic or access to the building.
- 5.3 **Perimeter Fence:** For outdoor dining areas, perimeter fences are required in compliance with ABC regulations for alcohol service. A perimeter fence shall be moveable and a minimum of thirty (30”) inches in height and maximum of forty-two (42”) inches in height. The fencing shall be black in color and constructed of factory-finished metal, or a manufactured fiberglass railing system and designed to be removed daily or seasonally so the sidewalk can be used for pedestrian use. All open air dining perimeter fence systems shall be durable and well maintained. All open air dining fencing shall be reviewed and approved by the Town as part of the review of the license agreement.

- 5.4 **Access:** Only one well-defined entrance opening is permitted to the open air dining area. Orientation of the access opening will be reviewed by the Town staff as part of the review of the license agreement. Access must meet all ADA Standard Disability Access requirements.
- 5.5 **Umbrellas:** Umbrellas shall be soft top and not permanently mounted. All umbrellas shall be constructed of fire resistant vinyl fabric or canvas. Umbrellas shall be any color. Umbrellas must be weighted to remain in place. At no point shall the height of an umbrella be lower than seven (7) feet above the sidewalk of the Open Air Dining area. The name of the host restaurant may appear on the valence of each umbrella provided that the advertising occurs a maximum of three times per umbrella and is less than one square foot each. No other advertising on umbrellas is permitted. Signage on umbrellas shall not be counted toward the allowed signage for the restaurant.
- 5.6 **Furnishings:** The furnishings for the open air dining/outdoor furniture shall consist solely of moveable tables and chairs, outdoor furniture and decorative accessories. Tables and chairs and outdoor furniture shall be constructed of stainless steel, fiberglass, powder coated aluminum or other metal, or other sustainable product of similar quality. Plastic furniture and furniture constructed of light metals (such as hollow aluminum) is not allowed due to concerns regarding durability and appearance. Any trashcans or busing station must be shown on the plan and also meet the same standards for color and materials. All open air dining furnishings shall be reviewed and approved by the Town as part of the review of the license agreement.
- All outdoor furniture must be secured, and all open air dining furniture must be secured within the open air dining area during hours the establishment is closed. All objects required for operation of an open air dining area tables and chairs and outdoor accessories and all outdoor furniture shall be removed and stored out of view during severe adverse weather conditions if so declared by the Town. These objects include tables, chairs, umbrellas, furnishings and decorative fixtures.
- During the off season (December 1 – February 28) all fencing, furniture and furnishings must be stored inside the host restaurant/business or on private property in a location not visible from a public right-of-way. Storage of the fencing, furniture and furnishings is the responsibility of the licensee.
- 5.7 **Lighting:** Any lighting proposed shall be approved by Town staff in the license agreement. No extension cords are permitted to be used where they will cause a pedestrian hazard.
- 5.8 **Signs:** No signage is permitted with the exception of signage required by ABC and a sign, a maximum of two (2) square feet in size, intended to direct people to wait to be seated, proceed inside the host restaurant or seat yourself. See Section 5.5 – Umbrellas for details regarding umbrella advertising and signage.

- 5.9 **Storage:** In the open air dining area, storage of any kind is not permitted, including trash or refuse containers unless the containers are part of a busing station or a fast food restaurant as approved in a license agreement. The operator shall not permit the licensed area to be used for storage of furniture or equipment or for any purpose other than as an open air dining area.
- 5.10 **Bicycle Parking Area:** Bicycle parking is not allowed within the open air dining area. Bicycles cannot be leaning against or chained to a perimeter fence.
- 5.11 **Maintenance:** Cleanup and maintenance of the area of a restaurant's/business's defined space including chairs, tables, furnishings, umbrellas, fencing, emptying of trash cans, etc. and Town property adjacent to the open air dining/outdoor furniture area is the sole responsibility of the designated licensee. (See instructions for approved methods of cleaning the brick sidewalks as covered in the License Agreement.)

## SECTION 6. ADMINISTRATION AND ENFORCEMENT

### 6.1 License Requirements

A license is required for an open air dining/outdoor furniture area on public right-of-way. The license shall be granted only after the application materials have been properly submitted by the applicant, reviewed and approved by the Town Manager, or his designee. The regulations herein are intended to establish the necessary criteria with which the open air dining/outdoor furniture areas shall first comply in order to be eligible for consideration for the granting of a license.

The Town Manager, or his designee, may deny or grant a license subject to such terms and conditions as the Town Manager, or his designee, may, with reasonable discretion, deem proper. Notwithstanding any other provision of law, the Town Manager, or his designee, shall deny any license request he determines, in his discretion, to be detrimental to the public health, safety and welfare or interest. A denial shall be in writing and document the reasons for the denial. A denial is appealable to the Town Council. Upon approval of the License Agreement, the applicant shall satisfy insurance requirements and license fees, as listed below, prior to beginning construction of the open air dining area.

#### 6.2.a Submittal and Review Procedures

The submittal and review process shall be as outlined below.

- 6.2.b **Pre-application:** Meet with the Town Manager, or his designee, on-site and show the staff the location of the proposal. Staff will be available during this meeting, or any time before or after, to answer questions prior to submitting a License Application. Prior to

this meeting, it is recommended that the applicants read the Open Air Dining/Outdoor Furniture License regulations herein. If the project is deemed feasible after the pre-application meeting, the applicant will complete an Open Air Dining License Application. Prior to the consideration of any application for a license, the applicant must submit a preliminary concept consisting of: the proposed open air dining/outdoor furniture area, including photographs of the existing façade of the associated restaurant building and adjacent building façades.

### 6.2.c **Open Air Dining License Application**

The applicant shall submit a completed Open Air Dining/Outdoor Furniture Application, to the Town Manager's Office. No application shall be processed for the year in question that fails to meet the application deadline. All renewals shall be due on the same schedule as the business licenses.

The following are required to be submitted along with the application for review:

6.2.c.1 Sketch of the existing property.

6.2.c.2 Layout of the open air dining/outdoor furniture area: The scaled layout drawing shall show the existing building outline, property lines, the proposed open air dining/outdoor furniture area location, fence and access point (if applicable), all fixtures and furniture, sidewalk, obstructions and the street(s). A minimum scale of 1" = 10'-0" shall be used. The layout must demonstrate the minimum clear path on the sidewalk between the face of the open air dining/outdoor furniture perimeter and any obstructions or the street(s).

6.2.c.3 Photographs: Photographs of the proposed open air dining/outdoor furniture site, existing building façade(s) and adjacent property on each side.

6.2.c.4 Proposed Fixtures and Furnishings: Manufacturer specifications, images of all proposed furnishings, including tables, chairs and umbrellas.

6.2.c.5 Letter of Authorization: A letter from the property owner (if the applicant is not the property owner) for the open air dining/outdoor furniture area.

6.2.d Upon receipt of the complete application, the Town Manager, or his designee, will review the application within ten (10) business days of receiving the application and provide comments. The applicant will have an opportunity to revise the application packet, if necessary.

6.2.e Upon successful completion of the review and, if applicable, the final application packet revisions, staff will approve the Open Air Dining/Outdoor Furniture Application.

### 6.3 **Permits and Inspections Review**

6.3.a If the Open Air Dining/Outdoor Furniture License is approved by the Town Manager, or his designee, the applicant will be required to set up a field inspection with staff to confirm compliance with the license agreement prior to commencing operations of the open air dining area or placement of the outdoor furniture.

6.3.b Approval of the Wythe County Health Department and, when applicable, the State of Virginia Alcoholic Beverage Control Board is required for operation.

### 6.4 **Insurance and Fees**

6.4.a Applicant will provide liability insurance coverage not less than one million dollars (\$1,000,000) for personal injury and property damage as required with the insurance certificate supplied upon approval indemnifying the Town of Wytheville and naming it as an additional insured.

### 6.5 **Enforcement**

6.5.a The license period shall be for up to twelve (12) months and renewable on the same schedule as business licenses.

6.5.b During the period in which the license is in effect, the Town Manager's Office, or his designated representative, is to enforce the provisions of the license agreement, and is authorized to suspend by written notice the agreement if there is a violation of the agreement. The written notice shall detail the violations.

6.5.c In the event the Town determines that the Licensee has failed to comply with any of the terms or conditions of this Agreement, the licensee shall be given a minimum of twenty-four (24) hours and a maximum of ten (10) calendar days to remedy its nonconformance. The amount of time that the Licensee shall be permitted to gain compliance shall be determined in the sole discretion of the Town by its authorized employee. However, such time shall be reasonable and shall be based upon the level of severity of the noncompliance. If the Licensee fails to effect compliance within the time allowed, the Town shall have the right to suspend the open air dining operation, in whole or in part, until such time as the Licensee shall remedy its noncompliance.



## 6.6 **Revocation of License:**

The license agreement shall provide that an Open Air Dining/Outdoor Furniture License may be revoked by the Town Manager whenever the Town Manager determines that one of the following conditions has occurred:

- 6.6.a. The owner or operator of the host restaurant/business has been found guilty of a criminal offense arising from the operation of the host restaurant/business;
- 6.6.b. The owner or operator of the host restaurant/business has been assessed a civil penalty for violation of any fire, building, zoning, alcoholic beverage control or health regulation arising from the operation of the establishment;
- 6.6.c. The presence of the open air dining/outdoor furniture area is causing or contributing to a deterioration of the quality of the pedestrian experience or general environment in the area (including, but not limited to, trash and debris);
- 6.6.d. The open air dining/outdoor furniture area is in violation of any material term of its license agreement or the Open Air Dining/Outdoor Furniture Regulations; or
- 6.6. e. The owner or operator of the host restaurant has failed to comply with an order of the Virginia Department of Health or the Town Building Official directing that the open air dining area be closed.
- 6.6.f The license agreement shall also provide that the Town Manager may suspend the licensee's privilege to operate the open air dining/outdoor furniture area under the granted license pending a final disposition of any criminal charge, alcoholic beverage control violation or civil infraction arising from the operation of the host restaurant/business.

## 6.7 **Effect of Revocation of License**

The license agreement shall provide that upon revocation or suspension of a license by the Town Manager, the owner or operator shall immediately cease operation of the open air dining and shall remove all tables, chairs and other items located on Town property within twenty-four (24) hours of the revocation or suspension. Upon revocation or suspension of an Outdoor Furniture license by the Town Manager, the business operator shall remove all outdoor furniture within twenty-four (24) hours of the revocation or suspension. The license agreement shall authorize the Town Manager to remove, or contract for the removal of any tables, chairs, fences, outdoor furniture and other items encroaching upon Town property and charge the costs thereof to the owner or operator.

## 6.8 **Appeal of Suspension or Revocation**

An appeal of a suspension or revocation may be filed within ten (10) days from the date of the suspension or revocation notice. The appeal shall be heard by the Town Council.