

**CITY OF BARNESVILLE
ORDINANCE # 547**

SIDEWALK CAFES

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF BARNESVILLE, GEORGIA BY AMENDING ARTICLE 1, ADDING SECTION 86-33 - SIDEWALK CAFES, WHICH WILL ALLOW LIMITED TEMPORARY USE OF THE SIDEWALKS OF THE CITY IN THE DOWNTOWN AREA FOR SIDEWALK CAFES, TO REGULATE SAID CAFES AND FOR OTHER PURPOSES.

WHEREAS, the Mayor and Council find further that a vibrant, attractive downtown area is of great benefit to all the citizens of the City, providing a focal point for the community and making the City more attractive to tourists, potential residents, visitors, business and industry; and

WHEREAS, the Mayor and Council of the City of Barnesville, Georgia find that sidewalk cafes will add to the ambiance and attractiveness of the City downtown District.

NOW THEREFORE, Be it ordained and established by the Mayor and Council of the City of Barnesville, Georgia, the following Rules and Regulations regarding the permitting and operation of Sidewalk Cafes in the Downtown District be adopted:

I. Purpose

The primary purpose of public rights-of-way is the free and unobstructed right of travel. The City recognizes that outside table service by restaurants can be of significant benefit to the general public so long as such use is not inconsistent with the underlying dedication for the public right-of-way, does not impede travel, and does not interfere with public safety or the rights of adjoining property owners. Therefore, the City may approve temporary use of the public right-of-way to operate a sidewalk café.

The purpose of this policy is to:

- A. Provide for pedestrian and vehicular safety and convenience.
- B. Restrict unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into or egress from any residence, place of business, other building or from the street to the sidewalk by persons exiting or entering parked or standing vehicles.
- C. Provide reasonable access for the use and maintenance of poles, posts, handicap ramps, traffic signs or signals, hydrants, mailboxes and access to locations used for public transportation purposes.
- D. Not interfere with the operations of adjacent businesses.
- E. Encourage active Street level activity to enhance urban environment.
- F. Preserve and enhance the character of the Historic Commercial District.

II. DEFINITIONS

- A. Outside Table Service: An outdoor dining area on a public sidewalk where patrons may consume food and/or beverages provided by an abutting food service establishment.
- B. Temporary Use: Situated on, but not attached to, the public right-of-way.

- C. Approval: The temporary use approval created by this policy.
- D. Restaurant: An establishment holding the business tax designation of full-service restaurant.

III. APPROVAL REQUIRED

It is unlawful for any person to place furniture on, or provide outside table services on the public right of way in the City without first obtaining a permit. Any person desiring a permit needs to file an application with the City, supplying such information in connection with the proposed temporary use as may be required by the City. A permit issue under this ordinance is for the calendar year in which it is issued. The permit must be renewed each calendar year. The permit fee is not prorated for partial year use.

IV. APPLICATION FOR TEMPORARY USE APPROVAL

- A. The issuing authority will be the Code Enforcement Officer.
- B. Applications. The applicant must file at City Hall, with the Community Development Coordinator, a written application for a Use of City-Owned Property and/or Public Rights -of-Way for Sidewalk Cafes Permit. The application needs to contain the following information and/or documents:
 - 1. Full and complete contact information of the applicant who is the owner and/or principal in charge of the restaurant.
 - 2. Full and complete contact information of a responsible person who the City may notify or contact at any time concerning the applicant's requested temporary use.
 - 3. A scaled drawing of the temporary use location. The drawing needs to indicate the following: the proposed layout; materials and design; the relationship of the proposed temporary use to the curb; obstacles; existing building; and buildings on either side.
 - 4. A picture of the furniture and/or umbrellas proposed for use. (Note: Please do not purchase furniture before being granted a Sidewalk Café Permit. Submission of pictures showing proposed furniture will suffice).
 - 5. A copy of the business tax certificate provided to each business by the City of Barnesville. A certificate showing that the business maintains general liability insurance with a minimum coverage amount of \$50,000 per person and \$100,000 per occurrence. The business's insurance policy must list the "Mayor and Council of the City of Barnesville" as an additional insured. Application fee of \$50.00, in the form of check or money order, made payable to the City of Barnesville is required.
- C. Action on Applications. The City will:
 - 1. Process applications, ensure site sufficiency and issue permits. The City may approve all conforming applications.
- D. Approved Permits.
 - 1. The applicant should not change or increase the approved furniture, umbrellas or site plan without written authorization from the City.

V. FINDINGS

- A. No permit may be issued until the application is approved by the City Manager or his designee and all of the findings are met.
1. The proposed temporary use meets the standards of this policy.
 2. The proposed temporary use does not unduly interfere with the use of the public right-of-way by adjoining property owners and tenants.
 3. The public use of the sidewalk, pedestrian, are not restricted.
 4. The proposed temporary use is complementary to and not inconsistent with the underlying dedication for public right-of-way and is not inconsistent with the City's title or estate in the underlying public right-of-way.
 5. The proposed temporary use is compatible with the use and enjoyment of surrounding uses.
 6. The proposed temporary use does not impede travel on the public walkway or create a hazard to the safety or health of passers-by.
 7. The proposed temporary use does not unlawfully alter the associated use of the abutting property.
 8. The outside table furniture and umbrellas have been approved by the City.
 9. Building entryways are not obstructed.
 10. All ADA provisions are met.

VI. OUTSIDE TABLE SERVICE STANDARDS

- A. All permits issued pursuant to the terms of this policy will conform to these standards, and no permit may be issued which does not so conform.
- B. Business Operations
1. Umbrellas must be approved by the City. No commercial logos, product logos or business names are allowed on umbrellas or in any other outdoor display. All umbrellas must be a solid color and all umbrellas used by a particular café must be the same color.
 2. All outside table service must end by midnight or when a full menu is no longer served, whichever is earlier. At this time, all furniture or other elements such as ashtray receptacles and movable planters must be brought inside the business and the public walkway returned to its original condition. THE OWNER IS REPOSNSIBLE FOR ANY DAMAGE OR INJURIES CAUSED BY THE OUTSIDE FURNITURE. IT IS REQUIRED THAT THE OWNER REMOVE ALL OUTSIDE FURNITURE OR OTHER ELEMENTS IN HIGH WIND OR STORMY CONDITIONS.
 3. Approved applicant must be in compliance with the Alcoholic Beverage Ordinance. Alcohol service at an outdoor table must conform to the license currently held.
 4. Any alcohol served at an outdoor table must be served in a plastic cup. Beer cans or bottles are prohibited and wine bottles must be presented in a sheath or ice bucket.
 5. Outside table services are for sit-down food and beverage service only; no stand up service is allowed.
 6. Outside tables need to be kept in a good state of repair and maintained in a clean, safe and sanitary condition in accordance with the County Health Department regulations.
 7. All Fire Department regulations and standards concerning exterior lighting and power must be met.

C. Public Right-of-Way

1. Encroachment onto the public right-of-way for the purposes of displaying merchandise is not allowed under this policy.
2. A minimum of six (6) feet of unobstructed sidewalk needs to be maintained between the tables and chairs and light poles and trees. A minimum eight (8) foot unobstructed path needs to be maintained if no light poles or trees are present. No portion of any tree lawn may be used for outside table service.
3. The sidewalk café should directly abut the wall of the restaurant.
4. The outside table service needs to be located in a manner which will not interfere with visibility, vehicular or pedestrian mobility or access to City or public utility facilities. The determination of whether the outside table service (or any part thereof) interferes needs to be made by the City at the time of application based on the characteristics of each proposed site.
5. The permit holder must keep the area between the building and curb clean and clear of trash and cigarette butts. It must be swept when furniture is removed.
6. Tables and chairs must be placed on the public right-of-way according to the site plan that was approved as part of the permit. It is the permit holder's responsibility to maintain this configuration at all times.
7. All outside table services must be readily accessible to and useable by individuals with disabilities.

D. Administrative

1. Permits may be issued only to the operator of a business in the abutting property.
2. Only those establishments in the business tax category of restaurants may operate a sidewalk café. Establishments serving alcohol must be licensed as a full-service restaurant.
3. Temporary, mobile or free standing food service providers are not eligible under this policy.
4. Permits are not transferable upon change in ownership or management.
5. Use and occupation of the public right-of-way which is allowed under this policy may be temporarily suspended, without prior notice or hearing, when, in the discretion of Code Enforcement Officer, the Police Chief, or the Fire Chief any such use, occupation or obstruction may interfere with public safety efforts or programs, special events, street improvement activities, construction activities, cleaning efforts, or other similar activities or with the health, welfare, or safety of the citizens of the City.
6. Permits needs to be considered temporary and nonpermanent in nature and the applicant should have neither property interest in nor any entitlement to the granting or any continuation of any such permit.
7. All plans and permits for outside table service approved by the City must be kept in a visible place for inspection at all times the establishment is open for business.
8. The City may, in its sole discretion, and at any time, place additional conditions upon the issuance of permits in order to ensure the protection of the public walkways and the rights of all adjoining property owners and the health, safety and general welfare of the public.

VII. INDEMNIFICATION OF CITY

- A. As a condition of issuance, the approved applicant and any person acting under or pursuant to said permit, agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent, or groundless) to the maximum extent allowed by law, the Mayor and Council of the City of Barnesville and each member thereof, and its officers, employees and representatives, from and against any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part result from, or arise out of, or are claimed to result from or to rise out of any acts, negligence, errors, or omissions (including, without limitation, professional negligence) of approved applicant, its employees, representatives, contractors, subcontractors, or agents by reason of or arising out of, or in any matter connected with, any and all acts, operations, privileges authorized, allowed or undertaken pursuant to the temporary use permit including, without limitation, any condition of property used in the operations.
- B. This agreement indemnity includes, but is not limited to, personal injury (including death at any time) and property or other damage sustained by any person or persons (including, but not limited to, companies, corporations, approved applicant and its employees or agents, and members of the general public).
- C. As a further condition of issuance of the approval, the approved applicant covenants not to sue the Mayor and Council of the City of Barnesville and each member thereof, and its employees, agents and representatives and needs to cause its insurers to waive subrogation against the same with respect to any action, claim or demand in any way resulting from or connected with any and all undertakings and operations conducted pursuant to the temporary use approval.

VIII. LIABILITY INSURANCE

- A. The approved applicant is required to have general liability insurance with the following limits:
 - 1. \$50,000 per person
 - 2. \$100,000 per occurrence
- B. Policy should name "The Mayor and Council of the City of Barnesville" as an additional insured.
- C. When renewing insurance annually, business owner should provide the City with an updated copy of the Certification of Liability Insurance. A copy of this document should either be mailed or faxed to:

City Clerk
City of Barnesville
109 Forsyth Street
Barnesville, GA 30204
770-358-0185 (FAX)

- D. Failure of a business to provide the City with an updated Certificate of Liability Insurance by the expiration date of the Certificate currently on file with the City will result in temporary suspension of said businesses' Sidewalk Café Permit until a current Certificate is provided to and filed by the Department.

IX. TERMINATION

- A. In the event of a default or change in City policy, the City Manager may notify the approved applicant in writing of a termination and specify the time within which the termination is to take place or, in the discretion of the City, immediately terminate the permit without prior notice. Upon delivery of a notice of termination, the City has the right to require the immediate removal of all obstructions in the public walk way, and may perform such removal if the approved applicant fails to do so within such time as specified by Code Enforcement. The approved applicant needs to reimburse the City for any expense incurred by the City in removing any obstruction in the event it is not removed by the approved applicant within the time required by the City.

X. LAPSE OR REVOCATION AND REFUSAL TO ISSUE

- A. A person desiring approval for outside table service which has been the subject, in part or in whole, of a prior approval which has lapsed, been revoked or terminated needs to file a new application. The City may refuse to issue such approval for outside table service if any applicant fails to meet any requirements for new approval, or if such person has failed or refused:
1. To repair public improvements or other property damaged as a result of the occupancy of a public right-of-way; or
 2. To demonstrate readiness and willingness to comply with the terms of this policy, with the standards promulgated pursuant to this policy or with the terms of the approval.

XI. ENFORCEMENT

Code Enforcement Officer is the enforcing authority and will issue approvals and ensure compliance with this policy.

- A. Notice of violation of any standards of operation will be made verbally or in writing to the permit holder. Immediate abatement of such violation will be required by the permit holder. Verbal notices of violation need to be followed by a written notice for purposes of establishing a record of violations at the discretion of the party giving verbal notice.
- B. Violations of the terms of the permit or any provision of these standards will be kept on file by the City. More than two violations within one calendar year of the provisions of this policy will constitute cause to revoke the temporary use permit.
- C. Upon termination of the permit, the applicant needs to remove all personal property, furnishings, and equipment from the public right-of-way immediately.
- D. Enforcement of the temporary use permit will be carried out by the Code Enforcement Officer.

XII. ADMINISTRATIVE HEARING AND APPEAL

- A. All appeals concerning applications or permits should be made in writing to the City Manager within ten business days of receiving written notification of denial or revocation of a permit. Such appeal shall be heard by the City Manager within ten business days of receipt of the appeal and written notification of decision will be issued within ten business days of that decision.

- B. Decisions of the City Manager may, within ten business days of notification, be appealed in writing to the City Council in the same manner as provided for in the City of Barnesville Zoning Ordinances Section 1100.3. Such appeal shall be heard by City Council within thirty business days of receipt of the appeal and written notification of decision will be issued within ten days of that decision. Rulings of the City Council are final.

XIII. POLICY TO REGULATE TEMPORARY USES ONTO CITY-OWNED PROPERTY AND PUBLIC RIGHTS-OF-WAY

This policy supersedes any and all approvals given prior to the implementation of this policy.

DESIGN STANDARDS

Sidewalk Café and Street Furniture

Applicant must provide specifications and a photograph of the proposed sidewalk furniture.

Sidewalk Café furniture must comply with the following requirements:

- All furniture must be dark green, black or muted silver.
- Umbrellas must be a solid color and all umbrellas used by a particular business must be the same color.
- All furniture and umbrellas must be durable enough to withstand weather and sidewalk conditions.
- The preferred material for sidewalk café furniture is metal. However, some plastic or wood may be appropriate.
- Both tables and chairs must be constructed of the same material and be of the same esthetic design.
- No glass table tops are permitted. Tables may not be larger than 16 square feet. (4 ft x4 ft)
- Any change in furniture or umbrellas requires approval of the City.

Examples of Approved Furniture:

Name of Store/Site	Manufacturer/Collection	Style
Lowe's	Garden Treasures	3-Piece Birkdale Patio Furniture Set
Lowe's	Garden Treasures	Woodbridge Bistro Chair and Square Dining Table
Woodard	Bistro Collections	Parisienne Table and Chair
Woodard	Valencia	Barrel Chair and Mess Top Table
Woodard	Bistro Collections	Marsala Side Chair with Mesh Seat and Mesh Top Table
Wal-Mart	Eden Outdoor	Newport Stacking Arm Chair
Woodard	Eden Outdoor	Lakeside Stacking Arm Chair
Woodard	Jack Post	Square Table
Woodard	International Home	Miami Milano Table

The Review Committee will assist the business with selection of appropriate

CITY OF BARNESVILLE

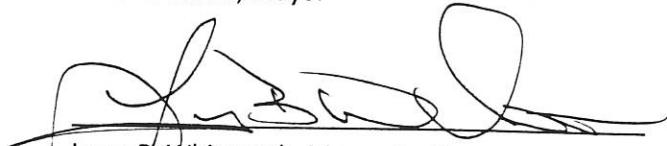
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SIDEWALK CAFES

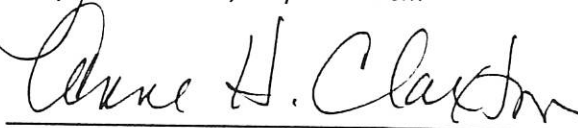
PASSED THIS THE 11th DAY OF May, 2015.



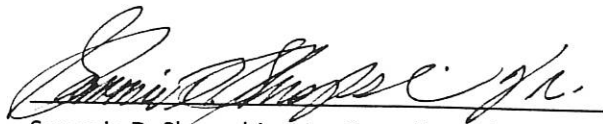
Peter L. Banks, Mayor



Larry B. Whitworth, Mayor Pro Tem



Anne H. Claxton, Councilmember



Sammie D. Shropshire, Jr., Councilmember



Christopher Hightower, Councilmember



Mark R. Stone, Councilmember

ATTEST:



Carolyn S. Parker
City Clerk



