

## ORDINANCE NO. 1545

An ordinance creating Article VIII of Chapter 25 of the Code of the City of Jamestown, North Dakota concerning outdoor seating in the City of Jamestown on City or State right-of-way.

WHEREAS, the City of Jamestown has the authority to enact ordinances to protect the health, safety and welfare of the citizens of the City of Jamestown.

WHEREAS, pursuant to chapter 40-50.1 of the North Dakota Century Code and the Home Rule Charter of the City of Jamestown, the City has the authority to provide for the public, health, safety, and morals of the city by regulating its streets and sidewalks; and

WHEREAS, the City of Jamestown desires dining establishments or on-sale licensed holders to utilize the sidewalks pursuant to review and approval of the City Auditor or the designee.

NOW THEREFORE, be it ordered by the City Council of the City of Jamestown, North Dakota, that Article VIII of Chapter 25 be enacted as follows:

### **ARTICLE VIII. Outdoor Seating Areas.**

#### **Section 25-65. Outdoor seating areas.**

No person may own, set-up, or operate an outdoor seating area on City or State right-of-way without first obtaining a permit. Businesses which offer eat-in dining or hold an on-sale alcohol permit are eligible to obtain a permit under this article for use of the sidewalk adjacent to business or property. Permitholders for outdoor seating areas and their employees shall meet the following:

- (1) The permitholder shall set up the outdoor seating area, including, but not limited to, the furniture, canopies, fencing and/or other accessories used for the outdoor seating area, only in the area designated by the City in the permit, specifically excluding roadways. The outdoor seating area shall not impede, endanger, or interfere with pedestrian or vehicular traffic;
- (2) Furniture, canopies, fencing and/or other accessories used for the outdoor seating area shall be located so that a minimum of 48 inches of unobstructed clearance within the pedestrian way, or the minimum required by the International Building Code as amended from time to time by the Americans with Disabilities Act, whichever is more restrictive, shall be provided at all times;
- (3) The permitholder shall provide proper containers or some other means for the collection of waste and trash within the permitted outdoor seating area. The permitholder shall keep the immediate area around the outdoor seating area and the outdoor seating area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor seating area. All waste and trash shall be properly disposed of by the permitholder;
- (4) The permitholder shall comply with all applicable regulatory agency requirements. The permitholder shall display in a conspicuous location all such required permits and licenses and shall provide copies of those permits and licenses to the City prior to issuance of a permit for an outdoor seating area by the City. The permitholder shall continuously maintain the required approvals, permits and licenses, and provide evidence to the City of the continuous maintenance of them;
- (5) The permitholder shall be responsible for the maintenance, upkeep, and security of the furniture and accessories of the outdoor seating area and the City shall not be responsible for the same;
- (6) The permitholder shall not have on the premises any bell, siren, horn, loudspeaker, electronic billboards, flashing signs, flashing lights, windsocks or any other audio or visual device to attract the attention of possible customers, nor shall the permitholder use any such device to attract attention;

- (7) For any outdoor seating area where alcoholic beverages are served, the permit holder shall comply with all state and local regulations for the sale, possession and/or consumption of alcoholic beverages and shall provide the City with a copy of any and all required permits or licenses for the sale, possession, and/or consumption of alcoholic beverages except those permits and licenses issued by the City and a diagram and/or plans showing the location of the outdoor seating area which were submitted for the permit or license. In addition, the area where alcoholic beverages are sold, possessed and/or consumed must be effectively partitioned by rope, temporary fence, or other devices designed and intended to separate the outdoor seating area from passersby;
- (8) Design of the furniture and accessories for an outdoor seating area shall be durable, safe, and consistent with the aesthetics of the neighborhood. No specific material is permitted or prohibited, but the City of Jamestown Building Official may require or prohibit the use of certain materials or may require the applicant to modify its furniture or other accessories in furthering these objectives;
- (9) Tables, chairs, ropes, fences and any other structure or item placed on the sidewalk must be removed from the sidewalk at the end of the business day, at business closure, or in the event of inclement weather, unless arrangements for assembly and storage of such items on a part of the sidewalk are approved in the permit;
- (10) Cooking, food preparation or self-service food shall not be allowed in such outdoor seating areas; and
- (11) No canopy may be placed over a building exit.

#### **Section 25-66. Application.**

Businesses who desire to apply shall submit a completed application to be filed with the City Auditor's Office upon a form reviewed and approved by the City Council, but at a minimum shall include:

- (1) The name, address and telephone number of the applicant;
- (2) A site plan showing the proposed location of furniture, canopies, fencing and other accessories for the outdoor seating area; a description, drawing, sketch, or photograph showing the material and design of all furniture, fencing, canopies and accessories to be used in the outdoor seating area; location for the outdoor seating area; and other pertinent information related to the use of the outdoor seating area;
- (3) The applicant shall provide and maintain a certificate of insurance for comprehensive general liability, automobile liability, and workers compensation coverage in minimum amounts as determined from time to time by the City Council. Any Applicant holding an-sale alcohol license must also obtain liquor liability insurance in amounts as determined by the City Council. All certificates shall be issued by an insurance company authorized to do business in North Dakota, shall name the City as 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 insurance shall be primary and non-contributory. The permit holder shall continuously maintain the insurance required by this section and shall continuously provide the City with evidence of the insurance required by this section. The City Council may have additional insurance requirements as approved on the permit application. Any permit holder desiring to obtain a permit upon the North Dakota Department of Transportation (NDDOT) Right-of-Way may be required to obtain additional insurance or have additional requirements and fees;
- (4) The permit holder shall execute a statement on the permit application, wherein the applicant holds harmless and indemnifies the City from any claims or causes of action arising out of or related to the permitted activity, including, but not limited to, compliance with the Americans with Disabilities Act, the International Building Code and any amendments thereto, and all other health and safety laws and regulations;

- (5) The application shall be signed by the owner, and if the property is being leased, the lessee shall also sign the application;
- (6) Such additional information as may be requested by the City Auditor or the Finance and Legal Committee which information may be necessary to determine compliance with this article; and
- (7) Payment of the permit fee set by resolution of the City Council.

### **Section 25-67. Approval Procedure.**

When the City Auditor or the designee determines an application is complete, the City Auditor shall review the applications in conjunction with City staff. The City Auditor may take action upon a completed application, but also has the discretion to seek City Council approval for any application. The City Auditor may approve, approve with conditions, or deny any permit after determining by the greater weight of the evidence that the permit would not be a detriment to the health, safety, and welfare of the general public. In determining what constitutes a detriment to the health, safety, and welfare of the general public, the following factors, among others not specifically enumerated, shall be considered:

- (1) The location, type, and size of the encroachment, including the encroaching structure(s);
- (2) The proximity of the encroaching structure(s) to a traveled road, whether public or private;
- (3) Whether the encroaching tables, chairs, or other structure(s) will unreasonably interfere with pedestrian or vehicular passage or safety;
- (4) Whether the encroaching structure(s) will interfere with an existing water or wastewater line, storm water facility, or other utility;
- (5) The effect upon the safety, health, and welfare of residences, businesses and the general public in allowing the encroachment. This consideration may include concerns for attracting unwanted noise or disorderly behavior; and
- (6) Design of the furniture and accessories for an outdoor seating area shall be durable, safe, and consistent with the aesthetics of the neighborhood. No specific material is permitted or prohibited, but the City may require or prohibit the use of certain materials or may require the applicant to modify its furniture or other accessories in furthering these objectives.

The decision of the City Auditor may be appealed to the City Council within 15 days. Upon review on appeal or at the request of the City Auditor, the City Council may approve, approve with conditions, or deny any permit upon a determination as set forth above. The decision of the City Council shall be final. Approval of the permit by the City Auditor or the City Council as the case may be, shall also be deemed approval for the Mayor to sign an agreement on behalf of the City with the NDDOT to enter into an Encroachment Agreement.

### **Section 25-68. Permit Conditions and Termination.**

Upon approval of any permit, the City Auditor shall issue a permit subject to the following conditions along with any other conditions the City Auditor or City Council deems appropriate:

- (1) The permit is subject to termination by the City upon 30 days' notice in the event the City determines the encroachment, including activities associated with the encroachment, creates a safety hazard to pedestrians or vehicular traffic, or for the operational needs of the City. Further, any permit issued upon an NDDOT right-of-way may be terminated at any time, without notice, in the event that the NDDOT terminates its consent for the encroachment.

- a. A permit may also be terminated if the permitholder violates any terms of the permit or this Article. Upon notice of an investigation for a violation provided to the City Auditor, the City Auditor shall notify the permitholder of the alleged violation. Upon notification of the alleged violation, the permitholder has 5 days to provide a response to the City Auditor. After the permitholder has provided a response or 5 days have lapsed, the City Auditor may revoke the permit or may take any other action which the City Auditor deems appropriate. The decision of the City Auditor may be appealed to the City Council. The City Council shall conduct a hearing after providing not less than 5 days' notice to the permitholder. Upon a hearing, and a finding that the City Council has determined by the greater weight of the evidence a violation occurred, the City Council may revoke the permit or take any other action it deems appropriate. A decision of the City Council shall be final;
- (2) The owner (and lessee, where applicable) obtaining the permit shall agree that, upon such termination, if the owner (or lessee, where applicable) shall fail to remove the encroachment within 30 days following the giving of the notice by the City in accordance with subsection (1) of this section (or immediately upon termination by the NDDOT), the City shall be authorized to remove the encroaching structure and recover all costs associated therewith from the property owner (and lessee, where applicable);
- (3) The property owner (and lessee, if applicable) shall agree to indemnify and hold harmless the City from any and all liability as set forth in Section 25-66(4);
- (4) If the property is sold or, where applicable, if the lease is terminated after issuance of the permit, the permit shall be immediately and automatically terminated without notice and a new permit application with the new property owner and, where applicable, the lessee, shall be required prior to the encroachment being permitted to continue; and
- (5) The length of the term of the permit shall commence upon issuance of the permit and expire on October 31<sup>st</sup> of each year. The permitholder must renew on an annual basis.

ATTEST:

Sarah Hellekson  
City Auditor /City Administrator

APPROVED:

Dwaine Heinrich  
Mayor

Introduced by Council Member Buchanan  
Seconded by Council Member Schloegel  
First Reading: May 3, 2021  
Second Reading: May 11, 2021  
Final Passage: May 11, 2021

Roll Call No. 2 showed: 5 ayes, 0 nays, 0 absent.