



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods, and diverse communities of Fairfax County

April 19, 2023

ZONING ORDINANCE AMENDMENT – OUTDOOR DINING Preliminary Concepts

BACKGROUND

The FY 2023/2024 Zoning Ordinance Work Program ([ZOWP](#)), endorsed by the Board of Supervisors (Board) on June 28, 2022, lists “Additional Reports to the Board” as a Priority 1 item, which includes Outdoor Dining. This item was added to the ZOWP in response to the Board’s direction to consider ways to allow the continuation of outdoor dining/fitness and other activities permitted in parking areas during the Covid Emergency. On October 4, 2022¹, staff presented to the Board’s Land Use Policy Committee (LUPC) an overview of land use programs implemented during the Covid Emergency and recommendations for a proposed path forward to either sunset or continue the program. The LUPC concurred that the majority of programs would be allowed to sunset at the end of the one-year grace period following the Board’s declaration to end the Covid Emergency, except for the outdoor dining program². At the October 4th LUPC meeting, staff presented possible approaches to allow the continuation of outdoor dining permitted under the Emergency Ordinance. The LUPC supported an administrative permit approach, but on a one-time basis versus an annual renewal. Staff has further studied the topic and researched neighboring jurisdictions to propose the options in the considerations section below.

EXISTING ZONING ORDINANCE PROVISIONS

The existing Zoning Ordinance does not define outdoor dining. However, outdoor seating is permitted by-right as an accessory use in all districts where restaurants and craft beer production establishments are permitted. Parking³ is not required for outdoor seating, provided the number of outdoor seats does not exceed 20 for an establishment with a gross floor area of less than 5,000 square feet, and 32 for an establishment with a gross floor area of 5,000 square feet or more. Providing additional outdoor seating requires the submission and approval of a parking tabulation to demonstrate that the number of existing parking spaces on-site meets the minimum off-street parking requirements for all uses, including any outdoor seating. These provisions are the same in the current Zoning Ordinance and zMOD.

¹Summary October 4 2022, Land Use Policy Committee ([fairfaxcounty.gov](https://www.fairfaxcounty.gov)):

<https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting-materials/2022/oct04-land-use-summary.pdf>

² Board declared the end of the Covid Emergency, effective [March 1, 2023](#)

³ Changes to parking for outdoor seating are proposed in the pending [Parking Reimagined](#) project



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EMERGENCY ORDINANCE

The Uncodified Ordinance to Provide a Method to Assure Continuity in Fairfax County Government During the Novel Coronavirus Disease 2019 (COVID-19) Emergency and Its Aftermath by Temporarily Approving Outdoor Dining and Outdoor Fitness and Exercise Activities Subject to Certain Conditions, Thereby Suspending Any Requirement for Individualized Approvals of Such Activities (Emergency Ordinance), initially adopted on July 14, 2020, and last amended by the Board on July 27, 2021, allowed the setup of outdoor dining, subject to certain conditions, without any requirement for individual approvals. The Emergency Ordinance for outdoor dining applied to any existing restaurant, dining establishment, food court, brewery, microbrewery, distillery, winery, or tasting room for permitted either by-right, by a proffered condition, by special exception, by special permit, or by other development approval. The Emergency Ordinance was valid only for establishments already approved to operate with a Nonresidential Use Permit/Certificate of Occupancy and a Food Establishment Permit. For a full description of all of the Emergency Ordinance standards, please refer to Attachment 1.

CONSIDERATIONS

Staff proposes to add outdoor dining to the definition section of the Zoning Ordinance as a permitted accessory use to a restaurant, carry-out restaurant, restaurant with drive-through, craft beverage production establishment or other similar uses that have a food establishment permit. The use is proposed to be permitted in all zoning districts, unless expressly prohibited by any applicable proffered condition, development condition, special permit, or special exception condition. Staff proposes to carry forward the approach set forth in the Emergency Ordinance to allow outdoor dining on private property by-right subject to certain standards and to add a new administrative permit (AP) process for outdoor dining when located in parking lot. A summary of the proposed standards is provided below, and the full proposed text is provided as Attachment 2. As an accessory use, any outdoor dining use will also need to comply with the general standards for accessory uses contained in the Zoning Ordinance, such as the requirement that the use be subordinate in purpose, area, or extent to the principal use served. The proposed standards will not be applicable to establishments with outdoor dining areas approved as part of their site plan approval. Any outdoor dining with permanent structures or enclosures would be an expansion of the principal use and require site plan and/or building permit approval.

Definition and General Standards Applicable to All Outdoor Dining

Staff proposes the following definition and general standards applicable to outdoor dining permitted by-right and by AP to limit potential impacts to tenants and residential properties directly adjacent to the outdoor dining. Standards contained in the Emergency Ordinance that address ADA⁴, Alcohol, Furniture, Life Safety, Location, Parking, Pedestrian Circulation, and Signs are incorporated with the proposed standards below.

⁴ Americans with Disabilities Act

- **Definition:** Staff proposes a new definition classifying the use as an accessory use and prohibiting permanent structures associated with the use as follows: *An accessory outdoor seating area intended solely for the consumption of food and beverages which does not include permanent structures. All tables, chairs, umbrellas, tents, lighting, and other accessories must be removable and maintained in good visual appearance and condition. This use does not include any use meeting the definition of a public entertainment use.*
- **Permitted Zoning Districts:** Staff proposes that outdoor dining be permitted in all zoning districts as an accessory use, unless expressly prohibited by any applicable proffered condition, development condition, special permit, or special exception condition subject to applicable standards for each permission type as detailed below.
- **Size:** Staff proposes to continue allowing outdoor dining on private property by-right, provided that any single establishment may not exceed 50 percent of the indoor dining floor area of the establishment. In addition, the total area devoted to outdoor dining serving multiple establishments may not exceed 50 percent of the total combined indoor dining floor area for all establishments. In staff's opinion, a limit based on the indoor dining area is a more accurate means of determining the allowable outdoor dining area than the occupancy limit provided in the Emergency Ordinance. All outdoor dining areas must be located entirely on impervious surfaces and must be clearly demarcated by rope, bollards, planters, or other object. An option for consideration is provided in the draft text that could limit the outdoor dining area to a range from 25 percent to 75 percent of the indoor dining area.
- **Hours of Operation:** To mitigate potential noise issues related to activities in outdoor dining areas staff proposes that the hours of operation generally conform to the business hours of the principal use, but in no event occur before 7:00 AM or after 10:00 PM when the outdoor dining is located directly adjacent to single family development or as otherwise approved by the Board in conjunction with a rezoning or other action before the Board. An option for consideration is provided in the draft text that requires no outdoor dining located directly adjacent to single family development may operate before 9:00 AM.
- **Noise:** Staff proposes that any audio or video entertainment in the outdoor dining area be subject to and comply with Chapter 108.1 (Noise Ordinance). In addition, any extension cords used to supply power to any audio or video equipment may not create a trip hazard.
- **Parking:** Consistent with what is being proposed with the Parking Reimagined Zoning Ordinance amendment, staff proposes no additional parking be required for outdoor dining, regardless of its size or location.

Standards when permitted by administrative permit (AP)

As mentioned above, staff proposes all outdoor dining located on impervious areas, such as existing patios or sidewalks of a private property continue to be permitted by-right. However, staff proposes any outdoor dining located in parking lots be permitted only with the issuance of an AP by the Zoning Administrator subject to a one-time application fee of \$205, which is the same as the current fee for temporary uses. An option is provided to consider a lower range between \$100 and \$205 for the outdoor dining administrative permit fee.

The size of outdoor dining in parking lots would still be subject to the proposed maximum size of 50 percent of the indoor dining area. If an establishment provides outdoor dining on both the sidewalk/patio and the parking lot, the cumulative size cannot exceed 50 percent of the indoor dining area of the establishment. As required in the Emergency Ordinance, adequate onsite parking must be maintained for onsite users and any outdoor dining located in a parking lot may not reduce the total number of parking spaces below the minimum required for the site. However, the outdoor dining use itself would not have a minimum parking requirement. Outdoor dining may not be located in any accessible parking spaces, access aisle, street access for fire department vehicles, or parking lot landscaping. An option for consideration is included in the draft text that would limit the size of any outdoor dining in parking lots to a maximum of 500 square feet to 1,000 square feet per establishment. This option may deter any potential concerns of overcrowding within parking lots if multiple establishments in one development proposed to have outdoor dining in parking lots.

Similar to all other AP review, staff will review the submission, including the proposed use, location, site layout, hours, parking, traffic access, sanitation, safety, and other items as applicable to ensure protection of adjoining properties from any potential adverse effects of the outdoor dining activity. The Zoning Administrator may revoke the permit at any time for failure to comply with all standards for the outdoor dining operation.

JURISDICTIONAL RESEARCH

Staff has researched zoning regulations relating to outdoor dining in the following neighboring jurisdictions: the Cities of Alexandria and Fairfax, Arlington, and Prince William Counties, as well as Montgomery County, Maryland. All of these jurisdictions permit outdoor dining through an administrative approval process and require outdoor dining areas to meet design guidelines similar to those proposed above. Fairfax City in particular has created a seasonal outdoor dining pilot permit program to evaluate regulations and design standards for a comprehensive permanent program. The pilot program allows restaurants to apply for permits for the use of both public and private space for seasonal outdoor dining after the Declaration of Local Emergency grace period ended in September 2022. Outdoor dining in Montgomery County is subject to an initial application fee of \$775 and an annual fee of \$250. Alexandria City charges a onetime fee of \$150, while Fairfax City, Arlington and the Town of Leesburg charge an annual fee of \$115, \$125, and \$100, respectively.

PLANNED OUTREACH

Following Board direction, staff will further refine the proposed changes and share with stakeholders including shopping center owners, restaurant operators, and other food and beverage operators, to inform them of the topic and to obtain feedback to assist staff in shaping the amendment. Staff also plans to hold several public outreach meetings on the topic in

Spring/Summer of 2023 and anticipates potential authorization and public hearings in Summer/Fall of 2023.

Since the adoption of the Emergency Ordinance, relatively few complaints have been received regarding outdoor operations and in staff's opinion this simplified approach will allow continuation of the outdoor dining experience for customers and establishments.

Questions and comments can be directed to Lily Yegazu, Principal Planner at lily.yegazu@fairfaxcounty.gov or 703-324-1314.

ATTACHMENTS

1. Emergency Ordinance
2. Draft Zoning Ordinance Text for Discussion Purposes

AMENDMENTS TO AN UNCODIFIED ORDINANCE TO PROVIDE A METHOD TO ASSURE CONTINUITY IN FAIRFAX COUNTY GOVERNMENT DURING THE NOVEL CORONAVIRUS DISEASE 2019 (COVID-19) EMERGENCY AND ITS AFTERMATH BY TEMPORARILY APPROVING OUTDOOR DINING AND OUTDOOR FITNESS AND EXERCISE ACTIVITIES SUBJECT TO CERTAIN CONDITIONS, THEREBY SUSPENDING ANY REQUIREMENT FOR INDIVIDUALIZED APPROVALS OF SUCH ACTIVITIES

AMENDMENTS TO AN UNCODIFIED ORDINANCE to provide a method to assure continuity in Fairfax County government during the COVID-19 Emergency and its aftermath, as authorized by Virginia Code § 15.2-1413, by temporarily approving outdoor dining and outdoor fitness and exercise activities subject to certain conditions, thereby temporarily suspending the need for individualized approvals for such activities.

Be it ordained by the Board of Supervisors of Fairfax County:

1. That the following amendments to this uncodified ordinance are hereby adopted:

A. Purpose of the Ordinance.

This ordinance is intended to provide a method to assure continuity in Fairfax County government as the County continues to address and recover from the COVID-19 emergency. Fairfax County government comprises not only the Board of Supervisors, but also numerous County agencies and deliberative bodies that fulfill essential government functions and provide essential government services within the locality. These provisions are intended to sustain the County's economy and ensure the continued ability of County agencies and deliberative bodies to carry out their functions during this emergency and its aftermath without compromising public safety.

This ordinance was being adopted in response to the COVID-19 outbreak. The World Health Organization declared COVID-19 a global pandemic on March 11, 2020. On March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a National Emergency beginning March 1, 2020. On March 12, 2020, Governor Ralph Northam issued a Declaration of a State of Emergency due to Novel Coronavirus (COVID-19). The Governor declared the emergency "to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat" and he found that "[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia." Effective March 16, 2020, Governor Northam and the State Health Commissioner jointly issued an Order declaring a state public health emergency. On

March 17, 2020, the Fairfax County Director of Emergency Management, with the consent of the Board of Supervisors, declared a local state of emergency due to the potential spread of COVID-19. The local Declaration of Emergency remains in effect until the Board of Supervisors takes appropriate action to end it.

On March 23, 2020, the Governor issued Executive Order 53, which ordered all public and private schools closed for the remainder of the 2019–20 school year and imposed temporary restrictions on restaurants, recreational entertainment, public and private gatherings, and non-essential retail businesses. By virtue of amendments on April 15 and May 4, 2020, the restrictions on restaurants and non-essential businesses remained in effect until May 14, 2020. On March 30, 2020, the Governor issued Executive Order 55, which ordered all individuals in Virginia to remain at their places of residence until June 10, 2020, except as set forth in that order and Executive Order 53.

On May 8, 2020, the Governor issued Executive Order 61, introducing Phase One in the state's strategy to ease some of the temporary restrictions instituted in Second Amended Executive Order 53 and Executive Order 55 (orders referred to collectively as Phase Zero). On May 12, 2020, the Governor issued Executive Order 62 extending Phase Zero for Northern Virginia through May 28, 2020. That order was amended on May 14, 2020, to extend Phase Zero for certain other jurisdictions.

As part of Phase One, restaurants were permitted to reopen to the extent they have seating in outdoor spaces with limited capacity and adequate spacing. Phase One also allowed fitness and exercise facilities to reopen for outdoor activities only. The Governor's executive orders provided additional procedural and regulatory discretion to the Virginia Alcoholic Beverage Control Authority, which has issued guidance for outdoor dining in Topic 16.

With the impending expiration of Phase Zero in Northern Virginia, the Board held a special meeting on May 28 to consider an uncodified emergency ordinance to provide a method to assure continuity in Fairfax County government during the COVID-19 emergency by temporarily approving outdoor dining and outdoor fitness and exercise activities subject to certain conditions, thereby suspending any requirement for individualized approvals of such activities. The Board adopted the emergency ordinance, which would have expired after 60 days unless repealed or readopted.

The Governor allowed Amended Executive Order 62 to expire, moving Northern Virginia into Phase One on May 28, 2020. In Executive Order 65, issued on June 2, the Governor ordered that most of the Commonwealth, but not including Northern Virginia, would move into Phase Two on June 5. Under Phase Two, among other things, indoor dining and indoor fitness and exercise activities were allowed subject to capacity limits; given these limits, the continued allowance for outdoor dining and outdoor fitness and

exercise activities remained critical to sustain these businesses. On June 9, 2020, the Governor amended Executive Order 65 to order Northern Virginia's entry into Phase Two on June 12. In Executive Order 67, issued on June 30, 2020, the Governor ordered the Commonwealth's entry into Phase Three, which further relaxed restrictions on activities.

At a regular meeting on July 14, 2020, the Board held a public hearing and adopted this ordinance. As originally adopted, the emergency ordinance allowed only tents with all sides open. With impending cold fall and winter weather, however, establishments will need to be able to enclose tents for the comfort of their patrons and staff. Allowing tents to be enclosed will promote the ability of establishments to continue in business while following social distancing requirements. At a regular meeting on October 20, 2020, the Board held a public hearing and adopted amendments clarifying the circumstances when a permit from the fire official is required for a tent or group of tents; allowing tents to be closed on one or more sides; and adding provisions regarding the use of heaters, both inside and outside tents.

Since then, the Governor issued Executive Order 72 and a series of amendments establishing and then easing "Commonsense Surge Restrictions" applicable to businesses, public and private in-person gatherings, schools, and institutions of higher education. With the widespread distribution of effective vaccines, the state has now made tremendous progress in combatting COVID-19.

But even as the Governor's Executive Order 79 anticipates the end of statewide public health restrictions, it recognizes that the virus remains a serious risk to unvaccinated people. In addition, new COVID-19 variants continue to be discovered and account for a significant portion of cases in the U.S. It is not yet known to what extent current vaccines will be successful against these variants. In the Fairfax Health District alone, there have been more than 78,000 confirmed and probable cases of COVID-19, and the virus has taken the lives of more than 1,100. While more than half the County's residents have been fully vaccinated, a substantial portion have not received even one dose, including children less than 12 years old, who are not yet eligible to receive vaccinations. Given these factors, there remains an unquantifiable risk of a resurgence of the virus.

The virus's economic impacts have also been particularly dire. The County sustained approximately 50,000 job losses and experienced unemployment claims 28 times the normal rate. A disproportionate number of these job losses were in service industries--particularly the restaurant industry. Although some of these jobs have been recovered, there is still a significant need to address and ameliorate the economic impacts experienced in this sector of the County's economy.

But for this ordinance, under current County ordinances and regulations, business owners would typically be required to pursue a range of applications to allow outdoor dining and outdoor fitness and exercise activities. In the midst of the COVID-19 emergency and its aftermath, the cost and time to meet such requirements would compound the stress on economically challenged businesses, hinder the opportunity presented by relaxed state restrictions to revitalize the County's economy, and likely result in the de facto closure of more such businesses. At the same time, processing and deciding such a multitude of applications on an urgent basis would be extremely difficult, if not impossible, for the County government and would consume extraordinary amounts of time and attention on the part of the County's staff and its deliberative bodies, at a time when they are also strained by the emergency and its impacts. These factors, separately and collectively, would threaten the County's continuity in government if the ordinance were to expire too soon.

The Board of Supervisors desires to continue reducing these impacts of the COVID-19 emergency and its aftermath to business owners, to the communities those businesses serve and who wish to support them, and to County government. To that end, this ordinance, like the emergency ordinance it replaced, automatically approves outdoor dining and outdoor fitness and exercise activities that meet certain conditions, including those established by the Governor in any applicable executive order of the Governor.

Many County businesses have made or are anticipated to make substantial investments in modifying their activities and uses, as allowed by this ordinance, to respond to pandemic and its impacts. Extending this ordinance's effective period—from six months to twelve months after the end of the local state of emergency—will enhance the ability of these businesses to realize a return on their investments while maintaining COVID-related health protocols; the extension will also defer or avoid the need for County processing of numerous applications for such modifications.

It is not the intent of this ordinance to infringe on the ability of any town—Clifton, Herndon, or Vienna—to provide a method to assure continuity in its own government. For that reason, the ordinance will not apply in any of those towns unless and until the town's governing body, by ordinance, decides to be subject to this ordinance.

B. Virginia Statutory Authority for the Ordinance.

Virginia Code § 15.2-1413 authorizes localities to adopt an ordinance to "provide a method to assure continuity in its government, in the event of an enemy attack or other disaster," "[n]otwithstanding any contrary provision of law, general or special." The Governor's Declaration of a State of Emergency found that "[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia." A

2021 amendment to § 15.2-1413 expanded, from six to twelve months, the period within which an ordinance adopted under the statute must cease effect.

The Virginia Attorney General has defined “continuity in government” as coordinated efforts undertaken to assure the continuation of local government’s essential functions during an emergency.

C. Definitions.

“Continuity in Fairfax County government” includes, without limitation, those actions, and the coordination of actions, that are necessary to assure the continuation of the County’s essential functions and services. By way of example and not limitation, such necessary actions include those related to (1) the County’s finances, such as the public hearings and adoption of the FY 2021 budget, tax rate, and utilities fees; appropriations of funds; and funding requests; (2) contracts that need Board action; (3) applications, appeals, or other requests that are subject to mandatory or directory time frames for action; (4) satisfying due process or other constitutional requirements; (5) public safety; and (6) measures that help sustain the County’s economy.

“Emergency” means the outbreak of the respiratory illness referred to as the novel coronavirus or COVID-19, as described in the Governor’s Declaration of a State of Emergency and the local Declaration of Emergency, and the spread and effects of COVID-19, which constitute a disaster as defined in Virginia Code § 44-146.16.

“Outdoor dining” means delivery, takeout, and outdoor dining and beverage services operated by any restaurant, as defined in this ordinance. The term does not include outdoor entertainment.

“Restaurant” includes any restaurant, dining establishment, food court, brewery, microbrewery, distillery, winery, or tasting room.

“Fitness and exercise activities” means fitness and exercise activities conducted by any fitness center, gymnasium, recreation center, sports facility, or exercise facility.

D. Expansion of Outdoor Dining and Outdoor Fitness and Exercise Activities.

1. The Board of Supervisors hereby approves, without the need for any individualized determinations, the expanded use of outdoor space for outdoor dining and for fitness and exercise activities, all subject to the following conditions:
 - a. This approval is valid only for establishments located in zoning districts where they are already approved to operate by right, by a proffer condition, by

special exception, by special permit, or by other development approval. No further administrative approval, proffer condition amendment, special exception amendment, special permit amendment, or any other development approval is required as long as the outdoor activity complies with all of the conditions of this ordinance. Further, no temporary special permit or other zoning permit is required to close one or more private streets for the purpose of allowing outdoor dining or outdoor fitness and exercise activities. To qualify under this ordinance, an establishment must have a valid Non-Residential Use Permit/Certificate of Occupancy and, in the case of outdoor dining, a Food Establishment Permit.

- b. This emergency approval automatically expires upon the repeal of this ordinance.
- c. Occupancy of the outdoor dining area(s) for any single establishment may not exceed 50% of the lowest occupancy load specified on the establishment's Non-residential Use Permit/Certificate of Occupancy or Maximum Occupancy Certificate. For any outdoor dining area(s) serving multiple establishments, total seating must be no more than 50% of the total combined lowest occupancy loads for all the establishments.
- d. Seating area(s) must be accessible for disabled patrons.
- e. Any area used for outdoor dining or for fitness and exercise activities must be clearly delineated by cordon, marking or other means.
- f. If a tent is no larger than 900 square feet and is at least 12 feet from any another tent, it requires no permit. If a tent is larger than 900 square feet, it requires a permit from the fire official, through the Office of the Fire Marshal. If multiple tents are separated by less than 12 feet but their combined area does not exceed 900 square feet, no permit is required. If multiple tents are separated by less than 12 feet and their combined area exceeds 900 square feet, a permit from the fire official is required. The normal fee for such a permit is hereby waived for any establishment applying under this ordinance. If the fire official has issued a permit for one or more tents but there is a material change to what was approved, including closure on any side, a new permit is required.
- g. Any tent must be located at least 20 feet from any building that is on a separate lot and be securely anchored to prevent collapse or uplift during inclement weather. Any tent or tent area larger than 900 square feet must be flame resistant with appropriate labeling affixed to the tent material.

- h. No cooking or open flame is permitted under any tent unless approved by the fire official. One or more heaters are allowed as long as they are listed by a nationally recognized testing laboratory for the use and comply with the requirements of the Statewide Fire Prevention Code. Those requirements include, but are not limited to, that any such heater be maintained at least 10 feet from any tent exit or combustible material.
- i. All tables, chairs, umbrellas, tents, lighting, and other accessories must be removable and maintained in good visual appearance and condition. The outdoor area must be kept free of trash and debris, and any trash containers must be removed or appropriately stored at the end of each business day.
- j. Any heater used outdoors must comply with the Statewide Fire Prevention Code and the Uniform Statewide Building Code, as applicable. In particular, portable outdoor gas-fired heating appliances, known as patio heaters, are allowed subject to those regulations, which include such requirements as not using the heater within 20 feet of a tent; not storing the heater within a tent; maintaining a five-foot clearance from buildings, combustibles, and exits; ensuring it is a device listed by a nationally recognized testing laboratory; and ensuring that it is used with an integral fuel tank.
- k. No outdoor dining area, outdoor fitness and exercise area, or associated equipment or activity may obstruct a fire lane or fire equipment, such as fire hydrants and fire department connections; any building entrance or exit or any other area marked or designated for life safety or ADA accessibility; or pedestrian passage on any trail, right-of-way, or sidewalk, without adequate alternative pedestrian passage. Street access must be maintained for fire department vehicular response.
- l. Any outdoor dining area must be located entirely on impervious surfaces, such as existing patios, sidewalks, or paved parking spaces. No additional physical alteration—including, for example, addition or enlargement of any deck or paved surface—may be made to the site to accommodate outdoor dining or fitness and exercise. Outdoor fitness and exercise activities are allowed on impervious surfaces and on adjacent open space as appropriate.
- m. Adequate onsite parking must be maintained for onsite users. This ordinance does not permit any reduction in the number or accessibility of parking spaces designated for individuals with disabilities. Relocation of any such space requires approval by the County's building official, must not compromise accessibility, and must not violate any other legal requirement.

- n. No additional business sign or advertisement is permitted except as permitted under Article 12 (Signs) of the Zoning Ordinance.
 - o. Before using any outdoor area for outdoor dining or for fitness and exercise activities under this ordinance, each establishment is responsible for ensuring that it has the necessary right to do so under this ordinance and that it has permission from the property owner. Each property owner is also responsible for ensuring that no such use occurs on the owner's property without permission.
 - p. The use must comply with all other requirements of any executive order of the Governor (including but not limited to requirements for social distancing, use of face coverings, and cleaning and disinfection); any rules promulgated by the Virginia Alcoholic Beverage Control Authority (including but not limited to Topic 16); and any other applicable code or ordinance.
2. No establishment may operate under this ordinance unless it fully complies with the ordinance and with all other applicable requirements as referenced in paragraph 1(o). Any establishment that fails to fully comply may be subject to criminal and/or civil enforcement, including injunctive relief.

E. Scope of Application.

It is not the intent of this ordinance to infringe on the ability of any town—Clifton, Herndon, or Vienna—under Virginia Code § 15.2-1413 to provide a method to assure continuity in its own government. For that reason, the ordinance will not apply in any of those towns unless and until the town's governing body, by ordinance, decides to be subject to this ordinance.

F. Supersession of Inconsistent Requirements.

The provisions of this Ordinance apply notwithstanding any contrary provision of law, general or special, as authorized in Virginia Code § 15.2-1413.

- 2. **That these ordinance amendments will become effective upon adoption.**
- 3. **That this ordinance will remain in effect no longer than 12 months after the Board of Supervisors terminates the local Declaration of Emergency. Within that 12-month period, the Board will resume normal governmental authority in**

accordance with Virginia Code § 15.2-1413 by repealing this ordinance in compliance with Virginia Code § 15.2-1427.

4. That the sections, subsections, paragraphs, sentences, clauses, phrases, and words of this ordinance are severable. If any section, subsection, paragraph, sentence, clause, phrase, or word is declared unconstitutional or otherwise invalid by the lawful judgment or decree of any court of competent jurisdiction, its unconstitutionality or invalidity shall not affect the validity of any of the remaining sections, subsections, paragraphs, sentences, clauses, phrases, and words of this ordinance, since the same would have been enacted by the Board of Supervisors without and irrespective of any unconstitutional or otherwise invalid section, subsection, paragraph, sentence, clause, phrase or word being included.

GIVEN under my hand this 27th day of July, 2021.



Jill G. Cooper
Clerk for the Board of Supervisors
Department of Clerk Services

Definition:

Outdoor Dining: An accessory outdoor seating area intended solely for the consumption of food and beverages, and which does not include permanent structures. All tables, chairs, umbrellas, tents, lighting, and other accessories must be removable and maintained in good visual appearance and condition. This use does not include any use meeting the definition of a public entertainment use.

Standards applicable to all outdoor dining areas:

- (1) Outdoor dining, unless expressly prohibited by any applicable proffered condition, development condition, special permit, or special exception condition or otherwise approved as part of a site plan, may be permitted as an accessory use to the following: a restaurant; restaurant, carry out; restaurant with drive-through; craft beverage production establishment or other similar uses that have a food establishment permit. All outdoor dining must be in accordance with the following standards:
 - (a) The outdoor dining area for any single establishment may not exceed 50 percent of the indoor dining floor area of the establishment. Additionally, for any outdoor dining area serving multiple establishments, the total area devoted to outdoor dining may not exceed 50 percent of the total combined indoor dining floor area for all establishments. ***(Option: Outdoor dining areas may not exceed a range from 25 percent to 75 percent of the indoor dining area.)***
 - (b) The hours of operation must generally conform to the business hours of the principal use, but in no event may any outdoor dining occur before 7:00 AM or after 10:00 PM when located directly adjacent to single family development or as otherwise approved by the Board in conjunction with a rezoning or other action before the Board. ***(Option: Outdoor dining located directly adjacent to single family development may not operate before 9:00 AM)***
 - (c) Any area used for outdoor dining must be clearly demarcated by rope, bollards, planters, or other object. All outdoor dining areas must be located entirely on impervious surfaces, but not in a parking lot. Any outdoor dining located in parking areas is subject to the standards in section (2) below.
 - (d) The outdoor dining area may not obstruct any fire equipment, building entrance or exit or any other area marked or designated for emergency egress or ADA accessibility, or pedestrian passage on any trail or sidewalk.
 - (e) Any single tent larger than 900 square feet, or multiple tents separated by less than 12 feet and exceeding a combined area larger than 900 square feet, requires a permit from the Office of the Fire Marshal. All tents, regardless of size, must be securely anchored to prevent collapse or uplift during inclement weather.
 - (f) No cooking, open flames or outdoor heaters are permitted under any tent unless approved by the Office of the Fire Marshal.
 - (g) Outdoor dining and related activities must comply with Chapter 108.1 (Noise Ordinance).
 - (h) No additional business sign or advertisement is permitted except as permitted by the Zoning Ordinance. The outdoor dining area must be kept free of trash and debris. Any extension cords associated with audio or video entertainment equipment may not create a trip hazard.

- (i) Outdoor dining areas are subject to all applicable provisions of the County Code.

Standards when permitted by administrative permit:

- (2) Outdoor dining located in a parking lot must conform to the applicable standards for all outdoor dining standards above, and must also comply with the following standards:
 - (a) May not reduce the total number of parking spaces below the minimum required for the site.
(Option: Outdoor dining area provided in a parking lot may not exceed a range from 500 square feet to 1,000 square feet per establishment)
 - (b) May not be located, in any designated accessible parking spaces, access aisles, street accesses for fire department vehicles, or parking lot landscaping that is located in or part of the parking lot.