

City of Falls Church

<p>Meeting Date: 02-13-23</p>	<p>Title: (TO23-01) ORDINANCE TO AMEND, REENACT, AND RECODIFY CHAPTER 48, “ZONING” AS FOLLOWS: ADD A DEFINITION OF OUTDOOR DINING TO ARTICLE I “IN GENERAL” SEC. 48-2 “DEFINITIONS;” ADD A NEW DIVISION 11 “OUTDOOR DINING” TO ARTICLE V “SUPPLEMENTARY REGULATIONS” IN ORDER TO CREATE STANDARDS FOR CREATION AND REGULATION OF OUTDOOR DINING USES; AND ADD REFERENCES TO THE NEW DIVISION 11 TO: (1) ARTICLE IV “DISTRICTS,” DIVISION 9 “B-1 LIMITED BUSINESS DISTRICT” SEC. 48-457; DIVISION 10 “B-2 CENTRAL BUSINESS DISTRICT” SEC. 48-490; DIVISION 11 “B-3 GENERAL BUSINESS DISTRICT” SEC. 48-525; AND DIVISION 13 “O-D OFFICIAL DESIGN” SEC. 48-589 AND (2) ARTICLE V “SUPPLEMENTARY REGULATIONS” DIVISION 2 “OFF STREET PARKING REQUIREMENTS” SUBDIVISION IV “REGULATION OF USE TYPES” SEC. 48-1003 “PARKING REQUIREMENTS BY USE”</p>	<p>Agenda No: 10(b)(1)</p>	
<p>Proposed Motion: MOVE to grant first reading to (TO23-01), refer to the Planning Commission and Economic Development Authority, schedule public hearing and second reading for March 27, 2023, and advertise the same according to law.</p>			
<p>Originating Dept. Head: Paul Stoddard, AICP PS 2-7-2023</p>	<p>Lead Staff: Laura Arseneau, AICP Principal Planner LA 2-7-2023</p>	<p>Disposition by Council:</p>	
<p>City Manager: Wyatt Shields 703.248.5004 FWS 2-08-2023</p>	<p>City Attorney: Brian J. Lubkeman 703.248.5010 BJL 02-08-23</p>	<p>CFO: Kiran Bawa 703.248.5092 KB 2-9-2023</p>	<p>City Clerk: Celeste Heath 703.248.5014 CH 02-9-23</p>

2 **REQUEST:**

3 Council is requested to grant first reading to, and refer to the Planning Commission and
 4 Economic Development Authority, a proposed zoning ordinance text amendment to clarify and
 5 to make permanent provisions for outdoor dining. Outdoor dining is currently operating under
 6 temporary administrative approval flexibility made available under the COVID emergency
 7 legislation.

8

9 Summary of proposed changes:

- 10 • Update the Zoning Ordinance to:
 - 11 ○ include a definition of ‘outdoor dining’
 - 12 ○ to allow for administrative reductions in required parking to accommodate
 - 13 outdoor dining; and
 - 14 ○ to consolidate requirements for outdoor dining in a new Supplementary
 - 15 Provisions section.
- 16 • Update administrative procedures to facilitate review of new requests for outdoor dining.

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RECOMMENDATION:

Staff recommends adoption of the proposed motion. Staff’s recommendation is based on the following:

1. Popularity of outdoor dining
2. Need to provide certainty for business owners
3. Need to provide flexibility in required parking to accommodate outdoor dining
4. Need to provide for a no-cost, easy-to-apply permitting process

Updates to this report since the Council’s February 6, 2023 work session are highlighted in grey.

BACKGROUND:

UPDATES FROM FEBRUARY 6, 2023 WORK SESSIONS

During the February 6, 2023 Council Work Session, Council raised the following questions and provided the following feedback:

Council Comment/Question	Staff Response
Specify on what can be included as zoning regulations.	Parking and noise changes. Note staff is not proposing any modifications to noise in relation to outdoor dining.
Explain new permit submission process with more detail	<ul style="list-style-type: none">• No fee• One-time permit application process (no renewals required)• Providing one submission item for both zoning and building safety review
Review process for existing businesses with outdoor dining uses	Staff has provided more detail and clarity in the later sections of this report.
Review legal standards to allow Zoning Administrator to review parking on a case by case basis related to outdoor dining	Staff coordinated the proposed language with the City Attorney
Provide updates on Community Engagement Process	Staff has provided more detail about the engagement process including a one-page informational flyer, a community meeting, and posting outdoor dining updates on the zoning website
Clarity on updating of process for outdoor dining uses in the public right of way (separate from this application)	The proposed code amendment includes only language for existing and future outdoor dining applications on private property. As a separate administrative item from this proposal, staff will develop a process for outdoor dining uses that currently exist or will exist in the public right-of-way.

34 Council has continued to allow flexibility in local zoning ordinance regulations that were
35 intended to help businesses operate under statewide social distancing requirements during the
36 pandemic. The final extension from City Council was on September 27, 2022, to run for six
37 months, expiring on March 27, 2023.

38
39 Expanded outdoor dining in the city has generally been received positively by the community
40 and businesses. As pandemic restrictions ease, business patterns for restaurants and other
41 businesses will continue to adjust. Some businesses have, or are considering, investing in more
42 permanent expansions to their outdoor dining operations. These investments require greater
43 certainty in the long-term rules and regulations regarding outdoor dining. Therefore, at the
44 direction of City Council, staff has researched and proposed draft zoning ordinance text to
45 address outdoor dining use standards.

46
47 **Emergency Legislation and Outdoor Dining**
48 On March 12, 2020, the Governor of Virginia issued Executive Order 51, thereby declaring a
49 state of emergency for the Commonwealth of Virginia, because of the COVID-19 pandemic.
50 Following the action at the State level, on March 16, 2020, the Falls Church Director of
51 Emergency Management with the consent of City Council, declared a local State of Emergency
52 in the City of Falls Church. On April 6, 2020, the City Director of Emergency Management with
53 the consent of City Council updated the local Emergency Declaration to declare that the
54 emergency is also a “disaster” as defined by Virginia Code §44-146.16.

55
56 In an effort to support local businesses while protecting public health and safety, on
57 April 13, 2020, City Council adopted an Emergency Ordinance to suspend certain local zoning
58 regulations that regulate conducting restaurant business outdoors. During the emergency
59 legislation, local zoning ordinance temporary provisions were granted. State building and safety
60 codes continued to remain in effect. City Council can implement stricter regulations than the
61 state or federal code, but does not have purview to waive or relax them. The City of Falls
62 Church COVID Emergency Ordinance (Ordinance 2008) provided for the following flexibilities
63 for commercial restaurant uses:

- 64 1. Permit the placement of temporary signs and banners that promote a drive-up, carryout-
65 style of food and beverage. The signs must be removed within 30 days of the end of the
66 local state of emergency.
- 67 2. Permit carry-out orders and delivery of food and beverage from the immediate vicinity of
68 the establishment entrance or within its parking lot to be an accessory use temporarily
69 permitted by the occupancy permit.
- 70 3. Allow parking spaces assigned to the occupant to be converted to tents, outdoor seating,
71 and carry out as necessary to facilitate the use during this crisis.

72
73 Following the adoption of the Emergency Ordinance, City staff developed a short application
74 form, called a “seating plan review sheet,” which businesses used to apply for outdoor dining as
75 accessory uses under the relaxed COVID zoning standards. This submission included an outdoor
76 dining seating layout and reviews from City Zoning staff and Building Safety staff. This process
77 is still in use as the Emergency Ordinance continues to be in effect.

78

79 On September 20, 2021, City staff presented a proposed outdoor dining zoning amendment to
80 City Council. In that proposal, staff recommended that all outdoor dining uses apply for a
81 Special Use Permit to be reviewed and approved by the Board of Zoning Appeals, primarily due
82 to concerns with noise and impacts of the use on existing parking. City Council preference for an
83 administrative review and approval to be conducted by staff, that could be completed in an
84 expedited manner to support local businesses. See the [September 20, 2021 Council work session](#)
85 [video](#) for this discussion of outdoor dining code amendments.

86
87 As of December 2022, thirteen outdoor dining temporary uses had been approved by the City to
88 utilize the relaxed zoning measures in relation to outdoor dining. Staff notes that many
89 establishments established and operated outdoor dining uses prior to the COVID emergency
90 without a formal review and approval process by zoning and building safety staff.

91
92 **Federal, State, and Local Authority Application to Outdoor Dining**
93 Local jurisdictions are expressly granted the right by the state to modify local zoning regulations
94 and site plan requirements (including parking requirements) and to regulate noise impacts.

95
96 Federal and State Codes establish certain baselines for all businesses and cannot be relaxed by
97 local governments. Examples of Federal and State Code provisions include:

- 98 • Occupancy levels
- 99 • Adequate toilet fixtures
- 100 • Restaurant egress in relation to table and chair placement
- 101 • Alcohol and Beverage Consumption (ABC) regulations
 - 102 ○ Businesses that would like to expand their current outdoor areas or
 - 103 establish new outdoor areas must apply to their local ABC agent. Further,
 - 104 if alcohol is served outside, a barrier must be provided around the seating
 - 105 area.
- 106 • Americans with Disability Acts (ADA) provisions
 - 107 ○ Pathway to entrances
 - 108 ○ Parking spaces
- 109 • Fire Code
 - 110 ○ Tents
 - 111 ○ Heaters

112
113 **Neighboring Jurisdictions**

114 Staff researched measures taken by the nearby jurisdictions of Arlington County, the City of
115 Fairfax, and the Town of Vienna to address the increases in demand for the outdoor dining use.
116 In response to the COVID-19 pandemic, Arlington County created a Temporary Outdoor Seating
117 Area Permit (TOSA) allowing for newly created or expanded exterior spaces at restaurants and
118 bars (<https://building.arlingtonva.us/permits/tosa/>). Arlington recently extended the TOSA permit
119 process until February 2023 and has started a study, Future of Outdoor Dining (FOOD), to gain
120 community input on design guidelines related to outdoor dining and more permanent provisions.
121 Tentative public hearing dates are scheduled for early 2023.

122
123 The Town of Vienna adopted new zoning ordinance language related to outdoor dining uses on
124 June 6, 2022. The new language requires all outdoor dining uses to be reviewed; however, if

125 there are fewer than 12 outdoor dining seats then the process is administratively reviewed and
126 approved. If there are more than 13 outdoor dining seats, the outdoor dining proposal will need a
127 Conditional Use Permit and reviewed by the Planning Commission and the Board of Zoning
128 Appeals.

129
130 The City of Fairfax adopted new outdoor dining zoning ordinance language on July 26, 2022. All
131 outdoor dining proposals will be administratively reviewed and, if appropriate, approved by
132 staff. The City of Fairfax limited outdoor dining to a seasonal use, allowing the use only from
133 March 1st through November 30th of the calendar year.

134
135 All three jurisdictions are requiring or will require submission of plats or site plans that show the
136 location of the outdoor dining use on the property as well as information needed to complete a
137 review.

138
139 **STAFF ANALYSIS AND PROPOSED LANGUAGE**

140 Staff analyzed the zoning ordinance and is proposing the following changes for creation of the
141 outdoor dining use. In this report, staff is only proposing language for existing and future
142 outdoor dining applications on private property. As a separate administrative item from this
143 proposal, staff will develop a process for outdoor dining uses that currently exist or will exist in
144 the public right-of-way. For specific draft language related to each issue below, please refer the
145 end of this report.

146
147 **Definition of Outdoor Dining (Sec. 48-2)**

148 Staff recommends adding the following definition of “outdoor dining” in the Zoning Ordinance:

149
150 “Outdoor Dining, means an outdoor seating area associated with a restaurant use. The
151 outdoor dining use can consist of tables, chairs, barriers, tents, and other ancillary
152 features that contribute to the outdoor dining use.”

153
154 **Removal of Language and Referral to New Outdoor Dining Section (Secs. 48-457, 48-490,
155 48-525, 48-589)**

156 In commercial zoning districts of the Zoning Ordinance related to accessory uses, staff proposes
157 relocating and updating existing zoning ordinance language that allows the Zoning Administrator
158 to approve outdoor dining uses by reviewing location, number of seats and manner of access.
159 Staff is proposing new language that is broader and refers to the new outdoor dining use
160 regulations in Sec.48-1219 through Sec.48-1221. This language allows the Zoning Administrator
161 more flexibility in their review and to consider unforeseen issues.

162
163 **Update Off-Street Parking Regulations- Referral to Outdoor Dining (Sec. 48-1004, Table 3)**

164 Staff proposes clerical edits in Table 3 of the Off-Street Parking Zoning Ordinance Section to
165 refer to the new outdoor dining standards in relation to restaurant uses. A reference symbol and
166 footnote are proposed to be added to the table.

167
168 **Zoning Administrator Approval Standards (New Sec. 48-1221)**

169 Administrative Approval

170 Consistent with outdoor dining approvals prior to the emergency ordinance and to ensure a quick
171 process for business owners, staff recommends an administrative permit approval process. The
172 proposed permit process is outlined in a separate section of this report.

173
174 Inspections

175 Staff proposes draft zoning ordinance language to include a standard to allow the Zoning
176 Administrator authority to review and inspect the outdoor dining uses during initial review
177 and/or on a complaint basis or if outdoor dining use standards are not being met. This will ensure
178 that these outdoor dining areas are safe for patrons and owners. The majority of the fixtures
179 related to outdoor dining are easily moved and temporary; for example, tables, benches, heaters
180 and umbrellas. Relocation of temporary fixtures could inadvertently obstruct egress or violate
181 ADA requirements, potentially creating unsafe situations. Any issues would be communicated in
182 a notice of violation and owners would have a reasonable time to address any issues.

183
184 Reduction in Required Parking

185 Staff proposes language to allow the Zoning Administrator to administratively approve
186 reductions in required parking to accommodate outdoor dining if the use meets certain standards.
187 Staff recommends the inclusion of this language as a response to the success of this temporary
188 approval during COVID. Under the COVID State of Emergency, the City Council temporarily
189 relaxed commercial parking standards to allow parking areas to be repurposed for outdoor
190 dining. The experience demonstrated that many businesses, especially in smaller commercial
191 spaces, can operate successfully with less parking. Reducing parking requirements for these
192 smaller commercial buildings could make them more attractive to prospective tenants and
193 encourage the outdoor dining use.

194
195 Conditional Approval

196 Staff proposes zoning ordinance language to allow the Zoning Administrator to impose
197 additional conditions in the interest of safety, health, accessibility and noise as appropriate. This
198 standard provides discretion to the Zoning Administrator to address issues that are specific to a
199 particular site that may not be generally applicable.

200
201 Revocation Standard

202 Staff proposes zoning ordinance language to allow for the revocation of an approved outdoor
203 dining use permit if the use is not in conformance with approved zoning ordinance standards and
204 other applicable laws and regulations.

205
206 **NEW OUTDOOR DINING PERMIT PROCESS:**

207 The proposed outdoor dining use permit would be reviewed administratively by the Zoning
208 Administrator with the standards outlined above. Staff proposes a one-time application, with no
209 fee.

210
211 Existing Outdoor Dining Use Permits

212 For existing businesses with approved outdoor dining uses as of January 2023, staff will review
213 the Certificate of Occupancy (CO) permits to ensure compliance as well as the outdoor dining
214 plan on file. Staff will complete a preliminary inspection for concerns related to state and local
215 code regulations. If the CO is met and there are no code violations, the business will be issued an

216 outdoor dining permit. However, the businesses are still subject to other inspection and review
217 fees as appropriate and the City reserves the right to revoke the outdoor dining permit use for
218 code violations with reasonable prior notice.

219
220 **New Outdoor Dining Use Permits**

221 For businesses requesting a new outdoor dining use permit, staff proposes that the business
222 submit an application form and supplementary items for review, including:

- 223 • Layout of outdoor dining space including ADA parking (if applicable) and pathways, as
224 well as trash and loading areas
- 225 • Provide current Certificate of Occupancy
- 226 • Relevant information for allowable occupancy calculations
- 227 • Letter of approval from property owner. If the property owner withdraws consent, then
228 the permit will be revoked effective as of the date of that withdrawal.

229
230 Further, the businesses are still subject to other inspection and review fees as appropriate and the
231 City reserves the right to revoke the outdoor dining permit use for code violations with
232 reasonable prior notice. A draft one-page application form and a detailed list of recommended
233 submission items is attached.

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235
236 **COMMUNITY ENGAGEMENT:**

237 Staff proposes the following engage the business community regarding these proposed changes:

- 238 1. Provide a one-page flyer to all restaurants currently operating outdoor dining
- 239 2. Host a daytime meeting tailored to restaurant owners, with notices sent via emails on file
240 (scheduled for February 21, 2023 at 2pm)
- 241 3. Update information on the Zoning website regarding the proposed changes
- 242 4. Engaging with the Planning Commission, Economic Development Authority (EDA), and
243 Chamber of Commerce.

244
245 **FISCAL IMPACT:**

246 Meals tax receipts during Fiscal Year 2020 (July 1, 2019 through June 30, 2020) totaled
247 \$3,046,873. Meals tax receipts for FY 2021 totaled \$3,109,733. Meals tax receipts for FY 2022
248 totaled \$4,135,020. Additionally, meals tax receipts for FY2023 are projected to be \$4,400,000.
249 As demonstrated by the steady rise of meals tax receipts from FY 2020 through FY 2022,
250 restaurants have been able to find a method to continue forward during the COVID pandemic
251 and part of that is due to the flexibilities provided with outdoor dining zoning regulations.

252
253 **TIMING:**

254 City Council First Reading	February 13, 2023
255 Restaurant Owners Meeting	February 21, 2023
256 Planning Commission Work Session (Tentative)	March 1, 2023
257 Planning Commission Public Hearing (Tentative)	March 15, 2023
258 City Council Second Reading (Tentative)	March 27, 2023

259

260 The temporary COVID local zoning regulations are set to expire March 27, 2023. If the proposed
261 zoning changes are still under review at that time, staff would recommend suspending zoning
262 enforcement for existing outdoor dining while the proposed changes remain under review.
263

264 **ATTACHMENTS:**

- 265 1. Ordinance 2008 - COVID Emergency Ordinance to Suspend Zoning Regulations
- 266 2. Ordinance 2052 – Ordinance Extending Suspension of Emergency Zoning Regulations
- 267 3. Outdoor Dining Zoning Use Comparisons Chart - City of Falls Church, Arlington
268 County, Town of Vienna, City of Fairfax
- 269 4. Draft Outdoor Dining Application Form and Submission Recommendations

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(TO23-01)

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274
275 ORDINANCE TO AMEND, REENACT, AND RECODIFY CHAPTER 48,
276 “ZONING” AS FOLLOWS: ADD A DEFINITION OF OUTDOOR DINING TO
277 ARTICLE I “IN GENERAL” SEC. 48-2 “DEFINITIONS;” ADD A NEW
278 DIVISION 11 “OUTDOOR DINING” TO ARTICLE V “SUPPLEMENTARY
279 REGULATIONS” IN ORDER TO CREATE STANDARDS FOR CREATION
280 AND REGULATION OF OUTDOOR DINING USES; AND ADD
281 REFERENCES TO THE NEW DIVISION 11 TO: (1) ARTICLE IV
282 “DISTRICTS,” DIVISION 9 “B-1 LIMITED BUSINESS DISTRICT” SEC. 48-
283 457; DIVISION 10 “B-2 CENTRAL BUSINESS DISTRICT” SEC. 48-490;
284 DIVISION 11 “B-3 GENERAL BUSINESS DISTRICT” SEC. 48-525; AND
285 DIVISION 13 “O-D OFFICIAL DESIGN” SEC. 48-589 AND (2) ARTICLE V
286 “SUPPLEMENTARY REGULATIONS” DIVISION 2 “OFF STREET
287 PARKING REQUIREMENTS” SUBDIVISION IV “REGULATION OF USE
288 TYPES” SEC. 48-1003 “PARKING REQUIREMENTS BY USE”
289

290 THE CITY OF FALLS CHURCH, VIRGINIA, HEREBY ORDAINS that Chapter 48
291 “Zoning” is amended, reenacted, and recodified as follows:
292

293 **ARTICLE 1- IN GENERAL**

294
295 **Sec. 48-2- Definitions**

296
297 ***

298 *Outdoor Dining, means an outdoor seating area associated with a restaurant use.*
299 *The outdoor dining use can consist of tables, chairs, barriers, tents, and other*
300 *ancillary features that are directly related to the outdoor dining use.*

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303 **ARTICLE IV. - DISTRICTS**

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307 **DIVISION 9. – B-1 LIMITED BUSINESS DISTRICT**

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311 **Sec. 48-457. Accessory uses permitted.**

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313 ***

314 (2) Outdoor dining when extending a permitted principal indoor food sales or food
315 service use. ~~provided that the zoning administrator approves the location and number of seats~~
316 ~~and the manner of access.~~ For additional supplementary regulations, including approval
317 requirements, see Secs. 48-1219 through 48-1221.
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319 ***

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321 **DIVISION 10. – B-2 CENTRAL BUSINESS DISTRICT**

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325 **Sec. 48-490. Accessory uses permitted.**

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327 ***

328 (2) Outdoor dining when extending a permitted principal indoor food sales or food
329 service use. ~~., provided that the zoning administrator approves the location and number of seats~~
330 ~~and the manner of access.~~ For additional supplementary regulations, including approval
331 requirements, see Secs. 48-1219 through 48-1221.

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335 **DIVISION 11. – B-3 CENTRAL BUSINESS DISTRICT**

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339 **Sec. 48-525. Accessory uses permitted.**

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343 (2) Outdoor dining when extending a permitted principal indoor food sales or food
344 service use. ~~., provided that the zoning administrator approves the location and number of seats~~
345 ~~and the manner of access.~~ For additional supplementary regulations, including approval
346 requirements, see Secs. 48-1219 through 48-1221.

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350 **DIVISION 13. – ORIGINAL DESIGN DISTRICT**

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354 **Sec. 48-589. Accessory uses permitted.**

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356 ***

357 (2) Outdoor dining when extending a permitted principal indoor food sales or food
358 service use. ~~., provided that the zoning administrator approves the location and number of seats~~
359 ~~and the manner of access.~~ For additional supplementary regulations, including approval
360 requirements, see section 48-1219 through 48-1221.

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364 **ARTICLE V. – SUPPLEMENTARY REGULATIONS**

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DIVISION 2- OFF STREET PARKING REQUIREMENTS

Subdivision IV. - Regulation by Use Types

Sec.48-1004- Requirements

Table 3- Parking Requirements by Use

Use Types	Loading	Required Off-Street Parking and Standing Spaces
Food:		
Automobile-oriented convenience food store [^]	1	1 per 100 sf of floor area
Baker, confectionery, dairy, delicatessen, groceries, meats, poultry, produce, seafood [^]	1	1 per 250 sf of floor area
...		
Restaurant, liquor outlet, tavern [^]	1	1 per 100 sf of space used by customers
Restaurant Drive-through [^]	N/A	12 standing spaces, or as determined by use permit
...		

* Loading spaces for self storage warehouse - 1 space per 20,000 sf of floor area.
sf = square feet.

[^] [Subject to Outdoor Dining Regulations in Secs. 48-1219 through 48-1221.](#)

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DIVISION 11. – OUTDOOR DINING USE

388 Sec. 48-1219. – Intent

389 The intent of this division shall be to allow for outdoor dining uses, subject to
390 limitations as provided herein and elsewhere in this Chapter and as otherwise provided
391 under applicable law. In the event of any conflict between the provisions of this division
392 and any other provision of this Code, this division shall be controlling.

394
395 Sec. 48-1220. – Definitions

396
397 For the purposes of this division, certain words and phrases shall have the
398 meanings assigned to them in Section 48-2 of this Code, except in those situations where
399 the context clearly indicates a different meaning.

400
401 Sec.48-1221. – Standards for Zoning Administrator approval

402
403 The Zoning Administrator may approve outdoor dining uses following review by
404 the Zoning Administrator, Building Official, and other applicable city agencies, for
405 adherence to federal, state and local codes and regulations, subject to the following
406 conditions:

- 407
408 1) The Zoning Administrator may require inspections of the proposed outdoor dining
409 use during initial review, and subsequently on a complaint basis or if it is believed
410 for any reason that use standards and/or imposed conditions are not being met.
411 2) The Zoning Administrator may approve reductions in required parking to
412 accommodate a proposed outdoor dining use, on a case by case basis. The Zoning
413 Administrator, in considering whether or not to approve reductions in required
414 parking for a particular outdoor dining use, will rely on: expected parking demands
415 both with or without the proposed outdoor dining use; the burden the proposed
416 outdoor dining use may impose on nearby public or shared parking; the record of
417 parking complaints by adjacent business(es); and/or the burden on City parking
418 enforcement.
419 3) The Zoning Administrator may attach such conditions to any approval of a
420 proposed outdoor dining use in the interest of safety, health, accessibility, and noise,
421 as reasonably determined by the Zoning Administrator in consultation with other
422 City agencies as appropriate.
423 4) The Zoning Administrator may revoke any approval issued pursuant to this division
424 at any time for failure to comply with applicable provisions of this Code, including
425 but not limited to this division and any conditions imposed in connection with any
426 approval issued hereunder, or for failure at all times to comply with applicable
427 provisions of local, state and federal laws and regulations.

428
429 1st Reading:
430 2nd Reading:
431 Adoption:
432 (TO23-01)

EMERGENCY ORDINANCE TO SUSPEND ENFORCEMENT OF CERTAIN ZONING REGULATIONS THAT LIMIT OUTDOOR CONDUCT OF BUSINESS AND PLACEMENT OF TEMPORARY SIGNS IN ORDER TO GRANT TEMPORARY RELIEF TO BUSINESSES FROM CERTAIN ZONING RESTRICTIONS DURING THIS PANDEMIC

- WHEREAS, on March 12, 2020, the Governor of Virginia issued Executive Order Fifty- One (the “Governor’s Executive Order”) declaring a state of emergency for the Commonwealth of Virginia arising from the COVID-19 pandemic and further acknowledging the existence of a disaster, as defined by Virginia Code § 44-146.16, arising from the public health threat presented by this spreading communicable disease; and
- WHEREAS, on March 13, 2020, the President of the United States declared a national emergency, beginning March 1, 2020, also in response to the spread of the virus; and
- WHEREAS, on March 16, 2020, the Falls Church Director of Emergency Management (Director), with the Consent of the Falls Church City Council (“City Council”), declared a local state of emergency (“Declaration”) in Falls Church City (“City”) because of the likely outbreak of the virus in the City and the resulting danger to the public’s health, safety, and welfare due to the transmission and contraction of the virus; and
- WHEREAS, there have been many confirmed and suspected cases of COVID-19 within the Commonwealth of Virginia, the City, and surrounding jurisdictions; and
- WHEREAS, on April 6, 2020, the City Director of Emergency Management, with the consent of the City Council, issued an updated Declaration, declaring the emergency is also a “disaster” as defined by Virginia Code §44-146.16; and
- WHEREAS, the City Council has found that emergency measures, including this Ordinance, are necessary to mitigate the ongoing emergency and disaster that is occurring in the City, and to protect the health, safety, and welfare of the citizens; and
- WHEREAS, to support local businesses from the effects of the pandemic and to protect the public’s access to food and retail services during this pandemic, and to promote social distancing measures, the City Council authorizes the City Manager to temporarily suspend enforcement of certain zoning regulation governing the placement of temporary signs, erecting of outdoor tents, food delivery and carryout operations, and the permitted use of parking spaces;

THE CITY OF FALLS CHURCH, VIRGINIA, HEREBY ORDAINS THAT notwithstanding any provision of law, regulation or policy to the contrary, in order to grant temporary relief to businesses from certain zoning restrictions that limit outdoor conduct of

business during this pandemic, the City Council authorizes the City Manager to suspend enforcement of zoning regulations as follows:

1. To permit the placement of temporary signs and banners that promote a drive-up, carryout-style of food and beverage, provided that no vision or safety obstructions are created. The Manager may permit in addition to signs otherwise allowed under Falls Church City Code Section 48-1265(7), one temporary banner sign of up to 30 square feet, one temporary window sign occupying no more than 50 percent of a single window pane, and one sandwich board sign up to ten square feet per business frontage may be displayed for the duration of the declared emergency. Any emergency temporary signs shall be removed within thirty (30) days after the end of the emergency.
2. Permit the taking of orders and delivery of food and beverage from the immediate vicinity of the establishment entrance or within its parking lot to be an accessory use temporarily permitted by the occupancy permit.
3. Allow parking spaces assigned to the occupant to be converted to tents, outdoor seating and carry-out as necessary to facilitate the use during this crisis.

IT IS FURTHER ORDAINED that this ordinance shall be effective immediately.

Emergency Adoption: 04-13-20

First Reading: 04-13-20

Second Reading: 05-26-20

Adoption: 05-26-20

(TR20-15)

IN WITNESS WHEREOF, the foregoing was adopted by the City Council of the City of Falls Church, Virginia on April 13, 2020 on and emergency basis and re-adopted on May 26, 2020 as Ordinance 2008.



Celeste Heath
City Clerk

ORDINANCE TO AMEND ORDINANCE 2008 TO CONTINUE THE
SUSPENSION OF CERTAIN ZONING REGULATIONS FOR SIX MONTHS
AFTER THE END OF THE COVID-19 EMERGENCY DECLARATION BY
CITY COUNCIL

- WHEREAS, on March 16, 2020, the Falls Church City Council (“Council”) adopted Resolution 2020-10, consenting to the Director of Emergency Management’s declaration of a local emergency; and
- WHEREAS, on April 6, 2020, the Council adopted Resolution 2020-11, consenting to the Director of Emergency Management’s updated declaration of a local emergency and disaster; and
- WHEREAS, the Council and other City entities took a number of emergency actions pursuant to its powers arising from the declaration of local emergency; and
- WHEREAS, on an emergency basis on April 12, 2020, and then a permanent basis on May 24, 2020, the City Council adopted Ordinance 2008, which authorized the City Manager (Manager) to suspend enforcement of the following zoning regulations:
1. To permit the placement of temporary signs and banners that promote a drive-up, carryout-style of food and beverage, provided that no vision or safety obstructions are created. The Manager may permit in addition to signs otherwise allowed under Falls Church City Code Section 48-1265(7), one temporary banner sign of up to 30 square feet, one temporary window sign occupying no more than 50 percent of a single window pane, and one sandwich board sign up to ten square feet per business frontage may be displayed for the duration of the declared emergency. Any emergency temporary signs shall be removed within thirty (30) days after the end of the emergency.
 2. Permit the taking of orders and delivery of food and beverage from the immediate vicinity of the establishment entrance or within its parking lot to be an accessory use temporarily permitted by the occupancy permit.
 3. Allow parking spaces assigned to the occupant to be converted to tents, outdoor seating and carry-out as necessary to facilitate the use during this crisis; and
- WHEREAS, the flexibility allowed by Ordinance 2008 will terminate at the end of the declared local emergency and disaster on October 1, 2022, unless other action is taken; and
- WHEREAS, Council desires that the City staff review the zoning flexibility that was provided by Ordinance 2008 and make recommendations to Council as to whether any Zoning Ordinance changes should be made permanent; and

WHEREAS, Council finds that it would be unnecessary and an undue hardship to require businesses to reverse course to comply with the existing Zoning Ordinance requirements if permanent changes are to be made in the near future;

NOW, THEREFORE, THE CITY OF FALLS CHURCH HEREBY ORDAINS that Ordinance 2008 of the City of Falls Church, Virginia, is hereby amended to add the following clause at the end:

IT IS FURTHER ORDAINED that this ordinance shall be effective for a period of six months after the declaration of emergency and disaster, consented to by the City Council on April 6, 2020, is ended on October 1, 2022.

1st Reading: 09-12-22
2nd Reading: 09-27-22
Adoption: 09-27-22
(TO22-15)

IN WITNESS WHEREOF, the foregoing was adopted by the City Council of the City of Falls Church, Virginia on September 27, 2022 as Ordinance 2052.



Celeste Heath, City Clerk

	Arlington County	Town of Vienna (Permanent Outdoor Dining/ Seasonal Outdoor Dining)	Fairfax City (Seasonal Outdoor Dining Pilot Permit Program)
Review and Approval	<p>Temporary Outdoor Seating Area Permit: Currently operating under TOSA permits.</p> <p>TOSA Private Property: The County will issue a temporary approval in an expedited timeframe.</p> <p>TOSA Public Property: The County will complete a review of applications on public property and notify applicants if a temporary Right-of-Way Permit or other permit application is required. The review of both will happen concurrently to meet faster turnaround times.</p> <p>Future of Outdoor Dining (FOOD) Study: Existing TOSAs will be allowed to remain in place at least until February 2023 as County staff work with businesses and residents to develop new guidelines for the permanent program, which are expected to be completed by Spring 2023.</p>	<p>Permanent Outdoor Dining (12 or fewer seats, located on a patio, deck, or sidewalk): Administrative Approval by Town Staff</p> <p>Permanent Outdoor Dining (13 seats or more, located on a patio, deck, or sidewalk): Requires a conditional use permit. Applications are reviewed first by Town Staff, then by the Planning Commission, which makes a recommendation regarding approval. Final decisions are made by the Board of Zoning Appeals. Permanent site changes, including adding a deck or patio for outdoor dining, require site plan amendment approval in addition to the conditional use permit approval.</p> <p>Seasonal Outdoor Dining: Administrative Approval by Town Staff</p> <p>*Furniture and other outdoor features are still subject to review and approval by the Board of Architectural Review.</p>	<p>Administrative Approval by City of Fairfax Staff. Valid from March 1 – November 30 of the calendar year.</p>
Timeframe of Validity	TOSA's are valid until the County determines otherwise. They will be subject to periodic review, and may be terminated at any time.		Valid from March 1 – November 30 of the calendar year.
Submission Requirements	<p>TOSA's Supporting Materials:</p> <p>1) A depiction of the existing site, including an aerial map, photographs, and if</p>	Seasonal Outdoor Dining:	All Seasonal Outdoor Dining Pilot Permit Program Applications:

	<p>available, a survey plat, drawings or plans.</p> <p>2) A depiction of the proposed TOSA, including a plat or site plan that shows:</p> <ul style="list-style-type: none"> • Site conditions, including any streetscape items (tree pits, light poles, hydrants, fixed benches, parking meters, etc.) • Dimensions of TOSA (length x width) • Distance between TOSA and restaurant entrance (must be less than 100 feet) • Number and location of tables and seats (min. six-foot distance between tables) • Points of access/egress • Location of barrier surrounding TOSA (required if alcohol consumption is proposed) • Dimension of clear sidewalk for pedestrian passage on public sidewalks (min. six feet) • Other temporary elements such as tents, canopies, umbrellas, planters, etc. • Portable outdoor heaters, if any 	<ol style="list-style-type: none"> 1) To-scale plans showing the location of any outdoor dining furniture or structures 2) Written notice detailing seasonal outdoor dining plans to all business owners located within the same property/shopping center of the applicant's business. A notarized affidavit verifying notice has been given must be submitted with the applications. 3) Completed Applicant Authorization Form signed by the property owner. The property owner or property manager acting on behalf of a property owner must authorize any proposed outdoor dining located on the owner's property. 	<ol style="list-style-type: none"> 1) A site plan showing the proposed seasonal outdoor dining space to scale; including layout of furnishings and furniture, measurements (to buildings, sidewalks, roadways, etc.), and location of physical barriers 2) A furniture and furnishings summary that includes color photos, renderings, or graphics showing the type and materials of furniture, umbrellas, and/or planters. If barriers are required to meet design guidelines, submit color photos, renderings, or graphics as well. If product specification sheets are available, it is recommended to include them with the submittal. <p>Applications Involving Public ROW</p> <ol style="list-style-type: none"> 1) Proof of commercial general insurance with the City named as additionally insured in the minimum amount of one million dollars (\$1,000,000.00) per occurrence.
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	<ul style="list-style-type: none"> • Any parking restriction requests (this may result in an accompanying TROW permit) <ol style="list-style-type: none"> 3) If applicant has access, include a copy of existing Certificate of Occupancy and Capacity Certificate for interior restaurant (seating chart not required). 4) If applicable and applicant has access, include a copy of existing Certificate of Occupancy, Capacity Certificate, and seating chart for outdoor dining area. 5) If the creation or expansion of the TOSA will be located on private property not currently controlled by the business, provide a Statement of Consent from the property owner to include owner's name, title, address, phone number, and email. 		<ol style="list-style-type: none"> 2) Proof of commercial general insurance with the City named as additionally insured in the minimum amount two million dollars (\$2,000,000.00) general aggregate. 3) If applicable, evidence of liquor liability coverage with a minimum of one million dollars (\$1,000,000.00) per occurrence and proof of workers compensation insurance. <p>Applications Involving Private Property</p> <ol style="list-style-type: none"> 1) Written approval for use of the identified seasonal outdoor dining area with signature from the property manager and/or owner.
<p>Fee</p>	<p>The County is not charging any fees to review and process TOSA applications.</p>	<p>Conditional Use Permit Fee: \$1,500</p>	<p>Annual application charge of \$100.00 for the inspection and review of all seasonal outdoor dining areas.</p> <p>Applicants for seasonal outdoor dining areas located in the public ROW, are required to pay an exclusive use fee. The exclusive use fee is assessed based on the square footage of the public ROW area leased. Fees for use of</p>

			public sidewalk or public ROW shall be ten dollars (\$10.00) per square foot per term.
Parking	<p>Where appropriate, repurposing parking lanes may add flexibility.</p> <p>Closure of curbside parking to accommodate pedestrian travel may be considered.</p> <p>The use of parklets for outdoor seating may be considered.</p>	<p>Permanent Outdoor Dining (both options): Any permanent outdoor dining seats count toward the parking requirement for restaurants, one parking space per four seats, and the applicant must show adequate parking is provided for proposed indoor and outdoor seating.</p> <p>Seasonal Outdoor Dining: Permitted in off-street parking spaces from April 1 to Oct. 31. No more than 20% of the required off-street restaurant parking spaces may be used for seasonal outdoor dining. If the number of off-street parking spaces exceeds the minimum number required, then those spaces may also be utilized for outdoor dining.</p>	No seasonal outdoor dining area may be located on ADA parking spaces or required parking spaces (sites must meet the required minimum needs as specified in the Zoning Ordinance).
Webpage	<p>Future of Outdoor Dining Study (FOOD)</p> <p>Temporary Outdoor Seating Area Permit</p>	Town of Vienna Outdoor Dining	<p>City of Fairfax Seasonal Outdoor Dining Pilot Program</p> <p>Seasonal Outdoor Dining Pilot Permit Application</p>

City of Falls Church
Department of Community Planning & Economic Development Services
Application for Outdoor Seating Area

Filing Instructions

For restaurants and food/beverage service establishments that wish to apply for an outdoor seating approval, materials may be emailed to permits@fallschurchva.gov or submit their completed application and supporting documents Monday-Friday from 8 am – 5 pm at the Permits Counter in City Hall (300 Park Ave., Suite 103 East, Falls Church, VA 22046).

1. Read all applicable guidelines and complete application.
2. Prepare all recommended supporting materials and submit with application.
3. Submit application and supporting materials via email or in person at the Permits Counter in City Hall.
4. Questions? Email permits@fallschurchva.gov or call 703-248-5080

OUTDOOR SEATING APPLICATION

Restaurant Name: _____ Date of Application: _____

Business Address: _____

Is this an existing business with an approved Certificate of Occupancy and Capacity Certificate? Yes _____ No _____

Maximum Occupancy Load (interior, from Certificate of Occupancy or capacity certificate) _____

APPLICANT INFORMATION

Name: _____ Relation to business: _____

Address: _____ Phone #: _____

Email Address: _____

Backup Contact Name & Phone #: _____

Code Requirements for Restaurants with Outdoor Seating Areas

In addition to City Zoning Ordinance requirements, businesses must abide by applicable federal, state and local laws and requirements, including any special requirements, as amended. Please reference Zoning Ordinance Secs. 48-1237 through 48-1239 for additional local outdoor dining standards.

Applicant Acknowledgement and Signature

The undersigned agrees to comply with all of the requirements of applicable federal, state and local laws, ordinances and regulations.

Applicant Signature

Date

Checklist of Recommended Submission Materials

- _____ 1) Provide the following items that depict the **existing** site, including where the outdoor seating is proposed:
 - ___ Aerial map
 - ___ Photographs- exterior photographs showing existing site conditions on all 4 sides of building with pictures of adjacent businesses
 - ___ If available, survey plat, drawings or plans
- _____ 2) Provide a plat or site plan that depicts the **proposed seating area**. The following information must be shown:
 - ___ Location and number of seats and tables
 - ___ Dimensions (length and width in feet) of the outdoor seating area
 - ___ Dimensions from property lines
 - ___ Location & type of barrier surrounding the seating area (required if subject to ABC license)
 - ___ Layout of interior of restaurant including toilets and seating layout
 - ___ ADA parking and pathways
 - ___ Trash and loading areas
 - ___ Restaurant exit points
 - ___ Other temporary elements such as lights, umbrellas, canopies, tents, planters, serving stations, etc.)
 - ___ Portable outdoor heaters/heating elements
- _____ 3) Statement from applicant, in letter form, justifying outdoor dining use
- _____ 4) Statement from property owner consenting to use of outdoor space for seating as shown on proposed plans
- _____ 5) Current Certificate of Occupancy
- _____ 6) Other information as requested by agencies for review (as needed)