



Public Works Department
P.O. Box 1129, 1004 S. Glenburnie Road
New Bern, N.C. 28560
(252) 639-7501

CITY OF NEW BERN STREET CAFÉ PERMIT APPLICATION PACKET

This packet of information includes the City of New Bern's Administrative Order 1.6 as well as the City of New Bern's Code of Ordinances Chapter 66 Section 66-71 which governs the process to obtain a street café permit from the City of New Bern.

Below is a checklist of the required documents that must be submitted for your request to be reviewed.

Please complete this form and submit with your application packet.

Checklist	
<input type="checkbox"/> Scaled Drawings	<input type="checkbox"/> Tax ID#
<input type="checkbox"/> Evidence of Insurance	<input type="checkbox"/> Fee Payment
<input type="checkbox"/> Signed Release of Liability and Hold Harmless Agreement	
<input type="checkbox"/> Signed sworn Statement	
<input type="checkbox"/> Copies Permits and Licenses	
<input type="checkbox"/> ABC Permit	<input type="checkbox"/> Other _____

I have reviewed and understand the New Bern Code of Ordinances Chapter 66 Section 66-71, and as part of my permit application, I understand I must comply with all provisions therein.

Signature: _____ Date: _____

Street Café Permit Application

Please type or print in ink.

Please complete and provide the following requested information.

- 1) Restaurant Name (Legal entity and/or D-B-A):

Address: _____

Telephone Number: _____

- 2) Name of Operator:

Address: _____

Telephone Number: _____

- 3) Current and Valid Tax ID: _____

- 4) Food, Beverages, and/or Food Products to be sold (Attach Menu):

- 5) Hours of Operation of Restaurant

a) Number of seats and/or persons can restaurant serve

b) Hours of Operation of Café

- 6) A scaled drawing or site plan detailing the section of sidewalk or pedestrian way to be used for the sidewalk café, the section for pedestrian use (must be free of obstructions and at minimum 36 inches (3 feet), and the proposed placement of tables, chairs, and other furnishings on the sidewalk or pedestrian way.

a) Barriers delineating boundaries of the sidewalk café must meet the following minimum standards.

Applicant Signature: _____ Date: _____

CITY OF NEW BERN STAFF USE ONLY

☐ **Completed Application to include:**

☐ **Scale Drawings** _____

☐ **Tax ID#** _____

☐ **Insurance Verification** _____

☐ **Fee Payment Received** _____

☐ **Signed Indemnity** _____

☐ **Sworn Statement** _____

☐ **Initial Inspection** _____

☐ **Final inspection** _____

☐ **Copies Permits and Licenses** _____

☐ **ABC Permit** _____

☐ **Other** _____

This permit application has been approved for one of the following: ___street café without alcohol / ___street café with alcohol subject to applicant agreeing to follow all City ordinances including CHAPTER 66 “STREETS, SIDEWALKS AND OTHER PUBLIC PLACES” OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

City Manager Signature: _____

Date: _____

RELEASE FROM LIABILITY AND HOLD HARMLESS AGREEMENT

CITY OF NEW BERN: OPERATION OF STREET CAFÉ LOCATED AT

(Common name and address of restaurant)

In consideration of the sum of \$1.00, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by _____ (Full corporate name, hereinafter referred to as "Applicant"), and in consideration of the issuance of the permit herein applied for, Applicant hereby agrees as follows:

To the fullest extent permitted by law, the Applicant shall release, defend, indemnify, keep and save harmless the City, its agents, officials, and employees from and against any and all claims, damages, losses, costs, responsibility or liability for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether agents, officials, or employees of the City or third persons, and to all property proximately caused by, incident to, resulting from, arising out of or occurring in connection with the Applicant's use or occupancy of the City's street or pedestrian ways as may be permitted pursuant to this application (or by any person acting for the Applicant or for whom the Applicant is alleged to be in any way responsible), whether such claim is based in whole or in part on contract, tort (including alleged active or passive negligence or participation in the wrong) or upon an alleged breach of any duty or obligation on the part of the City, its agents, officials or employees.

The provisions of this agreement shall include any claims for equitable relief or for damages (compensatory or punitive) against the City, its agents, officials, and employees, including alleged injury to the business of any claimant, and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the City, its agents, officials, and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorney's fees by reason of the assertion of any such claim against the City, its agents, officials or employees. The Applicant shall maintain during the life of the street café permit insurance covering the Applicant's liability assumed under this agreement.

The Applicant expressly understands and agrees that any insurance protection required as a condition to the issuance of the permit herein applied for, or otherwise provided by the Applicant, shall in no way limit the Applicant's responsibility to release, indemnify, keep and save harmless and defend the City as herein provided.

By executing this release and indemnity, Applicant expressly accepts those portions of the City's streets or pedestrian ways to be used in the operation of the street café in their present condition. Applicant agrees that it shall have no claim against the City for failure to repair or

maintain those portions of street or pedestrian ways used in the operation of the street café, or for any damages to the same by the City, however caused.

The intention of the Applicant is that this release and indemnity be incorporated into any permit for the operation of a street café issued to it pursuant to Section 66-71 of the Code of Ordinances of the City of New Bern and this application. It is further the intention of the Applicant that this release and indemnity be broadly construed and applied in favor of the City.

This the ____ day of _____, 20____.

(Full Corporate Name of Applicant)

Federal Tax I.D. #

By: _____
President or Manager (Signature)

Approved as to Form:

City Attorney

NORTH CAROLINA

CRAVEN COUNTY

SWORN STATEMENT

I, _____, the _____
(insert President or Manager) of _____ (insert full
corporate name) being first duly sworn, depose and say that:

_____ (insert full corporate name) is the
owner and operator of the restaurant commonly known as _____
located at _____, New Bern, North Carolina.

_____ (insert full corporate name) has not
violated any laws, regulations, and/or ordinances relating to the possession, sale, consumption or
transportation of intoxicating beverages or controlled substances during the five (5) years
immediately preceding the date of its permit application dated _____,
20____, and has not been convicted of any such violations.

Full Corporate Name

By: _____
President or Manager

Sworn to and subscribed before me this ____ day of _____, 20____.

Notary Public

(SEAL)

My Commission Expires: _____

**RESOLUTION TO TEMPORARILY CLOSE PORTIONS OF MIDDLE STREET,
POLLOCK STREET, AND CRAVEN STREET TO VEHICULAR TRAFFIC**

THAT WHEREAS, the Board of Aldermen of the City of New Bern desires to temporarily close certain portions of Middle Street, Pollock Street, and Craven Street to vehicular traffic, all as illustrated on the map attached hereto and incorporated herein as Exhibit A (such closed portions of streets being referred to as “Closed Streets”), to allow for the operation of street cafes pursuant to city code Section 66-71; and

WHEREAS, the Board desires to temporarily close such Closed Streets to vehicular traffic between the hours of 5:00 p.m. and 11:00 p.m. on the following dates:

- Friday, May 22 through Monday, May 25, 2020,
- Friday, May 29 through Saturday, May 30, 2020,
- Friday, June 5 through Saturday, June 6, 2020,
- Friday, June 12 through Saturday, June 13, 2020,
- Friday, June 19 through Saturday, June 20, 2020,
- Friday, June 26 through Saturday, June 27, 2020,
- Friday, July 3 through Saturday, July 4, 2020,
- Friday, July 10 through Saturday, July 11, 2020,
- Friday, July 17 through Saturday, July 18, 2020,
- Friday, July 24 through Saturday, July 25, 2020, and
- Friday, July 31 through Saturday, August 1, 2020.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF
THE CITY OF NEW BERN:**

That the Closed Streets shall be temporarily closed to vehicular traffic between the hours of 5:00 p.m. and 11:00 p.m. on the following dates:

- Friday, May 22 through Monday, May 25, 2020,
- Friday, May 29 through Saturday, May 30, 2020,
- Friday, June 5 through Saturday, June 6, 2020,
- Friday, June 12 through Saturday, June 13, 2020,
- Friday, June 19 through Saturday, June 20, 2020,
- Friday, June 26 through Saturday, June 27, 2020,
- Friday, July 3 through Saturday, July 4, 2020,
- Friday, July 10 through Saturday, July 11, 2020,
- Friday, July 17 through Saturday, July 18, 2020,
- Friday, July 24 through Saturday, July 25, 2020, and
- Friday, July 31 through Saturday, August 1, 2020.

AN ORDINANCE TO AMEND CHAPTER 66 “STREETS, SIDEWALKS AND OTHER PUBLIC PLACES” OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect certain revisions to Chapter 66 “Streets, Sidewalks and Other Public Places” of the Code of Ordinances of the City of New Bern.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

SECTION 1. That Article III “Obstructions” of Chapter 66 “Streets, Sidewalks and Other Public Places” of the Code of Ordinances of the City of New Bern be and the same is hereby amended by adding Section 66-71 “Street cafés.” as follows:

“Sec. 66-71. Street cafés.

(a) *Definitions.* The following definitions shall apply in this section:

(1) *Alcoholic beverage* means any beverage regulated by Chapter 18B – “Regulation of Alcoholic Beverages” of the North Carolina General Statutes that a restaurant may lawfully serve or sell for consumption in a street as defined herein while operating as a street café.

(2) *Restaurant* means any establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises, including businesses that are referred to as restaurants, cafés, grills and other establishments that have a food counter where food is sold.

(3) *Restaurant operator* means the person, firm, or corporation operating a restaurant and associated street café. This definition includes the owner, and manager if different from the owner, of the restaurant and associated street café.

(4) *Street* means that portion of a city street between the curb lines, or between the lateral lines of the street if there is no curb.

(b) *Street café permit generally.* The city manager or his designee may issue permits for the serving of food and beverages on a designated portion of a street to be effective only during such periods that the board of aldermen closes a street for the purpose of allowing street cafés.

(c) *Application.* Any restaurant desiring to operate a street café shall prepare and file an application with the city manager or his designee which shall contain the following information:

- (1) The name, address, and telephone number of the restaurant desiring to operate a street café.
- (2) The name, address, telephone number, and email address of the restaurant operator.
- (3) A current and valid Tax ID.

(4) The type of food, beverage, or food product to be sold and served at the street café. If alcoholic beverages are to be sold, the type of such alcoholic beverages.

(5) The hours of operation of the restaurant and the proposed hours of operation of the street café.

(6) A scaled drawing or site plan showing the following:

a. The section of street to be used; and

b. The proposed placement of the tables, chairs and other furnishings on the street. If modifications of the original drawing or site plan are desired by either the city or the applicant, a new drawing must be submitted and approved by the city manager or his designee.

(7) Evidence that the applicant has obtained and will maintain a general liability and workers compensation insurance policy in the amount of one million dollars (\$1,000,000) for the operation of a street café which names the city as an additional insured.

(8) An indemnity statement, approved by the city attorney, whereby the restaurant operator agrees to indemnify and hold harmless the city and its officers, agents, and employees from any claim arising from the operation of the street café.

(9) A copy of all permits and licenses issued by the state or the city, including health and ABC permits and business licenses, necessary for the operation of the restaurant business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the city for exterior alterations or improvements to the restaurant.

(10) A sworn statement describing any violation by the restaurant operator of any laws, regulations, or ordinances relating to the possession, sale, consumption, or transportation of intoxicating beverages or controlled substances during the five (5) years immediately preceding the date of the permit application.

(11) Such additional information as may be requested by the city manager or his designee to determine compliance with this section.

(12) A fee as provided in the City of New Bern fee schedule to cover the cost of processing and investigating the application and issuing the permit.

(d) *Issuance of permit.* No permit for the operation of a street café may be issued unless the application is complete and unless the following requirements are met:

(1) The street café must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities, and other customer convenience facilities as the restaurant. The street café must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.

(2) The operation of the street café must be clearly incidental to the associated restaurant business. The cumulative seating capacity of the street café, associated restaurant business, and any associated sidewalk café may not be more than one hundred (100%) percent of the interior seating capacity of the associated restaurant. In addition, no more patrons than can be accommodated by the actual seats provided in the street café can occupy the area of the street café.

(3) All furnishings used for street café use pursuant to this section:

- a. Shall comply with the American with Disabilities Act;
- b. Shall not be placed at any location which obstructs underground utility access points, ventilation areas, meters, accessible ramps or other facilities provided for physically challenged persons, a building access or exit, or any emergency access or exit way;
- c. Shall not extend beyond the street café area as designated in the application.

(4) The restaurant seeking to operate the street café must front on and open onto the street proposed for the street café.

(5) Tables, chairs, and other furnishings utilized for sidewalk cafés shall be of a type that can be easily removed from the street. Tables, chairs, and other furnishings used in the operation of the street café must be removed no later than the time specified in any street closing ordinance for the street to reopen. If such items are not removed by such time, the city shall have the right to remove and dispose of these items and may assess the restaurant operator for the cost of such removal and disposal. These items shall not be permanently affixed to the street and must remain within the designated boundaries as delineated by street markers. The city shall also have the right to remove such items immediately in emergency situations. The city shall not be responsible for damage to street café furnishings under any circumstances.

(6) Except as elsewhere permitted, the operation or furnishing of the street café shall not involve any permanent alteration to or encroachment upon any street, sidewalk, or to the exterior of the associated restaurant. The owner of the street café shall be responsible for repairing any incidental damage to streets or public sidewalks resulting from the operation of the street cafe.

(7) No person shall operate a street café later than 11:00 p.m. After such hour, the area of the street café shall be open to the public and shall not be considered part of the premises of the restaurant. Any person consuming alcoholic beverages in a street café after such hour shall be subject to the provisions Section 46-5 of the city code.

(8) The approved site plan for the street café must be maintained within the place of business at all times.

(9) All restaurants operating a street café shall keep the approved site area clean.

(10) The restaurant seeking to operate the street café shall meet other reasonable conditions that may be necessary as determined by the city manager or his designee.

(11) Alcoholic beverages may be served at street cafés provided the following additional requirements are met:

a. The street café shall be part of a restaurant and shall otherwise be authorized, permitted, or licensed under the state law and the city code to serve and sell alcoholic beverages for on-premises consumption.

b. The portion of the street café where alcohol is or may be served shall be enclosed by clearly visible barricades and shall have not more than two (2) points of ingress and egress.

c. The street café must be included as part of the premises for which an ABC permit for a restaurant, as defined in G.S. § 18B-1000(6), is issued, pursuant to G.S. § 18B-1001, for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages on-premises.

d. Signs shall be posted, visible at all exit points from the street café, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises.

e. The restaurant operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the five (5) years preceding the commencement of the sale of alcoholic beverages at the street café.

f. The applicant shall obtain and maintain an insurance policy in the amount of one million dollars (\$1,000,000.00) for liquor liability, and shall name the city as additional-insured.

(e) *Denial or revocation of street café permit.*

(1) The city manager or his designee may deny or revoke a permit, pursuant to this section, if he finds that the granting or continuation of the permit would not be in the public's interest, or if he finds that the operator of the business or establishment has:

a. Made a deliberate misrepresentation or provided false information in the application;

b. Used the street in such a manner as to create a public nuisance or constitute a hazard to the public health, safety, or welfare;

c. Failed to keep the street or alley clean and free of refuse;

d. Failed to maintain any health, business or other permit or license required by law for the operation of the business or establishment;

e. Violated any of the terms of this ordinance, or violated any law, regulation, or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances;

f. Failed to maintain the amount and type of insurance required herein; or

g. Failed to uphold the terms of the permit.

(2) The applicant may appeal the denial of the permit to the board of aldermen within fifteen (15) working days after the date of the written denial and the board of aldermen may take such corrective action as it shall find necessary. The findings and determination of the board of aldermen shall be final.

(3) Before the revocation of a permit, the city manager shall notify the permit holder of his intent to revoke the permit and the reasons therefor and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the city manager shall notify the permit holder in writing of this decision and the reasons therefor. A decision of the city manager to revoke a permit may be appealed to the board of aldermen in accordance with the provisions of subsection (2) herein.

(f) *Reservation of rights.* The city reserves the right to require any street café established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the city, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the city. The city further reserves the right to amend, alter, or change the permit as provided for in this article upon further review and consideration for reasons of public safety, adopted public policy, or operational concerns without any costs to the city. In such event, the city manager or his designee will notify the applicant by email of amendments to the permit. These amendments will require issuance of a new permit within the time period specified in the notice. If the new permit is issued prior to the expiration of the original permit that is being amended, the fee shall be waived for the amended permit. Failure to comply with the amended permit pursuant to this section will result in automatic termination of the street café permit.

(g) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this section shall:

(1) Be issued for the period beginning July 1 and expiring June 30 of each year and in all events will automatically expire on June 30, but shall only be effective during periods when the board of aldermen closes a public street for the purpose of allowing street cafés;

(2) Be renewed on a year-to-year basis;

(3) Be in addition to the annual privilege license, if any, required pursuant to the city's fee schedule;

(4) Not be transferable or assignable;

(5) Specifically provide whether the sale and consumption of alcohol is permitted under the permit; and

(6) Be subject to site inspection prior to initial permit issuance as well as annual permit renewal. If such street café permit is approved, a fee shall be levied for each separate annual issuance of the permit in accordance with the city's adopted fee schedule."

ADOPTED THE 12th DAY OF MAY, 2020