

**PROPOSED ORDINANCE**

**Proposed by: Planning and Zoning Staff** (*Revisions in bold, italic, deletions are strikethroughs*)

The following is a proposed ordinance to amend the Code of the Town of Vienna to allow outdoor dining with conditions in the zoning ordinance, Chapter 18 - Zoning, Article 11, C-1 Local Commercial Zone Regulations, Section 18-72 and Section 18-74 and Article 21, Conditional Use Permits, Section 18-210. Use Permits Required.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

The Town Code, Chapter 18 Zoning, Article 11, C-1 Local Commercial Zone Regulations, Section 18-72 and Section 18-74, is amended to read as follows:

Sec. 18-72. Permitted uses.

A. The following uses shall be permitted in the C-1 zone:

General business enterprises consisting of sales.

Home installation services associated with sales.

Limited repairing, manufacturing, processing or assembly.

Offices.

Recreation.

Restaurants.

Restaurants, carry-out.

B. The uses permitted within the C-1 zone must meet all of the following criteria in addition to all other requirements specified in this article except those hereinafter expressly prohibited and those designated with special conditional limitations:

1. The entire operation of the business or activity shall be conducted wholly within an enclosed building.
2. No sales or services of any kind, type or nature, comprising or relating to the business shall be conducted on the premises outside of a wholly-enclosed building. Nor shall any sales be permitted for consumption on the premises outside of a wholly-enclosed building, with the exception of restaurants, subject to limitations listed under incidental uses.
3. No storage or display of merchandise, equipment, or other material will be wholly-permitted outside of an enclosed building, regardless of whether the storage or display area is a public thoroughfare or is privately owned.

4. Repairing, processing, manufacturing, washing, drying, dry cleaning, fabricating, forming, finishing or assembly shall be limited to those which are incidental to home consumption or use and services to other commercial enterprises when such services are not performed for or do not result in the resale by the recipient thereof. Such a use, however, shall not be permitted if there is any emission of smoke, odor or noise which is detectable outside of the building beyond the boundaries of the lot on which the building housing such use is located.
5. Office buildings, with the exception of the ground floor, shall be occupied solely for professional use or the administrative activities accessory to other than professional uses. No such activity in office buildings shall be considered as a permitted use if it involves storage or parking on the premises of trucks, buses, taxies, equipment, or other commercial vehicles other than passenger automobiles incidental to the professional use or required for the use of persons engaged in the purely administrative activities accessory to the non-professional use.
6. No business shall be considered as a permitted use if it involves the killing of poultry or other livestock or the processing of animal products. This restriction shall not include the cutting and preparation of animal products when performed for retail sale on the premises as food for consumption; and the killing or cutting of animals, other than human, incidental to medical practice or medical research.
7. Where a building contains office space as well as other commercial enterprises, the applicable criteria in this section for office buildings shall apply to that portion of the building consisting of offices and the other criteria shall apply to the other commercial enterprises.

C. Incidental uses.

1. In any restaurant, there shall be permitted as an additional incidental use thereto the operation of a bona fide, licensed catering service or a carry-out service, as herein defined, provided either or both such service is conducted wholly within the enclosed structure in which the restaurant is located.
2. In any restaurant:
  - a. ~~Meals may be served for consumption~~ *Outdoor dining may be permitted* on a roof garden of such building or at ~~ground level sidewalk~~ tables directly adjoining such building, subject to the *following* provisions ~~of article 21 of this chapter;~~
  - b. ~~Restaurants which received temporary outdoor commercial activity permits by December 31, 2021 may continue to operate under the permits until June 30, 2022, subject to the following conditions:~~
    - i. ~~Outdoor dining located within 60 feet of a residentially zoned property utilized for residential uses may only be used from 10:00 a.m. to 9:00 p.m. on Sunday, 9:00 a.m. to 9:00 p.m. on Monday through Thursday, 9:00 a.m. to 9:30 p.m. on Friday, and 10:00 a.m. to 9:30 p.m. on Saturday.~~

- ~~ii. If off-street parking spaces are being utilized for outdoor dining, no more than eight seats per parking space used for outdoor dining shall be allowed within those spaces.~~
- ~~iii. The applicants acknowledge that they will comply with the noise ordinances set forth in section 10-20.1 and section 10-44 of the Town Code.~~

**b. General provisions**

- i. The property owner or property manager acting on behalf of a property owner must authorize any proposed outdoor dining located on their property.
- ii. All structures, features, furnishings, and exterior modifications shall be subject to review by the Board of Architectural Review, except for restaurants located within buildings developed under Sections 18-87.4 and 18-87.5.
- iii. All applications shall include to-scale plans showing the location of any outdoor dining furniture or structures.
- iv. Permanent changes shall be subject to Site Plan Control Provisions under Article 25.
- v. Outdoor dining furniture and equipment cannot block pedestrian access or interfere with ADA accessible routes to and from buildings and public facilities.
- vi. **Outdoor dining is subject to review by the Building Code Official.**
- vii. Outdoor dining furniture and equipment cannot block fire entry or exits points, fire department connections (FDC), or any other required safety exits. Outdoor dining cannot be located in or block any designated fire lanes. **Outdoor dining areas are subject to review by the Fairfax County Fire Marshal.**
- viii. Outdoor dining cannot be located within 75 feet of a residentially zoned property utilized for residential uses.
- ix. All restaurants must adhere to the Town's noise ordinances set forth in section 10-21.1 and section 10-44 of the Town Code.
- x. **Amplified sound, including music, is not permitted outdoors, except as otherwise permitted under Chapter 18.**
- xi. Establishments with temporary outdoor dining permits must apply for a permit within **thirty/sixty** days of the effective date of this ordinance

**c. Permanent outdoor dining**

- i. Outdoor dining with more than 12 seats requires a conditional use permit and will be subject to article 21 of this chapter.
  - 1. **In addition to criteria set forth under Section 18-209, adverse impacts to surrounding properties including but not limited to noise and lighting shall be considered by Board of Zoning**

*Appeals when reviewing an application for a conditional use permit.*

*2. Hours of operation for outdoor dining shall be considered by the Board of Zoning Appeals when reviewing an application for a conditional use permit.*

- ii. Any permanent outdoor dining seats shall count towards the parking requirement for restaurants, subject to article 16 of this chapter.*
- iii. Permanent outdoor dining shall be located on a permanent surface, such as a private sidewalk, deck or patio.*
- iv. Permanent outdoor dining shall include adequate protection from vehicles.*

*d. Seasonal outdoor dining within off-street parking spaces*

- i. Seasonal outdoor dining may be permitted in off-street parking spaces from April 1 to October 31. Otherwise section 18-137 shall apply.*
- ii. Seasonal outdoor dining areas may only be active from 10 am to 9 pm on Sunday, 9 am to 9 pm on Monday through Thursday, 9 am to 9:30 pm on Friday, and 10 am to 9:30 pm on Saturday.*
- iii. Outdoor dining requires issuance of a permit, which is to be reviewed and issued annually by the Zoning Administrator. The permit may be revoked if it is found any conditions listed in this chapter are not adhered to.*
- iv. Applicants will be required to provide written notice detailing seasonal outdoor dining plans to all business owners located within the same property/shopping center of the applicant's business. A permit may not be issued until 30 days after abutting and adjacent business owners have been notified of the intention to apply for seasonal outdoor dining. A notarized affidavit shall be submitted with the application to verify this notification requirement has been met.*
- v. No more than 20% of the required off-street parking spaces for a restaurant may be utilized for outdoor dining. If there are excess parking spaces above the minimum number of off-street parking spaces required per article 16, then those spaces may also be utilized for outdoor dining.*
- vi. Seasonal outdoor dining shall be protected from vehicular traffic with rigid barriers.*
- vii. Total number of seats shall not exceed the number of parking spaces utilized for outdoor dining, multiplied by eight.*
- viii. Outdoor dining cannot interfere with the use of a refuse storage area or the use of a loading space.*

- ix. *Only non-permanent structures, such as tents, are allowed to take up said parking spaces and parking spaces must be able to be easily converted back to be used for parking.*
- x. *Parking lot striping shall not be changed without site plan approval.*
- xi. *ADA spaces shall not be used or moved for outdoor dining without site plan approval.*

e. Live entertainment and patron dancing may be permitted subject to article 21 of this chapter.

D. Commercial group building development. Commercial group building development which shall comply fully with the provisions of section 18-173.1.

E. Certified massage therapists as defined in this Code.

Sec. 18-74. Use permit required.

A. Each separate use conducted within a building in the C-1 zone and each accessory use to any such primary use conducted in a building in this zone shall require a separate use permit before such separate primary or accessory use shall be engaged in.

B. Restaurants offering live entertainment, including patron dancing, shall be subject to the granting of a conditional use permit.

C. ~~*Consumption of meals on a roof garden of an enclosed building in which a restaurant is located, or at sidewalk tables directly adjoining such building, Permanent outdoor dining with more than 12 seats*~~ shall be subject to the granting of a conditional use permit.

*1. In addition to criteria set forth under Section 18-209, adverse impacts to surrounding properties including but not limited to noise and lighting shall be considered by Board of Zoning Appeals when reviewing an application for a conditional use permit.*

*2. Hours of operation for outdoor dining shall be considered by the Board of Zoning Appeals when reviewing an application for a conditional use permit.*

D. Motel, hotel and tourist homes.

E. Hospitals, sanitariums, clinics and animal hospitals complying with the requirements of section 18-210(O).

The Town Code, Chapter 18- Zoning, Article 21, Conditional Use Permits, Section 18-210. Use Permits Required, is amended to read as follows:

A use permit is required for any of the following uses (see regulations for zone in which the use is proposed to be located):

A. Amusement enterprises, if conducted wholly within an enclosed building, provided that the existence and location of the same shall not impose a deleterious effect

upon the Town and that permits therefor shall ensure compatibility with land use policies embodied in this chapter.

- B. Auditoriums and halls.
- C. Auto sales.
- D. Bowling alley.
- E. Carpenter or general woodworking shop (excluding outdoor storage).
- F. Cemeteries.
- G. Colleges and schools (private, elementary and high) of a noncommercial nature.
- H. Concrete mixing plants.
- I. ~~Consumption of meals on a roof garden of an enclosed building in which a restaurant is located, or at sidewalk tables directly adjoining such building-~~  
**Permanent outdoor dining with more than 12 seats.**
  - 1. In addition to criteria set forth under Section 18-209, adverse impacts to surrounding properties including but not limited to noise and lighting shall be considered by Board of Zoning Appeals when reviewing an application for a conditional use permit.**
  - 2. Hours of operation for outdoor dining shall be considered by the Board of Zoning Appeals when reviewing an application for a conditional use permit.**
- J. Contractor's equipment storage yard or plant, or rental of equipment commonly used by contractors
- K. Draying, freighting, or trucking yard or terminal.
- L. Farm or gardening implement, sales and service.
- M. Feed and fuel yard.
- N. Funeral homes.
- O. Golf courses, country clubs, private clubs, including community buildings and similar recreational uses not owned and/or operated by a public agency (does not include golf driving ranges).
- P. Hospitals, sanitariums and clinics which are an integral part of such hospitals and clinics providing treatment for mental or behavioral disorders as out-patient counseling or therapeutic facilities only; and provided that such clinics, if not an integral part of a hospital or sanitarium, are formally affiliated with such hospital or sanitarium or such other governmentally sponsored organization that provides counseling for mental or behavioral disorders.

Notwithstanding any of the above, all clinics and facilities not an integral part of a hospital or sanitarium and treating contagious diseases, drug or alcohol addicts or abusers, sex offenders, felons, or persons suffering from psychosis, anti-social personality disorders or explosive personality disorders are not permitted, regardless of whether such facility operates an in-patient or out-patient facility, counseling or therapeutic facility or otherwise.

Animal hospitals not providing boarding facilities other than for hospitalization to provide medical and/or surgical care for the patient are likewise subject to procurement of a use permit. However, animal hospitals providing boarding facilities not directly associated with immediate medical and/or surgical care for the patient are not permitted.

- Q. Hotel and motel.
- R. Institutional home and institutions of an educational or philanthropic nature, except those of a correctional nature or for mental cases.
- S. Live entertainment and patron dancing in restaurants.
- T. Manufacture, compounding, processing, packaging, or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries and food products, except fish and meat products, sauerkraut, vinegar, yeast and the rendering or refining of fats and oils.
- U. Massage therapists.
- V. Minute car wash stations.
- W. Nursery and kindergarten schools (private).
- X. Reserved.
- Y. Outdoor amusement enterprises.
- Z. Pet shop.
- AA. Plumbing yard or storage.
- BB. Public buildings and uses.
- CC. Public parking area in transitional use.
- DD. Public parks, playgrounds, and other recreational uses.
- EE. Public utilities, as defined and regulated in section 18-13.
- FF. Taxi stand (only private property).
- GG. Theater, indoor or outdoor.
- HH. Transitional parking lots.

II. Drive-through facility, with the following submittal requirements and evaluation criteria:

1. Application submittal requirements:

- A. A written statement describing the proposed use and providing all information pertinent to the review of the application. Such information would include, but not be limited to: the type of product or service to be offered; the proposed hours of operation and employee staffing; plans for the control of litter and the disposal and recycling of waste material; effects on air quality at the site and in adjacent areas; and estimates of sound levels that would be generated by the proposed use at site boundary lines.
- B. A traffic analysis providing information that would include, but not be limited to: estimates of the number of vehicle trips and the amount of vehicular stacking that would occur daily and during a.m./p.m. peak hours; trip generation by use type; estimated internal and external traffic flows; parking and vehicular stacking spaces that would be provided on-site; and data on existing traffic conditions and the traffic-handling capacity of roads fronted by the proposed use. In addition, the analysis would discuss sight distances at points of ingress and egress, pedestrian and bicycle traffic, and any other site-specific traffic factors or public safety issues associated with the application.

2. Applications for drive-through facilities will be evaluated on the basis of the following criteria, with emphasis given to potential adverse effects on adjoining or nearby properties:

- A. Location and arrangement of any drive-through window in relation to adjoining properties and public rights-of-way.
- B. Appropriateness of proposed hours of operation.
- C. Traffic circulation patterns, including safe ingress and egress, and a clear designation of drive-through aisles through the use of paving materials, pavement markings or landscaping.
- D. Pedestrian circulation and safety.
- E. Adequacy of screening of vehicle use and parking areas.
- F. Noise impact associated with, but not limited to, exterior speakers and motor vehicles.
- G. Compliance with federal, commonwealth and local pollution standards.
- H. Other factors, as deemed appropriate, that affect the health, safety, and general welfare of the community.

3. Drive-through facilities adjacent to residentially-zoned properties shall meet the following applicable criteria:

- A. A drive-through facility operating later than 10:00 p.m. shall not have any portion of its operation (including, but not limited to, the stacking lane, menu boards or speaker boxes) located closer than 75 feet from any residentially-zoned property.
- B. No speaker box or other audio mechanism, regardless of operating hours, shall be located closer than 35 feet from any residentially-zoned property.

JJ. Family Day Homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home.

This Ordinance shall become effective ten (10) days following notice of adoption by the Town Council.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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Linda J. Colbert, Mayor

ATTEST:

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Town Clerk