

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

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**SENATE BILL 311\*  
State and Local Government Committee Substitute Adopted 4/16/13  
PROPOSED COMMITTEE SUBSTITUTE S311-PCS35325-SU-16**

Short Title: Apex/Cary/Raleigh ROW Usage in CBD.

(Local)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED  
AN ACT TO PERMIT THE TOWNS OF APEX AND CARY AND THE CITY OF RALEIGH  
TO ENACT SIDEWALK DINING ORDINANCES FOR USE OF STATE-OWNED  
RIGHT-OF-WAY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 136-18(9) reads as rewritten:

"(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except ~~(i) for~~ for any of the following:

- a. ~~materials~~ Materials displayed in welcome centers in accordance with ~~G.S. 136-89.56, and (ii) for~~ G.S. 136-89.56.
- b. ~~vending~~ Vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed.
- c. Activities permitted by a local government pursuant to an ordinance meeting the requirements of G.S. 136-27.4.

Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense."

**SECTION 2.** Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-27.4. Use of certain right-of-way for sidewalk dining.**



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1        (a) The Department may enter into an agreement with any local government permitting  
2 use of the State right-of-way associated with components of the State highway system and  
3 located within the zoning jurisdiction of the local government for sidewalk dining activities.  
4 For purposes of this section, "sidewalk dining activities" means serving food and beverages  
5 from a restaurant abutting State right-of-way to customers seated in the State right-of-way. The  
6 agreement between the Department and the local government shall provide that the local  
7 government is granted the administrative right to permit sidewalk dining activities that, at a  
8 minimum, comply with all of the following requirements and conditions:

- 9        (1) Tables, chairs, and other furnishings shall be placed a minimum of six feet  
10 from any travel lane.
- 11        (2) Tables, chairs, and other furnishings shall be placed in such a manner that at  
12 least five feet of unobstructed paved space of the sidewalk, measured from  
13 any permanent or semi-permanent object, remains clear for the passage of  
14 pedestrians and provides adequate passing space that complies with the  
15 Americans with Disabilities Act.
- 16        (3) Tables, chairs, and other furnishings shall not obstruct any driveway,  
17 alleyway, building entrance or exit, emergency entrance or exit, fire hydrant  
18 or standpipe, utility access, ventilations areas, or ramps necessary to meet  
19 accessibility requirements under the Americans with Disabilities Act.
- 20        (4) The maximum posted speed permitted on the roadway adjacent to the  
21 right-of-way to be used for sidewalk dining activities shall not be greater  
22 than 45 miles per hour.
- 23        (5) The restaurant operator shall provide evidence of adequate liability  
24 insurance in an amount satisfactory to the local government, but in no event  
25 in an amount less than the amount specified by the local government under  
26 G.S. 160A-485 as the limit of the local government's waiver of immunity or  
27 the amount of Tort Claim liability specified in G.S. 143-299.2, whichever is  
28 greater. The insurance shall protect and name the Department and the local  
29 government as additional insureds on any policies covering the business and  
30 the sidewalk activities.
- 31        (6) The restaurant operator shall provide an agreement to indemnify and hold  
32 harmless the Department or the local government from any claim resulting  
33 from the operation of sidewalk dining activities.
- 34        (7) The restaurant operator shall provide a copy of all permits and licenses  
35 issued by the State, county, or city, including health and ABC permits, if  
36 any, necessary for the operation of the restaurant or business or a copy of the  
37 application for the permit if no permit has been issued. This requirement  
38 includes any permits or certificates issued by the county or city for exterior  
39 alterations or improvements to the restaurant.
- 40        (8) The restaurant operator shall cease part or all sidewalk dining activities in  
41 order to allow construction, maintenance, or repair of any street, sidewalk,  
42 utility, or public building by the Department, the local government, its  
43 agents or employees, or by any other governmental entity or public utility.
- 44        (9) Any other requirements deemed necessary by the Department, either for a  
45 particular local government or a particular component of the State highway  
46 system.

47        A local government given the administrative right to permit sidewalk dining activities under  
48 this section may impose additional requirements on a case-by-case basis, and nothing in this  
49 section requires the local government to issue or maintain any permit for sidewalk dining  
50 activities if, in the opinion of the local government, such activities cannot be conducted in a  
51 safe manner. Nothing in this section requires the Department to give a local government the

1 right to establish a permit program for sidewalk dining activities if, in the opinion of the  
2 Department, such activities cannot be conducted in a safe manner.

3 (b) A municipality applying to the Department for administrative rights under this  
4 section shall:

5 (1) Enact an ordinance consistent with, but not necessarily limited to, the  
6 requirements of this section.

7 (2) For applications along a federal-aid route or where the laws of the United  
8 States otherwise require, obtain permission from the Federal Highway  
9 Administration to permit the right-of-way to be used for the sidewalk  
10 dining."

11 **SECTION 3.** This act shall not preempt or override local ordinances currently in  
12 place.

13 **SECTION 4.** This act applies to the Towns of Apex and Cary and the City of  
14 Raleigh only.

15 **SECTION 5.** This act is effective when it becomes law.