

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS35090-MH-41C* (02/12)

Short Title: Allow ROW Usage in Central Business Districts. (Public)

Sponsors: Senators Hunt, Daniel, and Harrington (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT LOCAL GOVERNMENTS TO ENACT SIDEWALK DINING
3 ORDINANCES FOR USE OF STATE-OWNED RIGHT OF WAY.

4 The General Assembly of North Carolina enacts:

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

6 " ...

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

18 a. ~~materials~~ Materials displayed in welcome centers in accordance with
19 ~~G.S. 136-89.56, and (ii) for~~ G.S. 136-89.56.

20 b. ~~vending~~ Vending machines permitted by the Department of
21 Transportation and placed by the Division of Services for the Blind,
22 Department of Health and Human Services, as the State licensing
23 agency designated pursuant to Section 2(a)(5) of the
24 Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of
25 Transportation shall regulate the placing of the vending machines in
26 highway rest areas and shall regulate the articles to be dispensed.
27 Every other use or attempted use of any of these areas for
28 commercial purposes shall constitute a Class 1 misdemeanor and
29 each day's use shall constitute a separate offense.

30 c. Activities permitted by a local government pursuant to an ordinance
31 meeting the requirements of G.S. 136-27.3.

32 " ..."

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

35 "§ 136-27.3. 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 use
2 of the State right-of-way associated with components of the State highway system and located
3 within the zoning jurisdiction of the local government for sidewalk dining activities. For
4 purposes of this section "sidewalk dining activities" means serving food and beverages from a
5 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 complying
8 with at least the following requirements and conditions:

- 9 (1) Tables, chairs, and other furnishings must be placed a minimum of six feet
10 from any travel lane.
- 11 (2) Tables, chairs, and other furnishings must 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 shall not be greater than 45
22 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 as the limit of Tort Claim
26 liability in G.S. 143-299.2, which shall protect and name them as additional
27 insured on any policies covering the business and the sidewalk activities.
- 28 (6) The restaurant operator shall provide an agreement to indemnify and hold
29 harmless the Department or the local government from any claim resulting
30 from the operation of sidewalk dining.
- 31 (7) The restaurant operator shall provide a copy of all permits and licenses
32 issued by the state, county or city, including health and ABC permits, if any,
33 necessary for the operation of the restaurant of business, or a copy of the
34 application for the permit if no permit has been issued. This requirement
35 includes any permits or certificates issued by the county or city for exterior
36 alterations or improvements to the restaurant.
- 37 (8) The restaurant operator shall cease part or all sidewalk dining activities in
38 order to allow construction, maintenance, or repair of any street, sidewalk,
39 utility, or public building, by the Department, the local government, its
40 agents or employees, or by any other governmental entity or public utility.

41 The Department or the local government may impose additional requirements on a
42 case-by-case basis. Nothing in this section requires the Department or local government to
43 issue or maintain any agreement for sidewalk dining if, in the opinion of the Department or
44 local government, such activities cannot be conducted in a safe manner.

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

- 47 (1) Enact an ordinance consistent with, but not necessarily limited to, the
48 requirements of this section.
- 49 (2) For applications along a federal-aid route or where the laws of the United
50 States otherwise require, obtain permission from the Federal Highway

1 Administration to permit the right-of-way to be used for the sidewalk
2 dining."
3 **SECTION 3.** This act shall not preempt or override local ordinances currently in
4 place.
5 **SECTION 4.** This act is effective when it becomes law.