



**THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK**

Date: November 15, 2023

Sponsored by Council Members: Resciniti, Riley, Friedman, Burns, Strawn, Scanlon, Scaringi

Introduced by Committee: Rules&Procedures

ORDINANCE

entitled

**AN ORDINANCE TO AMEND CHAPTER 327,
USE OF RIGHTS-OF-WAY, OF THE CODE OF
THE CITY OF BINGHAMTON**

WHEREAS, the City Clerk and Director of the Economic Development Departments of the City of Binghamton have recommended to amend the City Code Chapter 327, *Use of Rights-of-Way*, §327-2.A, *Definitions*; and §327-2.B, *General Description*; §327-2.E, *Outdoor Café Permit Fees*; §327-2.G, *Permit Approval Procedure*; §327-2.H, *Denial Appeal Process*; §327-2.J, *Terms and Conditions*; and §327-2.L, *Permit Modification, Revocations and Inspections* to update for various changes regarding the Outdoor Café Permits.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. That the Code of the City of Binghamton, Chapter 327, *Use of Rights-of-Way*, is hereby amended as dictated in the Attachment.

Section 2. That this ordinance shall take effect immediately.

Introductory No. 023-149

Permanent No. 023-148

Sponsored by City Council Members:
Resciniti, Riley, Friedman, Burns, Strawn, Scanlon,
Scaringi

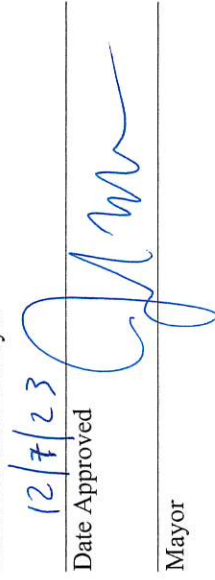
**AN ORDINANCE TO AMEND CHAPTER 327,
USE OF RIGHTS-OF-WAY, OF THE CODE OF
THE CITY OF BINGHAMTON**

The within Ordinance was adopted by the Council of
the City of Binghamton.

Date 12/16/23


City Clerk

Date Presented to Mayor 12/7/23

Date Approved 12/7/23



Mayor

	Ayes	Nays	Abstain	Absent
Councilwoman Resciniti				✓
Councilwoman Riley	✓			
Councilwoman Friedman	✓			
Councilman Burns	✓			
Councilman Strawn	✓			
Councilman Scanlon	✓			
Councilwoman Scaringi	✓			
Total	<u>6</u>	<u>0</u>	<u>0</u>	<u>1</u>

Code of the City of Binghamton

Adopted Defeated

6 Ayes 0 Nays 0 Abstain 1 Absent

I hereby certify the above to be a true copy of the legislation adopted by the Council of the City of Binghamton at a meeting held on 12/16/23. Approved by the Mayor on 12/7/23. 

Chapter 327, RIGHTS-OF-WAY, USE OF

[HISTORY: Adopted by the City Council of the City of Binghamton as indicated in article histories.

Amendments noted where applicable.]

GENERAL REFERENCES

Auctions and auctioneers -- See Ch. 184.

Curfew -- See Ch. 211.

Loitering -- See Ch. 279.

Parks and recreation -- See Ch. 301.

Peddling and soliciting -- See Ch. 307.

Public assembly -- See Ch. 318.

Transient retail merchants -- See Ch. 331, Art. I.

Vehicles and traffic -- See Ch. 400.

ARTICLE I, Mass Gatherings [Adopted 10-5-1970 (Ch. 14, § 14-3, of the 1970 Code)]

§ 327-1. Assembly of crowds restricted.

It shall be unlawful for persons unnecessarily to assemble in or upon any public highway or part thereof, in such numbers as to obstruct traffic, and no public meeting shall be held and no crowd shall be assembled within any congested district of the City within 100 feet of a street intersection.

ARTICLE II, Outdoor Cafe Permits [Adopted 2-2-1987 by Ord. No. 12-87 (Ch. 12, § 12-6, of the 1970 Code); amended in its entirety 5-1-1995 by Ord. No. 95-130; Amended 5-18-00 by Ord. no 00-46; Amended 6-06-2012 by Ord. No 12-39; Amended 02-07-2018 by Ord. No 18-18]

§ 327-2.A. Definitions.

For the purposes of this section, the below terms shall be defined as follows:

OUTDOOR CAFÉ – An accessory seating area for a restaurant or tavern located on the public right of way, requiring an Outdoor Café Permit from the City of Binghamton.

PUBLIC PEDESTRIAN AREAS – Those areas accessible by pedestrian traffic which are not immediately adjacent to a street or highway, and which are exempt from vehicular traffic.

SIDEWALKS – Any walkway along the margin of a street or highway, designed and prepared for the use of pedestrians, encompassing the area between the front line of any abutting property and the curb or, where there is not curb, the line where the street begins.

NON-CONTIGUOUS MUNICIPAL PUBLIC SPACE – Space that is located in front of, behind, or to the side of the licensed premises; is within the property boundaries of the licensed premises as extended out; or within the property boundaries of the two nearest adjacent properties; does not extend further than the midline of any public roadway; is separated from the licensed premises only by a sidewalk or public pedestrian area; and otherwise complies with all applicable federal, state and local requirements.

§ 327-2.B. General Description.

An Outdoor Café Permit as described herein shall grant the holder thereof the ability to use public property for café purposes consistent with these rules and regulations. The City shall issue such permits only to those ground floor restaurants or taverns which are contiguous to and have a formal ingress or egress by door or passageway to public property. Such public property may consist of public pedestrian areas, ~~or~~ sidewalks, and/or non-contiguous municipal public space.

§ 327-2.C. Hours and Months of Operations. [Amended 12-18-2013 by Ord. No. 13-103; Amended 0207-2018 by Ord. No 18-18]

Approved Outdoor Café Permits shall be valid from March 1st through November 30th during the year in which the permit was issued; the City reserves the right to exclude any particular dates from the outdoor café

§ 327-2.E. Outdoor Café Permit Fees. [Amended ___ - ___ -2023 by Ord. No. ____]

The cost of an Outdoor Café Permit shall include the site plan review fee, the annual rental fee, and the security deposit, as described below:

1. Site Plan Review Fee. The site plan review fee shall be established from time to time by the Council of the City of Binghamton (See Exhibit J). The site plan review fee shall be paid together with an Outdoor Café Permit application, and shall be nonrefundable, regardless of the site plan review determination. As described in § 327-2.K, approved Outdoor Café Permits may be renewed on an annual basis for up to four (4) additional calendar years, without obtaining additional site plan reviews, provided that the Outdoor Café as described in the original permit remains unchanged. No site plan review fee shall be required during each annual renewal, provided that no additional site plan review is required during this four (4) year period.
2. Annual Rental Fee. The annual rental fee shall be based on the total square footage of the public property utilized, and shall be established from time to time by Council of the City of Binghamton (See Exhibit J). The annual rental shall be paid upon issuance of an Outdoor Café Permit fee and is nonrefundable. Should the applicant wish to renew the Outdoor Café Permit, the annual rental fee shall be paid upon each annual renewal.
3. Security Deposit. The security deposit shall be established from time to time by the Council of the City of Binghamton (See Exhibit J). The security deposit shall be paid upon issuance of an Outdoor Café Permit. IN the event that the City must provide services for the cleaning, maintenance, and/or repair of the area rented by the permit holder, the cost of such services shall be billed to the permit holder. Should the permit holder fail to submit payment for such services, the total cost shall be deducted from the security deposit. Any remaining portion of the security deposit shall be returned to the permit applicant within thirty (30) days of expiration of the Outdoor Café Permit, or within thirty (30) days of the ~~City Clerk's~~ **Office of Economic Development's or their designee's** receipt in writing that the permit applicant no longer wishes to operate an Outdoor Café.

§327-2.G. Permit Approval Procedure [Amended 02-07-2018 by Ord. No 18-18; Amended ___ - ___ - 2023 by Ord. No. ____]

Upon receipt of the completed Outdoor Café Permit application, along with the site plan review fee and all associated documentation, the Planning Department will complete an initial review of the site plan. If the proposed Outdoor Café area is located within a locally designated historic district, or if it involves a designated local landmark property, the Planning Department **may, at its discretion, shall** refer such site plan to the Commission on Architecture and Urban Design ("CAUD") for review and approval. Upon receipt of such recommendations, the Planning Department shall forward the Outdoor Café Permit application and such recommendations to the Police Department, Fire Bureau, Department of Public Works, Department of Parks and Recreation, Office of Building & Construction/Code Enforcement, Corporation Counsel, and City Clerk. All such departments shall submit their findings and determinations to the Planning Department within five (5) business days.

If the permit application is approved by the Planning Department, **the applicant will submit the following to the ~~City Clerk's~~ Economic Development Office or their designee:**

1. Certificate of Approval from the Planning Department and/or CAUD.
2. Proof of general liability insurance coverage in an amount not less than one million dollars (\$1,000,000), proof of property damage insurance in an amount not less than fifty thousand dollars (\$50,000), and, should the applicant intend to sell alcohol in the Outdoor Café area, proof of liquor liability insurance coverage in the amount not less than one million dollars (\$1,000,000). An endorsement naming the City of Binghamton as an additional insured on a primary non-contributory basis, and such other endorsements as may be required by the Corporation Counsel.

3. Payment of the security deposit and annual rental fee, See Exhibit J.
4. If the applicant intends to serve alcohol in the Outdoor Café area, the applicant must ~~first~~ receive approval from the New York State Liquor Authority (“NYSLA”). Upon receipt of items 1, 2, and 3 above, the ~~City Clerk’s~~ **Economic Development Office or their designee** will provide the applicant with a **notice of receipt of the municipal notice or waiver thereof and written authorization providing permission to use the municipal property.** ~~Landlord Authorization and Open Container Approval letter to be submitted to the NYSLA.~~ **The City of Binghamton reserves the right to request evidence of the applicants submittal to the NYSLA at any time during the Outdoor Café Season.** ~~applicant cannot operate the Outdoor Café until the City Clerk’s Economic Development Office or their designee receives a copy of the approval from the NYSLA and issues an Outdoor Café Permit.~~
5. Upon compliance with the above conditions, the ~~City Clerk~~ **Director of Economic Development or their designee** will issue an Outdoor Café Permit. If the application is denied, the ~~City Clerk~~ **Director of Economic Development or their designee** will advise the applicant of its right to appeal. If the applicant does not appeal, the ~~City Clerk~~ **Director of Economic Development or their designee** will reimburse the security deposit and annual rental fee to the applicant.

A permit application may be denied if the Planning Department and/or ~~City Clerk~~ **Director of Economic Development or their designee** determines that the issuance of such permit would cause public health and/or safety concerns, prior non-compliance, if the Outdoor Café would conflict with a previously scheduled event, or if the permit applicant fails to comply with the regulations described herein.

§327-2.H. Denial Appeal Process. [Amended ___-___-2023 by Ord. No. ____]

Should a permit be denied for any reason, the applicant shall have the ability to appeal the denial by submitting such appeal in writing to the Council of the City of Binghamton within thirty (30) days from receipt of the denial. If the appeal is successful, the application will be remanded to the Planning Department and/or CAUD, for modifications, if any; or the ~~City Clerk~~ **Director of Economic Development or their designee** will issue an Outdoor Café Permit in accordance with City Council’s decision. If the appeal is unsuccessful, the ~~City Clerk~~ **Director of Economic Development or their designee** will reimburse the security deposit and annual rental fee to the applicant.. A denial can be appealed to the Broome County Supreme Court in a CPLR Article 78 proceeding commenced within thirty (30) days of the decision.

§ 327-2.J. Terms and Conditions [Amended 02-07-2018 by Ord. No 18-18; Amended ___-___-2023 by Ord. No. ____]

All Outdoor Café Permits issued pursuant to this section shall be subject to the following conditions, rules and regulations:

1. The permit holder shall maintain responsibility for the Outdoor Café and provide sufficient personnel for the proper supervision and operation of the Café, and shall be responsible for the cleaning, maintenance and/or repair of said Outdoor Café area.
 - (i) Maintenance shall include cleaning the Outdoor Café area of all rubbish, debris, stains, and/or residue resulting from the operation of the Outdoor Café, leaving the site in a clean condition at the end of each day during which the Outdoor Café is in operation. Such maintenance shall be subject to the satisfaction of the City of Binghamton. Maintenance shall also include the repair of any City property which may have been damaged during the course of Outdoor Café operations.
 - (ii) Should the permit holder fail to clean, maintain, and/or repair the Outdoor Café area to the satisfaction of the City of Binghamton, the permit holder shall be notified by the City of

Binghamton in writing of such failure to comply with the regulations described herein, and shall be given a reasonable time period to restore the Outdoor Café area to an acceptable condition, given the nature of the violation.

- (iii) Should the permit holder fail to restore the Outdoor Café area to an acceptable condition, the City shall provide services for the cleaning, maintenance, and/or repair of the Outdoor Café area. The cost of such services shall be billed to the permit holder.
 - (iv) Should the permit holder fail to submit payment for those cleaning, maintenance, and/or repair services provided by the City of Binghamton, such funds shall be deducted from the security deposit, as outlined in §327-2.F.
 - (v) Notwithstanding any provision above, should the City be required to provide services for cleaning, maintenance, and/or repair of the Outdoor Café area, or if the permit holder fails to make any required payment in a timely manner, the Outdoor Café Permit, in accordance with §327-2.L *Outdoor Café Permit* maybe subject to immediate revocation by the City, and the permit holder may be ineligible to receive future Outdoor Café Permits.
2. If the security deposit is exhausted due to expenses incurred by the City for the cleaning, maintenance, and/or repair of the Outdoor Café area, the ~~City Clerk~~ **Director of Economic Development or their designee** may require the permit holder to provide an additional security deposit in an amount which may exceed the original security deposit. The permit holder will remain liable and shall reimburse the City for any and all damages or injury to any City property that may arise from the operation of the Outdoor Café.
 3. The permit holder shall hold harmless and indemnify the City form any and all claims, actions, damages, or liability arising from the operation of the Outdoor Café of every name and nature which may arise or be incurred by the City as a consequence of the giving of such permission, or as the result of the conduct of such Outdoor Café patrons, or as a result of the cleaning of rubbish, debris, stains, and/or residue resulting from said Outdoor Café.
 4. The permit holder shall comply with all regulations set forth by the Police Department, Fire Bureau, or other public safety personnel as they pertain to the conduct of the patrons of said Outdoor Café.
 5. All approved barriers and furniture may remain in the designated Outdoor Café area during the permitted months of operation. Upon expiration of the Outdoor Café Permit, all barriers and furniture must be removed, and the space must be made open and available for public use.
 6. Outdoor Café Permits are non-transferrable.
 7. Permit Holder shall not be allowed access to or use of City electricity, electrical equipment, and/or water service in connection with the operation of an Outdoor Café.
 8. The permit holder is responsible for ensuring that the business and its patrons adhere to all noise and public conduct regulations outlined in the Code of the City of Binghamton.
 9. The City shall not be responsible for the theft, loss, or damage to any furniture or other Outdoor Café property.
 10. No loudspeakers, public-address system, or similar amplification device shall be used, nor shall any live music be played within any Outdoor Café area without the permit holder having first obtained a Noise Permit from the City, as outlined in §292-9.
 11. Please be aware of Section §327-2.L: Permit Modification, Revocations, and Inspections.

§327-2.L. Permit Modification, Revocations and Inspections [Amended 02-07-2018 by Ord. No 18-18; Amended ___-___-2023 by Ord. No. ____]

The Planning Department and/or the ~~City Clerk~~ **Director of Economic Development or their designee** may modify an Outdoor Café Permit and/or site plan should it become necessary or proper to do so in the interest of public health and/or safety or to preserve the character of any neighborhood of the City. The Planning Department and/or the ~~City Clerk~~ **Director of Economic Development or their designee** may revoke an Outdoor Café Permit for any violation of this section, the Code of the City of Binghamton and/or other regulatory guidelines as established by Broome County or New York State. Should the permit holder fail to comply with the provisions of its patrons, the permit holder may be ineligible to receive future Outdoor Café Permits. The City reserves the right to conduct inspections of the Outdoor Café and the Outdoor Café area at any and all times in order to ensure that all regulations as described herein are being met by the permit holder.

If the permit holder is in violation of this section, the Code of the City of Binghamton and/or other regulatory guidelines as established by Broome County or New York State, the Planning Department and/or the ~~City Clerk~~ **Director of Economic Development or their designee** will give the permit holder written notice of the violation and ten (10) days to cure same.. Any failure to make a required payment must be cured within five (5) days of written demand for payment to the permit holder. Any failure to submit an application or complete the application process will result in a written notice of violation from the City Code Department with ten (10) days to comply. If failure to comply, the City reserves the right to remove any barriers or furniture from the public right-of-way. Notwithstanding the foregoing, an Outdoor Café Permit may be immediately revoked if the permit holder violates the time limits set forth in §327-2.C. *Hours and Months of Operations* above. If an Outdoor Café Permit is revoked, the permit holder may be ineligible to receive future Outdoor Café Permits. Any notice can be e-mailed to the permit holder or delivered to the restaurant or tavern associated with the Outdoor Café.