



## Agenda

### Huntington Planning Commission Monday, January 5, 2026 – 5:30pm

---

1. Preliminaries
2. Call to Order
3. Roll Call
4. Election of Chair and Vice Chair
5. Approval of the December 1, 2025 Minutes
6. Old Business

#### **PC 25-13**

*Issue:* An ordinance of Council amending, modifying and re-enacting article 1340 of the codified ordinances of the City of Huntington, as revised, to amend definitions, the permit process, and standards for Outdoor Dining Areas.

7. New Business

#### **PC 26-01**

*Issue:* A site plan review for a hotel development located at 550 Kinetic Drive that is approximately 2.03 acres. The parcel is zoned C-2 Highway Commercial.

*Location:* 550 Kinetic Dr., Huntington, WV 25701

*Petitioner/Property Owner:* Emerald Hospitality LLC, 489 Ironwood Gate Dr., Princeton, WV 24740

8. Good and Welfare
9. Adjournment

**Minutes**  
**Huntington Planning Commission**  
**December 1, 2025**

A meeting of the City of Huntington Planning Commission was held on December 1, 2025 at 5:30 p.m. in the City Council Chambers, 800 5<sup>th</sup> Avenue, Huntington, WV 25701.

Members Present: Holly Mount, Ford Rucker, Sharon Pell, Ursulette Ward, Matt White, and CW Dolin

Members Absent: Jean Simmons and Charles Shaw

Staff Present: Kenzie Roland, Planner I  
Ericka Hernandez, Assistant City Attorney

*Mr. Dolin* motioned to approve the October 6, 2025 minutes. *Ms. Ward* seconded the motion. All were in favor, Minutes were approved.

**Old Business**

**PC 25-12**

*Issue:* A petition to make the following changes to the City of Huntington Zoning Ordinance:

1. Amend Article 1315 Definitions and Measurements to define additional terms related to Death Care Uses.
2. Amend Article 1320 Permitted Uses to amend Funeral Homes, Cemeteries, and Crematoriums.
3. Amend Article 1341 General Regulations to add Crematoriums to permitted accessory uses.
4. Amend Article 1341.29 to include regulations related to Death Care Uses.
5. Amend Article 1343 Parking requirements for Funeral Homes.

Ms. Roland read the staff report.

*Ms. Mount* asked for those in favor to the petition to speak.

Andrew Reger, a representative of Reger Funeral Home, stated he was in favor of the text amendment after discussing it with staff.

*Ms. Mount* asked for those in opposition of the petition to speak. No one spoke.

*Mr. Rucker* motioned to send to send to Council with a full recommendation. *Ms. Ward* seconded the motion. All were in favor, PC 25-12 was sent to Council with a full recommendation.

**New Business**

**PC 25-13**

*Issue:* An ordinance of Council amending, modifying and re-enacting article 1340 of the codified ordinances of the City of Huntington, as revised, to amend definitions, the permit process, and standards for Outdoor Dining Areas.

Ms. Roland read the staff report.

*Ms. Mount* asked for those in favor to the petition to speak. No one spoke.

*Ms. Mount* asked for those in opposition of the petition to speak. No one spoke.

*Mr. White* asked why this article is being amended. *Ms. Roland* responded that the text amendment was brought forward to simplify the process of permitting outdoor dining areas and make it easier for businesses to operate in the public space.

*Mr. White* asked how the businesses were being billed currently. *Zane Parsley*, Planning Director, stated the reason for the amendment is because the City was not billing the annual fee. *Mr. White* then asked if businesses would be charged an annual fee. *Mr. Parsley* stated that there would be no annual fee.

*Ms. Mount* agreed that the one-time would be more business friendly and not worth the time of the staff. *Ms. Roland* stated that the City's comprehensive plan mentions a goal to keep the downtown area thriving and this text amendment would help achieve it.

*Ms. Mount* disclosed ex parte communication. She stated that another member of City Council had reached out to ask if this was related to PODA (Private Outdoor Designated Areas).

*Mr. Rucker* motioned to forward to Council with a favorable recommendation. *Mr. Dolin* seconded the motion. All were in favor, PC 25-13 was recommended favorably to Council.

### **Good and Welfare**

*Mr. Rucker* motioned to adjourn the meeting. *Mr. Dolin* seconded the motion. All were in favor.

Meeting adjourned at 5:43 pm.

Date approved: \_\_\_\_\_

Chairperson: \_\_\_\_\_ Prepared by: \_\_\_\_\_  
Holly Mount, Chair Kenzie Roland, Planner I

**City of Huntington Planning Commission**

**December 1, 2025**

**Staff Report:** An ordinance of Council amending, modifying and re-enacting article 1340 of the codified ordinances of the City of Huntington, as revised, to amend definitions, the permit process, and standards for Outdoor Dining Areas.

**PC 25-13**

**Issue:** An ordinance of Council amending, modifying and re-enacting article 1340 of the codified ordinances of the City of Huntington, as revised, to amend definitions, the permit process, and standards for Outdoor Dining Areas.

**Petitioner:** City of Huntington, 800 5<sup>th</sup> Avenue, Huntington, WV 25701

**Introduction**

This is a petition to update the City of Huntington's Zoning Ordinance to amend definitions, the permit process, and standards for Outdoor Dining Areas.

**Existing Code**

Under the existing code, outdoor dining areas are defined using three different definitions of *Small partitioned area*, *Large partitioned area*, and *Non-partitioned area*, where the difference includes being fenced and linear footage along storefront. Each type of outdoor dining area has a different annual administrative and renewal fee. The code also requires certain hours of operation of the outdoor dining areas, limiting it to only when the kitchen of the establishment is open and food is being served. Overall, the current code is complex and is specifically geared towards restaurants and restaurants serving alcohol.

**Proposed Code Changes**

**Amend Section 1340.04 Definitions**

- Amend "Operator"
- Add "Partitioned area"
- Remove "Small partitioned area"
- Remove "Large partitioned area"

**Amend Section 1340.05 Permit Process**

In Section 1340.05, the proposed amendment would transition from an initial and annual renewal fee of the differing outdoor dining areas to a one-time fee upon initial application for all permitted outdoor dining areas.

**Amend Section 1340.06 Standards for Outdoor Dining Areas**

In Section 1340.06, the proposed amendment would remove operating within certain hours and only require them to follow serving regulations laid out by the WVABCa regarding permitted days and times of service, if serving alcohol.

### **Staff Comments**

Article 1340 Outdoor Dining was enacted in 2018 and has acted a good baseline. However, enforcement has been difficult due to complex regulations under the existing code. The proposed amendments would simplify the definitions to easily determine how to proceed, relieve a financial burden on expanding their business into the public right-of-way, and remove and amend language to be more inclusive of bars and other food industry establishments.

The amendment, addition, and removal of the definitions proposed will open up the types of businesses when referring to their operators and only have a clear difference between “partitioned” and “non-partitioned” areas. The differing fees for different size of outdoor dining areas was difficult to manage as well as enforce. The simplification of a one-time fee upon application promotes ease when obtaining the permit and promotes a business-friendly partnership.

The proposed amendment would alleviate the operator of the outdoor dining area from operating within certain hours and only require them to follow serving regulations laid out by the WVABC. It will also open the door to small-scale businesses, such as pastry shops, coffee shops, or the like, who may operate differently from a full-scale kitchen restaurant.

### **Comprehensive Plan**

Currently the Zoning Ordinance for Outdoor Dining Areas focuses on restaurants and restaurants serving alcohol. However, it does not essentially target bars or smaller-scale food businesses. The Comprehensive Plan, Plan 2035 does mention the need to create a diverse retail and business environment. Therefore, the proposed amendment would allow current and new businesses to easily obtain a permit with the City by simplifying the fee and process, while promoting achievable growth and a more enjoyable experience.

### **Attachments**

- Proposed Amendments : Additions are underlined and withdrawn text are stricken through

**AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING  
ARTICLE 1340 OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON,  
AS REVISED, TO AMEND DEFINITIONS, THE PERMIT PROCESS, AND  
STANDARDS FOR OUTDOOR DINING AREAS.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON,  
CABELL AND WAYNE COUNTIES, WEST VIRGINIA,** that Article 1340 of the Codified  
Ordinances of the City of Huntington, as revised, is hereby **AMENDED, MODIFIED AND RE-  
ENACTED** to read as follows:

---

**ARTICLE 1340  
OUTDOOR DINING AND OUTDOOR SERVICE OF ALCOHOL**

---

**1340.04 DEFINITIONS.**

- (a) "Operator" shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in a district zoned for commercial use that possesses a valid ~~State of West Virginia food vendor's county health department permit and serves at a minimum both lunch and dinner food and/or drink for on-premise consumption~~, and has been issued an outdoor dining area permit by the city's planning department.
- (b) "Outdoor dining area" shall mean a confined area of the public sidewalk designated by a site plan approved by the city through its planning department and located in a commercial district, as shown on the City of Huntington's Official Zoning Map, where, if abutting a street, the street abutting the sidewalk is posted at a speed limit of 25 mph or less, and which area is adjacent to operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include alcoholic beverages contingent on proper licensure by the WVABC.
- (c) "~~Small p~~Partitioned area" shall mean an outdoor dining area that is fenced or otherwise enclosed ~~and occupies 30 or less of linear feet along the adjacent storefront.~~
- (d) "~~Large partitioned area~~" shall mean an ~~outdoor dining area that is fenced or otherwise enclosed and occupies greater than 30 feet of linear feet along the adjacent storefront.~~
- (e) "Non-partitioned area" shall mean an outdoor dining area that is not fenced or otherwise enclosed.

**1340.05 PERMIT PROCESS.**

\* \* \*

- (c) The outdoor dining area permit term shall be for one fiscal year, renewed July 1, unless revoked prior to expiration, and may be renewed on an annual basis. An ~~annual~~ administrative fee of \$100 ~~for a non-partitioned outdoor dining area, a \$250 administrative fee shall be assessed for~~

a small partitioned outdoor dining area or a \$500 administrative fee for a large petitioned area, shall be assessed upon initial application renewal of an existing outdoor dining area permit.

\* \* \*

**1340.06 STANDARDS FOR OUTDOOR DINING AREAS.**

(a) The outdoor dining area shall be located adjacent to the property of an existing and lawful establishment of a permitted operator and shall be under the responsible direction and control of that operator.

(b) ~~The outdoor dining area may be open to patrons between the hours of 7:00 a.m. and 11:00 p.m. daily, but said outdoor dining area may only be open while the kitchen associated with such establishment is open and operating such that it is capable of serving food to patrons.~~ In the event a permitted operator intends to serve any beverage regulated by the WVABCA in an outdoor dining area, all code provisions and regulations of the WVABCA regarding permitted days and hours of service shall be followed. If a bar is proposing to allow for outdoor drinking, ~~and do not meet the dining requirements listed above~~ they may petition to go before the board of zoning appeals to allow for an expansion to their existing special permit/conditional use permit if all other site and location requirements can be met.

\* \* \*

.....  
**BE IT FURTHER ORDAINED** that all other articles, sections and subsections of the Codified Ordinances of the City of Huntington, as revised, shall remain in full force and effect until further Ordinance of this Council.

**BE IT FURTHER ORDAINED** that the amendments to Article 1340 shall become effective upon its adoption by Council and approval by the Mayor.

SPONSORED BY \_\_\_\_\_

APPROVED AS TO FORM BY EBH \_\_\_\_\_

FIRST READING \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECOND READING \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE \_\_\_\_\_

---

BARBARA MILLER, CITY CLERK

DATE

---

PATRICK J. FARRELL, MAYOR

APPROVE

DATE \_\_\_\_\_

VETO

**City of Huntington Planning Commission**

**January 5, 2026**

**Staff Memorandum:** A petition to amend Article 1340 of the Zoning Ordinance.

After the Planning Commission recommended favorably the text amendment to Council, it was brought to the attention of staff that additional areas of the ordinance needed to be revised. This memorandum is intended to be included in the Planning Commission's record.

The following additional amendments are being made to ensure the ordinance reads clearly:

**Section 1340.05**

d. Any operator holding a valid existing permit for a particular outdoor dining area that continues to utilize that outdoor dining area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such operator shall ~~pay the applicable annual renewal administrative fee, complete all renewal paperwork~~ and comply with any other renewal requirements of the planning department, within 30 days of the commencement of the succeeding permit term. If the operator fails to meet all renewal requirements within the 30 days, then the operator's permit shall be deemed to have expired.

**Section 1340.07**

b. The applicant shall maintain such general liability insurance with at least \$1,000,000.00 coverage per each occurrence and shall ~~the~~ name as additional insured the City of Huntington, its agents, officer, directors, and employees. A copy of said insurance policy shall be furnished to the City of Huntington annually.

**Attachments**

- Proposed Amendments: Additions are underlined and withdraw text are stricken through

**AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING  
ARTICLE 1340 OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON,  
AS REVISED, TO ALLOW FOR THE OUTDOOR DINING AND OUTDOOR SERVICE  
OF ALCOHOL.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON,  
CABELL AND WAYNE COUNTIES, WEST VIRGINIA,** that Article 1340 of the Codified  
Ordinances of the City of Huntington, as revised, is hereby **AMENDED, MODIFIED AND RE-  
ENACTED** to read as follows:

---

**ARTICLE 1340  
OUTDOOR DINING AND OUTDOOR SERVICE OF ALCOHOL**

---

**1340.01 PLANNING DEPARTMENT RULES AND REGULATIONS UNDER ARTICLE.**

The City of Huntington Department of Planning and Development ("planning department") is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all outdoor dining area permit applications and to either grant or deny such permits under this article. Copies of such regulations, as amended from time to time, shall be maintained by the planning department, posted on the city's website and filed in the city clerk's office, and shall be available to interested parties at all reasonable times.

**1340.02 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND  
REGULATIONS.**

(a) The operation of an outdoor dining area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act, all provisions of state and local building and fire codes, as well as all state and local health laws and regulations regarding the service and preparation of food, and shall not unreasonably interfere with utility access. The operations of an outdoor dining area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration (WVABC). Nothing in this article shall be intended to alter or abridge any applicable federal, state and local laws or the operator's responsibility to comply with all code provisions and regulations of the WVABC.

(b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the city, as set forth in section 516.06 of the Huntington Revised Code, except that any permitted outdoor dining area operator and patrons of permitted operator's outdoor dining area shall be deemed to be exempt from said

prohibition during the hours of operation of the outdoor dining area and only within the confines of said area.

#### 1340.03 NONDISCRIMINATION/RIGHT TO LIMIT OR DENY ADMISSION OR SERVICE.

No person shall be denied access or service to an outdoor dining area on the basis of race as defined in Article 147, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the operator to limit access and admission to an outdoor dining area to only bona fide paying customers of that operator's establishment who are behaving in a lawful manner.

#### 1340.04 DEFINITIONS.

(a) "Operator" shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in a district zoned for commercial use that possesses a valid ~~State of West Virginia food vendor's county health department permit and serves at a minimum both lunch and dinner food and/or drink for on-premise consumption, and has been issued an outdoor dining area permit by the city's planning department.~~

(b) "Outdoor dining area" shall mean a confined area of the public sidewalk designated by a site plan approved by the city through its planning department and located in a commercial district, as shown on the City of Huntington's Official Zoning Map, where, if abutting a street, the street abutting the sidewalk is posted at a speed limit of 25 mph or less, and which area is adjacent to operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include alcoholic beverages contingent on proper licensure by the WVABCA.

(c) "~~Small p~~Partitioned area" shall mean an outdoor dining area that is fenced or otherwise enclosed ~~and occupies 30 or less of linear feet along the adjacent storefront.~~

(d) "~~Large partitioned area~~" shall mean an ~~outdoor dining area that is fenced or otherwise enclosed and occupies greater than 30 feet of linear feet along the adjacent storefront.~~

(e) "Non-partitioned area" shall mean an outdoor dining area that is not fenced or otherwise enclosed.

#### 1340.05 PERMIT PROCESS.

(a) An applicant for an outdoor dining area permit shall file an application with the City of Huntington Planning office on such forms and subject to such procedures as the Planner may establish. An application for an outdoor dining area permit shall be accompanied by the appropriate administrative fee as listed in section 1340.05(c), a \$5,000 surety bond for partitioned outdoor dining areas, and shall include: a site plan, drawn to scale showing the layout for the outdoor dining area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, aisles between tables, and if applicable, enclosures; routes of ingress and egress; clearances between the seating area and the curb; and any such additional requirements of the planning department with respect to type,

style, or specifications of the outdoor dining area, including those requirements subject to the approval of the WVABCA.

(b) After reviewing the application and site plan, the planner shall determine if the proposed outdoor dining area, consistent with the requirements of this article, is reasonable, promotes safe pedestrian and retail friendly vitality, and that there is adequate space remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic, while promoting the overall public health, safety and welfare. The planner may require that the applicant obtain the approval of other departments or utilities before making a final determination. Thereafter, the planning department may approve, approve with conditions, or deny an application. The approved plan and permit shall be posted at the operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the planning department. The planning department shall provide separate guidelines regarding applicable standards for uniform aesthetics, design, installation, and maintenance of the outdoor dining area and the Planning Commission will review these guidelines annually.

(c) The outdoor dining area permit term shall be for one fiscal year, renewed July 1, unless revoked prior to expiration, and may be renewed on an annual basis. An ~~annual administrative fee of \$100 for a non partitioned outdoor dining area, a \$250 administrative fee shall be assessed for a small partitioned outdoor dining area or a \$500 administrative fee for a large petitioned area, shall be assessed upon initial application renewal~~ of an ~~existing~~ outdoor dining area permit.

(d) Any operator holding a valid existing permit for a particular outdoor dining area that continues to utilize that outdoor dining area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such operator shall ~~pay the applicable annual renewal administrative fee~~, complete all renewal paperwork and comply with any other renewal requirements of the planning department, within 30 days of the commencement of the succeeding permit term. If the operator fails to meet all renewal requirements within the 30 days, then the operator's permit shall be deemed to have expired.

(e) The issuance of an outdoor dining area permit does not grant or imply vested rights to use of the area by the operator, but instead is a privilege granted to the operator. The city retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The city shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improving the overall public health, safety and welfare.

#### 1340.06 STANDARDS FOR OUTDOOR DINING AREAS.

(a) The outdoor dining area shall be located adjacent to the property of an existing and lawful establishment of a permitted operator and shall be under the responsible direction and control of that operator.

(b) ~~The outdoor dining area may be open to patrons between the hours of 7:00 a.m. and 11:00 p.m. daily, but said outdoor dining area may only be open while the kitchen associated with such establishment is open and operating such that it is capable of serving food to patrons.~~ In the event a permitted operator intends to serve any beverage regulated by the WVABCA in an outdoor

dining area, all code provisions and regulations of the WVABCA regarding permitted days and hours of service shall be followed. If a bar is proposing to allow for outdoor drinking, ~~and do not meet the dining requirements listed above~~ they may petition to go before the board of zoning appeals to allow for an expansion to their existing special permit/conditional use permit if all other site and location requirements can be met.

(c) All furniture or other personal property located on the public sidewalk/right-of-way by operator must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way by operator are strictly prohibited. If a permanent fixture is placed upon the right-of-way by the operator, the outdoor dining area permit shall be revoked immediately and the public right-of-way returned to its original condition.

(d) As authorized by state law, including, but not limited to, W. Va. Code §§ 8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on city right-of-way shall be provided, installed, maintained and removed by and at the discretion of the city, shall remain property of the city, and no other partitions or fencing shall be permitted absent a finding by the planning department that the city is unable to provide said partitions or fencing, and that the proposed partitions or fencing are consistent with applicable standards for uniform aesthetics, design, installation, maintenance and removal.

(e) The planning department shall have the authority to determine when furniture, personal property and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) An unobstructed corridor space of 60 inches must be maintained between the outer dimension of the outside dining area and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. Provided however that the planner may reduce this to a minimum of 36 inches of unobstructed corridor space with approvals from appropriate departments. In order to achieve a continuous pedestrian walk way, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the outdoor dining area. If the Americans with Disabilities Act requires a greater space, then the federal law shall control.

(g) An unobstructed clearance of 36 inches, must be maintained between a fire connection and any furniture or enclosures of an outdoor dining area. If the city's Fire Code requires a greater space, that Code shall control.

(h) The outdoor dining area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food, broken tableware, and litter.

(i) In order to control litter, the use of disposable tableware and utensils is prohibited.

(j) In accordance with section 572.04 of the Huntington Revised Code, noise from an outdoor dining area which unreasonably disturbs neighboring commercial or residential occupants is prohibited.

(k) In order to serve any beverage regulated by the WVABCA in an outdoor dining area, the designated area must be included in the floor plan for the licensed premises as approved by the WVABCA. Any beverage regulated by the WVABCA shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the city as an

outdoor dining area. Patrons are not permitted to carry any beverage regulated by the WVABCA out of the outdoor dining area.

(l) Smoking is prohibited within any outdoor dining area.

#### 1340.07 ADDITIONAL REQUIREMENTS.

(a) Prior to the issuance of a permit, the applicant must agree, in writing, that it shall indemnify, defend, and save harmless the city, its officers, agents, and employees, from and against all liability, claims, suits, damages, losses, costs, attorneys' fees and expenses of any or all types arising out of, or related in any way to, the permitted outdoor dining area.

(b) The applicant shall maintain ~~such~~ general liability insurance with at least \$1,000,000 coverage per each occurrence and shall ~~the~~ name as additional insured the City of Huntington, its agents, officers, directors and employees. A copy of said insurance policy shall be furnished to the City of Huntington annually.

(c) The authorization and privilege granted by a permit approved under this section shall be terminated due to the operator's failure to comply with any federal, state or local laws, any unabated nuisances or whenever the city desires to use the affected public right-of-way for any public purpose. In the event the city shall have a public need for use of the right-of-way or the property affected by the right-of-way, the city may terminate the use of such right-of-way by written notification to the applicant for the removal of any encroachments, and the operator shall cease use of the right-of-way unless and until such time the city has no public need for use of the right-of-way. Said removal shall be completed by the date specified in the notice and shall be accomplished by the applicant without cost to the city. If the applicant fails or neglects to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of the operator, and shall not be liable to the operator for any loss, financial or otherwise, or damage to the encroachment or personal property within the encroachment area.

#### 1340.08 DENIAL OR REVOCATION OF PERMIT.

(a) An outdoor dining area permit is a privilege granted to the operator that may be revoked by the city upon finding by the planning department that the operator has violated any federal, state or city law applicable to the outdoor dining area or the operation thereof, including but not limited to, compliance with all code provisions and regulations of the WVABCA, that the continued operation of the outdoor dining area poses a threat to the health, safety or welfare of the public, or that the outdoor dining area constitutes a public nuisance.

(b) An applicant who has been denied a permit, or an operator whose permit has been revoked, may appeal the denial or revocation to the City of Huntington Board of Zoning Appeals (BZA). The provisions of Article 13 of the City of Huntington Zoning Ordinance shall apply. Such appeal may be made in writing within 30 days following the decision appealed from, on forms available at the planning department, and shall set forth the basis on which the person contests the decision. Within ten days of receipt of the appeal by the BZA, the BZA shall set a date and time for a public

hearing. The public hearing shall be held within 45 days of receipt of the appeal to the BZA. The BZA shall conduct a public hearing on the appeal and may: deny the appeal and uphold the original order, requirement, decision or determination; grant the appeal and overturn the original order, requirement, decision or determination; or, issue an order which denies part of the appeal and grants part of the appeal. The BZA shall make written findings of fact and conclusions of law on which the BZA based its decision. The decision of the BZA may be appealed by either party, within 30 days, to the Cabell County Circuit Court, as set forth in WV Code § 8A-9-1, et seq.

#### 1340.09 NO GRANDFATHER PROVISION.

All outdoor dining areas on city right-of-way in operation at the time of the enactment of this article, as well as all such areas that are licensed thereafter, shall be subject to each provision of this article. No grandfather provision is applicable. No act of any person or business entity prior to the effective date of this article, which would be considered a violation under this article if it were in effect, shall be subject to prosecution.

#### 1340.10 SEVERABILITY.

Each section of this article shall be severable from the others, and if any section or portion thereof shall be determined to be unenforceable, then the remaining sections shall remain in full force and effect.

#### 1340.99 PENALTY.

Any operator who violates any provision of this article shall, upon conviction, be fined up to \$500 per day. Each day any violation of this article shall continue shall constitute a separate offense.

.....  
**BE IT FURTHER ORDAINED** that all other articles, sections and subsections of the

Codified Ordinances of the City of Huntington, as revised, shall remain in full force and effect until further Ordinance of this Council.

**BE IT FURTHER ORDAINED** that the amendments to Article 1340 shall become effective upon its adoption by Council and approval by the Mayor.

SPONSORED BY \_\_\_\_\_

APPROVED AS TO FORM BY \_\_\_\_\_ EBH

FIRST READING \_\_\_\_\_

SECOND READING \_\_\_\_\_

DATE \_\_\_\_\_

BARBARA MILLER, CITY CLERK

DATE

PATRICK J. FARRELL, MAYOR

APPROVE

DATE \_\_\_\_\_

VETO