

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

S

2

**SENATE BILL 311\*  
State and Local Government Committee Substitute Adopted 4/16/13**

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

---

Sponsors:

---

Referred to:

---

March 14, 2013

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

5 The General Assembly of North Carolina enacts:

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

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. 136-27.4."

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

34 **"§ 136-27.4. Use of certain right-of-way for sidewalk dining.**

35 (a) The Department may enter into an agreement with any local government permitting  
36 use of the State right-of-way associated with components of the State highway system and



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

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

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

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

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

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

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

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

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