

AN ORDINANCE AMENDING CHAPTER 17 OF THE CODE OF ORDINANCES TO REGULATE SIDEWALK DINING ACTIVITIES (2019-MM-YY/R-X)

BE IT ORDAINED by the Council of the Town of Chapel Hill as follows:

Section 1. Article VI, Chapter 17 of the Town Code is hereby revised to read as follows:

“ARTICLE VI. SALE OF MERCHANDISE ON SIDEWALKS, PUBLIC STREETS

Sec. 17-76. Legislative findings.

The council hereby finds that:

(a) Increasing the vitality of the town's commercial zoning districts is in the best interest of the citizens of the Town of Chapel Hill and the public health, safety and welfare;

~~(b) The Town Center 1, 2 and 3, Neighborhood Commercial, Neighborhood Commercial Conditional, Community Commercial, and Community Commercial Conditional zoning districts are in need of special efforts to enhance their vitality; and such efforts will promote the public health, safety and welfare;~~

(eb) Permitting limited sales of food and beverages by businesses in commercial districts ~~businesses adjacent to public sidewalks in the Town Center 1, 2 and 3, Neighborhood Commercial, Neighborhood Commercial Conditional, Community Commercial, and Community Commercial Conditional zoning districts~~ will enhance the vitality of the downtown and other commercial areas of Chapel Hill and the health, safety and welfare of the citizens of the town.

Sec. 17-77. General prohibition; exceptions.

Except as otherwise provided in this article, it shall be unlawful for any person to display, by arranging or placing or carrying upon any public street or sidewalk or by placing upon any tree, post, table, or other structure or vehicle situated upon the public right-of-way of any street or sidewalk within the town for the purposes of sale or barter or for any person to sell, rent, offer for sale, or barter any goods, wares, merchandise or commercial products of any kind on any public street or sidewalk within the town.

Sec. 17-78. Charitable sales.

Civic organizations or other groups engaged in charitable or fund-raising drives for community service may apply directly to the town manager for a temporary permit to display, sell, rent, offer for sale, or barter any goods, wares, merchandise, or commercial products of any kind on the public streets and sidewalks of the town.

Sees. 17-79-17-81. Reserved.

Sec. 17-82. Selling adjacent to intersections.

No selling done pursuant to a permit issued under this article shall be permitted within ~~fifty (50)~~ six (6) feet of the ~~right-of-way~~ travel lane at any intersection.

Sec. 17-83. Display on sidewalk permitted.

The holder of a temporary permit under this article may display articles for sale on the sidewalk in such manner as not to block any cross walk or impede the orderly flow of pedestrian traffic on any sidewalk or public street.

Sec. 17-84. Application of article to sale of article on U.N.C. property, sale of newspapers, magazines and food.

The provisions of this article shall not apply to the sale of any article on private property or on the property of the University of North Carolina, nor to the sale of newspapers or magazines except as to those locations as provided in Section 17-85, nor farm products exempted under N.C.G.S. 105-53(c), provided such sales do not interfere with or impede the orderly flow of pedestrian or automotive traffic.

Sec. 17-85. Distribution and sale of publications on certain specified blocks.

Any vendor choosing to distribute free publications in the locations listed below shall use the modular newspaper racks provided and maintained by the town in these areas. Individual privately owned free-standing newspaper racks shall not be permitted in the locations listed below for the purpose of distributing free publications.

Any vendor choosing to sell publications in the locations listed below shall purchase a newspaper rack meeting the design guidelines herein described, and shall locate and maintain the newspaper rack in an area designated by the town manager. All newspaper racks used for the sale of publications shall be green metal non-pedestal mounted racks not exceeding twenty (20) inches in width or thirty-six (36) inches in height, excluding top mounted coin slots. These racks shall be free of advertising on all sides excepting the front and top surfaces. Privately owned newspaper racks that do not meet these guidelines or that are not properly maintained, as determined by the town manager, shall not be permitted in the locations listed below for the purpose of selling publications.

- (1) 100 block of North Columbia Street;
- (2) 100 block of East Franklin Street, south side;
- (3) 200 block of East Franklin Street, north side; and
- (4) 400 block of West Franklin Street.

Sec. 17-86. General requirements for exceptions to this article.

Sale and offering for sale of food shall be subject to the following requirements:

(a) The sale of food under this article shall be limited to the further restrictions in this article. Approved restaurants with street frontage along roads with speed limits of no more than 45 miles per hour ~~Businesses in the Town Center 1, 2 and 3 Neighborhood Commercial, Neighborhood Commercial-Conditional, Community Commercial, and Community Commercial-Conditional zoning districts~~ may use the sidewalk area in front of their business, or in front of an adjacent property, with the concurrence of the affected property owners, and with the permission of the town manager. The town manager shall determine where sales are permissible on the basis of whether room is available in front of each business to permit at least ~~six (6)~~ five (5) feet of clear passage, measured as described in subsection (f), for pedestrians and all other restrictions of this article in addition to the space used for sales. ~~This minimum clear passage width may be increased if the town manager determines it is necessary in specific locations to provide adequate and safe pedestrian flow.~~

(b) Sales permitted under this article shall be by restaurants within the Town Center 1, 2 and 3, Neighborhood Commercial, Neighborhood Commercial-Conditional, Community Commercial, and Community Commercial-Conditional districts as defined in the Chapel Hill Land Use Management Ordinance and Zoning Atlas as approved by the town.

(c) Chairs and tables and related barriers, approved by the town manager, may be placed on the sidewalk; ~~these tables and chairs and related barriers shall have a maximum height of four (4) feet and shall have a maximum length of five (5) feet and a maximum width of three (3) feet.~~

(d) Activities authorized under this article shall comply with all applicable laws, ordinances and regulations, including but not limited to those pertaining to noise control, health, fire protection, litter control, business licenses, zoning, signs, and traffic safety.

(e) Activities permissible under this article shall not interfere with or impede the safe and orderly flow of pedestrian and vehicular traffic; shall leave clear for pedestrian traffic a continuous area of paved sidewalk at least ~~six (6)~~ five (5) feet wide, or at least ~~six (6)~~ five (5) feet of width of normally travelled area if there is no paved sidewalk; ~~and shall leave clear for access purposes an area at least three (3) feet wide next to the curb or edge of public streets where parking or standing of vehicles is permitted.~~

(f) Sidewalk sales under this article shall not be conducted:

~~(1) Within ten (10) feet of a fire hydrant, driveway, alley used by vehicles, or of a parking space for handicapped people.~~

~~(2) In any manner which damages or endangers any tree or shrub; within the area of a tree grate, fence or other protective device; or in the area of the roots of a tree or shrub if such area is unpaved within ten (10) feet of the base of the tree or within three (3) feet of the base of the shrub.~~

~~(3) In intersection or bus stop areas pursuant to section 17-82.~~

Table, chairs, and other furnishings shall be placed in such a manner that at least five (5) feet of unobstructed paved space of the sidewalk, measured from any permanent or semi-permanent object including trees, tree grates and shrubs, remains clear for the passage of pedestrians and provides adequate passing space that complies with the Americans with Disabilities Act. This minimum clear passage width may be increased if the town manager determines it is necessary in specific locations to provide adequate and safe pedestrian flow. Furnishings must be placed a minimum of six (6) feet from any travel lane.

(g) Table, chairs, and other furnishings shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilations areas, or ramps necessary to meet accessibility requirements under the Americans with Disabilities Act.

~~(g) The chairs and tables and any related barriers placed on the sidewalk must be removed by midnight and may not be placed on the sidewalk prior to 7:00a.m. The chairs and tables and any related barriers must be removed in inclement weather.~~

(h) Except as elsewhere permitted, the operation or furnishing of the sidewalk dining business shall not involve any permanent alteration to or encroachment upon any street or sidewalk. The restaurant operator and/or owner of the sidewalk dining operation shall be responsible for repairing any incidental damage to the public right-of-way resulting from the operation of the sidewalk dining.

(i) The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by the North Carolina Department of Transportation, the town, their agents or employees, or by any other governmental entity or public utility.

Sec. 17-87. General requirements for exceptions to this article.

Where the manager determines that strict compliance with any dimensional regulations (~~including those related to the size of furniture~~) of this article would preclude use of the sidewalk for sidewalk sales otherwise permitted and further determines that a variance from the strict dimensional requirements would not in a specific case substantially interfere with the public's use of the sidewalk or the rights of adjoining property owners, the manager may grant variances ~~of up to twenty (20) per cent of any dimensional regulation~~ as deemed necessary.

Sec. 17-88. Sidewalk food sales by ~~downtown~~ businesses adjacent to the right-of-way.

~~An approved restaurant business in a zoning district the Town Center 1 and 2, Neighborhood Commercial, Neighborhood Commercial-Conditional, Community Commercial, and Community Commercial-Conditional zoning districts~~ which (a) occupies building space at street level and (b) immediately fronts on and shares a common boundary with a public sidewalk or is separated from such sidewalk only by landscaped areas, may, upon receipt of a permit from the town, sell food on the portion

of the sidewalk directly in front of and nearest each business's respective space within the building or in front of an adjacent property with the concurrence of that property owner subject to the following:

- (a) If two (2) or more businesses with street level frontage occupy the same property, each shall be limited to the portion of the sidewalk directly in front of and nearest each business's respective space within the building or in front of an adjacent property with the concurrence of that property owner.
- (b) Use of the public sidewalk area under this section shall not obstruct the entrances or exits of any building, and shall not interfere with or impede the safe and orderly flow of pedestrian traffic.
- (c) The business shall be responsible for keeping the area of its sidewalk sales in clean condition.
- (d) A business permitted to sell under this section may only sell food and beverages and may not assign or delegate its space or authority under this section to other persons.
- (e) A business which vacates a building location shall not use the public sidewalk in front of such location.
- (f) A business which occupies no building space at the street level shall not conduct sidewalk sales under this section.
- (g) ~~Before conducting sidewalk sales under this section, the business shall agree to indemnify the town from any damages or claims and shall provide evidence of a general liability insurance policy, which policy names the town as an additional insured, with minimum liability coverage of one hundred thousand dollars (\$100,000.00) per person bodily injury; three hundred thousand dollars (\$300,000.00) per occurrence bodily injury and twenty five thousand dollars (\$25,000.00) per person occurrence property damage.~~ The restaurant operator shall provide evidence of adequate liability insurance in an amount satisfactory to the town, but in no event in an amount less than amount specified under G.S. 160A-485 as the limit of the town's waiver of immunity or the amount of Tort Claim liability specified in G.S. 143-299.2, whichever is greater. The insurance shall protect and name the N.C. Department of Transportation and the town as additional insureds on any policies covering the business and the sidewalk activities involving public rights-of-way.
- (h) The restaurant operator shall provide an agreement to indemnify and hold harmless the N.C. Department of Transportation and the town from any claim resulting from the operation of sidewalk dining activities involving public rights-of-way.
- (i) The restaurant operator shall provide a copy of all permits and licenses issued by the State, county or town, including health and ABC permits, if any, necessary for the operation of the restaurant or business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the county or city for exterior alterations or improvements to the restaurant.
- (h) The town manager reserves the right to revoke the permit to place tables and chairs and related barriers on the public right-of-way pursuant to Section 17-89(b) if any conditions of approval are not met, and to temporarily suspend permits during times of special events in the downtown area or adverse weather. During such times, sidewalk dining furnishings must be removed by the sidewalk dining restaurant.
- (k) It is unlawful to consume on a business's sidewalk dining area alcoholic beverages not purchased at that business or to remove alcoholic beverages in open containers from that business's sidewalk dining

area. Any business serving alcoholic beverages shall post a sign, visible from the sidewalk dining area, including this information.

Sec. 17-89. ~~Reserved~~ Sidewalk Dining Permits, Penalties and Remedies.

(a) Permits. All sidewalk dining activities require completion of a permit application and submittal to the town for approval. Before sidewalk dining activities are permitted, the restaurant operator must have a valid issued sidewalk dining permit. Sidewalk dining permits are not transferable or assignable. A fee as provided in the Town fee schedule must be paid by the sidewalk dining restaurant to cover the cost of processing and investigating the application and issuing the permit. Sidewalk dining restaurants must resubmit their application for their sidewalk dining permit should their occupancy change or they make changes to any part of their approved permit application (including, but not limited to, layout of or increase to the number of furnishings). The town may charge a renewal fee if a resubmitted application includes a change in a restaurant's occupancy.

(b) Penalties. The town manager may immediately revoke a permit issued pursuant to this ordinance, if he or she finds that the restaurant or restaurant operator has:

- (1) Deliberately misrepresented or provided false information in the application, or
- (2) Operated the sidewalk dining in such a manner as to create public nuisance or to constitute a hazard to the public health, safety, or
- (3) Failed to maintain any insurance, health, business or other permit or license required by the law for the operation of a restaurant or, if applicable, for sale of alcoholic beverages, or
- (4) Made changes in direct conflict with the approved permit application.

The restaurant operator may reapply for a sidewalk dining permit once the conditions of the revocation have been remedied.

Sec. 17-90. Application requirements and procedures.

The town manager may prescribe application requirements and procedures.”

Section 2. This ordinance shall become effective upon enactment.

This the _____ of _____, 2019.