

04-10-2019 Town Council Meeting
Responses to Council Questions

ITEM #6: Consider an Ordinance Text Amendment Amending Chapter 17 of the Code of Ordinances that Regulates Sidewalk Dining Activities

Council Question: What are the penalties for improper or unpermitted sidewalk dining (p. 53)?

Staff Response: *The penalties for improper or unpermitted sidewalk dining are outlined in proposed Section 17-89(b) of the text amendment. Essentially, the Town can revoke a restaurant's sidewalk dining permit immediately. Below is the exact language:*

(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.

Council Question: Can a copy of the 2013 statute passed by the General Assembly re: sidewalk dining be sent to us?

Staff Response: *The 2013 General Statute 136-27.4 is attached.*

Council Question: Can we see a copy of the current application that downtown restaurants have to complete for sidewalk dining?

Staff Response: *The current Application is attached. Note that it is currently called "Downtown Sidewalk Dining Permit Application" because the current ordinance is restrictive as to who can sidewalk dine which is essentially downtown restaurants. The future application will just be the "Sidewalk Dining Permit Application".*

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Council Question: Are there any safety concerns related to leaving furnishings out overnight... should they be secured in some manner as to decrease likelihood of furniture being taken or used for some unintended purpose?

Staff Response: *Staff discussed this at length and determined that there are no day to day concerns about leaving furnishings out overnight as long as they continue to comply with the Sidewalk Dining ordinance regarding spacing, clear passage, and other requirements. The Town can require that furnishings be removed during special events, construction-type activities, or adverse weather. Restaurants may decide to bring their furnishings inside or secure them at their discretion.*

North Carolina State Statute 136-27.4

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

(a) The Department may enter into an agreement with any local government permitting use of the State right-of-way associated with components of the State highway system and located within the zoning jurisdiction of the local government for sidewalk dining activities. For purposes of this section, "sidewalk dining activities" means serving food and beverages from a restaurant abutting State right-of-way to customers seated in the State right-of-way. The agreement between the Department and the local government shall provide that the local government is granted the administrative right to permit sidewalk dining activities that, at a minimum, comply with all of the following requirements and conditions:

- (1) Tables, chairs, and other furnishings shall be placed a minimum of six feet from any travel lane.
- (2) Tables, chairs, and other furnishings shall be placed in such a manner that at least five feet of unobstructed paved space of the sidewalk, measured from any permanent or semi-permanent object, remains clear for the passage of pedestrians and provides adequate passing space that complies with the Americans with Disabilities Act.
- (3) Tables, 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.
- (4) The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater than 45 miles per hour.
- (5) The restaurant operator shall provide evidence of adequate liability insurance in an amount satisfactory to the local government, but in no event in an amount less than the amount specified by the local government under G.S. 160A-485 as the limit of the local government'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 Department and the local government as additional insureds on any policies covering the business and the sidewalk activities.
- (6) The restaurant operator shall provide an agreement to indemnify and hold harmless the Department or the local government from any claim resulting from the operation of sidewalk dining activities.
- (7) The restaurant operator shall provide a copy of all permits and licenses issued by the State, county or city, 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.
- (8) 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 Department, the local government, its agents or employees, or by any other governmental entity or public utility.
- (9) Any other requirements deemed necessary by the Department, either for a particular local government or a particular component of the State highway system.

A local government given the administrative right to permit sidewalk dining activities under this section may impose additional requirements on a case-by-case basis, and nothing in this

section requires the local government to issue or maintain any permit for sidewalk dining activities if, in the opinion of the local government, such activities cannot be conducted in a safe manner. Nothing in this section requires the Department to give a local government the right to establish a permit program for sidewalk dining activities if, in the opinion of the Department, such activities cannot be conducted in a safe manner.

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

- (1) Enact an ordinance consistent with, but not necessarily limited to, the requirements of this section.
- (2) For applications along a federal-aid route or where the laws of the United States otherwise require, obtain permission from the Federal Highway Administration to permit the right-of-way to be used for the sidewalk dining. (2013-266, s. 2.)



Permit #: _____
Received on: _____
Fee: \$100.00

DOWNTOWN CHAPEL HILL SIDEWALK DINING APPLICATION, RULES AND REGULATIONS *

CONTACT INFORMATION	
Owner Name:	
Email:	Phone:
Applicant Name (if different from above):	
Email:	Phone:
RESTAURANT INFORMATION	
Restaurant Name:	
Address:	
Proposed hours for sidewalk dining:	
Briefly describe the proposed placement of sidewalk dining tables and chairs:	
OCCUPANCY AND SEATING	
<i>The sum of sidewalk and indoor dining patrons cannot exceed a restaurant's total occupancy at any time.</i>	
What is your current allowed occupancy? _____	What is your current indoor seating count? _____
How many additional patrons do you propose to seat with sidewalk dining? _____	
SIDEWALK DINING REQUIREMENTS	
<p>Sidewalk dining at full capacity must meet the below criteria. Town staff will perform a site visit to confirm that the described placement is possible in the proposed space. Please check each box indicating your understanding and compliance with the following North Carolina State Building Code requirements:</p> <ul style="list-style-type: none"> <input type="checkbox"/> No furnishings shall be placed within 6 feet of any vehicle travel lane (not including parking spaces). <input type="checkbox"/> Sidewalk dining must permit a 5 feet width of clear passage, measured from any permanent or semi-permanent object, for pedestrians on sidewalks <input type="checkbox"/> Furnishings shall not obstruct exits, entrances, driveways, alleyways, hydrant, standpipes, ventilation areas, utility access, or ramps <input type="checkbox"/> Furnishings must be non-combustible and cannot be permanently installed <input type="checkbox"/> Furnishings must not obstruct egress from buildings <input type="checkbox"/> If not already present, lighting (including emergency battery powered illumination) shall be provided for sidewalk dining at not less than 1 footcandle (11 lux) at the walking surface <input type="checkbox"/> Restaurant must provide at least one (1) ADA-compliant table (34" in height, accessible by a wheelchair and identified with a handicapped sticker) <input type="checkbox"/> No furnishings or other objects may obstruct anything that requires periodic access (including, but not limited to, Duke Energy or OWASA meters, cleanouts, grease traps, FDC and key boxes) 	

* This is a temporary application while the Town reconsiders its sidewalk dining ordinance (Chapel Hill Town Ordinance Chapter 17.86, 87 and 88). Only restaurants that want to use the public right of way (ie Downtown sidewalks) are required to comply with the above requirements and application.

OTHER RULES

- NC Alcohol Law Enforcement requirements apply to sidewalk dining. For restaurants that chose to sell alcohol at sidewalk dining tables not attached to their building (ie across sidewalks), applicants must show proof of Town sidewalk dining permit to the ABC Commission to obtain an alcohol sales permit. More information about this process can be found at <http://abc.nc.gov/Legal/LawEnforcement>.
- Sidewalk diners increase the total occupancy of restaurants. The sum of sidewalk dining and indoor dining patrons cannot exceed a restaurant's total occupancy.
- This permit only applies to the serving of food and beverages on sidewalks. Sale of other items must be sought per Sec 17-83 of the Chapel Hill Town Ordinance.
- During large town events, the Town may temporarily suspend sidewalk dining permits to accommodate increased crowds and prevent property damage (Sec 17-88h). Sidewalk dining furnishings **must** be removed during events where the street in front of the applying restaurant is closed unless otherwise indicated by the Town.
- Usable area for sidewalk dining is between the curb and building face occupied by the applicant's business. Use of the area in front of adjacent businesses requires concurrence of adjacent properties.
- For guidelines on outdoor heaters, contact the Fire Marshal at firemarshals@townofchapelhill.org.

APPLICATION CHECKLIST

The following documentation is required to complete your application for a sidewalk dining permit:

- Application and fee
- Pictures (front and both sides) of the area where sidewalk dining is proposed
- Picture of your posted occupancy card
- Description and/or hand drawn picture of proposed chairs, tables and any related barriers with length, width, height and material of each indicated. Websites of specific products are acceptable
- Evidence of general liability insurance policy, which names the Town as an additional insured, with minimum liability coverage of \$100,000 per person bodily injury, \$300,000 per occurrence bodily injury and \$25,000 per person occurrence property damage
- Letters of approval from adjacent property owners if proposed sidewalk dining furnishings extend beyond the area directly in front of the applicant's restaurant

CERTIFICATIONS

The undersigned property owner hereby authorizes this application for sidewalk dining.

Signature of owner:

Date:

The undersigned applicant hereby certifies that, to the best of his or her knowledge and belief, all information supplied with this application is true and accurate. The undersigned hereby certifies that he or she has read the Sidewalk Dining Requirements and Other Rules above and will ensure compliance.

Signature of applicant:

Date:

Pursuant to N.C. G.S. 136-27.4, the applicant agrees to indemnify and hold harmless the Town of Chapel Hill and its officers, agents and employees from all loss, liability, claims or expense (including reasonable attorneys' fees) arising from bodily injury, including death or property damage to any person or persons caused in whole or in part by the negligence or willful misconduct of the applicant except to the extent same are caused by the negligence or misconduct of the Town.

Signature of applicant:

Date:

Submission:

Complete applications with documentation should be emailed to permits@townofchapelhill.org. Town staff will review the application and send any requests for clarification to the indicated applicant.