

Ordinance



City Council
City of Wilmington
North Carolina
O-2022-84

Introduced By: Anthony N. Caudle, City Manager

Date: 10/18/2022

**Ordinance Amending City Code Chapter 4, Section 4-109. Sidewalk Cafes.
(OBG-2-622)**

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, certain amendments to Section 4-109. Sidewalk cafes are contemplated specifically with regard to required pedestrian way, operating times for sidewalk cafes, and appropriate establishments for operating such uses;

THEREFORE, BE IT ORDAINED:

SECTION 1: THAT Chapter 4, Licenses and Business Regulations, Article III. Sales of Merchandise on Public Property, Section 4-109(a) is amended to replace Main Street Mixed Use with Urban Mixed Use and add the Mixed Use district as follows:

- (a) *Permit generally.* The city manager or his designee may issue permits for the serving of food and beverages on the city sidewalks and pedestrian ways in the area of the city known as the Central Business District (CBD), Mixed Use District (MX), the Urban Mixed Use District (UMX), and other districts where the city manager determines that the development pattern is suitable for such uses, pursuant to Chapter 18 of the City Code.

SECTION 2: THAT Chapter 4, Licenses and Business Regulations, Article III. Sales of Merchandise on Public Property, Section 4-109(b). Definitions, is amended to add a definition of “eating or drinking establishment”, add a definition of “nightclub”, add a definition of “sidewalk cafe”, align the definition of “restaurant” with the current Land Development Code, and change the definition of “restaurant operator” to apply more generally to “operators” as follows:

- (b) *Definitions.* The following definitions shall apply in this section:
- (1) *Eating or Drinking Establishment.* A nightclub or restaurant as defined in sections 18-691 and 18-693 and provided herein.
 - (2) *Restaurant.* An establishment primarily engaged in the sale of foods, frozen desserts, and beverages to a customer in a ready-to-consume state.
 - (3) *Nightclub.* An establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises including bars, pubs, or taverns, that does not qualify as an eating establishment pursuant to NCGS Ch. 18B.
 - (4) *Sidewalk.* For the purposes of this subsection, that portion of a public street between

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CITY CLERK
[Signature]

the curb line, or the edge of pavement if there is no curb and the adjacent property line that is intended for the use of pedestrians.

- (5) *Pedestrian way.* An improved public walk or passageway intended for use by pedestrians, but not adjacent to any city street.
- (6) *Operator.* The person, firm, or corporation operating an eating or drinking establishment and associated sidewalk cafe. As used in this section, this definition includes the owner, and managers if different from the owner, of the eating or drinking establishment and associated sidewalk cafe.
- (7) *Sidewalk Cafe.* A portion of a public sidewalk or pedestrian way used as an extension of the use of an eating or drinking establishment to which it is adjacent.

SECTION 3: THAT Chapter 4, Licenses and Business Regulations, Article III. Sales of Merchandise on Public Property, Section 4-109(c). Application, is amended to replace references to restaurants with “eating or drinking establishment”, clarify that the required site plan must be to scale, and remove an obsolete reference to the Wilmington/New Hanover County Insurance Advisory Committee and replace with “city attorney” to read as follows:

- (c) *Application.* Any eating or drinking establishment desiring to operate a sidewalk cafe shall prepare and file an application with the city manager or his designee which shall contain the following information.
 - (1) The name, address, and telephone number of the eating or drinking establishment desiring to operate a sidewalk cafe.
 - (2) The name, address, e-mail address, and telephone number of the operator.
 - (3) The hours of operation of the eating or drinking establishment and the proposed hours of operation of the sidewalk cafe.
 - (4) A drawing or site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk cafe, and the section to be kept clear for pedestrian use, and depicting the proposed placement of tables, chairs, barricades, and other furnishings on the sidewalk or pedestrian way.
 - (5) Evidence of adequate insurance or other forms of security to hold the city and its taxpayers harmless from claims arising out of the operation of the sidewalk cafe, as determined by the city manager in consultation with the city attorney.
 - (6) An indemnity statement, acceptable to the city, whereby the operator agrees to indemnify and hold harmless the city and its officers, agents, and employees from any claim arising from the operation of the sidewalk cafe.
 - (7) A copy of all permits and licenses issued by the state or the city, including health and ABC permits and business licenses, necessary for the operation of the restaurant 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 city for exterior alterations or improvements to the establishment.
 - (8) Such additional information as may be requested by the city manager or his designee to determine compliance with this section.
 - (9) A fee as provided in the City of Wilmington Fee Schedule to cover the cost of

processing and investigating the application and issuing the permit.

SECTION 4: THAT Chapter 4, Licenses and Business Regulations, Article III. Sales of Merchandise on Public Property, Section 4-109(d). Issuance of permit, is amended to replace references to restaurants with "eating or drinking establishment" or "establishment" as may be applicable, expand the allowable capacity of sidewalk cafes, and clarify hours of operation to read as follows:

- (d) *Issuance of permit.* No permit for the operation of a sidewalk cafe may be issued unless the application is complete and unless the following requirements are met:
- (1) The sidewalk cafe must be associated with an operating eating or drinking establishment such that it is under the same management and shares the same food or beverage preparation facilities, restroom facilities, and other customer convenience facilities as the establishment. The sidewalk cafe must be operated under the same name as the eating or drinking establishment and may not be open or operated at any time when the establishment is not open for business.
 - (2) The occupancy of the sidewalk café by patrons shall not exceed the number of seats available nor any allowable outdoor occupancy limit established by the Fire Marshal.
 - (3) Tables, chairs, and other furnishings, as shown in the drawing submitted with the plan, may be placed at the building or at the curb, but must be located in such a manner that a minimum of five (5) feet of unobstructed width (as measured from the street-side edge of the sidewalk or building front) is retained on sidewalks or pedestrian ways with widths of ten (10) or more feet; sidewalks or pedestrian ways less than ten (10) feet wide require a minimum of four (4) feet of unobstructed width. Obstructions include, but are not limited to, trees, poles, lighting, signs, hydrants, trash receptacles, and tree grates. Provided, however, a tree grate shall not be considered an obstruction if:
 - a. The owner of the sidewalk cafe pays the full cost of installing a tree grate approved as complying with the Americans With Disabilities Act as an acceptable surface for pedestrians and wheelchairs; and
 - b. The owner maintains the grate so that it provides a smooth and level surface for passage.
 - (4) The establishment seeking to operate the sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk cafe. The placement of tables, chairs, and other furnishings may not extend beyond the sidewalk or pedestrian-way frontage of the associated restaurant.
 - (5) Tables, chairs, and other furnishings utilized for sidewalk cafes shall be of a type that can be easily removed from the public right-of-way. Tables, chairs, and other furnishings used in the operation of the sidewalk cafe must be removed or secured by lock and key each night within thirty (30) minutes of the closure of the sidewalk cafe. If such items are not removed, the city shall have the right to remove such items. These items shall not be permanently affixed to the sidewalk and must remain within the designated boundaries as delineated by city-installed sidewalk markers. The city

shall not be responsible for damage to public sidewalk cafe furnishings under any circumstances.

- (6) Except as elsewhere permitted, the operation or furnishing of the sidewalk cafe shall not involve any permanent alteration to or encroachment upon any street, sidewalk, or pedestrian way or to the exterior of the associated restaurant. The owner of the sidewalk cafe shall be responsible for repairing any incidental damage to public sidewalks resulting from the operation of the sidewalk cafe.
- (7) No person shall operate a sidewalk cafe earlier than 8:00 a.m. nor later than 11:00 p.m. When not in operation, the area of the sidewalk cafe shall be open to the public and shall not be considered part of the premises of the restaurant. Any person consuming alcoholic beverages in a sidewalk cafe outside of operating hours shall be subject to the provisions of section 6-12 of the City Code.
- (8) The approved site plan for the sidewalk cafe must be posted conspicuously within the place of business at all times.
- (9) All establishments operating a sidewalk cafe shall keep the approved site area clean as required by section 11-41 of the City Code.

SECTION 5: THAT Chapter 4, Licenses and Business Regulations, Article III. Sales of Merchandise on Public Property, Section 4-109(e). Alcoholic Beverages, is amended to remove redundant ingress/egress requirements in subsection (e)(2) and to remove completely subsection (e)(5) overbroad and redundant record requirements, subsection (e) to now read as follows:

- (e) *Alcoholic beverages.* Notwithstanding the provisions of section 6-12 of the City Code, alcoholic beverages may be served at sidewalk cafes provided the following requirements are met:
- (1) The sidewalk cafe shall be part of an eating or drinking establishment and shall otherwise be authorized, permitted, or licensed under the state law and City Code to serve and sell alcoholic beverages for on-premises consumption.
 - (2) The portion of the sidewalk cafe where alcohol is or may be served shall be enclosed by clearly visible barricades.
 - (3) The sidewalk cafe must be included as part of the premises for which an ABC permit for a restaurant, as defined in G.S. § 18B-1000, is issued, pursuant to G.S. § 18B-1001, for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages on-premises.
 - (4) Signs shall be posted, visible at all exit points from the sidewalk cafe, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises.

SECTION 6: THAT Chapter 4, Licenses and Business Regulations, Article III. Sales of Merchandise on Public Property, Section 4-109(f). Denial, shall be amended to clarify the process for appeals, to read as follows:

- (f) *Denial.* A permit may be denied if it is found that the granting of the permit would not be

in the public interest. Any applicant denied a permit to operate a sidewalk cafe shall receive a written statement, outlining the grounds on which the denial is based. The applicant may appeal the denial of the permit to the city manager within thirty (30) working days after the date of the written denial and the city manager may take such corrective action as shall be necessary. Appeals of the determination of the city manager shall be made to city council within thirty (30) days after the date of the written denial by the city manager. The findings and determination of the city council shall be final.

SECTION 7: THAT Chapter 4, Licenses and Business Regulations, Article III. Sales of Merchandise on Public Property, Section 4-109(g). Permit revocation, shall be amended to remove reference to “restaurant” to clarify that the standard pertains to any business operating a sidewalk café and set forth standards for evidence, to read as follows:

- (g) *Permit revocation.* The city manager may revoke a permit issued pursuant to this section, if he finds by a preponderance of the evidence that the restaurant operator has:
- (1) Deliberately misrepresented or provided false information in the permit application.
 - (2) Violated any provision of Chapter 4, Section 4-109 of the Wilmington City Code or county health department regulations.
 - (3) Violated any law, regulation, or ordinance regarding the possession, sale, transportation, or consumption of intoxicating beverages or controlled substances.
 - (4) Operated the sidewalk cafe in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the sidewalk cafe area clean and free of refuse.
 - (5) Failed to maintain any health, business, or other permit or license required by law for the operation of a business.

Before the revocation of a permit, the city manager shall notify the permit holder of his intent to revoke the permit and the reasons therefor and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the city manager shall notify the permit holder in writing of this decision and the reasons therefor. A decision of the city manager to revoke a permit may be appealed to the city council in accordance with the provisions of subsection (f).

SECTION 8: THAT Chapter 4, Licenses and Business Regulations, Article III. Sales of Merchandise on Public Property, Section 4-109(i)(1). Term, transfer, renewal, etc., to amend the permit terms to align with the city of Wilmington fiscal year, and to read as follows:

- (1) Be issued for the period beginning July 1 and expiring June 30 of each year;

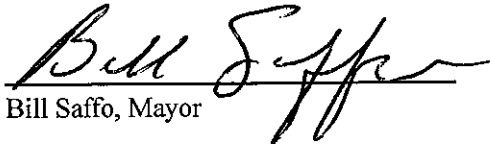
SECTION 9: That any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 4-1 of the City Code.

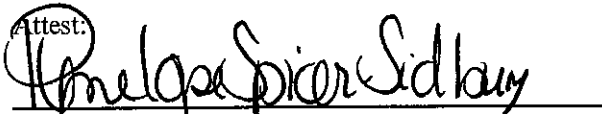
SECTION 10: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

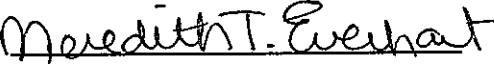
SECTION 11: If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 12: That this ordinance shall be effective upon its adoption by City Council.

Adopted at a regular meeting
on October 18, 2022


Bill Saffo, Mayor

Attest:

Penelope Spicer-Sidbury, City Clerk

Approved As To Form:

Meredith T. Ewenhart
City Attorney

