

Ordinance



City Council
City of Wilmington
North Carolina
0-2022-85

CITY CLERK
CERTIFIED TO BE A TRUE COPY
Anthea Spivey-Silva

Introduced By: Anthony N. Caudle, City Manager

Date: 10/18/2022

Ordinance Amending City Code Chapter 11, Section 11-45. Benches, Chairs, Planters, and Other Street Furniture on Sidewalks and Plazas. [Land Use Action]

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, certain amendments to Section 11-45. Benches, chairs, planters, structures, tents, and other street furniture on sidewalks and plazas are contemplated specifically with regard to appropriate placement and required pedestrian way;

THEREFORE, BE IT ORDAINED:

SECTION 1: THAT Chapter 11, Streets and Sidewalks, Article III. Sidewalks generally, Section 11-45 is amended to align allowable placement with that of Section 4-109. Sidewalk cafes and to replace “code enforcement office” with “planning department” to accurately reflect departmental responsibilities, to read as follows:

- (a) No person, firm, or corporation shall erect, place, or maintain any benches, chairs, planters, structures, tents, or other street furniture on any publicly owned property or rights-of-way without first having obtained a permit from the city. The city manager, or designee, may issue a permit for the placement of benches, chairs, planters, or other street furniture at specified locations along publicly owned rights-of-way on a sidewalk, sidewalk area, shoulder, or plaza provided the following criteria are met:
- (1) The use of benches, chairs, or planters, structures, tents, and other street furniture should be designed to enhance and blend in with the surroundings. Street furniture shall not be permitted if it endangers the public health and safety or prohibits pedestrian passage along the public right-of-way entrance to any establishment.
 - (2) The placement of street furniture may be 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. The placement of furniture may not extend beyond the sidewalk or pedestrian way frontage of the associated property or business.
 - (3) No street furniture may be placed in any location whereby the clear, unobstructed space for the passageway of pedestrians is reduced to less than four (4) feet (as measured from the street edge of the sidewalk). Trees, poles, signs, hydrants, trash receptacles, etc., are all considered obstructions. Tree grates shall not be considered

obstructions if the owner pays the full cost of installing a tree grate or other acceptable surface approved for complying with the Americans with Disabilities Act as an acceptable surface for pedestrians and wheelchairs and the owner maintains the grate so that it provides a smooth and level surface for passage.

- (4) Street furniture shall not be anchored and must be easily removed from the public right-of-way.
 - (5) The owner is required to maintain the street furniture and the area surrounding its placement in a clean and safe condition.
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- (b) Application for a permit shall be made on forms provided by the city to the planning department. The application shall be accompanied by information showing the type of furniture to be placed and its proposed location. In addition to any other applicable fees, an annual application fee shall be paid per site location for the placement of the street furniture. The amount of such fees shall be set forth in the city fee schedule.
 - (c) Permits issued for street furniture pursuant to this section shall be considered separate from permits and requirements for other specific right-of-way usage permits such as sidewalk cafes and sandwich board signs. The city manager, or designee, may limit the number of permits available at each business location.
 - (d) Permits issued pursuant to this section may be revoked due to public need of the right-of-way, non-compliance with the provisions of this section, or any other reason deemed sufficient to the city. If, upon revocation, the street furniture is not removed upon twenty-four (24) hours' notice, the city shall have the right to remove and dispose of such street furniture and may assess the property owner for the cost of such removal and disposal.
 - (e) The use of the term "street furniture" in this section shall include benches, chairs, planters, structures, tents, and other physical objects placed in the public right-of-way for use by the public, patrons, people interacting with the public, or for the purpose of enhancing the public realm.
 - (f) A violation of section 11-45 shall constitute a misdemeanor.

SECTION 2: That any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 11-1 of the City Code.

SECTION 3: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 4: 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 5: That this ordinance shall be effective upon its adoption by City Council.

Adopted at a regular meeting
on October 18, 2022

Bill Saffo
Bill Saffo, Mayor

ATTEST:
Penelope Spicer-Sidbury
Penelope Spicer-Sidbury, City Clerk

APPROVED AS TO FORM:
John D. Joye
City Attorney MRE

