



**ORDINANCE NO 09-804**  
**Amend Chapter 8 Article IX. Sidewalk Cafes**

**ARTICLE IX. SIDEWALK CAFES\***

**\*Editor's note:** Ord. No. 06-650, adopted July 11, 2006, repealed the former Art. IX, §§ 8-184--8-192, and enacted a new Art. IX as set out herein. The former Art. IX pertained to similar subject matter and derived from 06-626, 4-11-06.

**DIVISION 1 GENERALLY**

Sec. 8-184. Purpose and permit required.

- (1) *Purpose.* These standards and procedures are adopted in order to:
- (a) Accommodate eating and/or drinking establishments wishing to utilize a portion of the public sidewalk for outside seated dining. The incidental sale or provision of food or snacks shall not entitle such a use to be considered a sidewalk café.
  - (b) Ease the process for obtaining permission to operate an outdoor dining facility, and
  - (c) Ensure adequate space is maintained for pedestrians on the sidewalk adjacent to sidewalk cafés.
- (2) *Permit required.* The town manager or his/her designee may issue permits for the serving of food and beverages on town sidewalks and boardwalks in the central business district in accordance with the provisions of this ordinance.  
(Ord. No. 08-735, 4-22-08; Ord. No. 08-763, 10-7-08)

Sec 8-185. Definitions

The following definitions shall apply in this section:

**Buffer Zone:** An area on a sidewalk or boardwalk typically having obstructions that may prevent accessibility (i.e. planters on boardwalks or car overhangs on sidewalks).

**Boardwalk:** Right-of-ways east of Woody Hewett/Canal; and from the north side of Harper Avenue up to and including Cape Fear Blvd. All boardwalks operate as pedestrian walkways.

**Eating and/or Drinking Establishments.** These establishments shall be defined in the Town's zoning ordinance.

*Eating and/or Drinking Establishment Operator* The person, firm, or corporation operating a eating and/or drinking establishment and associated sidewalk cafe. As used in this section, this definition includes the owner, and manager if different from the owner, of the eating and/or drinking establishment and associated sidewalk cafe.

*Obstruction* Anything that projects out into the public sidewalk or boardwalk area.

*Sidewalk* Public areas that accommodate pedestrian travel and are adjacent to a street designed for vehicular travel.

(Ord. No. 06-650, 7-11-06)

## DIVISION 2. PERMIT AND OPERATION

### Sec. 8-186. Application.

Any eating and/or drinking establishment desiring to operate a sidewalk cafe shall prepare and file an application with the town manager or his designee which shall contain the following information.

- (1) The name, address, and telephone number of the restaurant desiring to operate a sidewalk cafe.
- (2) The name, address, and telephone number of the restaurant operator.
- (3) The type of food, beverage, or food product to be sold and served at the sidewalk cafe.
- (4) The hours of operation of the establishment and the proposed hours of operation of the sidewalk cafe.
- (5) A drawing or site plan showing the section of sidewalk or boardwalk to be used for the sidewalk cafe, and the section to be kept clear for pedestrian use, and depicting the proposed placement of obstructions on the sidewalk or boardwalk.
- (6) Evidence of adequate insurance or other forms of security to hold the town and its taxpayers harmless from claims arising out of the operation of the sidewalk cafe, as determined by the town manager in consultation with the town's insurance carrier.
- (7) An indemnity statement, approved by the town attorney, whereby the eating and/or drinking establishment operator agrees to indemnify and hold harmless the town and its officers, agents, and employees from any claim arising from the operation of the sidewalk cafe.
- (8) A copy of all permits and licenses issued by the state or the town, including health and ABC permits and business licenses, necessary for the operation of the 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 town for exterior alterations or improvements to the restaurant.
- (9) A sworn statement describing any violation by the eating and/or drinking establishment operator of any laws, regulations, or ordinances relating to the possession, sale, consumption, or transportation of intoxicating beverages or controlled substances during the five (5) years immediately preceding the date of the permit application.
- (10) Such additional information as may be requested by the town manager or his designee to determine compliance with this section.

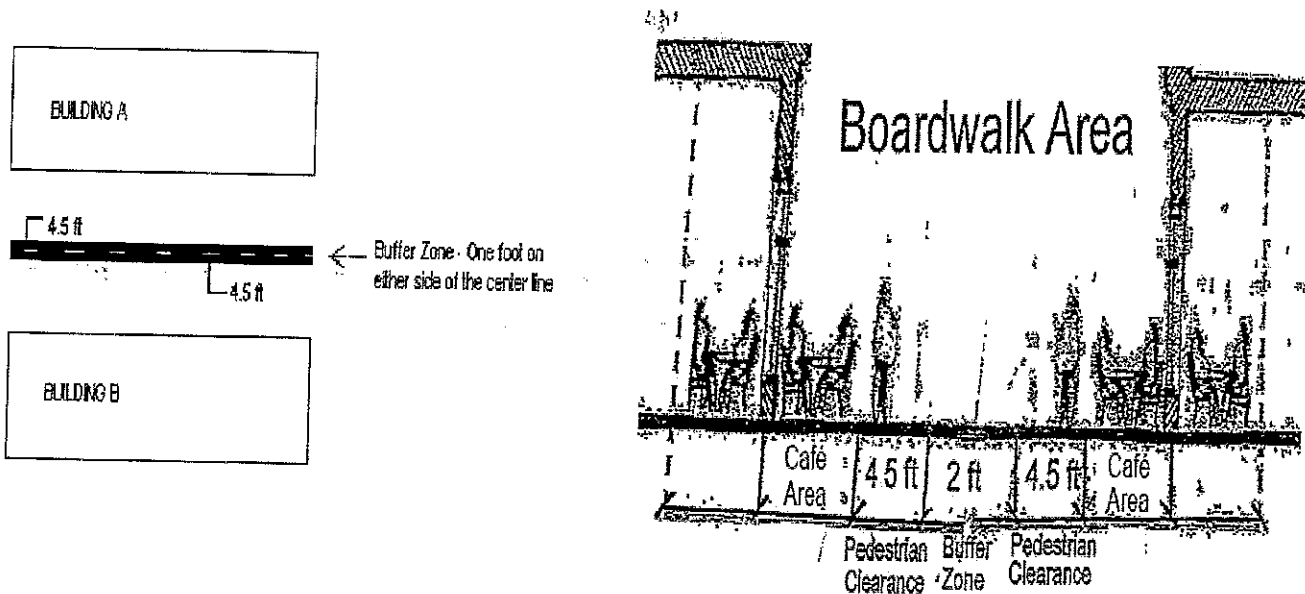
- (11) A fee as established by the town manager to cover the cost of processing and investigating the application and issuing the permit.  
 (Ord. No. 06-650, 7-11-06)

Sec. 8-187. 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:

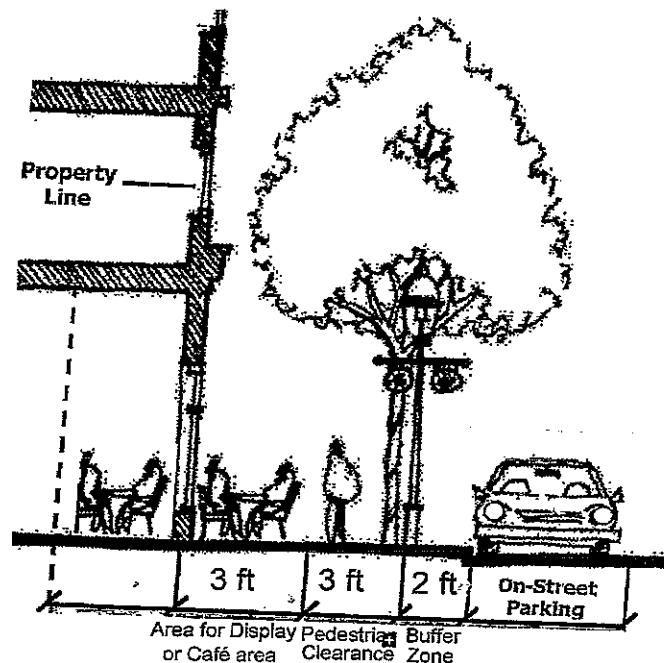
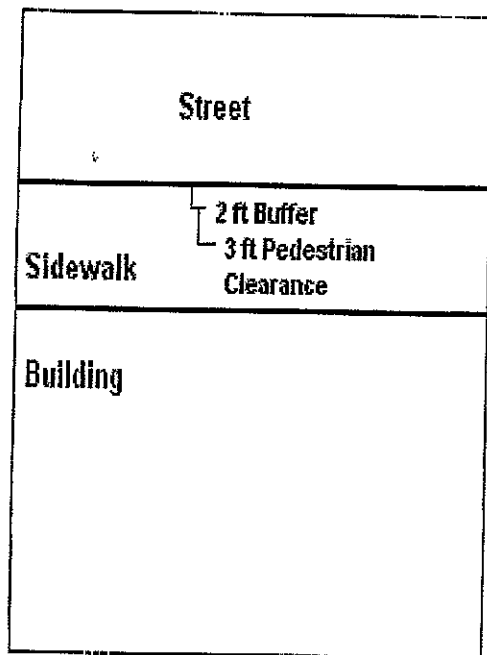
- (1) The sidewalk cafe must be associated with an operating eating and/or drinking establishment such that it is under the same management and shares the same food preparation facilities, restroom facilities, and other customer convenience facilities as the establishment. The sidewalk cafe must be operated under the same name as the eating and/or drinking establishment and may not be open or operated at any time when the eating and/or drinking establishment is not open for business
- (2) The operation of the sidewalk cafe must be clearly incidental to the associated eating and/or drinking establishment. The seating capacity of the sidewalk café may not be more than fifty (50) percent of the interior seating capacity of the associated restaurant.
- (3) Approved obstructions to accommodate sidewalk cafés:
  - (a) Boardwalk areas: Tables, chairs, ADA accessible platforms, and barricades may be allowed with town manager approval. All obstructions associated with sidewalk cafés shall allow for a minimum of four (4) feet six (6) inches of accessible area for pedestrians (see sketch 1). A two (2) foot buffer zone defined in the center of all boardwalks shall not be included as part of the accessible area for pedestrians.

Sketch #1



- (b) Sidewalk areas: Tables and chairs shall be allowed with town manager approval. No obstruction shall protrude within the public sidewalk area more than three (3) feet measured from the face of the building. Three (3) feet shall be maintained as accessible area for pedestrians (see sketch 2). A two (2) foot buffer zone measured from the face of the street side curb shall not be included as part of the accessible area for pedestrians.

Sketch #2



(c) All other obstruction shall be prohibited including but not limited to signage, lighting, and/or other forms of advertisement.

(d) All sidewalk cafés shall be designed to meet all ADA requirements.

(4) The eating and/or drinking establishment seeking to operate the sidewalk cafe shall front on and open onto the sidewalk or boardwalk proposed for the sidewalk cafe.

(5) The tables, chairs, barricades and platforms used in the sidewalk cafe shall be of a type that is easily removed from the public right-of-way. Tables, chairs, barricades, and platforms used in the operation of the sidewalk cafe must be removed within twenty-four (24) hours of notice from the town. If such items are not removed upon twenty-four (24) hours' notice, the town shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The town shall also have the right to remove such items immediately in emergency situations. The town shall not be responsible for damage to public sidewalk cafe furnishings under any circumstances.

(7) 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 boardwalk 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.

(8) The following timeframes shall be observed for sidewalk cafés:

a. No alcohol shall be served after 10:30 p.m. Any person consuming alcoholic beverages in a sidewalk café after such hours shall be subject to section 10-2, drinking in public.

b. At 11:00 p.m.: All tables, chairs, barricades, and platforms used in the operation of the sidewalk café shall be removed. The area of the sidewalk café shall be reopened to the public and shall not be considered part of the premises of the restaurant.

c. A sidewalk café may open at 7:00 a.m. each morning.

(Ord. No. 06-650, 7-11-06; Ord. No. 08-763, 10-7-08)

Sec. 8-188. Alcoholic beverages.

Notwithstanding the provisions of section 10-2 of the Town Code, alcoholic beverages may be served at sidewalk cafes provided the following requirements are met:

(1) The sidewalk cafe shall be part of a eating and/or drinking establishment as that term is defined in section 8-185 of the Town Code, and shall otherwise be authorized, permitted, or licensed under the state law and Town Code to serve and sell alcoholic beverages for on-premises consumption.

(2) The sidewalk cafe must be included as part of the premises for which an ABC permit 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.

(3) 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. Further, consumption of alcoholic beverages shall only be allowed while seated at the tables of the sidewalk cafe.

(4) The eating and/or drinking establishment operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the three (3) years preceding the commencement of the sale of alcoholic beverages at the sidewalk cafe.

(5) The sidewalk café shall be utilized for outside seated dining. The incidental sale or provision of food or snacks shall not entitle such a use to be considered a sidewalk café. Alcoholic beverages may be served to seated patrons in the designated sidewalk cafe area prior to 10:30 p.m. provided the patrons are also dining.

(6) Congregating of patrons in or around sidewalk cafés shall be prohibited. Alcohol consumption outside of the sidewalk café shall be a violation of the Town Code, section 10-2, drinking in public. (Ord. No. 06-650, 7-11-06; Ord. No. 08-763, 10-7-08)

### DIVISION 3. DENIAL OR REVOCATION OF PERMIT

Sec 8-189. 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 town council within fifteen (15) working days after the date of the written denial and the town council may take such corrective action as it shall find necessary. The findings and determination of the town council shall be final.

(Ord. No. 06-650, 7-11-06)

Sec. 8-190. Permit revocation.

The town manager may revoke a permit issued pursuant to this section, if he finds that the eating and/or drinking establishment operator has:

(1) Deliberately misrepresented or provided false information in the permit application.

(2) Violated any provision of Chapter 8, Article IX of the Code of the Town of Carolina Beach 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 restaurant business.

Before the revocation of a permit, the town manager shall notify the permit holder of his/her intent to revoke the permit and the reasons therefore and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the town manager shall notify the permit holder in writing of this decision and the reasons therefore. A decision of the town manager to revoke a permit may be appealed to the town council in accordance with the provisions of section 8-189.

(Ord. No. 06-650, 7-11-06)

#### DIVISION 4. RESERVATION OF RIGHTS AND TERMS

##### Sec. 8-191. Reservation of rights.

The town reserves the right to require any sidewalk cafe established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the town, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the town.

(Ord. No. 06-650, 7-11-06)

##### Sec. 8-192. Term, transfer, renewal, etc.

Permits issued in accordance with the provisions of this section shall:

(1) Be issued for the period beginning September 1 and expiring August 31 of each year.

(2) Be in addition to the annual privilege license required pursuant to article II of this chapter and the fee schedule.

(3) Not be transferable or assignable.

(Ord. No. 06-650, 7-11-06)

Adopted this 14<sup>th</sup> day of July 2009.

Attest:

Melinda N. Prusa  
Melinda N. Prusa, Town Clerk

Joel A. Macon Mayor

