

§ OUTDOOR DISPLAY & SALES - OUTDOOR DINING ACCESSORY USES

(5) Outdoor Display and Sales.

(a) Outdoor display and sales shall be generally defined as the display and sales of goods, wares or merchandise outside of a permanent structure on property owned or leased by the person, firm or corporation. Outdoor display and sales must be secondary and incidental to the principal use or structure on the property, unless authorized pursuant to § 155.309, Temporary Use.

(b) Outdoor display and sale areas greater than 50 square feet shall only be permitted following Planning Director review of a minor site plan in accordance with § 155.707, illustrating the extent of the permitted area for outdoor display and sales subject to the standards below. Outdoor display and sale areas 50 square feet or less do not require site plan approval, but are subject to the standards below.

(c) The location of outdoor merchandise must be on the same property as the principal use, and not within the right-of-way, except that in the B-1 zoning district it may be displayed in the right-of-way, provided that clearance requirements are maintained for pedestrian passage.

(d) Merchandise shall be displayed to allow pedestrians use of the adjacent sidewalk or parking areas, and shall meet ADA accessibility requirements.

1. Any merchant desiring to display and sell merchandise along a public sidewalk or right-of-way must also receive approval from the Town Manager or his designee, and agree to following stipulations:

A. Merchandise must be removed from the sidewalk within 24 hours of notice from the Town. If such items are not removed following notice, the Town has the right to remove and dispose of these items and may assess the property owner for the cost of removal and disposal. The Town has the right to remove such items immediately in emergency situation. The Town is not responsible for damage to the merchandise under any circumstances.

B. The owner of the business displaying or selling merchandise within a public sidewalk is responsible for repairing any incidental damage to public sidewalk resulting from the display of merchandise.

C. Merchandise must be removed from the sidewalk when the business is closed.

(6) Outdoor Dining.

(a) Outdoor dining shall be defined as the placement of tables and chairs for dining outside of a permanent structure.

(b) General Requirements.

1. Outdoor dining shall be permitted with a zoning compliance permit for eight or fewer seats. More than eight seats is subject to a minor site plan, or as a component of a major site plan in accordance with § 155.707, illustrating the extent of the outdoor dining area, the maximum seating capacity, and subject to the standards below. The impact of outdoor dining areas on adjacent churches, hospitals, public schools, and residential uses shall be mitigated to minimize potential impacts related to glare, light, loitering, and noise.

2. Patron tables and other outdoor dining area components shall be clearly defined and located on the same site as the other facilities of the restaurant or on the adjacent public right-of-way. Separation between the seating and vehicular or pedestrian traffic by a physical barrier may be required, with the design to be approved by the Planning Director.

3. Separation may be achieved through the use of materials which include, but are not limited to landscape planters, walls, railings or a combination thereof. Only barriers composed of landscape planters or masonry walls may be solid.

(c) The additional parking necessary to accommodate seating created in the outdoor dining area shall comply with the parking requirements set forth in § 155.401 of this chapter.

(d) Outdoor dining areas and associated structural elements, such as awnings, covers, umbrellas, or other physical elements shall be compatible with the overall design of the main structure and must maintain a height clearance of eight feet and meet ADA accessibility requirements. Dining equipment (including, but not limited to tables, chairs, space heaters, barriers) may remain in place.

(e) The Town may revoke the outdoor dining area if it is determined that its operation is causing litter problems either on or off the property where the dining is located or that such use is otherwise creating a danger to the public health or safety.

(f) In addition to the requirements set forth above, if any portion of the outdoor dining area is to be located within a public right-of-way (sidewalks only), the dining area must also receive approval from the Town Manager or his designee, and agree to following stipulations. Outdoor dining within right-of-way owned and operated by the State of North Carolina, must also meet the requirements of G.S. § 136-27.4 listed below.

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, Tables, chairs, and other furnishings shall be placed a minimum of six feet from any travel lane.
 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 specified by the Town 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 NCDOT and the Town as additional insured on any policies covering the business and the sidewalk activities.
 6. The restaurant operator shall provide an agreement to indemnify and hold harmless NCDOT and the Town 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 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 Town 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 NCDOT, the Town, its agents or employees, or by any other governmental entity or public utility.
 9. Any other requirements deemed necessary by the NCDOT, either for a particular Town or a particular component of the state highway system
- (g) The Town reserves the right to terminate the use of outdoor dining within the public right-of-way at any time. Upon notice, all furnishings must be removed from the sidewalk within 24 hours of notice from the Town. If furnishings are not removed within the time specified, the Town has the right to remove and dispose of these items and may assess the property owner for the cost of removal and disposal. The Town has the right to remove such items immediately in emergency situations. The Town is not responsible for damage to the furnishings under any circumstances.
- (h) The owner of the business utilizing a dining area within a public sidewalk is responsible for repairing any incidental damage to public sidewalk resulting from outdoor dining furnishings.