

May 26, 2020 - Presented for 1st Reading

2020-25 (1ST READING): ORDINANCE TO AMEND IN THE CODE OF ORDINANCES CHAPTER 19, ARTICLE 1 SECTIONS 19-3.1.3, 19-3.1.5, 19-3.1.6, 19-3.1.7, 19-3.1.8, 19-3.1.9, AND 19-3.2 TO PERMIT AND REGULATE SIDEWALK CAFÉ USES AT NANCE PLAZA.

Applicant/Purpose: Staff/ to amend the Café Ordinance to allow for a café in the right-of-way adjacent to Nance Plaza in the Arts and Innovation District.

Brief:

- Proposal allows cafes on the west side of Nance Plaza to extend into the public right-of-way of George Cox Street as approved by the Zoning Administrator.
- The size of the café cannot adversely impact the remaining parts of the public way, or Nance Plaza, or compromise the essential purpose of Nance Plaza.
- A minimum of 5' must be maintained for pedestrian passage in the R-O-W.

Issues:

- The decision to allow café uses in Nance Plaza was discussed during the consideration of the Arts and Innovation District and prior to Council's decision to sell a City owned building to be used as a brewery.
- Additional conditions to operate a café on the west side of Nance Plaza:
 - The café perimeter must be fully or partially enclosed by a barrier approved by the Zoning Administrator (the barrier cannot interfere w/ pedestrians).
 - Proof of off-premises beer & wine license issued by the SCDOR shall be provided to the city.
 - Permittee shall supply clear plastic cups for beer & wine to patrons. The permittee's name &/or logo shall be displayed on such cups.
 - Café cannot serve liquor, or serve beer or wine for in Nance Plaza in a container other than a clear plastic logo cup.
 - Permittee may not serve beer or wine in their plastic logo cups after midnight. The café shall be closed to the public between midnight until the permitted business opens for business the next day.
 - Permittee shall display city-approved signage, viewable from the café, regarding this article & other rules/restrictions concerning alcohol consumption in & outside the Plaza.

Public Notification: Normal meeting notification.

Alternatives: None considered.

Financial Impact: Business license & hospitality fee revenues from the operation of the brewery.

Manager's Recommendation:

- I recommend 1st reading (5/26/2020).

Attachment(s): Proposed ordinance.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
CITY OF MYRTLE BEACH

ORDINANCE TO AMEND IN THE CODE OF
ORDINANCES CHAPTER 19, ARTICLE 1
SECTIONS 19-3.1.3, 19-3.1.5, 19-3.1.6, 19-
3.1.7, 19-3.1.8, 19-3.1.9, AND 19-3.2 AS
SET FORTH BELOW TO PERMIT AND
REGULATE SIDEWALK CAFÉ AT NANCE PLAZA

SECTION 19-3.1 Sidewalk, boardwalk and boardwalk adjacent cafes

Sec. 19-3.1.2 Purposes. The purpose of this section is to permit and encourage sidewalk, boardwalk and boardwalk adjacent dining that is compatible with other uses of the public ways. The City finds that cafes occupying specified public ways as a form of encroachment (hereinafter café or cafes) encourage a pedestrian-oriented environment, help to create a visually attractive atmosphere and streetscape, and promote overall commerce. Private commercial use of public sidewalks for the purpose of operating a sidewalk cafe in the City is prohibited unless a permit is obtained from the Construction Services Department as provided in this chapter.

Sec. 19-3.1.3 Definitions.

Abutting property owners and occupants. Any owner or occupant of property which abuts the subject sidewalk café site excluding public right-of-way; and any other person who has requested in writing to be provided such notice.

Adjacent sidewalk area. That portion of the public sidewalk between the curb line and the property line demarcated by extending the side building lines of the premises until they intersect the curb except that the adjacent sidewalk area on the West side of Nance Plaza may extend further into the public way, as approved by the Zoning Administrator, so long as the size of the café does not adversely impact the remaining parts of the public way and/or Nance Plaza or compromise the essential purpose of Nance Plaza.

Boardwalk and boardwalk adjacent. That portion of a public works project commonly known as the Myrtle Beach Boardwalk located entirely within the Downtown Redevelopment District.

Operate a café as defined herein. Serving food or beverage from a restaurant to patrons seated at tables located within the prescribed adjacent sidewalk area or boardwalk or boardwalk adjacent property, including, in the case of a permittee in possession of a valid license for the sale of alcohol beverages covering such adjacent sidewalk area, boardwalk or boardwalk adjacent property, the service of such beverages, or providing seating for patrons within the adjacent sidewalk area, boardwalk or boardwalk adjacent property and the right to require contemporaneous commercial activity as a condition of occupying the space therein.

1 **Sec. 19-3.1.4 Application and Permit Fees** The application and permit fees shall be an initial
2 fee of \$500.00, with an annual renewal fee of \$100.00.

3
4 **Sec. 19-3.1.5 Permit Application.**

- 5 a. An abutting property owner or occupant of property may make application for a
6 permit to operate a café on adjacent sidewalk area, the Boardwalk or on Boardwalk
7 adjacent property. The application shall be made at the Construction Services
8 Department on a form provided. The request for permit shall minimally contain:
9 1. A completed application, with the express understanding that no permit is
10 effective until an approved certificate of insurance and endorsement form is
11 delivered to Construction Services the Director;
12 2. A scale diagram of the area for sidewalk café use, with dimensions and
13 placement of objects shown; and
14 3. The location and description of the tables and materials requested to be in the
15 right-of-way.
16 b. Other information shall be provided as required by the Zoning Administrator Director
17 to carry out the purpose of this chapter.
18

19 **Sec. 19-3.1.6 Location,**

- 20 a. ~~The operation of a café is limited to structures to abutting property owners and~~
21 ~~occupants, in the following designated areas only. A café may only be operated by~~
22 ~~owners or occupants of buildings in the following designated areas:~~
23 1. Both sides of 9th Avenue North between Nance Plaza, and Broadway Street.
24 2. The West side only of Nance Plaza.
25 3. The East side only of Broadway Street between 9th Avenue North and Oak
26 Street.
27 4. The East side only of Oak Street between Broadway Street and 8th Avenue
28 North.
29 5. Both sides of 8th Avenue North between Oak Street and Kings Highway.
30 6. Both sides of Main Street between Oak Street and Kings Highway.
31 7. The South side only of Main Street between Broadway Street and Oak Street.
32 8. Both sides of Broadway Street between US Highway 501/Main Street and 4th
33 Avenue North.
34 9. Sidewalks within C-6 Zones.
35 10. The Boardwalk from Plyler Park to 1st Avenue North.
36 11. In an existing soft oceanfront encroachments area from 8th Avenue North to
37 the southern terminus of the Boardwalk.
38 12. Sidewalks from the Boardwalk extending to Ocean Boulevard on 9th Avenue
39 North and the southern boundary of Plyler Park.
40 b. For cafés in sections (1)-(9) above, a minimum of ~~five-four (5-4)~~ feet must be
41 maintained for pedestrian passage. For cafés in sections (10) - (12) above, the cafés
42 may encroach up to twelve (12) feet into the public way, provided that there be no
43 less than twelve (12) feet of pedestrian passage. The Zoning Administrator Director
44 may require more if necessary to protect the public safety or to ensure handicap
45 access, and may also adjust this requirement where unusual circumstances exist and
46 where public safety would not be jeopardized.
47 c. Cafes on the West side of Nance Plaza allowed in section (2) above may extend into
48 the public right-of-way such a distance approved by the Zoning Administrator
49 provided, however, that the size of the café does not adversely impact the remaining
50 parts of the public way and/or Nance Plaza or compromise the essential purpose of

1 Nance Plaza. Notwithstanding the foregoing, a minimum of five (5) feet must be
2 maintained for pedestrian passage. The Zoning Administrator may require greater
3 width for pedestrian passage if necessary to protect the public safety or to ensure
4 handicap access, and may also adjust this requirement where unusual circumstances
5 exist and where public safety would not be jeopardized.
6

- 7 d. ~~The Director~~ Construction Services shall forward all applications for review by the
8 Police Chief for any business who holds a valid liquor license, or in which alcoholic
9 beverages are intended to be served.

10 1. The Police Chief upon review of the application will sign the application for
11 concurrence with granting the permit, or;

12 2. Submit a memorandum of concerns to Construction Services ~~the Director~~ for
13 consideration.

- 14 e. Construction Services ~~The Director~~ shall forward all applications for review by the
15 Zoning Administrator and all other applicable departments. The Zoning Administrator
16 shall confirm the zoning of the request, and confirm that the proposed use is in
17 conformance with the requirements of the zoning law and the requirements of this
18 chapter.
19

- 20 f. No additional outdoor seating authorized herein shall be used for calculating seating
21 requirements pertaining to location of, applications for, or issuance of a liquor license
22 for any establishment; nor shall it be used as the basis for computing required seating
23 for restaurants and dining rooms, or as grounds for claiming exemption from such
24 requirements under the provisions of any city ordinance or state law. Nothing
25 authorized herein suspends the application of state laws and regulations.
26

27 **Sec. 19-3.1.7 Liability and Insurance.** Prior to the issuance of permit, Permittee shall:

- 28 a. File with Construction Services ~~the Director~~ a signed statement that the permittee
29 shall defend, indemnify and hold harmless the City, its officers and employees, from
30 any claims for damages to property or injury to persons which may occur in connection
31 with an activity carried on under the terms of the permit.

- 32 b. Furnish and maintain such public liability, food products liability, liquor liability and
33 property damages insurance as will protect permittee and City from all claims for
34 damage to property or bodily injury, including death, which may arise from operations
35 under the permit or in connection therewith. Such insurance shall provide coverage of
36 not less than the amount of municipal tort liability under the South Carolina Tort
37 Claims Act. The permittee shall name the City of Myrtle Beach as an additional
38 insured, in such manner and amounts required by the Risk Manager. Such insurance
39 shall be without prejudice to coverage otherwise existing, and shall name as
40 additional insured the City, its officers and employees, and shall further provide that
41 the policy shall not terminate or be canceled prior to the expiration of the permit
42 without 30 days written notice to the City.
43

44 **Sec. 19-3.1.8 Forms and Conditions of Permit.**

- 45 a. General conditions for all sidewalk, boardwalk and boardwalk adjacent café permits:

46 1. The permit issued shall be personal to the permittee only and is not
47 transferable in any manner. Each permit issued shall terminate December 31st
48 of the year in which it is issued. There is no proration.

49 2. The permit may be temporarily suspended by the Director of Construction
50 Services if the public interest requires use of the right-of-way for a public

- event, public emergency, construction, repair, or any other purpose related to the public health, safety or welfare.
3. The permit is specifically limited to the area approved or as modified by the Zoning Administrator ~~Director~~, and will include a diagram indicating the area approved for the café, the manner or demarcation and the location of the tables and materials permitted to be in the right-of-way. The Construction Services ~~Director~~ shall perform annual reviews upon renewal for conformance.
 4. The public way, and all things placed there shall at all times be maintained in a clean and orderly condition by the abutting property owner or occupant. Only those things authorized by the permit and shown on the diagram may be stored in the public right-of-way when the sidewalk cafe is not in operation. Should the permittee not utilize the sidewalk as authorized for a period of 48 hours or more, all the tables and materials shall be removed therefrom.
 5. Only one menu board shall be permitted per outdoor café within the permitted area, and its maximum size shall not exceed four square feet, and is not to be considered as part of any signage package or permit.
 6. Sidewalk cafes shall meet all requirements of the South Carolina Department of Environmental Control and Department of Revenue.
 7. The City of Myrtle Beach has the right to repeal or amend this or any section and thereby terminate or modify all sidewalk cafe operations. No permittee shall obtain any property right in the continued private commercial use of the public sidewalk, boardwalk and adjacent areas.
 8. Music, voice, sound, and noise of all kinds are regulated by section 14-62 of the Myrtle Beach Code, provided however there can be no speakers directed toward the public or amplified sound south of 7th Avenue North on boardwalk adjacent cafes to be located on existing soft encroachments.
 9. The sidewalk area covered by the permit and the public right-of-way immediately adjacent to it, as well as all tables, chairs, plants, planters and other café-related equipment shall be maintained in a neat and orderly appearance at all times by the permittee, including the clearing of all debris as needed during the day, again at the close of each business day and at other times as determined by the city.
 10. The city may require the temporary removal of café equipment, décor and other objects associated with the café when such action is necessitated by maintenance or repairs of any public street, sidewalk, boardwalk and surrounding areas as well as maintenance or repairs of any utility.
 11. The code inspector or his designee, or the police or fire departments may cause the immediate removal or relocation of any equipment, décor, and/or other objects associated with the café in emergency situations. The city and its officers and employees shall not be responsible for items relocated during emergencies.
 12. Permittee is strictly accountable for maintenance, safety, good order, and the proper legal and moral conduct of its patrons.
 13. At all times, permittee must comply with all other applicable local ordinances and state and federal laws and regulations.
 14. The issuance of a permit does not grant or infer vested rights to use of the café area by the permittee. The city retains the right to deny the issuance of a permit or the renewal of a permit for any reason.

b. Additional conditions applicable to permits to operate a café on the West side of Nance Plaza:

1. The perimeter of the café extending into the public right-of-way shall be enclosed or partially enclosed by fence, rope, potted shrubbery or other barrier as approved by the Zoning Administrator provided, however, that the barrier does not interfere with the pedestrian path.
2. If permittee intends to serve beer and/or wine, proof of off-premises beer and wine license issued by the South Carolina Department of Revenue shall be provided to the city.
3. Permittee shall supply clear plastic cups for beer and wine to patrons utilizing the café and/or Nance Plaza. The permittee's name and/or logo shall be displayed on such cups ("logo cups").
4. It is a violation of the permit to operate a café on the West side of Nance Plaza to serve liquor or to serve beer or wine for patron's consumption in Nance Plaza in a container other than a clear plastic logo cup.
5. Permittee may not serve beer or wine in their clear plastic logo cups for use within Nance Plaza after midnight. The café shall be closed to the public between midnight and the hour the permitted business opens for business the following day.
6. Permittee shall display city-approved signage on its premises, viewable from the café, regarding this article and other rules and restrictions concerning alcohol consumption within and outside the confines of Nance Plaza.

Sec. 19-3.1.9 Denial, Revocation, or Suspension of Permit.

- a. The Director of Construction Services may deny, revoke, or suspend the permit as provided above or upon finding that any provision of this chapter or condition of approval will be or has been violated.
- b. Upon denial, revocation, or suspension the Director of Construction Services shall give notice of such action to the applicant or permittee in writing stating the action which has been taken and the reason therefor. The action shall be effective immediately, but the applicant or permittee may make written request, within 10 calendar days after the notice is issued, for a hearing by the City Manager. Upon hearing the matter, the City Manager shall render a final decision concerning the permit within 10 calendar days. The applicant or permittee may make written request, within 10 calendar days after the Manager's decision is issued, for a hearing by the City Council. Upon hearing the matter, the City Council shall render a final decision concerning the permit within 10 calendar days.

Sec. 19-3.2 Penalties. Any violation of this chapter shall be a misdemeanor, and result in suspension or revocation of permit.

This ordinance shall be effective immediately upon adoption.

Mayor Brenda Bethune

ATTEST:

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3 Jennifer Stanford, City Clerk

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5 1st Reading

6 2nd Reading