

**CITY OF KANNAPOLIS
ORDINANCE TO ESTABLISH DOWNTOWN PRIVATE USE ZONES**

BE IT ORDAINED that the City Council for the City of Kannapolis does hereby amend the Kannapolis City Code by the addition of Chapter 2, Article III, "Downtown Private Use Zones" as follows:

"Sec. 9-31 Purpose and Intent.

Pursuant to the provisions of North Carolina General Statutes 160A-11, 160A-174, 160A-175, 160A-178 and 160A-194, the purpose of this Ordinance is to establish regulations relating to Outdoor Dining and Outdoor Display of merchandise and other temporary and special event activities which encroach into Private Use Zones typically as an ancillary component of an adjacent or nearby primary business which is located in Downtown Kannapolis. It is intended that such uses will enhance the Downtown experience and will not unduly restrict public access or enjoyment or detract from the image or appearance of the Downtown area.

Sec. 9-32. Definitions.

The following definitions shall apply in the interpretation of this Ordinance:

"Block" shall mean a tract of land with or without buildings bounded on at least three sides by publicly maintained streets.

"Downtown Kannapolis" ("Downtown") is defined as an area bounded by Vance Street to the south, Laureate Way to the north, Dale Earnhardt Boulevard to the west and the railroad right-of-way to the east.

"Establishment" (or "Food Establishment" or "Food and Beverage Establishment") shall mean the operating business or tenant to which an Outdoor Dining, Outdoor Display, Mobile Food Vending, Vending Unit, Mobile Cart and Food Truck is associated. "Associated" means operated by the same vendor management providing identical services.

"Food" is defined as its usual and ordinary meaning, and shall include all items designed for human consumption, including, but not by way of limitation, candy, popcorn, hot dogs, tacos, sandwiches, peanuts, soft drinks, ice cream and dairy products.

"Food Truck" is defined as a commercially manufactured motorized vehicle in which ready-to-eat food is cooked, wrapped, packaged, processed or portioned for service, sale or distribution.

"License" is defined as a permit issued by the City allowing the Licensee to conduct business in the Downtown Private Use Zones.

“Merchant” as defined in Chapter 9, Article II, of the Kannapolis City Code shall have no application to the provisions of this Article III and are not eligible for Licenses issued pursuant to this Article.

“Mobile Cart” is defined as a mobile, nonmotorized vehicle or conveyance which is intended to be pushed, pulled or otherwise used by a mobile vendor for the transport of any food, goods, wares or merchandise of any name, nature or description.

“Mobile Food Vendor” is defined as a seller of foods from a mobile food preparation van, cart or other conveyance, whether upon the public streets, alleys or public property or on private property. This definition shall include the term cart, mobile cart or food cart.

“Mobile Vendor” is defined as a transient vendor with no established business in the Downtown who is selling or delivering food or goods.

“Outdoor Dining” is defined as the use of an adjacent, outside area by a food or beverage establishment for the same eating and drinking activities that occur within the associated Establishment.

“Outdoor Display(s)” is defined as use of a space where commercial goods, merchandise and signs are placed outside a building for display or sale purposes, and in conjunction with permanent commercial uses located inside an associated Establishment.

“Primary Private Use Zones” (or “Primary Zones”) are areas within the public domain or public right-of-way that are located immediately adjacent to all Downtown building faces and extending outward two (2) feet.

“Public Accommodation” is defined as a use or facility designed and utilized strictly for the convenience of access and locations which are frequented by the public. Examples include bank teller machines, payment kiosks and postal shipping drop-off boxes.

“Secondary Private Use Zones” (or “Secondary Zones”) are defined as designated areas within the public domain or public right-of-way including streets, parking areas, sidewalks, landscaped areas, plazas and similar public use areas intended to also be available for private business use or public accommodation pursuant to this Ordinance. In some cases, the Secondary Zones overlap with Primary Zones. With the exception of some parking areas, these Secondary Zones are further depicted in Section 9-42.

“Reserved Parking” in a Secondary Private Use Zone is defined as publicly maintained parking spaces Downtown which may be available for private parking or other non-parking uses on a limited or temporary basis.

“Temporary Private Use Zones” (or “Temporary Zones”) are areas Downtown available for temporary, short-term private use that include: 1) all Secondary Use Zones not subject

to a valid License, and 2) the following areas which are not available for issuance of a License:

- a. Reading Room on the west side of West Avenue, south of Cannon Baller Way.
- b. Event Lawn on the west side of West Avenue, south of Cannon Baller Way.
- c. Platform 1 adjacent to the Event Lawn.
- d. Platform 2 on the east side of West Avenue, north of Cannon Baller Way.
- e. Pergola on the east side of West Avenue, north of West A Street.
- f. Pump House Patio on the west side of West Avenue, south of Cannon Baller Way.
- g. Reading Room Terrace on the west side of West Avenue, south of Cannon Baller Way.
- h. Putting Green on the west side of West Avenue, adjacent to Vance Avenue.

These Temporary Private Use Zones are further depicted in Section 9-42.

“Vending Unit” means a mobile van, cart, or other conveyance, stand or any facility that is not on a permanent foundation that complies with the International Building Code, and which is used for the sale or delivery of food or goods.

Sec 9-33. Private Use Zones.

- (1) Private Use Zones are located in Downtown Kannapolis as defined in this Ordinance. Private Use Zones are further depicted in Section 9-42; however the specific dimensions and locations may be adjusted as part of the License issuance described in Section 9-37.
- (2) Outdoor Dining shall only be permitted within any Secondary Private Use Zone pursuant to this Ordinance.
- (3) Outdoor Displays shall be permitted within a Primary Private Use Zone or any Secondary Private Use Zones pursuant to this Ordinance.
- (4) Outdoor Dining and Outdoor Displays in the Private Use Zones shall not extend beyond the boundaries of the Block where the associated Establishment is located. The City Manager or designee shall have the authority to waive this restriction in cases where the Purpose or Intent of this Ordinance is maintained.
- (5) Temporary Private Use Zones shall be available for short-term rental to any group, business or individual for any lawful purpose. The rental fees shall be determined by the City Council and adopted as part of the City’s Fee Schedule which may be amended from time to time.
- (6) All publicly maintained parking spaces Downtown may be designated as Reserved Parking and shall be treated the same as all other Secondary Private Use Zones pursuant to this ordinance.

(7) Mobile Food Vending, Vending Units, Mobile Carts and Food Trucks shall be permitted in Downtown in Secondary Private Use Zones when exclusively related to an associated Establishment subject to the provisions of this ordinance. Notwithstanding the foregoing, these uses shall not be located beyond the boundaries of the Block where the associated Establishment is located. The City Manager or designee shall have the authority to waive this restriction in cases where the Purpose or Intent of this Ordinance is maintained.

Sec. 9-34. General Standards for Outdoor Dining.

(1) Location Standards.

- a) Outdoor Dining areas must not obstruct business entrances.
- b) Outdoor Dining areas shall not encroach into an adjacent pedestrian passageway. The pedestrian passageway shall be a minimum unobstructed width of seven (7) feet on West Avenue and five (5) feet on all other Downtown streets. This pedestrian passageway shall be measured from the Outdoor Dining area boundaries to any obstruction including but not limited to light standards, benches, seat walls, stages, and street trees. The above-listed required minimum passageways will be reviewed on a case-by-case basis and the City Manager or designee shall make minor modifications as necessary.
- c) Outdoor Dining areas shall not be located within six (6) feet of any open street, alleyway crosswalk, or driveway open to vehicular traffic.
- d) Outdoor Dining areas shall not be located within six (6) feet of any fire hydrant or standpipe.

(2) Development Standards.

- (a) The City will provide chairs and tables on behalf of the Establishment and charge an annual fee for the use of the fixtures to the owner of real property where the Establishment is located (which may be the same entity). The tables and chairs will remain the property of the City. A valid license, as described in Sec. 9-37, shall be required prior to the City purchasing any tables and chairs. The fee for the tables and chairs will be established in the fee schedule described in Sec. 9-37. Other fixtures needed to effectively operate the Outdoor Dining area will be the responsibility of the Establishment.
- (b) Outdoor Dining areas shall be physically separated from all adjacent pedestrian passageways with fencing, swag roping, decorative plants, landscape planters, or similar architectural barriers that prevent encroachment of tables and chairs or other facilities or equipment into the

adjacent pedestrian passageway. The City Manager or designee may relax this standard if there is no encroachment into the pedestrian passageway; provided however the City Manager or designee shall not relax any standard set forth by any other governmental entity with jurisdiction over Outdoor Dining activities.

- (c) Lighting shall be required for Outdoor Dining areas where food or drink will be served during the evening hours. Existing, City-maintained lighting may be used to comply with this requirement. Additional lighting fixtures may be added to the Outdoor Dining area but must be decorative and complement the architectural character of the building and area. Lights mounted on the adjacent building shall not cause direct glare or other visual obstruction to pedestrians or vehicle drivers along the adjacent street and should illuminate only the Outdoor Dining and adjacent pedestrian oriented areas. Electrical cords may not cross pedestrian passageways.
- (d) Portable umbrellas for individual tables may be permitted provided they do not obstruct the public pedestrian areas and required pedestrian passageway. Umbrellas must be stored at close of business and during windy conditions.
- (e) Tents, canopies, temporary enclosures and similar structures are prohibited.
- (f) No permanent fixtures, facilities, or structures are permitted. Drilling of holes into pavers is prohibited unless expressly permitted by the City Manager or designee.
- (g) No business, product, or other advertising signing (including umbrellas) are permitted in any Private Use Zone except as may be necessary to communicate the relationship of the Outdoor Dining area with the associated Establishment.

(3) Operational Standards.

- a) Outdoor Dining areas shall be continuously supervised by the Establishment's employees. Food Establishments serving alcoholic beverages shall have a supervisor, at least 21 years of age, on-site at all times of operation. Any behavior that disturbs customers or passersby in the public pedestrian areas will constitute grounds for revocation of the License to operate in an Outdoor Dining area.
- b) Establishments are required to maintain all areas in and around the Outdoor Dining area in a manner which is clean, sanitary and free of food and beverage products, litter and debris.
- c) The Outdoor Dining hours of operation shall be limited to the hours of operation of the associated Establishment.

- d) All plans and Licenses for the Outdoor Dining area approved by the City must be kept on the premises for public inspection at all times during which the associated Establishment is open for business.
- e) Outdoor Dining areas shall be operated in a manner that meets all requirements of the Cabarrus Health Alliance and all other applicable regulations, laws, ordinances and standards. Food Establishments serving alcoholic beverages shall also obtain all necessary permits required by the North Carolina Alcoholic Beverage Commission.
- f) Outdoor Dining facilities/furniture may remain in the Private Use Zones when the Establishment is closed. However, no storage of furniture and fixtures is allowed in Outdoor Dining areas. Storage is defined as stacking or clustering furniture and fixtures in a such a way that these items are not set up for immediate use and detract visually from the downtown environment.

Sec. 9-35. General Standards for Outdoor Display.

(1) Locational Standards.

- (a) All Outdoor Displays must be placed so as not to obstruct business entrances.
- (b) Outdoor Displays in the Primary Private Use Zone shall not encroach more than two (2) feet from the adjacent building face. Outdoor Displays in either the Primary or Secondary Private Use Zones must be placed so that there is a clear pedestrian passageway of at least seven (7) feet on West Avenue and five (5) feet on all other Downtown streets. The above-listed required minimum passageways will be reviewed on a case-by-case basis and the City Manager or designee shall make minor modifications as necessary.
- (c) Outdoor Displays shall not be located within six (6) feet of any street, alleyway crosswalk, or driveway open to vehicular traffic.
- (d) Outdoor Displays shall not be located within six (6) feet of any fire hydrant or standpipe.
- (e) Outdoor Displays located in the Private Use Zones shall not encroach into any adjacent pedestrian passageway or public use areas.
- (f) Outdoor Displays shall be placed so as not to interfere with the reasonable use of storefront windows for display purposes by adjacent businesses.

- (g) Outdoor Displays shall not unreasonably obstruct visibility of other Establishments.
 - (h) Outdoor Displays shall not create a vehicle or pedestrian hazard.
- (2) Operational Standards.
- (a) All Outdoor Displays shall be limited to artwork and pottery, flowers and plants, general merchandise related to the associated Establishment or other items which are determined by the City Manager or designee to be consistent with the intent of this Ordinance and the City's overall Downtown revitalization objectives.
 - (b) The design and configuration of Outdoor Displays shall be attractive, compatible with the architecture of the building, and incorporate themes, colors and materials that are consistent with adjacent buildings and other public spaces in Downtown.
 - (c) All Outdoor Displays shall be portable in nature and removed from public view at the close of each business day.
 - (d) Outdoor Displays shall be maintained in a clean, neat and attractive condition, and in good repair at all times.
 - (e) Tents, canopies, temporary enclosures and similar structures shall be permitted in Secondary Private Use Zones on an occasional, temporary basis subject to prior approval by the City Manager or designee.
 - (f) No permanent fixtures, facilities, or structures shall be permitted.
 - (g) Outdoor Displays may include A-frame signs with a maximum area of six (6) square feet on both sides with a maximum height of three (3) feet and a two (2) foot width. All signage regulations within the Kannapolis Development Ordinance apply to Downtown Kannapolis.
 - (h) Restaurant menu signs will be allowed if they do not exceed six (6) square feet and shall be limited to one per business per sidewalk facing side.
 - (i) Outdoor Displays shall be allowed only within the same hours of operation of the associated Establishment.

Sec. 9-36. Reserved Parking.

- (1) Reserved Parking spaces shall be considered as Secondary Private Use Zones for the purposes of this ordinance and all applicable provisions shall apply.

- (2) Reserved Parking spaces may only be approved for Monday through Friday from 8:00 AM to 5:00 PM. This limitation shall not apply to parking spaces specifically depicted on the Private Use Zone Maps in Sec. 9-42.
- (3) Enforcement of the private, restricted use of Reserved Parking spaces shall be the responsibility of the licensee and/or the owner of the Establishment as described in Sec. 9-37.
- (4) The City will appropriately sign or otherwise mark the Reserved Parking spaces as reserved in accordance with the provisions of this ordinance.

Sec. 9-37. License and Fees.

- (1) Licenses shall be issued only to the fee simple owners of real estate in Downtown where the primary business is located. The property owner shall be ultimately responsible for proper operation of the permitted use for which the License is approved. However, it is understood and expected that an Establishment will be the responsible operational entity.
- (2) Licenses will not be required for use of any Primary Private Use Zone for Outdoor Displays, but such uses shall comply with the provision of this Ordinance.
- (3) A License shall be secured from the City before any Outdoor Dining or Outdoor Display within a Secondary Private Use Zone may commence.
- (4) All Licensed locations shall provide to the Licensee exclusive rights to the use of the leased space, but the Licensee may permit public use at its sole discretion. Enforcement of these rights will be the responsibility of the Licensee.
- (5) Licenses shall include an annual License Fee which shall be paid in advance for the purposes of defraying the costs incidental to the proceedings and for compensation to the public for removal of the Private Use Zone from day-to-day public use.
- (6) License Fees shall be determined by the City Council and adopted as part of the City's Fee Schedule which may be amended from time to time.
- (7) A License shall not be valid and considered fully executed until the License Fee is paid in accordance with the terms of the Agreement.
- (8) A License shall have an initial term no longer than one (1) year from its execution.
- (9) All fees collected as part of the administration of this Ordinance shall be earmarked in a special City fund and used exclusively for ongoing promotion and enhancement of Downtown. The use of these funds will be authorized at the sole discretion of the City Manager or designee upon receiving input from Downtown Kannapolis property owners and tenants.

- (10) Licenses are not transferable.

Sec. 9-38. Review Process.

- (1) Review Authority. The City Manager or designee shall have administrative authority to review, approve and revoke any License in their sole and exclusive discretion.
- (2) Conditions of Approval. The City Manager or designee may impose reasonable conditions to ensure that Outdoor Dining and Outdoor Display areas operate in a manner that is not detrimental to the public health, safety and welfare, is consistent with all applicable codes, policies and guidelines, and enhances the image, appearance and vitality of the area in which the use is located. This includes, but is not limited to, authority to regulate the design, layout, materials, colors, quality and appearance of Outdoor Dining and Outdoor Display areas; to establish specific location, utility, signage and other requirements for Mobile Food Vending, Vending Units, Mobile Carts and Food Trucks; to require security deposits, insurance and other reasonable financial guarantees and to prescribe operating terms which the licensed entity must follow.
- (3) Consideration of Existing Conditions. The City Manager or designee may adjust the provisions of Sec. 9-34 and Sec. 9-35 in situations where conditions existed prior to the adoption of this ordinance and strict compliance will cause significant financial or operational hardships.

Sec. 9-39. Insurance.

- (1) The Licensee at its own expense, shall purchase and maintain for the duration of a valid License Comprehensive General Liability Insurance and contractual liability assumed under this agreement. Such policy or policies of insurance shall be for limits of not less than \$1,000,000 bodily injury and property damage liability and will be subject to future review and adjustment at the request of the City. Certificates of Insurance shall be furnished to the City Manager or designee at the time of License application, naming the City of Kannapolis as additional insured, and containing the provision that 30 days written notice will be given to the City prior to cancellation or change in the required coverage.

Sec. 9-40. Revocation and Amendments.

- (1) Revocation of License. The City Manager or designee may terminate the License at any time and require the immediate removal of all privately owned items in the applicable Private Use Zone for reasons of public safety or non-compliance with the terms and conditions of its License. In such event the City Manager or designee will provide written notice of the termination to the Licensee providing the date by which items are to be removed. The Licensee binds itself, its

successor(s) and assign(s), to promptly remove said items without any cost to the City. Should the encroaching items not be removed within the period specified in the notice, the City may recover any cost associated with the removal of said items.

- (2) The City reserves the right to amend, alter or change the regulations or requirements contained in any License upon further review and consideration for reasons of public safety, adopted public policy, ordinance, or operational concerns without any cost to the City. In such event, the City Manager or designee will notify the Licensee in writing of such changes.
- (3) The City Manager or designee reserves the right to temporarily suspend any License upon seven (7) days' notice because of anticipated or actual conflicts in the use of sidewalk areas due to street repairs, parades, festivals and other similar events. Said notice shall not be required whenever an emergency situation requires prompt action. In such emergency situations, the City reserves the right and privilege to remove or alter furniture, equipment, merchandise and similar items.

Sec. 9-41. Appeals.

- (1) Persons who are denied a License or whose License has been suspended or revoked may appeal by filing a written notice of appeal with the City Manager.
- (2) The appeal must be submitted to the City Clerk's office within 10 days after the notice of the decision is provided to the Licensee.

Sec. 9-42. Private Use Zone Maps.

- (1) Map 1: Blocks 1, 2 and 8



- (2) Map 2: Blocks 3, 6 and 7



Sec. 9-43. Penalties.

Violations of this ordinance shall subject the offender to a civil penalty upon the issuance of a citation as provided in Sec. 1-14.”

Adopted this the 24th day of July, 2023.

Milton D. Hinnant
Mayor

Bridgette Bell, MMC, NCCMC
City Clerk