

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



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| Agenda Date: | January 18, 2022 |
| Action Required: | Approve Ordinance (1 st of 2 readings; no public hearing required) |
| Presenter: | James Freas, Director, Neighborhood Development Services |
| Other Staff Contact: | Chris Engel, Director of Economic Development |
| Title: | Outdoor Café Rent Payments—Responsibility for Collection, and Waiver of Rent Due for Permit Years 2020 and 2021 |

Background

The COVID 19 pandemic had significant impacts on restaurants and, as part of City efforts to support these businesses, City Council took actions utilizing authority under the declared state of emergency to waive and reduce the fees charged for the outdoor dining café areas on the downtown mall. Looking ahead to the next permit year, staff is proposing the Council take similar action to support downtown restaurants. The previously taken actions related to café permits/fees were as follows:

- Waived fees for the two months during which restaurants were closed under the Governor’s orders.
- Reduced fees by half for the remaining duration of 2020 and 2021.
- Deferred collection of those fees until date to be determined.

Every outdoor café on the Downtown Pedestrian Mall is required to rent space from the City pursuant to a permit program. These café permits and fees are governed by Chapter 28, Article VI of the City Code, and the Code designates the Zoning Administrator as the City official responsible for administering the program. Separately, from time to time, City Council approves a Fee Schedule, setting out various fees and charges associated with City zoning and other permit processes. Under the current Fee Schedule, the annual fees/rent for an outdoor café is set at \$5 per square foot of sidewalk café space plus an \$125 administration fee. New permit requests, and annual requests for renewals of existing permits, are due by March 1st of every year (the “Permit Year” may be referred to by year, but the commencement of a permit year is in March of each calendar year). Rents received by the City are appropriated to the Downtown Mall maintenance fund, which is in the Capital Improvement Plan (CIP) and administered by the Department of Parks and Recreation. The entire program is overseen by the Office of the Zoning Administrator in NDS.

As part of the review of the Sidewalk Café program, Zoning Administration staff suggested shifting rent collection responsibility to the Treasurer's office, which is better suited to the task with the appropriate procedures and capacities already in place. This change requires amendment of the ordinance. Staff discussed the proposal with Jason Vandever, City Treasurer, who had no concerns with taking over responsibility for rent collection.

Discussion

The Zoning Administrator and NDS Director met with Chris Engel, Director of Economic Development, to discuss how to address the upcoming Café permit year. Based on the experience of the Zoning Administrator and the recommendations of the Economic Development Office, staff recommends Council adopt the attached Ordinance.

- The Ordinance proposes to designate the Treasurer as the City official responsible for collecting rent payments due from outdoor café operators.
- The Ordinance will also waive permit fees and rent payment owed for 2020 and 2021. Any prepaid rents should be applied to the 2022 permit year or refunded to a café operator who will not be in business for the 2022 Permit Year.
- To replace the rent revenues proposed to be waived, it is staff's recommendation that City Council should appropriate ARPA funds to replace the lost revenue in the Downtown Mall Maintenance Fund, which resides in the operating budget for the Parks & Recreation Department. (The amount that would need to be appropriated from ARPA funds is **\$227,735**). That appropriation is NOT part of this Ordinance but would require separate action by City Council at a later date.
- Return to the normal fee/rent rates and payment requirements effective for the Permit Year commencing in March 2022.

Alignment with City Council's Vision and Strategic Plan

The proposed resolution and ordinance amendments support Council's vision for 'Economic Sustainability,' which identifies the Downtown Mall as an important economic asset for the City, as well as the 'Smart, Citizen Focused Government' vision, which calls for continuous work to identify better ways of delivering City services.

Community Engagement

There was no community engagement specific to the proposed ordinance provisions. Both proposals are based in part on feedback received by staff from restaurant owners in the course of administering the program.

Budgetary Impact

There is no impact on the general fund if Council implements the recommendation of using ARPA funds to replace foregone revenue. Otherwise, the City will effectively be waiving its claims for approximately \$227,735 for rent due and owing to the City for the periods from March 2020 through February 2022, which spans more than one Fiscal Year.

Recommendation

Staff recommends approval of the proposed Ordinance.

Alternatives

City Council could decline to approve the Ordinance. This would mean that each restaurant making use of outdoor café space on the Downtown Mall would owe the City an average of around \$5,000 in rent covering the 2020, 2021, and 2022 permit years. The zoning administrator would need to invoice each operator for the amounts owed and follow up with a collections process.

Attachments

- Proposed Ordinance

ORDINANCE
TO AMEND AND RE-ENACT THE PROVISIONS OF CHAPTER 28 (STREETS AND SIDEWALKS), ARTICLE VI (SIDEWALK CAFES) OF THE CODE OF THE CITY OF CHARLOTTESVILLE (1990) AS AMENDED, TO ESTABLISH THE CITY TREASURER AS THE CITY OFFICIAL RESPONSIBLE FOR COLLECTING RENTS FROM SIDEWALK CAFÉ OPERATORS; AND TO WAIVE RENTS DUE AND OWING TO THE CITY UNDER THE PROVISIONS OF CITY CODE SECTION 28-214(c)(2) FOR 2020 AND 2021

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE THAT Chapter 28, Article VI of the Code of the City of Charlottesville, Virginia (1990), as amended, is hereby amended and reenacted to include the following changes:

1. *The provisions of Chapter 28 (Streets and Sidewalks), Article VI (Sidewalk Cafés), Division 1 (Generally), Section 28-186, are amended and reenacted as follows:*

Sec. 28-186. - Responsibilities of zoning administrator under article.

The zoning administrator shall be responsible for receiving and approving applications for permits under this article and for administering the requirements of this article. *The City Treasurer shall be responsible for collecting rent payments required by Sec. 28-214(c)(2).*

2. *The provisions of Chapter 28 (Streets and Sidewalks), Article VI (Sidewalk Cafés), Division 2 (Permit), Section 28-214, are amended and reenacted as follows:*

Sec. 28-214. - Contents and conditions generally.

- (a) A permit granted by the zoning administrator under this division shall identify the permit term, or outstanding portion thereof, during which the operation of the café shall be authorized.
- (b) Permits for cafés on the downtown pedestrian mall or city sidewalks may contain additional reasonable conditions and requirements as the zoning administrator may deem necessary. The purpose of any such conditions shall be to ensure that the operation or use of the proposed café will not present a hazard to the public health, safety or welfare.
- (c) Effective for the permit term commencing in March 2009, and each permit term thereafter:
 - (1) Each applicant for a café permit shall pay a permit fee upon submission of such application, in the amount specified on the most recent fee schedule approved by city council. For operators renewing an existing permit this fee shall be due and payable within thirty (30) days following the commencement of the current permit term.
 - (2) Each operator shall pay rent in the amount specified on the most recent fee schedule approved by city council. Such rent shall be paid according to the payment schedule set by the *City Treasurer* ~~zoning administrator~~. Any café permit for which the holder has not

paid rent hereunder within thirty (30) days of the due date shall expire and become null and void.

- (d) No food preparation shall be performed in any area which is the subject of a café permit issued under this article. The operator of an outdoor café which is the subject of any such permit shall promptly remove all food dishes and utensils after each customer has left and shall thoroughly clean the entire café area and the sidewalk located within the café after the close of each business day. The zoning administrator shall have the authority to require any café operator, as an additional condition of a permit, to use only non-disposable dishes, utensils and napkins within the café area, upon a determination that the use of paper or plastic tableware or napkins is or has been contributing to litter problems in the area subject to the permit. Upon making such a determination, the zoning administrator shall issue thirty (30) days' advance written notice of the new requirement to each operator whose permit will be affected.
- (e) An outdoor café subject to a permit required by this article shall be operated only within the area specifically assigned to an operator by a permit issued by the zoning administrator. The operator shall clearly delineate its area of operation through use of any one (1) or more of the following markers: trees, fences, planters and barriers. All items used for delineation of café space shall be compliant with current ADA Guidelines and approved by city staff prior to use. An outdoor café shall be in operation only during hours that the restaurant with which it is associated is open.
- (f) Musical entertainment shall be allowed within any outdoor café area subject to a permit; however, such activity shall be limited to un-amplified vocal or instrumental performances and such activity shall not be conducted during the hours between 12:00 midnight and 11:00 a.m. of any day. Cafés located on the downtown pedestrian mall shall also be subject to the city's noise ordinance established for that area; however, in the event of a conflict between said noise ordinance and the requirements of this section, the stricter requirement shall govern the activities within such outdoor café.
- (g) No tents or similar structures shall be erected or utilized over or within any outdoor café operating under a permit granted pursuant to this article; except that, not more than twice per year, the operator of an outdoor café, after receiving approval of the city's board of architectural review, may erect or utilize a tent over or within his outdoor café space. No such tent may be utilized or remain in place for longer than seventy-two (72) hours.
- (h) Access to and use of city electricity by outdoor café operators, including, without limitation, use of any outdoor electrical outlet(s), shall be permitted for cash registers and credit card machines only to those operators that pay a monthly fee to the city as established by city council.
- (i) Space heaters (other than any heaters requiring use of city electricity or electrical outlets) may be utilized by a café operator so long as the use and operation of any such heater is in compliance with all applicable building and fire codes and does not present a threat to the health, safety or welfare of the public. Each heater must be approved by city staff.
- (j) No café permit shall be shared by any restaurant with another restaurant without the prior written approval of the zoning administrator. In the case of such sharing arrangement, (i) the original operator shall remain fully responsible for compliance with this article unless

otherwise agreed in writing by the zoning administrator; and (ii) if the space that is the subject of the permit exceeds eight hundred (800) square feet under circumstances permitted by section 28-212(e), approval of the sharing arrangement shall be conditioned upon a reduction of the area reserved by the permit to not more than eight hundred (800) square feet.

- (k) All tables, chairs and equipment located within an outdoor café shall be maintained in good, clean condition by the operator.

3. In recognition of the ongoing hardship that the COVID-19 pandemic has effected on restaurants within the City, and acknowledging the significance of the outdoor cafes on the Downtown Pedestrian Mall as important assets of the local economy, this Council hereby waives any and all permit fees and rents due and owing to the City by any outdoor café operator to the City, for or in connection with permits that commenced or were renewed in March 2020 and in March 2021 pursuant to City Code Section 28-214(c). Any rent amounts prepaid by a café operator for Permit Years 2020 or 2021 shall be credited by the Treasurer to the rent due for the 2022 Permit Year; however, in the event that a café operator prepaid rents for Permit Years 2020 or 2021, and that operator does not obtain or renew a permit for 2022, the Treasurer shall issue a refund of the prepaid amounts to the operator for which the applicable 2020 or 2021 outdoor café permit was issued. The provisions of this paragraph shall become effective March 1, 2022.

4. This Ordinance shall be effective upon adoption, except as otherwise specified herein.