

**TOWN OF APEX, NORTH CAROLINA
ORDINANCE NO. 2021-1006-35**

AN ORDINANCE TEMPORARILY MODIFYING TOWN CODE SECTION 14-14 AND SECTION 18-11 AND AMENDING CHAPTER 14 OF THE TOWN OF APEX CODE OF ORDINANCES

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. Under the authority of N.C.G.S Section 18B-300(c), Subsection (b) of Section 18-11 of the Apex Town Code of Ordinances is temporarily modified beginning October 7, 2021 and continuing through November 12, 2021, to read as follows with additions shown as bold underlined text and deletions as struck-through text:

Sec. 18-11. - Obstructions—Structures; vehicles.

...

(b) Notwithstanding the provisions of Town Code subsection 18-11(a) and section 18-12, downtown sidewalk food service tables may be placed and used on the sidewalks **and closed parking spaces** in the Central Business District of the Town of Apex as provided in this subsection 18-11(b) except when the street is temporarily closed to regular traffic for special events. A "downtown sidewalk food service table" is a table used for food service by a food service provider and located on a public sidewalk **or closed parking space** directly in front of the food service provider's place of business in the Central Business District. Downtown sidewalk food service tables are subject to the following requirements:

- (1) No downtown sidewalk food service table nor any chairs or other items used in connection with one shall reduce the clear accessible travel path of the sidewalk to a width of less than 36 inches. The width of the clear accessible travel path shall be measured from the street-side edge of the concrete sidewalk perpendicularly toward the building-side edge of the concrete sidewalk.
- (2) Downtown sidewalk food service tables and all chairs and other items used in connection with them shall be situated, outfitted and used in a manner that does not constitute a hazard to persons using the sidewalks.
- (3) ~~No person shall place, use or operate a downtown sidewalk food service table except as authorized by a site specific development plan approved by the Apex Planning Department.~~

Section 2. Under the authority of N.C.G.S Section 18B-300(c), Subsection (d) of Section 14-14 of the Apex Town Code of Ordinances is temporarily modified beginning October 7,

2021 and continuing through November 12, 2021 to read as follows with additions shown as bold underlined text:

Sec. 14-14. - Consumption and possession of open containers of malt beverages and unfortified wine prohibited on public streets and municipal property.

...

(d) *Exemption for downtown sidewalk food service tables.* The consumption of malt beverage and unfortified wine and the possession of an open container of the same, at a "downtown sidewalk food service table," as defined in Town Code section 18-11, shall be exempt from subsections 14-14(b) and (c) if the service of such malt beverage or unfortified wine is pursuant to a valid ABC permit and in conformity with the ABC laws. The Town of Apex grants control over the area of public sidewalk **and closed parking space** upon which a downtown sidewalk food service table is located to the adjacent food service provider to the least extent necessary for the area to qualify as part of the premises of the adjacent food service provider for the purposes of the applicable ABC permit **or as is necessary to access a downtown sidewalk food service table in an expanded area for ABC licensed premises authorized by section 14-39.**

Section 3. That Chapter 14 of the Town of Apex Code of Ordinances is hereby amended to create Section 14-39 as shown immediately below with additions shown by underlined text:

Sec. 14-39. – Authorization of expanded area for ABC licensed premises.

Pursuant to the authority granted by S.L. 2021-150, and in accordance with G.S. 160A-205.5, any establishment located within the corporate limits of the town and holding an ABC permit issued pursuant to Article 10 or 11 of Chapter 18B of the North Carolina General Statutes that allows the on-premises consumption of alcoholic beverages may utilize an area that is not part of the permittee’s licensed premises for the outdoor possession and consumption of alcoholic beverages sold by the permittee, subject to the requirements of G.S. 18B-904(h).

Section 4. The Town Clerk and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this Ordinance or future amendments as long as doing so does not alter the terms of this Ordinance.

Section 5. **Severability, Conflict of Laws.** If this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 6. **Effective Date.** This Ordinance shall be effective upon adoption.

Introduced by Council Member _____

Seconded by Council Member _____

Attest:

TOWN OF APEX, NORTH CAROLINA

Donna B. Hosch, MMC, NCCMC
Town Clerk

Jacques K. Gilbert
Mayor

Approved As To Form:

Laurie L. Hohe
Town Attorney