

Introduced by: Mr. Tackett
Ms. Kilpatrick
Date of introduction: June 9, 2020

ORDINANCE NO. 20-070

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),
ARTICLE 3 (“USE REGULATIONS”) REGARDING OUTDOOR SALES AND
SERVICES**

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) has determined that a novel coronavirus (“COVID-19”) presents a serious public health threat, and has advised the public that asymptomatic individuals may be carriers of the COVID-19 virus and may unknowingly spread the virus to other individuals in close proximity, and therefore, social distancing is required to help mitigate the individual exposure to (and community spread of) the COVID-19 virus; and

WHEREAS, it is in the best interests of the County to protect its citizens from a public health emergency that could threaten the lives of those who live and work here; and

WHEREAS, on March 12, 2020, the Governor of the State of Delaware issued a State of Emergency due to the public health threat of COVID-19, (the “COVID-19 State of Emergency”); and

WHEREAS, on March 23, 2020, the Governor issued the Fourth and Fifth Modifications to the COVID-19 State of Emergency declaration to close all non-essential businesses in Delaware, except those that can offer goods and services on the Internet, and to order a Shelter in Place for Delaware residents; and

WHEREAS, on May 22, 2020, the Governor issued the Nineteenth Modification to the COVID-19 State of Emergency instituting a Phase 1 Business Reopening Plan, which allows several business categories to reopen, including Retail and Food and Drink establishments, subject to restrictions and limited building capacities; and

WHEREAS, the temporary expansion of outdoor sales and service during the public health threat presented by COVID-19 facilitates responsible economic activity while promoting the public health; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), Section 40.03.329 (“Commercial temporary outdoor sales”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.03.329. Commercial temporary outdoor sales, restaurant seating and CAPE.

A. Any lawfully existing commercial use shall be permitted to display and sell its merchandise and serve food or beverages outdoors only under the following limited conditions.

1. [~~Outdoor sales shall be permitted only four (4) times a year.~~] Owners must obtain a limited use permit for all such temporary outdoor [~~sales before the~~] uses [~~is permitted~~]. The permit shall be valid for no more than [~~seven (7)~~] thirty (30) consecutive days and is renewable. Permits may be revoked at the discretion of the Department based on any applicable State of Emergency declaration.
2. No display, sales, seating or parking is permitted in any street right-of-way unless approved by DelDOT. In addition, no display, sales, seating or parking shall obstruct pedestrian or vehicular traffic [~~, except as permitted in Subsection A.4.~~].
3. All temporary structures associated with display, sales, dining areas [~~or temporary structures~~] shall comply with the minimum required yard setbacks for the zoning district in which the commercial temporary outdoor [~~sale~~] use is being proposed.
4. [~~No more than ten (10) percent of the required parking area for the existing commercial use may be used for the temporary outdoor sales.~~]

Section 2. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 3. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 4. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council’s intent. If any provision of this Ordinance or

any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 5. This Ordinance shall become effective immediately upon passage by New Castle County Council and approval of the County Executive or as otherwise provided in 9 *Del. C* § 1156 and shall only apply to Land Use applications submitted after such date(s) unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: This Ordinance expands the use of commercial temporary outdoor sales and service of food or beverages by increasing the number of days allowed for a permit and eliminating the restriction on the number of such permits. Restrictions on the potential locations of the temporary uses are similarly relieved in an effort to facilitate safer shopping and dining while the State and County operate under the COVID-19 State of Emergency.

FISCAL NOTE: There is no discernible fiscal impact upon the adoption of this ordinance.