

Petition # 2004-135
Petitioner: Charlotte Mecklenburg Planning Commission
City of Charlotte

APPROVED BY CITY COUNCIL
March 21, 2005

**AN ORDINANCE AMENDING APPENDIX A OF THE
CITY CODE – ZONING ORDINANCE**

ORDINANCE NO. _____

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

Section 1: Appendix A, “Zoning” of the Code of the City of Charlotte is hereby amended as follows:

A. CHAPTER 2: DEFINITIONS AND RULES OF CONSTRUCTION

1. PART 2: DEFINITIONS

- a. Add new definitions to Section 2.201, “Definitions”, in alphabetical order for “outdoor sales” and “temporary uses” to read as follows:

Outdoor Sales

The retail sale of any article, substance, or commodity located outside a retail establishment, where such goods are available for immediate purchase. Permanent garden centers attached to the main retail building are not included in the definition of “Outdoor Sales”, and are deemed to be part of the retail establishment. “Outdoor Sales” does not allow the display of merchandise, and does not include “Outdoor Seasonal Sales”.

Temporary.

An event, structure, or use that exists for a limited period of time, but no longer than 90 days.

B. CHAPTER 12: SUPPLEMENTAL DEVELOPMENT STANDARDS.

1. PART 4: ACCESSORY USES AND STRUCTURES

Add a new Section 12.417, titled “Outdoor Sales, Accessory”, to read as follows:

Section 12.417. Outdoor Sales, Accessory

Except as provided under subsection 12.417(5), below, outdoor sales are permitted only as an accessory use to a retail establishment located in the NS, CC, MUDD(CD), UMUD(CD), B-1SCD, B-1(CD), B-2(CD) zoning districts, unless

noted on the site plan or conditional plan that this use is restricted. An approved, permanent garden center component of a retail use that shares common walls with the principal building is not subject to this section. All outdoor sales shall be clearly incidental to the operation of the principal use, and shall meet the following requirements:

- (1) Outdoor sales shall be operated and maintained under the same ownership, or subject to the control of the property owner, and on the same parcel as the principal use.
- (2) Planning Director approval is required, and an administrative amendment will be required, if the additional outdoor retail sales area is located within the parking or maneuvering area and such outdoor retail sales area is not indicated on an approved conditional plan. The accessory, outdoor retail sales area shall not be counted toward the total allowed square footage.
- (3) Outdoor sales areas shall be fenced on all sides by a fence not less than 3 feet or no higher than 5 feet in height. The fence must be constructed of wrought iron, tubular aluminum, or other approved fencing material. Fencing is not required to be permanently affixed. The fence must be constructed to allow for 75% surveillance from passing vehicles and/or pedestrian traffic. Spaces between bars or slats shall be no greater than 6 inches apart. In no instance will a chain link or barbed wire fence be acceptable. Fencing shall be removed when the outdoor sales end.
- (4) Sales of retail items is allowed on the sidewalk located in front the building, but not on the public sidewalk located within any public right-of-way, however, a minimum clear zone of eight (8) feet shall be maintained for pedestrian use. The area used for sales of retail items on the sidewalk shall not exceed 50 square feet in area to be used continuously for the sale of goods and merchandise. No display of merchandise is permitted. No fencing is required for items on the sidewalk. The sales area in front of the building shall be shown on the site plan or conditional plan.
- (5) All equipment rental and leasing must occur within an enclosed building.
- (6) No tractor-trailer trucks, trailers, or other mobile storage containers, shall be used in conjunction with the outdoor sales area. Tractor trailers or other mobile storage containers may only be located near the loading dock area and shall be screened by a decorative fence from on-site parking lot(s).
- (7) The area designated for outdoor sales shall not be located in any minimum required parking area required by this ordinance. The outdoor sales area shall not require additional parking spaces.
- (8) The area(s) designated for outdoor sales shall not exceed 10% of the gross building square footage of the retail establishment for which this is an accessory use.

C. CHAPTER 9: TABLE OF USES AND HIERARCHY OF DISTRICTS

1. PART 1: TABLE OF USES AND HIERARCHY OF DISTRICTS

Amend Table 9.101 by adding “Outdoor Sales, Accessory”, in alphabetical order to the table of uses under “Accessory Uses and Structures”. Under the NS, CC, MUDD, UMUD, B-1 and B-2 zoning districts add a “PC” for the “Outdoor Sales, Accessory” line item.

D. CHAPTER 12: SUPPLEMENTAL DEVELOPMENT STANDARDS.

1. PART 5: SPECIAL REQUIREMENTS FOR CERTAIN USES

- a) Add a new Section 12.534 titled, “Periodic Retail Sales Events, Off-premise”. The new section shall read as follows:

Section 12.534. Periodic Retail Sales Events, Off-Premise

- (1) Any person or persons, corporation, or, agent who engages in or solicits, either in one location or by traveling from place to place, a periodic outdoor business selling and exhibiting for sale, or auction, goods, food, wares and merchandise who in furtherance of such purpose, hires, leases, uses or occupies any temporary structure, outdoor tent, parking lot, or other place on a site, or who operates from a truck, vending cart, or other area outside of a permanent structure on property not owned or leased by the person, firm, or corporation, shall meet the following requirements:
- (a) Periodic retail sales events may only be located in the UR-C, B-1, B-2, TOD, MUDD, UMUD, and Industrial zoning districts. Periodic retail sales events shall also be permitted in the B1-SCD, B-1 (CD), B-2-CD, MX-2, MX-3, NS, and CC zoning districts, as part of a retail center, unless noted on the site plan or conditional plan that this use is restricted.
 - (b) The event shall not have ingress/egress access to a Class V (collector), Class VI, (local), or Class VI-L (cul-de-sac).
 - (c) The event shall not involve or require the construction of a permanent building.

- (d) The event, including all sale and display items shall not be located in any required setback, any sight distance triangle, or required buffer.
 - (e) Any operator of a periodic retail sales event must receive a permit from the Zoning Administrator, which describes the type of event involved, and the duration of the sales operation or event. As part of the application, the operator shall submit to the Zoning Administrator proof of property owner permission to use the property.
 - (f) No more than twelve (12) periodic retail sales events shall be allowed per tax parcel, per calendar year, not including Outdoor Seasonal Sales.
 - (g) No one event shall be longer than 5 days, including set-up and breakdown time.
 - (h) There shall only be one Periodic Retail Sales Event (either off-premise or on-premise), or Outdoor Seasonal Sales event held at any one time on a tax parcel.
 - (i) No detached signs are permitted
 - (j) Hours of operation shall be between 8:00 a.m. and 9:00 p.m.
 - (k) The event shall not locate in any minimum required parking spaces for other businesses on the site.
 - (l) The event shall have adequate parking facilities based upon the size of the area used for the event. Parking spaces may be shared with other uses on the site, unless the Zoning Administrator determines that parking congestion problems will be present on the site during the times of the event. The Zoning Administrator may require additional parking to alleviate the congestion. If enough parking cannot be provided, the use may not be located on the site.
 - (m) The operator is responsible for the removal of all trash or refuse upon cessation of the event.
 - (n) All applicable local and state codes shall be met.
- (2) Any person so engaged shall not be relieved from complying with the provisions of this section by reason of association with any local dealer, trader, operator, merchant, organization, or auctioneer, or by conducting such periodic retail sales event in

connection with, as part of, or in the name of any local dealer, trader, operator, merchant, organization, or auctioneer.

- (3) Section 12.534(1) and (2) shall not be applicable in the following situations:
- (a) Persons or organizations participating in duly recognized fundraising events, including but not limited to, religious, charitable, non-profit, patriotic, or philanthropic events. If such persons or organizations are associated with an outdoor temporary retail sales event, the event would not be considered exempt from these regulations.
 - (b) On site, permanent business and retail establishments holding grand opening or re-opening events, tent sales, sidewalk sales, and similar special events. (See Section 12.535 for requirements).
 - (c) Outdoor Seasonal Sales such as Christmas tree sales, pumpkin sales, plant sales, or fresh produce sales, and similar events. (See Section 12.519 for requirements)
- b) Add a new Section 12.535 titled, “Periodic Retail Sales Events, On-Premise”. The new section shall read as follows:

Section 12.535. Periodic Retail Sales Events, On-premise

On-premise outdoor periodic sales events shall include grand openings, re-openings, periodic tent sales, sidewalk sales, or other special events sponsored by a business operating from a permanent structure or building on premise. Such events shall meet the following requirements:

- (1) The event, including all sale and display items shall not be located in the required setback, and shall not be located in any sight distance triangle, or required buffer.
- (2) The event shall have adequate off-street parking facilities.
- (3) The operator is responsible for the removal of all trash or refuse upon cessation of the event.
- (4) No one event shall be longer than 4 days, including set-up and breakdown time.
- (5) There shall only be one Periodic Retail Sales Event, (either off-premise or on-premise), or Outdoor Seasonal Sales event held at any one time per tax parcel.

- c) Amend Section 12.519, “Outdoor Seasonal Sales”, first paragraph, by adding references to “temporary retail sales events”. Also, remove the second from the last sentence, as it is no longer needed due to the new temporary sales events and accessory outdoor sales amendments above. All the conditions will remain unchanged. The current paragraph reads as follows:

Section 12.519. Outdoors Seasonal Sales.

Outdoors seasonal sales are temporary uses, which include but are not limited to Christmas tree sales, pumpkin sales, plant sales, fresh produce sales and similar uses. Outdoors seasonal sales are not intended to include the sale of manufactured items such as furniture, bedding, automobile parts, or household goods. Such sales are permitted in all nonresidential zoning districts as a use by right subject to the standards of the underlying zoning district. Outdoors seasonal sales shall be permitted in all residential districts subject to the following conditions:

- (1) Any operator of a seasonal sales use must receive a permit from the Zoning Administrator, which describes the type of sales involved, and the duration of the sales operation.
- (2) Such sales shall not operate more than a total of 45 days out of the year. The owner of the seasonal sales lot shall be required to maintain an account of the days of all sales operations and shall make such records available upon request of the Zoning Administrator.
- (3) The use may only be located on a vacant lot or on a lot occupied by a nonresidential use such as a church or school. The use shall not operate as an accessory to a principal residential use on a lot. In addition, the use shall not be located on a lot, which adjoins a residential use unless the lot is located on a major thoroughfare.
- (4) The use shall be located on a Class III, III-C, or IV street.
- (5) The use shall not involve or require the construction of a permanent building.
- (6) Any signage, which identifies the use, shall be in accordance with the underlying zoning district.
- (7) Five off-street parking spaces shall be provided for the use.
- (8) The use, including all sale items, parking and maneuvering shall observe a setback of 15 feet and sale items shall not be located in the sight distance triangle.

- (9) The operator is responsible for the removal of any vestige upon cessation of the seasonal sale including signage.

The new paragraph shall read as follows:

Section 12.519. Outdoors Seasonal Sales.

Outdoors seasonal sales are temporary seasonal uses, which include but are not limited to Christmas tree sales, pumpkin sales, plant sales, and similar fresh produce sales. Outdoors seasonal sales are not intended to include periodic retail sales events (on-premise or off-premise) or the sale of manufactured items such as furniture, bedding, automobile parts, household goods, spas, pools, or other similar items. Such sales are permitted in all nonresidential zoning districts as a use by right subject to the standards of the underlying zoning district. Outdoor seasonal sales of landscaping plants as an accessory use to a retail establishment, shall meet the requirements of Section 12.417.

Outdoors seasonal sales shall be permitted in all residential districts subject to the following conditions:

- (1) Any operator of a seasonal sales use must receive a permit from the Zoning Administrator, which describes the type of sales involved, and the duration of the sales operation.
- (2) Such sales shall not operate more than a total of 90 consecutive days per calendar year.
- (3) The use may only be located on a vacant lot or on a lot occupied by a nonresidential use such as a church or school. The use shall not operate as an accessory to a principal residential use on a lot. In addition, the use shall not be located on a lot, which adjoins a residential use unless the lot is located on a major thoroughfare.
- (4) The use shall be located on a Class III, III-C, or IV street.
- (5) The construction of a permanent building is not permitted.
- (6) Any signage, which identifies the use, shall be in accordance with the underlying zoning district.
- (7) Five off-street parking spaces shall be provided for the use.
- (8) The use, including all sale items, parking and maneuvering shall observe a setback of 15 feet and sale items shall not be located in the sight distance triangle.

- (9) The operator is responsible for the removal of any vestige upon cessation of the seasonal sale including signage.
- (10) **There shall be no more than one Periodic Retail Sales Event (either off-premise or on-premise), or one Outdoor Seasonal Sales permit issued at any one time on a tax parcel.**

Section 2. That this ordinance shall become effective upon its adoption.

Approved as to form:

City Attorney

I, _____, City Clerk of the City of Charlotte, North Carolina, DO
HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the
City Council of the City of Charlotte, North Carolina, in regular session convened on the
____ day of _____, 2005, the reference having been made in Minute Book _____, and
recorded in full in Ordinance Book _____, Page(s) _____.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this ____
day of _____, 2005