

# **Post-pandemic Zoning Changes: Reducing Commercial Parking Requirements**

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## **I. Introduction**

COVID-19 has put a strain on many aspects of what was considered a part of normal human life. It has had a big impact on the American restaurant industry, in particular. In the wake of the COVID-19 crisis, Pennsylvania Governor Tom Wolf issued a statewide stay-at-home order effective April 1, 2020, which closed all non-life-sustaining businesses.<sup>1</sup> Restaurants in Pennsylvania were only open for take-out or delivery, which caused steep financial losses for many businesses holding on to survive.<sup>2</sup>

There was a shred of relief when Governor Wolf reopened restaurants for outdoor and indoor dining at a limited capacity. This caused a new array of problems related to zoning laws in municipalities because restaurant owners needed approval from their town zoning boards to use parking lots as outdoor eating areas. States like New Jersey have opened their restaurants for outdoor dining only, which has caused a change in municipal zoning laws to allow for such an accommodation. A similar standard is needed for Pennsylvania to help mitigate spreading COVID-19. A useful tool for restaurant owners is to use specific street parking spaces as food pick up zones to avoid individuals entering the restaurant and coming in contact with others. It also makes sense to use commercial parking structures in shopping malls and the like to account

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<sup>1</sup> Official Pennsylvania Government Website, *Gov. Wolf, Sec. of Health: Pennsylvania on Statewide Stay-at-Home Order Beginning at 8PM Tonight, "Most Prudent Option to Stop the Spread,"* (April 1, 2020), <https://www.governor.pa.gov/newsroom/gov-wolf-sec-of-health-pennsylvania-on-statewide-stay-at-home-order-beginning-at-8-pm-tonight-most-prudent-option-to-stop-the-spread/#:~:text=The%20first%20orders%20were%20issued,business%20closures%20remain%20in%20effect>.

<sup>2</sup> Peter Wertz, *Outdoor Dining: The Zoning Implications of a Temporary Solution Becoming a National Trend* (Aug. 10, 2020), <https://www.mcneelanduse.com/2020/08/outdoor-dining-the-zoning-implications-of-a-temporary-solution-becoming-a-national-trend/#more-2278>.

for outdoor dining or public dining areas. There is a surplus of unused parking spaces because of the emphasis on online shopping. Reducing commercial parking requirements would help achieve these goals while at the same time reducing the spread of COVID-19. This topic is fairly new since the pandemic is still new, but there are a decent number of resources and data available that should help solve this problem.

Zoning regulations are one of the most useful forms of land use planning because they control the location of different land uses in a community.<sup>3</sup> Most of the zoning is enacted at the municipal level, which is why municipalities need to get involved to help businesses recover post-pandemic while at the same time mitigating any loss of human life associated with COVID-19.<sup>4</sup> Pennsylvania opened indoor dining at 50% capacity, but this is a lot riskier than keeping dining strictly outdoor as many states have been doing for a few months now.<sup>5</sup> According to the CDC, there are levels of risk associated with outdoor and indoor dining.<sup>6</sup> First, the lowest risk related to spreading COVID-19 is food service limited to drive-through, delivery, take-out, and curb-side pick-up.<sup>7</sup> Second, more risky than that is adding outdoor seating with seating capacity reduced to allow for tables that are at least six feet apart.<sup>8</sup> Last, the most risky is both indoor and outdoor seating with tables at least six feet apart.<sup>9</sup> If Pennsylvania were to make more accommodations for outdoor dining during warmer months by reducing commercial parking requirements, this would help slow down the spread of COVID-19 since it is seen as a less risky scenario compared to having both indoor and outdoor dining.

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<sup>3</sup> Timothy W. Kelsey, Stanford M. Lembeck, and George W. Fasic, *Zoning*, Penn State College of Agricultural Sciences (2001), <https://planningpa.org/wp-content/uploads/5-Zoning.pdf>.

<sup>4</sup> *Id.*

<sup>5</sup> Center for Disease Control and Prevention, *Considerations for Restaurants and Bars* (Sep. 6, 2020), [cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html](https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

There are not many ordinances in Pennsylvania that have addressed this problem, but there are a few municipalities that have tried. The city of Lancaster, PA adopted the Outdoor Retail Ordinance and the Outdoor Dining Ordinance.<sup>10</sup> These ordinances allowed business owners to use sidewalks for outdoor dining and allowed them to rent out parking spaces but failed to address reducing commercial parking requirements to use for outdoor dining and retail. Warren, New Jersey adopted an ordinance that allowed restaurants to use portions of parking lots for outdoor dining.<sup>11</sup> Escondido, California adopted an ordinance for outdoor sale events in commercial parking areas.<sup>12</sup>

The use of commercial parking lots for things like public dining areas will provide various social benefits because it allows individuals to gather with one another outside of their homes, which is something that has been lacking since quarantine began in April 2020. The economic benefits resulting from the change in commercial parking requirements is that it will allow developers to make use of these parking spaces during a time when businesses are suffering because so many indoor activities remain closed.<sup>13</sup> The environmental benefits are tied in with the economic benefits because keeping dining strictly outside until after the pandemic will help stop the spread of COVID-19, since it is much less risky than having both indoor and outdoor dining.<sup>14</sup> In addition, reducing commercial parking requirements will reduce the amount of stormwater runoff, which will reduce costs related to stormwater management.<sup>15</sup> Finally, the

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<sup>10</sup> Lancaster, Pa., Ordinance 06-2020 (July 29, 2020); Lancaster, Pa., Ordinance 04-2020 (June 5, 2020).

<sup>11</sup> Warren, Nj., Ordinance 20-19 (June 15, 2020).

<sup>12</sup> Escondido, Ca., Ordinance 2020-12 (May 20, 2020).

<sup>13</sup> Telephone Interview with Scott Coburn, General Counsel/Chief Information Officer, PSATS (Oct. 1, 2020).

<sup>14</sup> *Id.*

<sup>15</sup> *Stormwater Fees: Overview of Municipal Stormwater Fee Programs*, [https://pecpa.org/wp-content/uploads/Stormwater-Utility-Fee-Booklet\\_Revamp\\_March17.pdf](https://pecpa.org/wp-content/uploads/Stormwater-Utility-Fee-Booklet_Revamp_March17.pdf), (last visited Nov. 27, 2020).

reduced parking requirements are a way for municipalities to boost the amount of green space available.<sup>16</sup>

Part II of this narrative discusses the current problems associated with commercial parking requirements and the need for a new ordinance to tackle this problem. Part III focuses on how existing local ordinances do not adequately address this problem. Part IV takes a deep dive into the ordinances adopted in Lancaster, Pennsylvania, Warren, New Jersey, and Escondido, California and explains how this problem has been addressed by these municipalities and also describes how these ordinances provide social, economic, and environmental benefits to their residents and their communities. Part V provides a recommendation to the Pennsylvania State Association of Township Supervisors (PSATS) based on the experiences of the municipalities discussed in this Narrative.

## **II. Problems Related to Commercial Parking Requirements**

There is a surplus of unused parking spaces in shopping malls and the like that could very well be used for other things that could help businesses during COVID-19. A drone survey was conducted by Shippensburg University's Center for Land Use and Sustainability (CLUS) on Susquehanna Township to see what commercial parking structures look like to assess the need for a new ordinance.<sup>17</sup> CLUS flew drones over office buildings, fast food chains, and shopping malls during peak business hours and on the biggest shopping day of the year, "Black Friday."<sup>18</sup> This study revealed that many of the shopping malls used only 80% of their spaces even on "Black Friday" and only 44% on the Saturday before "back to school" shopping.<sup>19</sup> Even during

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<sup>16</sup> *Id.*

<sup>17</sup> Center for Land Use & Sustainability, *Parking Inventory in Susquehanna Township, Dauphin County, PA., Shippensburg University*, <https://ship.maps.arcgis.com/apps/MapSeries/index.html?appid=c7b2c17a49f94f328d9ad536ed9ca46c> (last visited Oct. 4, 2020).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

the biggest shopping days of the year, many commercial parking lots have at least 20% of their parking spaces unused.<sup>20</sup> If on the biggest shopping days of the year, only 80% and 44% of parking structures are being used, on normal business days the numbers are much lower.<sup>21</sup> There is no need to have a surplus of parking spaces available to accommodate only a few big shopping days out of the year. This is a substantial loss of potential use of land and development. Reducing commercial parking requirements will free up a considerable amount of land and landowners would then be afforded an opportunity to redevelop this land in a more useful form instead of allowing it to be wasted away.

The COVID-19 pandemic stopped in-person shopping for quite some time as well as indoor dining. Although, the situation was exasperated by the pandemic, in person shopping has been on the decline for quite some time now. This land could be put to good use by repurposing the land to create outdoor dining for struggling restaurants. The pandemic hit many businesses hard by forcing restaurants to serve food through take out or delivery only. There is a chance that this may be a reality once more as the pandemic gets worse. Instead of letting these commercial parking structures go to waste, Pennsylvania municipalities should use these parking structures to create outdoor dining for restaurants to cater to more individuals and create outdoor retail opportunities for consumers. The current commercial parking structures do not accommodate the repurposing of land that is needed to help businesses recover.

The reason why a new ordinance is needed is because PSATS does not currently have a model ordinance that addresses this problem. There is no reason parking lots should sit empty when they could be used for outdoor dining, public dining areas, and other outdoor activities. In addition, developers should be able to use areas in these parking spaces to come up with other

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

business ventures such as hosting flea markets or having food trucks for consumers. It is a waste of land to have these commercial parking lots remain empty when they could so easily be used to help struggling businesses during the pandemic or have other businesses set up in these areas that would have a positive economic benefit to the public as well as the shopping centers.

### **III. How Existing Local Ordinances have been Unable to Address the Problem**

Existing local ordinances have created alternatives for businesses post-pandemic, but almost none have addressed repurposing commercial parking structures to help with this problem. The ordinances that will be later reviewed in depth do tackle some issues by creating parklets, street closures, sidewalk cafes and public dining areas to help businesses post-pandemic. They also cover using portions of parking lots to accommodate tables, chairs, and the like for outdoor dining. Only one of the ordinances, however, speaks to the issue of repurposing commercial parking lots, and this ordinance is not from a Pennsylvania township.

When looking within Pennsylvania, local ordinances have failed to address this problem. Lancaster, Pennsylvania is on the right track with the use of public dining areas but is still lacking in terms of where those public dining areas would be and whether or not the city is considering using commercial parking lots to designate these areas.<sup>22</sup> Lancaster is not an outlier. Gettysburg is another Pennsylvania municipality that has an ordinance similar to Lancaster's that permits outdoor dining areas on sidewalks but does not speak to having similar dining areas in commercial parking structures.<sup>23</sup> There is a pattern across Pennsylvania and across the country

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<sup>22</sup> Lancaster, Pa., Ordinance 04-2020 (June 5, 2020); Lancaster, PA., Ordinance 06-2020 (July 29, 2020).

<sup>23</sup> Gettysburg, Pa., Code §13-1103 (2015).

because there are very few municipalities that have been proactive in moving with growing trends of society, which is that people would rather shop online than go to stores in-person.<sup>24</sup>

When looking outside of Pennsylvania, it seems that there are a few ordinances out there that try to solve this problem like Warren, New Jersey and Escondido, California.<sup>25</sup> The California Ordinance actually addresses the issue because it speaks of having retail and dining areas in commercial parking structures.<sup>26</sup> If a big city like Escondido, California can implement an ordinance like this on such a large scale, small and big Pennsylvania municipalities alike should have no problem. Although this topic is fairly new, there is much to learn from other municipalities outside of Pennsylvania to try to find a solution for this problem to see what Pennsylvania can do better.

#### **IV. How this Problem has been Addressed by other Municipalities**

##### **A. Lancaster, Pennsylvania Ordinances**

Unfortunately, for this project, most municipalities do not have ordinances in place yet to address reducing commercial parking requirements post-pandemic because the pandemic has only been around since January 2020. Lancaster, Pennsylvania is a good place to start because they adopted two ordinances post-pandemic that did address parking in some respects and there are some points that were made in these ordinances that should be adopted in PSATS's model ordinance for the state of Pennsylvania. Lancaster is a relatively small city in Pennsylvania with a land area of 7.23 square miles and a population of 59,265.<sup>27</sup> Lancaster also has a shopping

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<sup>24</sup> Blake Morgan, *More Customers are Shopping Online Now than at Height of Pandemic, Fueling Need for Digital Transformation*, (July 27, 2020), <https://www.forbes.com/sites/blakemorgan/2020/07/27/more-customers-are-shopping-online-now-than-at-height-of-pandemic-fueling-need-for-digital-transformation/?sh=cf50ea6bb90a>.

<sup>25</sup> Warren, Nj., Ordinance 20-19 (June 15, 2020); Escondido, Ca., Ordinance 2020-12 (May 20, 2020).

<sup>26</sup> Escondido, Ca., Ordinance 2020-12 (May 20, 2020).

<sup>27</sup> *United States Census Bureau*, <https://www.census.gov/quickfacts/lancastercitypennsylvania> (last visited Oct. 4, 2020).

mall called Park City Center, which has more than 150 stores.<sup>28</sup> It has a large parking lot that can be used to accommodate indoor and outdoor dining as well as allow for redevelopment of the unused parking spaces.

Lancaster's two ordinances, the Outdoor Retail Ordinance and the Outdoor Dining Ordinance are almost identical.<sup>29</sup> What these ordinances do right is they find a solution for businesses to operate by finding a way to reuse land that is currently going unused. For example, the ordinances allow for business owners to apply for temporary sidewalk café permits to create outdoor dining areas for their customers.<sup>30</sup> It also allows businesses to use parklets<sup>31</sup> as sidewalk cafes.<sup>32</sup> Business owners are even allowed to request street closures, which are considered on a case-by-case basis.<sup>33</sup> The most important takeaway from this ordinance in terms of reducing commercial parking is the idea of public dining areas.<sup>34</sup> The Lancaster Outdoor Dining Ordinance allows for public dining areas to be established by the Director of Public Works.<sup>35</sup> What this ordinance fails to do is establish that the use of empty parking spaces would be a good place to have these public dining areas since a lot of the land is going unused. The ordinance solves one problem by addressing the use of public dining areas, but fails to take into account that there is so much unused land in Lancaster in the form of commercial parking structures in malls that could allow for a public dining area. These ordinances find a way to use other unused

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<sup>28</sup> *Best Shopping in Lancaster*, <https://www.parkcitycenter.com/en.html#:~:text=Best%20Shopping%20in%20LancasterYou're%20in&text=This%20south%2Dcentral%20Pennsylvania%20retail,throughout%20more%20than%20150%20stores> (last visited Nov. 27, 2020).

<sup>29</sup> Lancaster, Pa., Ordinance 04-2020 (June 5, 2020); Lancaster, Pa., Ordinance 06-2020 (July 29, 2020).

<sup>30</sup> *Id.*

<sup>31</sup> A sidewalk extension that provides more space and amenities for people using the street.

<sup>32</sup> Lancaster, Pa., Ordinance 04-2020 (June 5, 2020); Lancaster, Pa., Ordinance 06-2020 (July 29, 2020).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

land like sidewalks to help accommodate businesses that want to have outdoor dining, and these same principles can be used in terms of parking structures.

### **B. Warren Township, NJ Ordinance**

Warren Township, NJ has a decent amount of land area with a size of 19.57 square miles, but with a small population of 15,625.<sup>36</sup> There are two shopping malls: Warren Village Shopping Center and the Corner Village at Warren. New Jersey was hit especially hard by COVID-19 because of its close proximity to the state of New York and so, these shopping malls remain closed. That is a lot of parking spaces that are currently not being used at all that could very well be used for something else.

The Warren Ordinance permits outdoor dining as well as limited sales and exercise classes within certain municipal parks and areas during the pandemic.<sup>37</sup> This Ordinance allows for outdoor tables, chairs, tents, umbrellas and benches within the property owned and adjacent to food establishments.<sup>38</sup> The Ordinance states that “nothing in this Ordinance shall preclude the use of a portion of the parking lot for all or a portion of such tables, chairs...”<sup>39</sup> The Ordinance also allows for municipal parks to be used to support local fitness businesses. Group fitness lessons are permitted in parking areas and sidewalks adjacent to the fitness or wellness business.<sup>40</sup> This Ordinance permits the use of parking lots to permit outdoor dining as well as fitness businesses.<sup>41</sup> There is an important aspect that this Ordinance lacks, just as the Lancaster Ordinance does.

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<sup>36</sup> *United States Census Bureau*, <https://www.census.gov/quickfacts/warrentownshipsomersetcountynewjersey> (last visited Oct. 4, 2020).

<sup>37</sup> Warren, Nj Ordinance 20-19 (June 15, 2020).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

Shopping malls have many food places that customers tend to frequent. The Warren Village Shopping Center has a Kings Supermarket, UPS Store, Country Squire Restaurants, a Starbucks, etc.<sup>42</sup> The parking lot allows for 315 cars.<sup>43</sup> The parking spaces directly outside of Country Squire or Starbucks are allowed to be used for outdoor dining, but the remainder of the parking lot remains unused. This Ordinance has yet to address how to use the remaining parking structure to create other alternatives for businesses holding on to survive.

### **C. Escondido, California Ordinance**

This narrative started off by speaking about a small Pennsylvania city like Lancaster and then speaking of a bigger township in New Jersey. Now, a big city like Escondido, California will be discussed because it is important to look at different sized cities, townships, or municipalities to see how a model ordinance would work in the state of Pennsylvania. Escondido, California has a land area of 36.81 square miles with a population of 151,625.<sup>44</sup> This city adopted an ordinance to address enacting temporary business relief measures related to statewide recovery and reopening efforts due to COVID-19.<sup>45</sup> The Ordinance distinguished between outdoor sale events in non-parking areas and outdoor sale events in parking areas.<sup>46</sup>

The Ordinance allows for authorization of temporary outdoor displays and sale events in commercial parking areas.<sup>47</sup> These sale events are allowed to recur during normal business hours on commercial property as long as the ordinance is effective.<sup>48</sup> It also establishes carry out zones by converting underutilized parking spaces into more functional spaces by allowing them

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<sup>42</sup> *Warren- Warren Village Shopping Center*, [http://www.thekleingrp.com/dt\\_properties/warren-warren-village-shopping-center](http://www.thekleingrp.com/dt_properties/warren-warren-village-shopping-center) (last visited Nov. 27, 2020).

<sup>43</sup> *Id.*

<sup>44</sup> *United States Census Bureau*, <https://www.census.gov/quickfacts/escondidocitycalifornia> (last visited Oct. 4, 2020).

<sup>45</sup> Escondido, Ca Ordinance 2020-12 (May 20, 2020).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

to be used for curbside pick-up, carry-out zones, and drop-off and pick-up related uses and activities. In addition, the Ordinance allows for business owners to convert on-street parking spaces to parklets (like the Lancaster Ordinance).<sup>49</sup> This Ordinance addresses commercial parking and unused land in a more direct way. It finds a way to use all of this unused land to help businesses recover post-pandemic by allowing commercial parking structures to be used for outdoor sale events and by converting unused street parking into parklets to allow for business owners to use this land to create outdoor dining areas for their customers.<sup>50</sup> This Ordinance comes the closest to finding ways to reinvent unused parking lots to help during the pandemic. This Ordinance will probably be the most helpful in creating the model ordinance for Pennsylvania.

#### **D. Social, Environmental, and Economic Benefits these Ordinances bring to Residents or Businesses**

The social benefits that come from these ordinances are quite obvious. The use of public dining areas allows for individuals to interact with one another during the pandemic without adding more risk to themselves. While the stay-at-home order was in effect, restaurants were still closed for indoor dining and outdoor dining was not available. Once Pennsylvania reopened indoor and outdoor dining, people rushed to restaurants and businesses because they missed the social aspects that come from these sorts of social situations. During the pandemic, there was a huge decline in mental health among all demographics because of the social isolation and loneliness that came with the pandemic.<sup>51</sup> There were significantly higher shares of people

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Rabah Kamal, Kendal Orgera, and Nirmita Panchal, *The Implications of COVID-19 for Mental Health and Substance Abuse*, (Aug. 21, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>.

(47%) that were sheltering in place that reported a decline in their mental health because of stay-at-home orders implemented across the country.<sup>52</sup> Shopping malls were empty and there was no such thing as being in a crowd unless you were at a grocery store. All three of the ordinances discussed in this narrative speak of outdoor dining. If Pennsylvania were to go back to strictly outdoor dining, the social benefits would remain the same because it gives the public a chance to interact with one another outside of the comfort of their homes. Allowing for businesses to operate at a higher capacity instead of forcing individuals to remain in their homes will show mental health going in an upward trajectory. Reducing commercial parking requirements would allow for more outdoor dining and outdoor retail opportunities, which would allow more social interactions and more social benefits as a result.

The economic benefits from reducing commercial parking requirements stems from the idea that more restaurants will be able to reopen for indoor dining and for the ones that are already open, they will be able to accommodate more people.<sup>53</sup> Indoor dining is currently open at a 50% capacity. Shopping centers are known for having many eateries that the public frequents on weekends. If the empty parking spaces were converted to dining areas for restaurants, there would be more people frequenting these restaurants. This, in turn, will help businesses recover at a much faster rate since they will be catering to more individuals.<sup>54</sup> Another thing to consider is that even if restaurants have just take-out or delivery, putting up tents and tables in these parking lots so that people can still enjoy their food in an almost restaurant type setting would have more individuals leaving their homes to frequent these

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<sup>52</sup> *Id.*

<sup>53</sup> *Outdoor dining has helped restaurants avoid disaster*, [https://www.washingtonpost.com/road-to-recovery/outdoor-dining-winter-coronavirus/2020/09/25/a603ac6c-ff60-11ea-8d05-9beaaa91c71f\\_story.html+&cd=4&hl=en&ct=clnk&gl=us](https://www.washingtonpost.com/road-to-recovery/outdoor-dining-winter-coronavirus/2020/09/25/a603ac6c-ff60-11ea-8d05-9beaaa91c71f_story.html+&cd=4&hl=en&ct=clnk&gl=us) (last visited: Nov. 27, 2020).

<sup>54</sup> *Id.*

establishments.<sup>55</sup> Any form of normalcy will force people to leave their homes – this comes pretty close to normal. The Lancaster Ordinance fails to address this, but the Warren and Escondido Ordinances allow for the use of unused parking spaces to accommodate the demands under this “new normal.” The more use of unused land to help businesses recover, the better off the economy will be because the business owners are still struggling with the losses sustained during the pandemic.

Lastly, the environmental benefits these ordinances bring are that freeing up parking space will bring about new development and allow for a way to boost the amount of green space available. Right now, municipalities all over Pennsylvania and the country are underutilizing its land. Zoning, for the most part, is supposed to help with land use planning. Wasting so many empty parking spaces that never fill to capacity is a huge misuse of land especially during a time when the use of this land can be helping so many businesses recover.

In addition to increasing green space, reducing commercial parking lots will also reduce the amount of stormwater runoff collected.<sup>56</sup> As of 2017, there were eight Pennsylvania municipalities with stormwater fee programs.<sup>57</sup> There are a number of things that can be done to reduce the amount of stormwater runoff including having permeable paving,<sup>58</sup> bioswales,<sup>59</sup> or rain gardens.<sup>60</sup> Reinventing the parking structures with these methods is a good start to reducing

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<sup>55</sup> *Id.*

<sup>56</sup> *Sources and Solutions: Stormwater*, <https://www.epa.gov/nutrientpollution/sources-and-solutions-stormwater#:~:text=Rain%20and%20snow%20flow%20over,facility%20to%20filter%20out%20pollutants>, (last visited Nov. 28, 2020).

<sup>57</sup> *Stormwater Fees: Overview of Municipal Stormwater Fee Programs*, [https://pecpa.org/wp-content/uploads/Stormwater-Utility-Fee-Booklet\\_Revamp\\_March17.pdf](https://pecpa.org/wp-content/uploads/Stormwater-Utility-Fee-Booklet_Revamp_March17.pdf), (last visited Nov. 27, 2020).

<sup>58</sup> A type of pavement with porous properties that will allow for the infiltration of water.

<sup>59</sup> A storm water runoff conveyance system that provides an alternative to storm sewers. They can absorb low flows or carry runoff from heavy rains to storm sewer inlets or directly to surface waters.

<sup>60</sup> A garden of native shrubs, perennials, and flowers planted in a small depression, which is usually formed on a natural slope. It is designed to temporarily hold and soak in rainwater runoff that flows from roofs, driveways, patios or lawns.

stormwater runoff, but reducing commercial structures in general and introducing municipalities to these types of methods would mean a lot less money spent to treat the water. Minimizing surface parking lots will reduce expenses related to stormwater management, which will have both an economic and environmental impact.

What these ordinances do not address is the idea that reducing commercial parking requirements can make room for more development, which will help socially, economically, and environmentally. As discussed early on in this narrative, converting commercial parking structures to allow for more food trucks to have their own space or establish more flea markets from time to time will help reinvent these parking structures while at the same time allow for so many benefits to the public. Since the space will still be limited to outdoor business ventures only, there is less of a risk of people transmitting COVID-19. At the same time, small businesses will flourish and lastly, the use of this space will allow for unused land to be redeveloped into something more useful during the pandemic. This idea could still remain even after the pandemic since online shopping is here to stay for the considerable future and issues related to stormwater management will remain unless there is a strong change to how parking structures currently function.

## **V. Recommendation to PSATS**

The Proposed Ordinance for PSATS will address the issues discussed in part II by reducing commercial parking requirements to incorporate outdoor dining and outdoor retail while simultaneously allowing for redevelopment of the parking structures and making the parking structures more sustainable. Right now, there are many townships in Pennsylvania in addition to Lancaster that have proposed ordinances to try to resolve issues created by the pandemic by allowing for parking spaces to be repurposed to help struggling businesses. The

Proposed Ordinance identifies the current problem associated with commercial parking structures and makes suggestions based on those findings.

Under the Proposed Ordinance, applicants may apply for redevelopment on existing parking spaces. There are currently more parking spaces available than there is a need for. Allowing for redevelopment will boost the economy by repurposing the land in a more useful manner rather than having the land being wasted. In addition, there are many options available to repurpose the parking structures in a way that makes it more environmentally friendly and more sustainable. Reducing commercial parking structures in general would significantly reduce the amount of stormwater runoff, which is directly associated with having large surface parking lots, as discussed earlier. Under the Proposed Ordinance, applicants will be able to apply for the construction of green space. Less than 10% of the parking spaces will also be converted into bicycle facilities, which is yet another environmental benefit that this Proposed Ordinance offers.

Most importantly, the Proposed Ordinance addresses the need for repurposing of the parking lots to assist businesses in recovering post-pandemic. It allows for temporary repurposing of parking spaces to accommodate outdoor dining and retail areas. It also allows for applicants to apply for patio extensions to create space for outdoor dining with table seating for restaurants and bars. This is significant because although many municipalities have allowed for some sort of accommodation for struggling businesses, there are not many municipalities that have addressed using commercial parking structures to accommodate for such an issue.

The three ordinances addressed in part IV have attempted to answer the question as to how to help businesses post-pandemic but have fallen short of incorporating commercial parking structures with the exception of the California Ordinance. As stated earlier, there are more parking spaces available than there is need for because of the emphasis on online shopping.

Converting these parking structures into outdoor dining and outdoor retail areas allows businesses to continue functioning during the pandemic in the event that there is another closure of indoor dining altogether. In addition, there are currently guidelines in place that indoor dining is open to a limited capacity. Having more outdoor dining opportunities will allow for businesses to cater to more individuals and will help struggling business survive throughout the pandemic. The Proposed Ordinance does a great job in explaining how an ordinance would work in this context.

Currently, there does not seem to be any added expenses associated with the adoption of this Proposed Ordinance. The Proposed Ordinance addresses a number of issues that will help municipalities save money by reducing the amount of stormwater runoff. The only foreseen added expense would be the burden on the Zoning Hearing Board since landowners would need their approval before starting development on the commercial parking structures. These costs will be offset by the amount of money municipalities will save on stormwater management and the economic benefits that the ordinance will bring by incorporating outdoor dining and outdoor retail opportunities for consumers and business owners. There will also be a large increase in development because the parking structures will be used in a more efficient and effective way, which will bring about economic benefits as well. Because of all the benefits this ordinance brings, there are no real costs associated with its adoption.

## **VI. Conclusion**

The current problem with wasted unused land can be solved by looking at what other municipalities are doing to find a solution. Lancaster, Warren, and Escondido have all addressed this issue by finding a way to redevelop unused parking spaces by having sidewalk cafes, public dining areas, parklets, and having outdoor sale events in commercial parking structures. The

ordinances by these three communities were used in this narrative to show how smaller and bigger cities/municipalities can adapt to growing changes in society. Even before the pandemic, there was more of an emphasis on online shopping and now more than ever, people are shopping online because they fear that going into stores makes them more susceptible to catching COVID-19. The ordinances in Pennsylvania need to be changed to reflect growing societal trends. There is no need for commercial parking structures to sit empty for majority of the year when they could very well be used for new development or help with existing issues that have come forth because of the pandemic. The new model ordinance adopted by PSATS needs to reduce commercial parking requirements to allow for these changes in society as well as new development that can come forth because of it.

## Repurposing of Commercial Parking Model Ordinance

**NOW, THEREFORE, be it enacted and ordained by the Township and the same is hereby ordained and enacted as follows, to wit:**

**ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.**

### Chapter 1.

#### Preliminary Provisions.

##### Section 101. Title.

This ordinance shall be known and may be cited as Repurposing of Commercial Parking Model Ordinance.<sup>61</sup>

##### Section 102. Purpose.

The purposes of the ordinance are as following:

- (1) to promote efficient use of land and to encourage alternative uses of underutilized parking spaces to satisfy the needs of occupants, employees, and patrons of all uses in this Township;<sup>62</sup>
- (2) to create a sustainability-based approach for repurposing commercial parking lots;
- (3) to provide more enabling space to expand businesses;
- (4) to convert underutilized parking spaces into more functional spaces and authorize the conversion of parking spaces into permanent and temporary repurposing uses<sup>63</sup>;
- (5) to create incentives for repurposing underutilized parking spaces by waiving certain permit fees; and

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<sup>61</sup> § 19.83. Title section., 101 PA ADC §19.83.

<sup>62</sup> Adapted to use for repurposing underutilized parking spaces from Rochester Hills, Mich., Zoning Ordinance art. 11, ch. 1, § 138-11.100 (2020).

<sup>63</sup> Adapted language from “The City Council desires to convert underutilized on-street parking spaces into more functional spaces and hereby authorizes the conversion of on-street parking spaces into parklets.” Escondido, Cal., Ordinance 2020-12 (May 20, 2020).

(6) to establish rules and regulations in repurposing commercial parking.

**Section 103. Legal authority.**

This ordinance is enacted and ordained:

- (a) under the grant of powers by the General Assembly of the Commonwealth of Pennsylvania under the act of July 31, 1968 (P.L. 805, No. 247) known as the Pennsylvania Municipalities Planning Code.<sup>64</sup>
- (b) under the act of June 24, 1931 (P.L. 1206, No. 331) known as the First Class Township Code.<sup>65</sup>
- (c) under the act of May 1, 1933 (P.L. 103, No. 60) known as the Second Class Township Code.

**Section 105. Definitions.**

The following words and phrases when used in this ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:<sup>66</sup>

“Applicant.” An individual or business entity that files a formal application for one or more of the permits listed in this ordinance. This term does not include applicants that have successfully obtained the permit.

“Bicycle facilities.” An area used for the storage of bicycles tied to a specific building or use.

This includes bicycle racks, lockers, and access areas.<sup>67</sup>

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<sup>64</sup> “Parking” Ordinances and Resolutions for Susquehanna Township (Fall 2019); 52 Pa. Stat. §10101 et. Seq. <https://widenerenvironment.wordpress.com/students/ordinances/>

<sup>65</sup> “Parking” Ordinances and Resolutions for Susquehanna Township (Fall 2019); 52 Pa. Stat. §55101 et. Seq.

<sup>66</sup> Language verbatim from §19.84. Definition section., 101 PA ADC §19.83.

<sup>67</sup> “Parking” Ordinances and Resolutions for Susquehanna Township (Fall 2019).

“Business.” An individual or business entity that is engaged in the commercial business including but not limited to food and retail businesses, banks, and offices. This is an existing entity with permits in accordance with the Township.

“Green space.” Land that is partly or completely covered with grass, trees, shrubs, or other vegetation and for the enjoyment of the public. This term includes but is not limited to parks, playgrounds, and community gardens.<sup>68</sup>

“Outdoor dining area.” An area utilizing parking spaces beyond building line for the purpose of serving of food and drink to patrons of an operating business. This shall include such areas used by restaurants, food service businesses and other food establishments for the outdoor sale of food to the general public. This is not intended to include any outdoor dining area located entirely within the private property of the business.<sup>69</sup>

“Outdoor retail area.” An area utilizing parking spaces beyond the building line for the purpose of showcasing and selling retail items to patrons of an operating business.

“Parking space.” An area in a parking lot, including and encompassing one or multiple spaces marked for the use of parking outside the commercial property and within the commercial parking lot.

“Parking study.” A study that is performed to determine location, use and adequacy of existing parking facilities. This includes but is not limited to parking inventories, parking usage surveys, and parking facility service studies.<sup>70</sup> This is usually conducted and submitted by the applicant to show that the current parking spaces are underutilized.

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<sup>68</sup> Definition verbatim, added “for the enjoyment of the public”, “playground”, and excluded “cemeteries” because it is not fit for commercial parking lots. *Region 1: EPA New England*, What is Open Space/Green Space (April 10, 2017), <https://www3.epa.gov/region1/eco/uep/openspace.html>

<sup>69</sup> Taken verbatim with only editing of redundancy from Gettysburg, Pa., Code §13-1102 (2015).

<sup>70</sup> Edited to use. Chapter 27 Parking Studies, <https://www.globalsecurity.org/military/library/policy/army/fm/19-25/CH27.htm#:~:text=Parking%20studies%20are%20performed%20to,to%20improve%20efficiency%20and%20safe>. (last visited Oct. 25, 2020).

“Permanent repurposing.” The use of parking spaces for alternative use that include the change of the landscape by redevelopment, raised deck platform, fence, walls, or other structures.

“Permittees.” Applicants who have complied with all requirements for permit, applied for such permit, and successfully obtained such permit.

“Redevelopment.” The use of parking spaces for new construction, including but not limited to new buildings and facilities constructed in accordance with existing Township rules and regulations.

“Temporary repurposing.” The use of parking spaces for alternative purposes that do not cause significant and irreparable damage to the existing parking lot.

“Township.” The Township of \_\_\_\_\_.

### **Section 106. Applicability.**

In any and all connection with every industrial, commercial, business, recreational uses, repurposing standards of underutilized Parking Spaces shall be provided in accordance with all of the following regulations except where otherwise specified herein. <sup>71</sup> The \_\_\_\_\_ District shall be exempt from the provisions of this ordinance. <sup>72</sup>

## **Chapter 2**

### **Permanent Repurposing of Use**

#### **Section 201. Purpose.**

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<sup>71</sup> Used language for applicability with adaption for repurposing standards instead of off street parking requirements from Waukee, Iowa, Zoning & Community Development Ordinance 168.03 (July 15, 2019).

<sup>72</sup> Id. at 168.06. Space left open for

A permittee shall be allowed to permanently repurpose existing parking spaces to accommodate redevelopment, green spaces, patio extension of existing restaurants and bars, and bicycle parking.

**Section 201. General requirements.**

In order to allow permanent repurposing, the following conditions shall be met:

- (1) Parking spaces are shown to be underutilized by a parking study.
- (2) Parking spaces exceed the minimum requirement.

**Section 203. Redevelopment.**

- (a) Purpose. An applicant may apply for redevelopment of new buildings on existing parking spaces.
- (b) Compliance. The redevelopment shall be in accordance with all Township ordinances and in compliance with all federal and state laws, as well as rules and regulations promulgated by the Township which pertain to new constructions within the Township.<sup>73</sup>
- (c) Permit. A permit shall be obtained, according to Chapter 4 of this ordinance.
- (d) Fee waiver. An applicant may submit a request to waive permit fee according to Section 403(b) of this ordinance. A waiver of permit fees shall be granted if the new collective number of parking spaces meets at least 80% of the minimum parking standard.
- (e) Displacement of required parking spaces. Where a required parking space is displaced by building expansion, a new addition of parking spaces shall be waived if the new collective number of parking spaces meets at least 80% of the minimum parking standard.<sup>74</sup>

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<sup>73</sup>Taken verbatim and only edited to include redevelopment. Gettysburg, Pa., Code §13-1104 (2015).

<sup>74</sup> Adapted to provide for more flexibility for the parking standard when there is a building expansion. Waukee, Iowa, Zoning & Community Development Ordinance 168.03 (July 15, 2019).

### **Section 203. Green space.**

- (a) Purpose. Applicants may apply for construction of green space on existing parking spaces.
- (b) Compliance. The construction of green space shall be in accordance with all Township ordinances and in compliance with all state and federal laws, as well as rules and regulations promulgated by the Township which pertain to recreational spaces within the Township.<sup>75</sup>
- (c) Fee waiver. All permit fees shall be waived by Township for application of construction of green spaces according to Section 403(b) of this ordinance.

### **Section 204. Patio extension.**

- (a) Purpose. An applicant may apply to construct a patio extension, to create a space for accessory outdoor dining and patios with table seating in connection with a restaurant or bar in existing parking spaces.<sup>76</sup>
- (b) The following physical requirements shall apply:
  - (1) The patio extension must be adjacent and attached to the building line of an existing restaurant or bar.
  - (2) A maximum of 33% of existing parking lots may be utilized for a restaurant patio extension, pursuant to the minimum parking requirements.<sup>77</sup>
  - (3) The patio extension shall not interfere with current travel lanes or handicapped parking spaces.

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<sup>75</sup> Taken verbatim and only edited to include recreational spaces. Gettysburg, Pa., Code §13-1104 (2015).

<sup>76</sup> *Temporary Patio Extension Program*, Parker Colorado, <http://www.parkeronline.org/2257/Temporary-Patio-Extension-Program>, (last visited October 25, 2020).

<sup>77</sup> *Id.*

- (c) Compliance. The patio extension shall be in accordance with all Township ordinances and in compliance with all state and federal laws, as well as rules and regulations promulgated by the Township which pertain to this use and operation of a patio extension of a business within the Township. <sup>78</sup>
- (f) Permits. A permit shall be obtained, according to Chapter 4 of this ordinance
- (g) Fee waiver. An applicant may submit a request to waive permit fee according to Section 403(b) of this ordinance. A waiver of permit fees shall be granted if the new collective number of parking spaces meets at least 80% of the minimum parking standard.

**Section 205. Bicycle parking.**

- (a) No permit. Not more than 10% of parking spaces may be converted into bicycle facilities without a permit.
- (b) Permit. A permit shall be obtained, according to Chapter 4 of this ordinance, if converting more than 10% of parking spaces into bicycle facilities.
- (c) The following requirements must be met:
  - (1) Bicycle facilities shall be located in convenient, highly visible, active, well-lit areas of the parking lot. <sup>79</sup>
  - (2) Bicycle facilities shall be located within 200 feet of the primary building entrance.
  - (3) The addition of bicycle facilities shall not make changes to any current layout of parking lot and shall be within the current demarcated lines for parking spaces.
  - (4) Bicycle facilities shall not encroach on handicap accessible parking spaces. <sup>80</sup>

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<sup>78</sup> Taken verbatim and only added language to pertain to patio extensions. Gettysburg, Pa., Code §13-1104 (2015).

<sup>79</sup> Verbatim with minimal edits. “Parking” Ordinances and Resolutions for Susquehanna Township (Fall 2019). <https://widenerenvironment.wordpress.com/students/ordinances/>

<sup>80</sup> *Id.*

- (5) Bicycle facilities shall provide for storage and locking of bicycles, either in lockers, medium security racks, or equivalent installations in which both the bicycle frame and wheels may be locked by the user. <sup>81</sup>
- (6) Bicycle facilities shall consist of racks or lockers anchored so that it cannot be easily removed. <sup>82</sup>
- (7) Bicycle facilities shall be of solid construction, resistant to rust, corrosion, hammers, and saws. <sup>83</sup>
- (8) Bicycle facilities shall be designed to be consistent with their environment and be incorporated whenever possible into building or street furniture design. <sup>84</sup>
- (9) Bicycle racks shall conform to the following:
1. Be simple, functional and durable.
  2. Be capable of supporting a bicycle in an upright position.
  3. Allow the user to lock a bicycle frame and wheel with either a standard U-shaped lock or a chain and cable and lock.
  4. Have no edges, seams, or hardware to pose a hazard or become unsightly.
  5. Be freestanding units to allow flexibility in the number provided and in their placement. <sup>85</sup>

**Section 206. Pickup parking lanes.**

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> This section is verbatim. "Parking" Ordinances and Resolutions for Susquehanna Township (Fall 2019). <https://widenerenvironment.wordpress.com/students/ordinances/>

- (a) No permit. Not more than 10% of parking spaces may be converted into pick-up parking lanes without a permit.
- (b) Permit. A permit shall be obtained, according to Chapter 4 of this ordinance, if converting more than 10% of parking spaces into pickup parking lanes.
- (c) General requirements:
  - (1) Pickup parking lanes shall exist within current demarcated lines for existing parking spaces.
  - (2) Pickup parking lanes shall not encroach on handicap accessible parking spaces.
  - (3) Pickup parking lanes shall have clear signage that marks the parking space.

### **Chapter 3**

#### **Temporary Repurposing of Use**

##### **Section 301. Purpose.**

Temporary repurposing of parking spaces shall be allowed to accommodate outdoor dining areas and outdoor retail areas.

##### **Section 302. General requirements.**

- (a) Permit. Temporary repurposing of parking spaces shall be prohibited without a permit obtained accordingly to Chapter 4 of this ordinance.
- (b) Physical requirements. The following shall apply to parking spaces repurposed for temporary uses:
  - (1) The minimum parking requirement shall be met after the repurposing of the parking space.
  - (2) The width of parking lanes shall exceed 7 feet.<sup>86</sup>

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<sup>86</sup> Adapted from Conditions and Penalties section of the application. Department of Licenses and Inspections, City of Philadelphia, Application for Outdoor Seating in the Right-Of-Way (2020).

- (3) The area may not encroach on accessible parking space.<sup>87</sup>
- (4) Tables, chairs, and equipment may not protrude into a travel lane.<sup>88</sup>
- (5) Any equipment may not cause irreparable damage to existing spaces.<sup>89</sup>
- (6) The area shall have a setback of at least 4 feet from adjacent parking spaces and 18 inches from travel lanes.<sup>90</sup>

**Section 303. Outdoor dining requirements.**

- (a) Physical requirements. The following requirements must be met:
  - (1) An outdoor dining area shall be used for table service only, restricted to the use of Parking Spaces contiguous to the property line or building line.<sup>91</sup>
  - (2) No building entrance or egress may be blocked at any time.<sup>92</sup>
  - (3) Outdoor dining area may not infringe on the right of way within the parking lot, contingent to the design of the parking lot.
  - (4) Outdoor dining area shall be open to the air.<sup>93</sup>
  - (5) Outdoor dining area shall provide and maintain adequate lighting.<sup>94</sup>
- (b) Sale and consumption of alcoholic beverages. An applicant for an outdoor dining area permit intending to serve alcoholic beverages shall obtain the appropriate liquor license and approvals from the Pennsylvania Liquor Control Board and shall comply with all

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Warren, N.J., Ordinance 20-19 (June 3, 2020).

<sup>90</sup> Lancaster, Pa., COVID-19 Outdoor Dining Ordinance Rules and Regulations (June 5, 2020).

<sup>91</sup> Gettysburg, Pa., Code §13-1103 (2015).

<sup>92</sup> *Id.*

<sup>93</sup> Department of Licenses and Inspections, City of Philadelphia, Application for Outdoor Seating in the Right-Of-Way (2020).

<sup>94</sup> Lancaster, Pa., Sidewalk Cafes Ordinance 5-1995, Art. 1192 § 240-17 (1995).

regulations of and promulgated by the Pennsylvania Liquor Control Board and with the following specific requirements: <sup>95</sup>

- (1) Except within the outdoor dining area as authorized by the Pennsylvania Liquor Control Board, no alcohol may be served or consumed outside of any other public right of way. <sup>96</sup>
  - (2) No alcoholic beverage may be transported by consumers, from the outdoor dining area, except where customers are allowed by the business operating the Outdoor Dining Area to bring their own alcoholic beverages, the beverages may be transported in sealed containers. <sup>97</sup>
  - (3) An outdoor dining area shall comply with provisions regulating alcohol consumption on public property. <sup>98</sup>
- (c) Removable Equipment. The following requirements shall apply:
- (1) An outdoor dining area may not be permanently located within the Parking Spaces by means of raised deck platforms, fences, walls, or other structures. The boundaries of an outdoor dining area shall be delineated by use of temporary barriers only. Any such temporary barriers shall be easy to remove and no greater than six feet in height. <sup>99</sup>
  - (2) Any temporary barriers shall be compliant with regulations promulgated under the Americans with Disabilities Act of 1990, as amended. <sup>100</sup>

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<sup>95</sup> Adapted and simplified language from Gettysburg, Pa., Code §13-1103 (2015).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

- (3) An outdoor dining area shall contain and use only removable tables and chairs. Umbrellas or other nonpermanent covers may be used. <sup>101</sup>
- (4) An operator of an outdoor dining area shall remove all of the chairs, tables, and equipment associated with the use and operation thereof immediately following the cessation of use of the outdoor dining area if it is not in use for a significant period of time. <sup>102</sup>
- (5) All movable furniture shall be moved to the inside of the building or secured to ground when not in use. <sup>103</sup>
- (6) No plastic food displays, food storage, or refrigeration apparatus may be permitted in the Outdoor Dining Area. <sup>104</sup>
- (7) Outdoor heaters shall be permitted provided approval by the Township. The Township, in concert with the Fire Marshalls, shall approve and or limit their location and operation. <sup>105</sup>
- (8) Tents shall be permitted provided that they do not cause irreparable harm to the existing landscape.

(d) Miscellaneous. The following shall apply:

- (1) The seating capacity of exterior dining may not exceed the current interior dining capacity of the existing business. <sup>106</sup>

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> From Conditions and Penalties section of application. Department of Licenses and Inspections, City of Philadelphia, Application for Outdoor Seating in the Right-Of-Way (2020).

<sup>104</sup> *Id.*

<sup>105</sup> Warren, N.J., Ordinance 20-19 (June 3, 2020).

<sup>106</sup> Adapted from the Conditions and Penalties section from the application. Department of Licenses and Inspections, City of Philadelphia, Application for Outdoor Seating in the Right-Of-Way (2020).

- (2) The outdoor dining area may not contain areas preparing food or bars preparing drinks.<sup>107</sup>
- (3) Permittee shall maintain and operate an outdoor dining area in accordance with all Township ordinances and in compliance with all Federal and State laws, as well as rules and regulations promulgated by the Township which pertain to this use and operation of an outdoor dining area within the Township.<sup>108</sup>
- (4) Permittee operating an outdoor dining area shall indemnify the Township and its agents from and against all liability arising out of the operation of an Outdoor Dining Area in the parking area or other areas within the Township.<sup>109</sup>

#### **Section 304. Outdoor Retail Requirements.**

(a) Physical Requirements. The following shall apply:

- a. An outdoor retail area shall be used for the sale and display of retail items, and restricted to the use of parking spaces contiguous to the property line or building line.
- b. No building entrance or egress may be blocked at any time.<sup>110</sup>
- c. An outdoor retail area may not infringe on the right of way within the parking lot, contingent to the design of the parking lot.
- d. An outdoor retail area shall be open to the air and shall provide and maintain adequate lighting.<sup>111</sup>

(b) Removable Equipment. The following shall apply:

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Gettysburg, Pa., Code §13-1103 (2015).

<sup>111</sup> Adapted from Lancaster, Pa. COVID-19 Outdoor Retail Ordinance Rules and Regulations (July 29, 2020).

- a. An outdoor retail area may not be permanently located within existing parking spaces by means of raised deck platforms, fences, walls, or other structures. The boundaries shall be delineated by use of temporary barriers only. Any such temporary barriers shall be easy to remove and may be no greater than six feet in height.<sup>112</sup>
- b. Any temporary barriers shall be compliant with regulations promulgated under the Americans with Disabilities Act of 1990, as amended.<sup>113</sup>
- c. Canopies and awnings shall be permitted provided that they do not cause irreparable harm to the existing landscape.
- d. Tables, display cases, racks and other similar items located in outdoor retail area shall be self-supporting and sturdy enough to withstand outside elements. Tables, display cases, racks and other similar items shall not be secured or affixed to the ground or the adjoining property.<sup>114</sup>
- e. All equipment and retail items shall be removed within one hour of closing.<sup>115</sup>

(c) Miscellaneous. The following shall apply:

- a. The hours of operation shall match the hours of the sponsoring retail establishment.<sup>116</sup>

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<sup>112</sup> *Id.*

<sup>113</sup> Gettysburg, Pa., Code §13-1103 (2015).

<sup>114</sup> Adapted from application for Outdoor Dining Area to Outdoor Retail Area. Gettysburg, Pa., Code §13-1103 (2015).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

- b. All merchandise or services displayed outdoors shall be of the same types ordinarily sold indoors at the associated retail establishment. All sale transactions shall be conducted indoors. <sup>117</sup>
- c. Permittee operating an outdoor retail area shall indemnify the Township and its agents from and against all liability arising out of the operation of an outdoor retail area in the parking area or other areas within the Township. <sup>118</sup>

## **Chapter 4**

### **Permits**

#### **Section 401. General requirements.**

- (a) Permit. Any business intending to repurpose current parking spaces, whether permanent or temporary, shall obtain a permit from the zoning officer, unless otherwise noted in this ordinance. <sup>119</sup>
- (b) Fee. A fee, in an amount to be established from time to time by resolution of the Township, shall be paid with the filing of the application. <sup>120</sup>

#### **Section 402. Permit application requirements.**

Permit application shall include the following:

- (1) The name and address of an applicant. <sup>121</sup>
- (2) The dimensions of the existing parking spaces intended to be used for proposed repurposing. <sup>122</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Adapted from the permit requirements. Gettysburg, Pa., Code §13-1104 (2015).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

- (3) A diagram, to scale of the actual intended location of equipment, tables and chairs. <sup>123</sup>
- (4) Proof of liability insurance conforming with requirement of Township. <sup>124</sup>
- (5) If applicable, written consent of the property owner, for the repurposing of existing parking spaces, who is leasing the business property to an applicant. <sup>125</sup>

**Section 403. Permanent repurposing.**

- (a) Additional permits. The issuance of a permanent repurposing permit allows applicant to use existing parking space for the proposed purpose. Additional permit may be required in the construction of permanent structures and shall be obtained in accordance with Township rules and regulations. An additional permit shall be obtained in the normal process.
- (b) Fee waiver. Permit fees shall be waived if the following is met:
  - a. A waiver application is included with the original application.
  - b. The waiver application includes grounds for waiver according to Section 202(d), 203(c), or 204(g) of this ordinance.

**Section 404. Temporary repurposing.**

- (a) Annual permit. A permit for temporary repurposing permit are issued annually and expires at the end of each calendar year in which it is issued. <sup>126</sup>
- (b) Deadline. An application for a permit to temporarily repurpose parking spaces shall be submitted before the annual deadline set by the zoning officer.

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<sup>123</sup> *Id.*

<sup>124</sup> Liability insurance needed in Conditions for issuance of license section. Lancaster, Pa., Sidewalk Cafes Ordinance 5-1995, Art. 1192 § 240-20 (1995); Adapted from the permit requirements. Gettysburg, Pa., Code §13-1104 (2015).

<sup>125</sup> Adapted from the permit requirements. Gettysburg, Pa., Code §13-1104 (2015).

<sup>126</sup> *Id.*

- (c) Outdoor dining area requirements. A permit for outdoor dining area shall include these additional requirements along with requirements in Section 401 and 402 of this ordinance:
- a. The proposed seating capacity.
  - b. The listing and proof of proper and current licenses for the operation of food service.<sup>127</sup>
  - c. If applicable, proof of a state liquor license authorizing business to serve alcoholic beverages.<sup>128</sup>

**Section 406. Authority of zoning officer.**

The zoning officer shall have the authority to deny an application for a permit to temporarily repurpose parking spaces according to Section 306 of this ordinance. The zoning officer shall also have the authority to suspend or revoke a permit for temporary repurposing according to Section 307 and 308 of this ordinance.<sup>129</sup>

**Section 407. Denial.**

The zoning officer may deny a permit application for temporary repurposing for any of the following reasons:

- a. There is opposition of the proposed repurposing of parking space by local residents or businesses,
- b. The applicant failed to comply with a permit requirement in Section 304 of this ordinance, or<sup>130</sup>

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Adapted from “Parking” Ordinances and Resolutions for Susquehanna Township (Fall 2019). <https://widenerenvironment.wordpress.com/students/ordinances/>

<sup>130</sup> Adapted and redacted. *Id.*

- c. The applicant failed to comply with a requirement in Section 301, 302, or 303 of this ordinance.

**Section 408. Suspension.**

The zoning officer may suspend a permit for temporary repurposing, if:

- a. A required business or health permit has been suspended or is invalid; or
- b. A permittee fails to maintain the outdoor area in accordance with Section 302 and 303 this Ordinance.<sup>131</sup>

**Section 409. Revocation.**

The Township may revoke a permit for temporary repurposing if:

- a. A required business or health permit have been revoked or cancelled<sup>132</sup>
- b. A permittee has violated any of the conditions set forth in Section 301 and 302 of this ordinance;<sup>133</sup>
- c. An outdoor dining area is no longer in the best interest of the Township;<sup>134</sup>
- d. An applicant has failed to correct violations of this ordinance within 14 days of receipt of notice.<sup>135</sup>

**Section 410. Notice to permittee.**

Upon revocation or suspension of a parklet permit, the zoning officer shall give the permittee written notice of the action that has been taken and the reasons for the action.<sup>136</sup>

**Section 411. Appeals.**

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Fort Lauderdale, Fla., Ch. 25, art. VII-A § 25A-187 (2020).

<sup>136</sup> *Id.*

An appeal of any disapproval, conditional or amended approval of a permit shall be made to the zoning hearing board within 14 days of notice.<sup>137</sup>

## **Chapter 5**

### **Other Provisions**

#### **Section 501. Severability.**

The provisions of this ordinance are severable. If any provision of this chapter or its application is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.<sup>138</sup>

#### **Section 502. Repeals.**

All ordinances in force on the date of the adoption of this ordinance are hereby repealed insofar as they are inconsistent with the provisions of this ordinance as of the effective date of this adopting ordinance, unless otherwise provided.<sup>139</sup>

#### **Section 503. Effective Date.**

This act shall take effect \_\_\_\_\_.<sup>140</sup>

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<sup>137</sup> Verbatim and added date requirement. Gettysburg, Pa., Code §13-1104 (2015).

<sup>138</sup> Adapted from 53 PA. STAT. § 5517 (2020).

<sup>139</sup> Taken verbatim with edits of redundancies. Bethel Park, Pa., Code §1.5.1

<sup>140</sup> § 19.72. Specified Date., 101 PA ADC §19.72.