

ORDINANCE NO. 17-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING ARTICLE 6.3 "USE AND WORK IN THE PUBLIC RIGHT OF WAY" OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH BY AMENDING SECTION 6.3.3 "SIDEWALK CAFE" TO ELIMINATE REGULATIONS FOR SIDEWALK CAFES LOCATED ON PRIVATE PROPERTY; AMENDING SECTION 6.3.3 (A) "PERMIT AND FEES" TO ADD LEASING FEES; AMENDING SECTION 6.3.3 (F) "REGULATIONS GOVERNING THE USE, DESIGN, AND MAINTENANCE OF A SIDEWALK CAFE" TO CREATE TWO ZONES; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City has permitted sidewalk cafes to be located in certain areas of the City; and

WHEREAS, the City desires to modify the Land Development Regulations (LDRs) governing sidewalk Cafes to provide for the public health, safety and welfare of the residents of the City and its visitors; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency (LPA), has determined that the amendments are consistent with and further the goals, objectives, and policies of the Comprehensive Plan; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on April 17, 2017, and voted 5 to 0 to recommend that the amendments be approved; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning Staff report; and

WHEREAS, the City Commission at duly notice public meetings on _____2017, and on _____2017, received and considered comments from the public and gave careful consideration to all aspects of this Ordinance; and

WHEREAS, the City Commission has determined it to be in the best interest of the City of Delray Beach that the LDRs be amended as described in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Article 6.3, "Use and Work in the Public Right of Way", Section 6.3.3 "Sidewalk Cafe", of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

Section 6.3.3 Sidewalk Cafe:

(A) **Definition:** A "Sidewalk Cafe" is a group of tables with chairs grouping of dining furniture which may include tables and chairs and associated articles, which has been approved by the City through a Sidewalk Cafe permit and is situated and maintained outside within a public right-of-way, a portion of which may be located in a public pedestrian way (sidewalk), between the building front (and/or side for corner lots) and the curb at the edge of the roadway whether on public or private property (excluding interior courtyard seating which is subject to parking requirements); and such area is used for the consumption of food and beverages sold to the public from an adjoining restaurant or other eligible business. All tables and chairs, and associated articles must be located within the sidewalk Cafe permit area. Sidewalk Cafes are allowed only when in compliance with this Section.

(AB) **Permit and Fees:** It shall be unlawful for any person to establish a Sidewalk Cafe at any site unless a valid permit to operate a Sidewalk Cafe has been obtained for that site, from the City pursuant to this Section. The permit shall be issued on a form provided by the City of Delray Beach. No permit shall be issued until all the requirements of this Section have been met. Permits shall not be transferable. All permits shall comply with the following:

(1) Each Sidewalk Cafe permit shall be effective for one year, from July 1st until June 30th. Any new permit application received after July 1st until December 31st will pay the full cost of the permit fee and the permit shall expire June 30th of the following year. Any new permit application received after December 31st will pay one-half of the cost of the permit fee and the permit shall expire June 30th of the same year. In addition, should the initial Sidewalk Cafe permit or any renewal permit be cancelled for any reason pursuant to this section, a new application fee shall be required for any subsequent permits issued.

(2) The initial Sidewalk Cafe application fee is one hundred fifty dollars (\$150.00). The along with the annual permit fee is \$4.75 based upon per the square footage of approved Sidewalk Cafe space; shall both be established by a resolution of the City Commission. Additional "leasing fees" shall be collected for any Sidewalk Cafe located in the Florida

Department of Transportation (FDOT) right-of-way along East Atlantic Avenue and along South Ocean Boulevard. The FDOT leasing fees will also be established by resolution of the City Commission and collected based on the terms outlined in the Lease Agreement between the City and the FDOT, which may be amended from time to time.

(3) **Renewals:** Renewals of a Sidewalk Cafe permit and payment of fees must be submitted and approved on or before July 1st of each year.

(4) **Late Renewal Fee:** If a renewal payment is not submitted by July 1st, it shall be considered late and subject to a late fee of ten-percent (10%), plus an additional five-percent (5%) late fee if payment is not received by the first of each month thereafter until paid, provided that the total late fee shall not exceed twenty-percent (20%) of the permit fee. If a renewal payment is not submitted by July 1st, the City has the right to immediately cancel the Sidewalk Cafe permit upon written notice to the permit holder and the City may also cancel such permit without notice if the payment, along with accrued late fees is not fully paid by October 1st. of any renewal period. [Amd. Ord. 56-09 10/20/09]

(5) Any applicant that was issued a Cafe permit prior to this ordinance and no longer meets the definition of a Sidewalk Cafe shall be eligible for one (1) one-year extension of their Sidewalk Cafe permit after which the applicant shall be required to submit a site plan modification (if the area of the Cafe is not shown on an approved site plan) or shall be required to remove all Sidewalk Cafe elements.

~~(B) — **Applicability:** The provisions of this section shall apply to all existing and proposed sidewalk Cafes effective July 1, 2005—~~

(C) — (E) (These subsection shall be renumbered according and shall remain in full force and effect as previously adopted)

(F) **Regulations Governing the Use, Design, and Maintenance of a Sidewalk Cafe:**

(1) A Sidewalk Cafe shall only be established in conjunction with a legally established restaurant or business where the food product is prepared, processed, or assembled on the premises (for example: deli, ice cream store, sandwich shop) where the food product preparation is the main or sole purpose of the business. These businesses shall be deemed eligible to apply for a Sidewalk Cafe permit. A business that prepares, processes, or assembles food on the premises, where such food preparation or assemblage is not the main or sole purpose of the business shall not be allowed to establish a Sidewalk Cafe.

(2) A Sidewalk Cafe may only be established in the area between the curb of a public roadway and in the front of the business or along a side street adjacent to the business on a corner lot or in front of public open space plazas adjacent to the business. The area may also include portions of a public pedestrian ways (sidewalk) or a public plaza and such businesses immediately

adjacent to the business with which the sidewalk Cafe is associated. However, businesses located on Atlantic Avenue which also have a side street frontage shall be allowed to establish a Sidewalk Cafe along only one (1) of the street frontages (e.g. Sidewalk Cafe permitted on either the side street or on Atlantic Ave, but not on both street frontages). The Sidewalk Cafe shall not be established adjacent to a travel lane or on-street parking, unless there is no ability to establish a Sidewalk Cafe adjacent to the storefront, in which case a Sidewalk Cafe may be located adjacent to a traffic lane or street parking as long as a six foot clear pedestrian path is provided and the tables and associated chairs provide a minimum setback of five feet (5') from the vehicular travel lane and associated curbing. This five feet (5') setback does not apply when the tables are immediately adjacent to on-street parking.

(3) Alcoholic beverages may be consumed within Sidewalk Cafe area.

(4) The use of the tables and chairs dining furniture shall be only for the customers of the business with which the Sidewalk Cafe is associated. Tables, chairs, umbrellas, barriers and other objects associated with a Sidewalk Cafe shall be of quality design, materials and workmanship both to ensure the safety and convenience of users and to enhance the visual and aesthetic quality of the urban environment, as previously approved by the City and as shown and depicted in the approved Sidewalk Cafe permit. All tables, chairs, umbrellas, barriers and associated objects must be located within the Sidewalk Cafe permit area. All umbrellas and canopies must maintain a minimum seven feet (7') clear area and shall not extend outside of the Sidewalk Cafe area. All barriers shall be three (3') in height. See Figures 6.3.3 – 1&2 for more

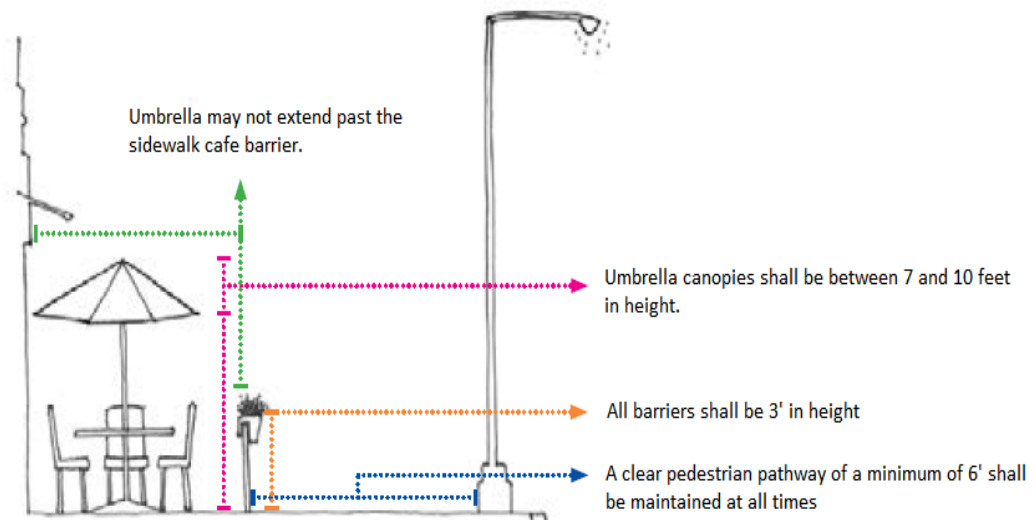


Figure 6.3.3 – 1 Sidewalk Cafe Cross section diagram

details.

(5) ~~Sidewalk Cafe operators shall maintain a clear pedestrian path of a minimum of six feet (six') at all times. The six foot (6') clear pedestrian path shall be parallel to the street and/or alley. In the event a six foot (6') clear pedestrian path adjacent to the curb is interrupted by street furniture, trees, tree grates or similar impediments, then the sidewalk Cafe operator may provide for a six foot~~

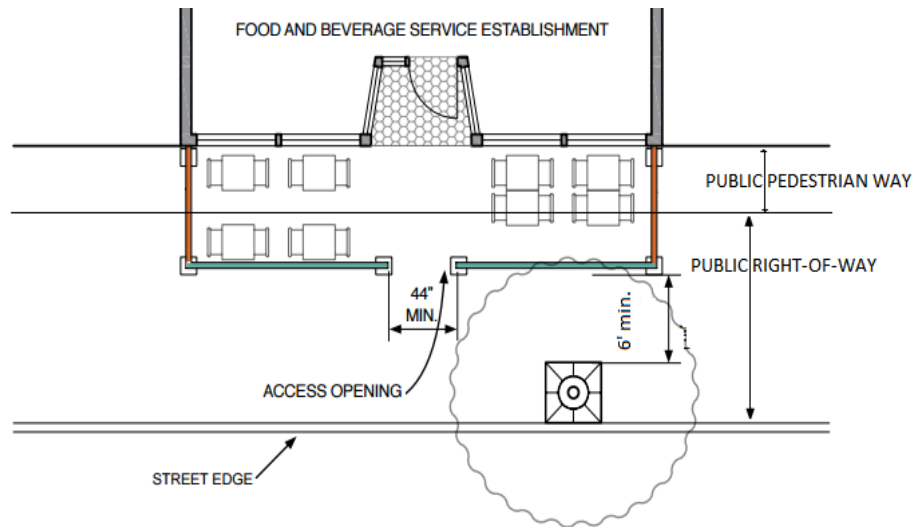


Figure 6.3.3 – 2 Sidewalk Cafe plan view diagram (Example)

~~(6') clear pedestrian path commencing from the edge of the impediment closest to the building façade for a distance of six feet (6') towards the building. In areas of higher pedestrian traffic or activity or if conditions are such that additional clearance is required to assure safe pedestrian travel, additional clear space shall be required. A clear pedestrian path greater than six feet (6') may be required on sidewalks with an adjacent traffic lane. For sidewalk cafes with permits approved prior to [effective date of this ordinance], the dimensions of approved pedestrian paths will prevail until the next permit renewal.~~

(5) Within “ZONE-1”, defined as that area east-to-west between Swinton Avenue and the Intracoastal Waterway, and north-to-south between NE 1st Street and SE 1st Street (see Figure 6.3.3-3), the following regulations shall apply:

- (a) When a Sidewalk Cafe operator provides a clear pedestrian path of a minimum of six feet (6'), the operator can choose to place the associated tables and chairs on either side of the pathway, but not on both sides. The six foot (6') clear pedestrian path shall be parallel to the street and/or alley.
- (b) In the event that a six foot (6') clear pedestrian path adjacent to the curb is interrupted by street furniture, trees, tree grates or similar impediments, then the Sidewalk Cafe operator may provide for a six foot (6') clear pedestrian path commencing from the edge of the impediment closest to the building façade for a distance of six feet (6') towards the building.

- (c) If a Sidewalk Cafe operator provides a clear pedestrian path of a minimum of seven feet (7'), the operator can place the associated tables and chairs on both sides of the pathway. The seven foot (7') clear pedestrian path shall be parallel to the street and/or alley.

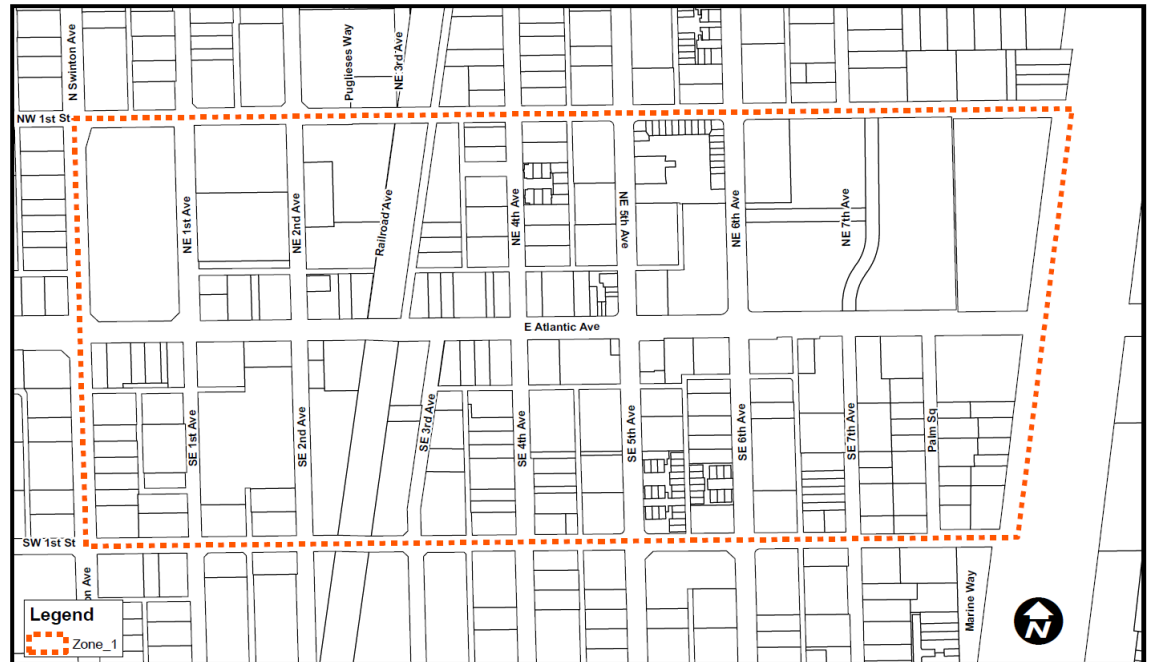


Figure 6.3.3 - 3 - Sidewalk Cafe Zone 1

- (d) For Sidewalk Cafes with permits approved prior to the effective date of this ordinance, the dimensions of approved pedestrian paths will prevail until the next annual permit renewal. In the event of any dispute as to the placement and/or dimension of any required pedestrian path within any ZONE, the Planning Zoning and Building Director, or a designee of the Director, shall make the final determination in order to bring the operator into conformance with any pedestrian pathway regulations set forth herein.
- (6) Within “ZONE-2” as defined as all other geographical areas of the City, the following regulations shall apply:
- (a) When a Sidewalk Cafe operator provides a clear pedestrian path of a minimum of six feet (6'), the operator can choose to place the associated tables and chairs on either side or both sides of the pathway. In either case, the six foot (6') clear pedestrian path shall be parallel to the street and/or alley.

- ~~(b)~~ When the Sidewalk Cafe is established on one side of the six foot (6') clear pedestrian path adjacent to the curb and is interrupted by street furniture, trees, tree grates or similar impediments, then the Sidewalk Cafe operator may provide for a six foot (6') clear pedestrian path commencing from the edge of the impediment closest to the building façade for a distance of six feet (6') towards the building.
- ~~(c)~~ For Sidewalk Cafes with permits approved prior to effective date of this ordinance, the dimensions of approved pedestrian paths will prevail until the next annual permit renewal.

~~(6)~~ (7) A “No Table Zone” is hereby established. No ~~S~~sidewalk Cafe tables or chairs shall be located within the “No Table Zone”. The “No Table Zone” is that area located at the intersections of Atlantic Avenue with any side street, within fifteen feet (15') of the extended curb line. The fifteen feet (15') will be measured perpendicular to the street from the extended curb. For non-Atlantic Avenue intersections, the “No Table Zone” shall be ten (10') feet as measured above.

~~(7)~~ (8) The Sidewalk Cafe area is to be segregated from the pedestrian pathway by means of barriers such as planters, railings or other similar moveable fixtures or other clearly visible demarcation. No part of the barrier shall be located within the required ~~5'~~ clear pedestrian pathway as defined in subsection (5) and (6) above.

~~(8)~~ (9) In addition to previously approved business signs, the Sidewalk Cafe may have one (1) additional business sign of the following signs which shall be approved administratively with the approval or renewal of the sidewalk café permit:—

(a) ~~A wall mounted menu board sign that does—~~The business sign shall not exceed ~~three~~ four square feet (~~3~~ 4 sq. ft.).

(b) ~~The business sign shall A free standing easel or art object that does not exceed five feet (5') forty-two inches (42") in height. that holds a menu board with a sign face not to exceed six square feet (2 ft. x 3 ft. or 6 sq. ft.).—~~

~~(c) Logos upon table umbrellas.—~~

~~The free standing easel or art object must be placed immediately in front of the business in the permitted sidewalk Cafe area. These signs shall not require further Site Plan Review and Appearance Board approval and are an exemption to requirements with the City's sign code. Portable signs shall be prohibited except as allowed in Section 4.6.7(E)(3)(d) Grand Opening Portable Signs.—~~

~~(9)~~ (10) Use area and/or seating capacity realized through a Sidewalk Cafe use and contiguous outdoor dining areas shall not invoke provisions of the zoning code as they pertain to parking or other matters.

~~(40)~~ (11) Food may be carried to tables by patrons or served by a table waiter/waitress for all uses that have been assessed restaurant parking requirements. All other uses that have been assessed general commercial parking requirements, but otherwise qualifying for Sidewalk Cafe permit, shall be for take-out food only (food may be carried to tables by patrons; no waiter/waitress service is allowed). The use of food preparation stations, trash receptacles and cash registers are prohibited within the Sidewalk Cafe area.

~~(44)~~ (12) The use of carpeting, artificial turf, or other services of any kind must be approved as a part of the Sidewalk Cafe application.

~~(42)~~ (13) All services provided to patrons of a Sidewalk Cafe and all patron activity (i.e., sitting, dining, etc.) shall occur within the designated Sidewalk Cafe area, and shall not impinge on the required ~~5' clear distance~~ clear pedestrian pathways as provided for in subsections (F)(5) and (6) above for pedestrian passage at any time. Chairs shall be arranged parallel to the clear pedestrian path so that they do not encroach into the clear pedestrian path to accommodate patrons.

~~(43)~~ (14) Hours of operation shall be the same as the associated businesses.

~~(44)~~ (15) The area covered by the permit, including the sidewalk, curb and gutter immediately adjacent to it, shall be maintained in a clean, neat, attractive and orderly manner at all times and the area shall be cleared of all debris and stains on a periodic basis during the day and again at the close of each business day, ensuring a tidy appearance. The permittee shall also be responsible to pressure clean the sidewalk surface on which the Sidewalk Cafe is located at least once a week or more frequently, if needed and pick up all litter and debris including litter and debris in the landscaped areas adjacent to the Sidewalk Cafe area under permit.

~~(45)~~ (16) No tables, chairs, or any other part of Sidewalk Cafes shall be attached, chained, or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area.

(G) — (H) (These subsection shall remain in full force and effect as previously adopted)

(I) Denial, Revocation, or Suspension of Permit; Removal and Storage Fees; Jurisdiction of the Code Enforcement Board or Civil Violations; Emergencies:

(1) In addition to the remedies for late fees set forth hereinabove at subparagraph (A)(4), ~~the City Manager or his/her designee may deny, revoke, or suspend a permit of any Sidewalk Cafe in the City if it is found that:~~

- (a) Any necessary business or health permit has either been suspended, revoked, or canceled or has lapsed.
- (b) The permittee does not have insurance which is correct and effective.
- (c) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal or modification of the Sidewalk Cafe, in order to avoid danger to the health, safety or general welfare of pedestrians or vehicular traffic.
- (d) The permittee has failed to correct violations of this subchapter or conditions of permitting within three (3) days of receipt of written notice of same.
- (e) If the permittee receives more than three (3) Code Enforcement violations and/or civil violations in a twelve (12) month period from the issuance of its permit for non-compliance to this Section, the permit shall be terminated and no refunds of the permit application fee shall be granted. The permittee may not receive a new permit for six months.
- (f) The Sidewalk Cafe does not enhance or conform to the aesthetic ambiance of the area or is not compatible with other adjacent businesses or Sidewalk Cafes.

(I)(2) through (6) —(J) (These subsection shall remain in full force and effect as previously adopted)

Section 3. Repeal of Conflicting Ordinances. All ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

Section 4. Severability. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this ordinance.

Section 5. Inclusion in Code. This ordinance shall be codified in the Code of Ordinances of the City of Delray Beach, Florida.

Section 6. Effective Date. The provisions of this Ordinance shall become effective immediately upon adoption.

ASSESSED AND ADOPTED in regular session on second and final reading on this _____ day of _____, 2017.

Cary D. Glickstein, Mayor

ATTEST:

City Clerk

First Reading _____

Second Reading _____