



## Legislation Text

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**TO:** Mayor and Commissioners  
**FROM:** Timothy Stillings, Planning, Zoning and Building Director  
**THROUGH:** Neal de Jesus, Interim City Manager  
**DATE:** June 13, 2017

ORDINANCE NO. 17-17: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH ARTICLE 6.3 "USE AND WORK IN THE PUBLIC RIGHT OF WAY" 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. (SECOND READING)

### **Recommended Action:**

Motion to Approve Ordinance No. 17-17 on Second Reading.

### **Background:**

In March 2005, the City Commission approved Ordinance No. 05-05 that modified the Sidewalk Cafe regulations by increasing setbacks from street curbing from 2' to 5'. Increasing the setback was intended to improve safety for Sidewalk Cafes and support better pedestrian flow through the sidewalk cafe areas. Ordinance No. 05-05 had a provision to allow the previous setback to remain in effect until the next permit renewal cycle, which occurred in October of that year. The Sidewalk Cafe regulations were amended again in July of that year (Ordinance No. 51-05). This amendment added the words "...outside whether on public or private property (excluding interior courtyard seating which is subject to parking requirements) ...".

As the Clean and Safe Staff enforced the new Sidewalk Cafe regulations, many of the Sidewalk Cafe Operators could not meet the new requirements. The new regulations also resulted in the decrease of the number of tables and chairs. It became apparent that the regulations were not meeting the goals established by the City. The current regulations have resulted in many complaints from the Sidewalk Cafe Operators and resulted in eight waiver requests since adoption.

At the City Commission Workshop meeting in November 2015, Community Improvement Staff

presented the challenges of the regulations. The discussion resulted in recommendations to remove the reference of sidewalk cafes on private property and allowed for different configurations of the Sidewalk Cafe widths based on geographical areas of the City. For instance, the area along Atlantic Avenue between Swinton Avenue and the Intracoastal has the most number of cafes and pedestrians that affect the level of service of the sidewalks. Therefore, a Sidewalk Cafe may be located on one side with a 6' clear pedestrian pathway and may be located on both sides if a 7' clear pedestrian pathway is provided. In other areas of the city, the Sidewalk Cafe may be located on both sides with a 6' clear pedestrian pathway.

As this proposed amendment was being drafted, the City was contacted by the Florida Department of Transportation (FDOT) requesting the City enter into a "Leasing Agreement" to collect rental fees for those Sidewalk Cafes and valet queues located in their right-of-ways along East Atlantic Avenue and on South Ocean Boulevard (affects approximately 12 Sidewalk Cafes). This Leasing Agreement between the City of Delray Beach and the FDOT was approved at the City Commission meeting of May 17, 2016. The ability to collect those fees is included in the proposed Ordinance No.17-17.

### **Proposed Ordinance:**

The following summarizes the amendments proposed in Ordinance No. 17-17:

The definition of a Sidewalk Cafe was updated to add clarification to the location of the Sidewalk Cafe to better distinguish it from other outdoor dining areas. The updated definition is as follows:

**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.

### **Permit and Fees:**

1. If the initial Sidewalk Cafe permit or any renewal permit is cancelled, a new application fee is required for any subsequent permits issued.
2. Fees are removed from the ordinance and shall be adopted by resolution that will be presented at the second reading of this ordinance.
3. Additional "leasing fees" shall be collected for any Sidewalk Cafe located in the FDOT right-of-way along East Atlantic Avenue and along South Ocean Boulevard.
4. The City may cancel a Sidewalk Cafe permit without notice if the payment, along with accrued late fees is not fully paid by October 1 of any renewal period.
5. Due to the change in the definition, any existing establishment that currently has a Sidewalk Cafe permit but no longer fits the definition, is granted a one (1) year period to either modify their site plan to seek approved for an outdoor dining area or to remove the

furniture from the public pedestrian way.

**Regulations Governing the Use, Design, and Maintenance of a Sidewalk Cafe:** Two figures were added to provide graphical examples of the regulations. Regulations were added to require a minimum height of 7' for all umbrellas and canopy's within a Sidewalk Cafe area and that the barrier that defines the Sidewalk Cafe area shall be 3' in height.

Establishes two geographic zones for regulating the location of the clear pedestrian pathways and widths:

**ZONE-1:** This is defined as the area East-to-West between Swinton Avenue and the Intercostal Waterway on Atlantic Avenue, and North-to-South between NE/SE 1<sup>st</sup> Streets (Clean and Safe Boundary). A map was added to show this area. Within Zone 1, a Sidewalk Cafe may be established on only one side of the required 6' clear pedestrian pathway and on both sides if a 7' clear pedestrian pathway is provided.

**ZONE-2:** This is defined as all geographical areas of the City that are outside of Zone 1. Within Zone 2, a Sidewalk Cafe may be established on both sides of the required 6' pedestrian pathway.

In both zones, if the area adjacent to the curb is interrupted by street furniture, trees, tree grates or similar impediments, 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.

**Signage:** The proposed ordinance eliminates the specific types of additional signs (i.e. menu boards) and allows for one additional business sign for Sidewalk Cafes.

At its meeting of April 17, 2017, the Planning and Zoning (P&Z) Board recommended approval of Ordinance No. 17-17 on a vote of 5 to 0 (Joycelyn Patrick and Leslie Marcus absent). The P&Z Board raised the following issues:

- The Board suggested that the definition of sidewalk cafe, Section 6.3.3 (A) is reworded so that seating is not limited to just tables and chairs as a restaurant may wish to include other furniture.
- That a graphic illustration is included in the ordinance to show the area that is a sidewalk cafe versus outdoor seating on private property.
- That all references to signs are removed from the sidewalk cafe regulations.

Subsequent to the P&Z Board meeting Ordinance No. 17-17 was revised to modify the definition of sidewalk cafe and to provide content neutral language with respect to signage.

**City Attorney Review:**

Approved as to form and legal sufficiency.

**Finance Department Review:**

Not Applicable.

**Funding Source:**

Not Applicable

**Attachments:**

- Ordinance No. 17-17
- Planning and Zoning Board Staff Report, April 17, 2017.