

ARTICLE 6.3 USE AND WORK IN THE PUBLIC RIGHT OF WAY

Section 6.3.1 General

Section 6.3.2 Plans and Permits Required: A permit is required for any work undertaken within the public right-of-way pursuant to Section 2.4.6(N). Before the City Engineer shall issue a permit for such work, he shall first cause the person or persons seeking to make the improvements to file, in his office, plans and specifications of the proposed improvements which he shall examine to determine that they meet the standards set forth in these Regulations.

Section 6.3.3 Movable Fixtures Within the Right-of-Way: Repealed in its entirety and enacted in the City Code of Ordinances, Section 102.40. [Amd. Ord. 27-96 8/06/96]

Section 6.3.3 Sidewalk Cafe: A sidewalk cafe is a group of tables with chairs and associated articles approved by the City situated and maintained outside whether on public or private property (excluding interior courtyard seating which is subject to parking requirements) and used for the consumption of food and beverages sold to the public from an adjoining business. All tables and chairs and associated articles must be located within the sidewalk café permit area. Sidewalk cafes allowed only when in compliance with this Section. **[Amd. Ord. 51-05 7/19/05]; [Amd. Ord. 5-05 3/1/05]**

(A) **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. **[Amd. Ord. 5-05 3/1/05]**

(1) Each 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. **[Amd. Ord. 56-09 10/20/09]; [Amd. Ord. 51-05 7/19/05]; [Amd. Ord. 5-05 3/1/05]**

(2) The sidewalk café application fee is one hundred dollars (\$100.00). The permit fee is \$3.00 per square foot of approved sidewalk café space. **[Amd. Ord. 5-05 3/1/05]**

SECTION 6.3.3 (A) (3)

(3) Renewals of a Sidewalk café permit and payment of fees must be submitted and approved on or before July 1st of each year. **[Amd. Ord. 51-05 7/19/05]; [Amd. Ord. 5-05 3/1/05]**

(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 fee shall not exceed twenty-percent (20%). If a renewal payment is not submitted by July 1st, the City has the right to immediately cancel the Sidewalk Café permit upon written notice to the permit holder. **[Amd. Ord. 56-09 10/20/09]**

(B) **Applicability:** The provisions of this section shall apply to all existing and proposed sidewalk cafes effective July 1, 2005. **[Amd. Ord. 5-05 3/1/05]; [Amd. Ord. 25-98 7/21/98]**

(C) **Required Information:** In addition to the required permit application and permit fee, the following must be provided at the time the application is submitted or renewed: **[Amd. Ord. 5-05 3/1/05]; [Amd. Ord. 25-98 7/21/98]**

(1) A copy of a valid occupational license; and description of use. **[Amd. Ord. 5-05 3/1/05]**

(2) A sketch plan of the area between the store front and vehicular travel surface, drawn to a minimum scale of 1" = 10' which shows: **[Amd. Ord. 25-98 7/21/98]**

- (a) The sidewalk café area including square footage and dimensions; **[Amd. Ord. 5-05 3/1/05]**
- (b) The store front and all openings (doors, windows); **[Amd. Ord. 5-05 3/1/05]**
- (c) The location of curb, sidewalk, and any utility poles, fire hydrants, landscaping, or other items, within the right-of-way and private property, between the curb and the store front including dimensions; **[Amd. Ord. 5-05 3/1/05]**
- (d) The location of any of the above items which are within six feet (6') of the ends of the proposed use area; and the location of parking spaces (or use of the street) adjacent to the proposed use area; **[Amd. Ord. 5-05 3/1/05]**
- (e) Clear delineation of the boundary between private property and the right-of-way including dimensions; **[Amd. Ord. 5-05 3/1/05]**

SECTION 6.3.3 (C) (2) (f)

- (f) Delineation of "clear pedestrian pathways" and "No Table Zones" as required by Subsection (F) (5); **[Amd. Ord. 5-05 3/1/05]**
- (g) Proposed location of chairs with tables, and other private features such as but not limited to hostess stands, umbrellas, etc.; **[Amd. Ord. 5-05 3/1/05]**
- (h) Proposed location of sidewalk café barriers as required by Subsection (F) (7); **[Amd. Ord. 5-05 3/1/05]**
- (i) Photographs and/or manufacturer brochures depicting the chairs, tables, umbrellas, menu boards and logos, and other private features including, but not limited to, lighting to be used in the proposed sidewalk cafe area. **[Amd. Ord. 5-05 3/1/05]**
- (j) If the Permittee intends to use property in front of an adjacent business, the permittee must submit a notarized statement from the adjacent business owner(s) indicating the adjacent business owner has allowed the use of the sidewalk in the front of their business(s), on a form acceptable to the City. **[Amd. Ord. 5-05 3/1/05]**

(3) Proof of Insurance and a Hold Harmless Agreement in a form acceptable to the City Attorney.

(D) **Processing**: The permit application including the Required Information as requested in Subsection (C) above shall be submitted to the Community Improvement Department for processing. Appeals shall be governed by Section 2.4.7(E). **[Amd. Ord. 5-05 3/1/05]; [Amd. Ord. 25-98 7/21/98]**

(E) **Geographic Limitation**: A permit for a sidewalk cafe may be issued within those zoning districts which allow restaurants, subject to any limitations or restrictions of the particular district. **[Amd. Ord. 25-98 7/21/98]**

(F) **Regulations Governing the Use, Design, and Maintenance of a Sidewalk Cafe**: **[Amd. Ord. 25-98 7/21/98]**

(1) A sidewalk cafe shall only be established in conjunction with a legally established restaurant and/or takeout food store, where the food product is prepared, processed, or assembled on the premises (for example: deli, ice cream store, sandwich shop).

SECTION 6.3.3 (F) (2)

(2) A sidewalk cafe may only be established in front of the business and such businesses immediately adjacent to the business with which the sidewalk cafe is associated. The sidewalk café shall not be established adjacent to a travel lane or on-street parking, unless there is no ability to establish a sidewalk café adjacent to the storefront, in which case a sidewalk café may be located adjacent to a traffic lane or street parking as long as a five foot clear pedestrian path is provided. However, a sidewalk café may be established adjacent to a landscape node. **[Amd. Ord. 5-05 3/1/05]**

(3) Alcoholic beverages may be consumed at a sidewalk cafe.

(4) The use of the tables and chairs at a sidewalk cafe shall be only for the customers of the business with which the sidewalk cafe is associated.

Deleted number (5) and renumbered. **[Amd. Ord. 5-05 3/1/05]**

(5) Sidewalk café operators shall maintain a clear pedestrian path of a minimum of five feet (5') at all times. The five foot (5') clear pedestrian path shall be parallel to the street and/or alley. In the event a five foot (5') clear pedestrian path adjacent to the curb is interrupted by street furniture, trees, tree grates or similar impediments, then the sidewalk café operator may provide for a five foot (5') clear pedestrian path commencing from the edge of the impediment closest to the building façade for a distance of five feet (5') 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 five feet (5') may be required on sidewalks with an adjacent traffic lane. **[Amd. Ord. 5-05 3/1/05]**

(6) A "No Table Zone" is hereby established. No sidewalk café 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 feet as measured above. **[Amd. Ord. 5-05 3/1/05]**

(7) The sidewalk café 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. The barrier shall not be located within the required clear pedestrian path. **[Amd. Ord. 5-05 3/1/05]**

(8) In addition to previously approved business signs, the sidewalk cafe may have one of the following signs: **[Amd. Ord. 5-05 3/1/05]**

(a) A wall mounted menu board sign that does not exceed three square feet (3 sq.ft.). **[Amd. Ord. 5-05 3/1/05]**

SECTION 6.3.3 (F) (8) (b)

(b) A free standing easel or art object that does not exceed five feet (5') in height that holds a menu board with a sign face not to exceed six square feet (2 ft. x 3 ft.). **[Amd. Ord. 5-05 3/1/05]**

(c) Logos upon table umbrellas. **[Amd. Ord. 5-05 3/1/05]**

The free standing easel or art object must be placed immediately in front of the business in the permitted sidewalk café 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. **[Amd. Ord. 5-05 3/1/05]**

(9) 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. **[Amd. Ord. 5-05 3/1/05]**

(10) Food may be carried to tables by patrons or served by a table waiter. Food shall not be prepared in the sidewalk cafe area. **[Amd. Ord. 5-05 3/1/05]**

(11) Hours of operation shall be the same as the associated businesses. **[Amd. Ord. 5-05 3/1/05]**

Deleted numbers (11) and (12) and renumbered. **[Amd. Ord. 5-05 3/1/05]**

(12) 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 café 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 café area under permit. **[Amd. Ord. 5-05 3/1/05]**

(13) 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. **[Amd. Ord. 5-05 3/1/05]**

(G) **Liability and Insurance:** **[Amd. Ord. 25-98 7/21/98]**

(1) Prior to the issuance of a permit, the applicant shall furnish a signed statement that the permittee shall hold harmless the City, its officers and employees and shall indemnify the City, its officers and employees from any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.

SECTION 6.3.3 (G) (2)

(2) Permittee shall furnish insurance and insurance certificate and maintain such public liability, food products liability, and property damage insurance from all claims and damages to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000) for bodily injury, and property damage respectively, per occurrence. Such insurance shall name the City, its officers and employees as additional insureds and shall further provide that the policy shall not terminate or be canceled without thirty (30) days written notice to the City. **[Amd. Ord. 25-98 7/21/98]**

Enacted a new letter (H) and relettered. [Amd. Ord. 5-05 3/1/05]

(H) **Penalties for Violations:** In addition to the remedies provided in Section 6.3.3(I), the following penalties will be imposed upon the issuance of a written notice to the permittee shall be given as follows: **[Amd. Ord. 5-05 3/1/05]**

1st violation – a written warning **[Amd. Ord. 5-05 3/1/05]**

2nd violation – up to \$100 fine **[Amd. Ord. 5-05 3/1/05]**

3rd violation – up to \$175 fine **[Amd. Ord. 5-05 3/1/05]**

(I) **Denial, Revocation, or Suspension of Permit; Removal and Storage Fees; Concurrent Jurisdiction of the Code Enforcement Board; Emergencies:** **[Amd. Ord. 5-05 3/1/05]; [Amd. Ord. 25-98 7/21/98]**

(1) 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. **[Amd. Ord. 5-05 3/1/05]**
- (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.

SECTION 6.3.3 (I) (1) (e)

- (e) If the permittee receives more than three (3) Code Enforcement violations in a 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. **[Amd. Ord. 5-05 3/1/05]**
- (f) The Sidewalk Café does not enhance or conform to the aesthetic ambiance of the area or is not compatible with other adjacent businesses or sidewalk cafes. **[Amd. Ord. 51-05 7/19/05]**

(2) The City may remove or relocate or order the removal or relocation of tables and chairs and other vestiges of the sidewalk café and a reasonable fee charged for labor, transportation, and storage, should the permittee fail to remove said items within thirty-six (36) hours of receipt of the written notice from the City Manager or his/her designee ordering removal or relocation. However, in the event of an emergency, no written notice of relocation or removal shall be given and relocation and/or removal shall commence immediately. **[Amd. Ord. 5-05 3/1/05]**

(3) The permittee may appeal the order of the City Manager pursuant to Section 6.3.3(J), below. **[Amd. Ord. 5-05 3/1/05]; [Amd. Ord. 25-98 7/21/98]**

(4) The Code Enforcement Board shall have concurrent jurisdiction over violations of this subchapter, and may only assess fines for noncompliance in accordance with Chapter 37 of the Code of Ordinances. **[Amd. Ord. 51-05 7/19/05]**

(5) The sidewalk café permit may be suspended upon written notice of the City Manager or his/her designee and removal may be ordered by the City when repairs necessitate such action. **[Amd. Ord. 5-05 3/1/05]**

(6) In addition, the City may immediately remove or relocate all or parts of the sidewalk café or order said removal or relocation in emergency situations, without written notice. In an emergency or upon the issuance of a hurricane warning or notification of another weather emergency by the county, the permittee shall forthwith place indoors all tables, chairs, and other equipment located on the sidewalk. Failure to comply shall result in violation of this subsection which shall result in the issuance of a fine not to exceed \$500.00. **[Amd. Ord. 5-05 3/1/05]**

(J) **Appeals**: **[Amd. Ord. 5-05 3/1/05]; [Amd. Ord. 25-98 7/21/98]**

(1) Appeals of the decision of the City Manager or his/her designee shall be initiated within ten (10) days of a permit denial, revocation or suspension, or of an order of removal or relocation, by filing a written notice of appeal with the City Manager. **[Amd. Ord. 25-98 7/21/98]**

SECTION 6.3.3 (J) (2)

(2) The City Manager shall place the appeal on the first available regular City Commission agenda. At the hearing on appeal, the City Commission shall hear and determine the appeal, and the decision of the City Commission shall be final and effective immediately. The City Commission shall apply the standards set forth in 6.3.3(I). **[Amd. Ord. 51-05 7/19/05]; [Amd. Ord. 25-98 7/21/98]**

(3) The filing of a notice of appeal by a permittee shall not stay an order of the City Manager or his/her designee regarding the suspension, revocation or denial of the permit, or the relocation or removal of the vestiges of the sidewalk cafe. Vestiges of the sidewalk cafe shall be removed as set forth in this subchapter, pending disposition of the appeal and the final decision of the City Commission. **[Amd. Ord. 25-98 7/21/98]**

(4) Appeals from the decision of the Code Enforcement Board shall be to the circuit court and not to the City Commission. **[Amd. Ord. 25-98 7/21/98]**

Section 6.3.4 Canopies: Canopies, marquees, and covered walkways may extend into the public right-of-way when approved by the Chief Building Official through approval of an applicable agreement with the City. **[Amd. Ord. 10-92 3/11/92; Amd. Ord. 18-91 2/26/91]**