



AGENDA ITEM REQUEST FORM

Development Services

Department Submitting Request

Zoning/Code Supervisor 

REGULAR COMMISSION MTG Meeting Dates - 7:00 PM

DEADLINE TO Town Clerk

ROUNDTABLE MEETING Meeting Dates - 7:00 PM

DEADLINE TO Town Clerk

- April 27, 2011
- May 24, 2011
- June 28, 2011
- July 26, 2011

- April 15 (5:00 pm)
- May 13 (5:00 pm)
- June 10 (5:00 pm)
- July 15 (5:00 pm)

- April 12, 2011
- May 10, 2011
- June 14, 2011
- July 12, 2011

- April 1 (5:00 pm)
- April 29 (5:00 pm)
- June 3 (5:00 pm)
- July 1 (5:00 pm)

*Subject to Change

- | | | | |
|---------------------------------------|---|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input type="checkbox"/> Consent | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

FY2011 DESIGNATED HIGH PRIORITY ITEM

SUBJECT TITLE: Sidewalk Cafés - Proposed amendments - Article VI Chapter 17-85 through 94 Sidewalk Cafés

EXPLANATION: At the May 24, 2011 Town Commission meeting staff was asked to draft revisions (**Exhibit 1**) to the Sidewalk Café Ordinance allowing for an easier process for businesses that apply for this type of use. The proposed revisions would authorize the Town Manager to administratively approve a permit for a sidewalk café if in compliance with the code.

The current process for this type of application is:

1. Plan review by staff after submission and application fee is paid.
2. Schedule for Planning and Zoning Board and conduct a public hearing.
3. Schedule for the Town Commission and conduct a public hearing.

We propose to:

1. Eliminate the requirement that sidewalk café permits require P&Z and Commission review.
2. Give the Town Manager the authority to approve a sidewalk café permit and provide an appeal process for a permit application that is denied.
3. Reduce the fees associated with the application.
4. Eliminate the 24 lineal feet sidewalk minimum. Recently two local businesses wanted to take advantage of the sidewalk café use, but could not because they had less than 24 lineal feet of sidewalk frontage.
5. Eliminated the requirement that a take-out facility cannot have sidewalk seating.

RECOMMENDATION: For the Commission to review the proposed amendments and provide direction to move forward with drafting an Ordinance.

EXHIBITS: Exhibit 1 – Sidewalk Café Ordinance with Daft Revisions.

Reviewed by Town Attorney
 Yes No

Town Manager Initials 

ARTICLE VI. - SIDEWALKS CAFÉS

Sec. 17-85. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning.

Affected party shall mean any property owner whose property directly abuts the property upon which the restaurant is located which has applied for or been issued a permit for a sidewalk café.

Permittee shall mean the lawful holder of a sidewalk café permit obtained pursuant to the terms and provisions of this article.

Right-of-way shall mean land in which the State, the Florida Department of Transportation, Broward County or the Town of Lauderdale-By-The-Sea owns the fee or has an easement devoted to or required for use as a transportation facility or street.

Sidewalk shall mean that area, whether privately owned or a portion of the right-of-way, which is located between the curblineline or the lateral line of a street and the adjacent building and which is intended for use by pedestrians.

Sidewalk cafe shall mean a use located on a sidewalk or portion of the right-of-way which is associated with a restaurant or food establishment where food or beverages are delivered and licensed for consumption on the premises. It shall be characterized by the presence of tables and chairs and may be shaded by awnings, canopies or umbrellas if permits for same have been issued.

Street means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic or parking.

Sec. 17-86. - Permit and revocable license required.

It shall be unlawful for any person to operate a sidewalk café on any sidewalk or public right-of-way within the Town without first obtaining a permit from the Town. entering into a A revocable license agreement in a form approved by the Town Attorney, with the Town for any portion of the Town's right-of-way which is used for a sidewalk café and must also be obtained. ing a permit as required by this article. The permit, and if required, the revocable license, location of Ssidewalk cafés are a conditional use and shall be located only where permissible as prescribed pursuant to a determination approved by the Town Manager or designee. Town Commission and where a lawful permit has been issued. No person shall establish a sidewalk café abutting any sidewalk unless such person has obtained a valid permit to operate a sidewalk café pursuant to this article. The revocable license shall be in a form approved by the Town Attorney and reviewed by the Town Commission in conjunction with its review of the permit application. The license is revocable at the sole discretion of either the Town Manager or Town Commission and shall not constitute a vested property interest in any portion of the public right-of-way.

Any person or entity operating a sidewalk café without a permit or any property owner allowing the operation of a sidewalk café without a permit upon his/her/its property shall be subject to penalties as provided in this article.

Each operator of a sidewalk café that operates in a portion of the right-of-way shall pay to the Town a monthly right-of-way license fee of \$1.50 for each square foot of right-of-way licensed for use ~~plus maintenance and capital improvement costs~~. In conjunction with the approval of a sidewalk café, the Town Manager or designee ~~Commission shall may~~ waive the monthly license fee in an amount equal to the amount expended by the applicant for improvements to the public right-of-way that benefit the public, not to exceed two years of monthly license fees.

Sec. 17-87. - Permit fee.

(a) All sidewalk café operators shall pay an annual permit fee of \$100 dollars, ~~based on the number of seats depicted on the Town approved site drawing required by these regulations. The annual permit fee for establishing or maintaining a sidewalk café shall be based on the total number of outdoor seats as follows:~~

~~Seating capacity from 1 to 15 \$105.00~~

~~Seating capacity from 16 to 50 150.00~~

~~Seating capacity from 51 or more 225.00~~

(b) The permit fee shall be paid on or before October 1 and shall cover the time period from October 1 through September 30 of the following calendar year, ~~except that where the permit fee exceeds \$1,000.00 the fee may be paid in two semiannual increments, the first to be due on October 1 and the second to be due on April 1.~~ No license permit shall be issued for any fractional portion of the year; provided, however, that any person or entity operating a sidewalk café for a period beginning after May 1, may obtain a permit for the remaining portion of the fiscal year upon payment of one-half of the permit fee required by this article. No refund of fees shall be allowed.

(c) The permit fees collected pursuant to this section from sidewalk cafés located in the Town of Lauderdale-By-The-Sea shall be placed in the general ~~revenue~~ fund.

Sec. 17-88. - Permit and license application.

(a) Application for a permit and license to operate a sidewalk café shall be made at the office of the Town Clerk. Such application shall include:

- (1) Name, address and telephone number of the applicant.
- (2) Name and address of restaurant.
- (3) A copy of a valid Town of Lauderdale-By-The-Sea business tax receipt to operate a restaurant adjacent to the sidewalk area which is the subject of the application.
- (4) A copy of a valid certificate of use for the building frontage adjacent to the sidewalk and which is the subject of the application.
- (5) Evidence of insurance containing terms required under section 17-90 of this article.
- (6) An 8½ X 11 drawing to legible scale showing the layout and dimensions of the existing sidewalk area and adjacent private property, proposed location, size and number of tables, chairs, steps, trees, parking meter, bus shelters, sidewalk benches, trash receptacles, and any other sidewalk obstruction either existing or proposed within the pedestrian area.

(7) Photographs, drawings or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects related to the sidewalk café.

(8) Written consent from the building owner as to the proposed use of the sidewalk and building frontage for a sidewalk café.

(9) A sidewalk café which will operate only on private property shall submit a nonrefundable application fee of:

~~(i) — \$150.00 for sidewalk cafés operated only on private property.~~

~~(10) A sidewalk café which will operate on private property and/or any portion of the public right of way shall submit a nonrefundable application fee of \$300.00~~550.00, ~~The Town staff shall including the cost of mail a notice, for sidewalk cafés which operate on a portion the right-of-way.~~

~~No application for use of the right-of-way shall be considered by the Town Manager~~Commission until notice has been provided to all property owners directly abutting to the property upon which the restaurant adjacent to the proposed sidewalk café is located. Such notice shall be a courtesy notice only and failure to mail or receive such notice shall not affect actions taken under this Article. Any affected property owner may provide written comments to the Town Manager or designee within ten (10) days of the date of the mailed notice, for the consideration of the Town Manager or designee.~~within 300 feet of the proposed sidewalk café site.~~

(b) Applications shall be reviewed for compliance with Town ordinances and if determined to be in compliance, may~~must~~ be approved by the Town Manager or designee ~~Commission~~.

(c) The Town Manager or designee may deny an application that does not comply with this section. Such denials shall be written and shall provide the reasons for the denial. The applicant or an Affected property owner may appeal the Town Manager or designee's decision to the Town Commission.

Sec. 17-89. - Requirements of a sidewalk café permit.

(a) Sidewalk cafés shall be located only in one of the following places:~~restricted to~~

(1) ~~the~~ sidewalk frontage of the licensed restaurant to which the permit is issued; or

(2) ~~within~~ the sidewalk frontage of the building where the validly licensed restaurant is located.

~~(3) — Such sidewalk cafés may also occupy, and in both cases, a portion of the non-vehicular right-of-way.~~

(3b) In the event the ~~subject~~ area of the permit extends in front of an adjacent owner's property, the permittee must obtain written permission from the adjacent property owner for use of this area. Failure to obtain such written permission will not justify a refund of the annual permit fee or any other fees paid to the Town of Lauderdale-By-The-Sea for operation of a sidewalk café.

(b) Permits shall not be issued ~~for those locations where~~ to place tables and chairs ~~would be placed~~ within a ten (10)-foot proximity of bus stops, taxi stands, ~~or~~ fire hydrants.

~~(d) — Tables or chairs will not be permitted within ten feet of~~ a pedestrian crosswalk, or handicap ramp.

(cde) However, the Town Manager or designee ~~Commission~~ may permit an exception to the distance requirement from ten (10) feet ~~to five feet~~ where established pedestrian and ramp~~tram~~ paths shall not be obstructed and where public safety shall not be adversely affected. ~~In areas of congested pedestrian activity, the Town Manager or designee Commission is authorized to require a wider pedestrian path, as circumstances dictate.~~

(def) A barrier, the design of which shall be approved by the Town, shall be required to separate sidewalk café service areas from pedestrian and vehicular paths of traffic when abutting the public right-of-way.

(efg) Tables, chairs, umbrellas, canopies, awnings, perimeter barrier and any other objects utilized as part of the sidewalk café shall be of quality design, materials, size, elevation and workmanship both to ensure the safety and convenience of users, and to enhance the visual quality of the urban environment. Design, materials and colors shall be approved by the Town Manager or designee~~Commission~~ prior to the issuance of the sidewalk café permit.

~~(fh) Awnings, umbrellas and other decorative material~~ All fabrics shall be fire-retardant, pressure-treated or manufactured of fire resistive material. ~~Signs, with the exception of the establishment name, are prohibited on awnings, umbrellas, chairs, tables and any other fixture which is abutting on the public right-of-way. Lettering may not exceed four inches in height.~~

(gi) Prior to issuance of a sidewalk café permit, the Town Clerk shall certify that there are no outstanding fines, moneys, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting a sidewalk café permit. A sidewalk café permit will not be issued until all outstanding debts to the Town are paid in full.

~~(j) One menu board only shall be permitted with a maximum size that does not exceed four square feet. The menu board shall be placed in a location approved by the Town Commission and the menu board location shall be shown on the permit. The menu board shall not be a sandwich [board] sign.~~

(hk) Any restaurant or food service establishment that qualifies under the conditions of this article may redesign the face of their establishment to allow for doors or panels that permit the establishment to have totally open sides allowing for an indoor/outdoor "café" design. These changes in the building can only be made after a proper building permit is issued, said changes otherwise comply with the "Code of Ordinances of the Town of Lauderdale-By-The-Sea", the Florida Building Code, and all appropriate fees paid.

~~(l) No sidewalk café permit shall be issued to any establishment which possesses less than 24 lineal feet of sidewalk frontage.~~

(im) Where public parking exists between the sidewalk area proposed for use and the portion of the right-of-way used for vehicular travel, a sidewalk café shall be located in such a manner that a minimum five(5)-foot wide clear pedestrian path on the sidewalk is maintained at all times.

(in) Where no public parking exists, a minimum five (5)-foot wide clear pedestrian path between the edge of the sidewalk closest to the right-of-way used for vehicular travel and the sidewalk café shall be maintained at all times.

(ke) In areas of congested pedestrian activity, the Town Manager or ~~his~~ designee, is authorized to require a wider pedestrian path ~~that~~ than the minimum ~~than~~ that provided herein as circumstances dictate.

(l) No objects shall be permitted around the perimeter of a sidewalk area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of the sidewalk by the general public.

Sec. 17-90. - Liability and insurance.

(a) The permittee agrees to indemnify, defend, save and hold harmless the Town, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of this permit, or the permittee's activity on the premises by executing a written hold harmless agreement.

(b) The permittee agrees to meet and maintain for the entire permit period, at his/her own expense, the following requirements:

(1) Commercial general liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The Town must be named ds as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting this requirement.

(2) Worker's compensation and employers' liability as required by the State of Florida.

(3) All policies must be issued by companies authorized to do business in the State of Florida and rated B+ or better per Best's Key Rating Guide, latest edition.

(4) The Town must receive 30 days' written notice prior to any cancellation, nonrenewal or material change in the coverage provided.

(5) The permittee must provide an original certificate of insurance as evidence that the above requirements have been met prior to commencing operations. Failure to comply with these requirements shall justify a suspension or revocation of a sidewalk café permit by the Town Manager or designee.

(c) The permit period shall run and insurance requirements as described in subsection (b) above shall be effective from October 1 until September 30 of the following calendar year.

Sec. 17-91. - Sidewalk café permits.

(a) Each permit shall be effective for one year from October 1 until September 30, subject to annual renewal with the approval of the Town Manager or designee.

(b) The permit issued shall be personal to the permittee only and shall be transferable only with the approval of the Town Manager or designee Commission.

(c) The permit may be temporarily suspended by the Town Manager or designee when necessary to clear sidewalk areas for a "community or special event" authorized by a permit issued by the Police Department.

(d) The Town Manager or designee may require the temporary removal of sidewalk cafés when street, sidewalk, or utility repairs necessitate such action.

(e) The Town Manager or his/her designee, and/or an authorized Police Officer of the Town may cause the immediate removal or relocation of all or parts of the sidewalk café in emergency situations.

(f) The Town and its officers and employees shall not be responsible for sidewalk café components relocated during emergencies.

(g) The permit shall be specifically limited to the area shown on the scale layout drawing attached to and made a part of the permit. The Town Manager or designee shall have the right to remove without notice, any tables, chairs or other objects not in the permit area.

(h) The permittee shall act to assure that its use of the sidewalk in no way interferes with pedestrians or limits their free unobstructed passage. The Town Manager or designee may require relocation of tables, chairs and other objects at any time for safety or pedestrian flow consideration.

(i) The sidewalk café shall be opened for use by the general public, although such ~~use~~ seating may be restricted by the permittee to the patrons of the permittee.

~~(j) Permittees holding a business tax receipt or certificate of use limited to take-out food are not eligible for sidewalk cafés. shall not be permitted to provide table service on the sidewalk.~~

(k) Tables, chairs, umbrellas, and any other objects provided with a sidewalk café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.

(l) The sidewalk area covered by the permit, and sidewalk and roadway immediately adjacent to it, shall be maintained in a neat and orderly appearance at all times, and the area shall be cleared of all debris as needed during the day, ~~and~~ again at the close of each business day and as may be directed designated by the Town Manager or designee.

(m) Signs, with the exception of the establishment name, are prohibited on awnings, umbrellas, chairs, tables and any other fixture which is on, or abutting on, the public right-of-way. Lettering may not exceed four inches in height. ~~No signs shall be permitted in the public right-of-way.~~

(n) No tables, chairs or any other parts of sidewalk cafés shall be attached, chained, or in any manner affixed to any tree, post, sign or other fixture, curb or sidewalk within or near the permitted area. No ~~additional~~ outdoor seating authorized herein shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of a liquor license for any establishment; nor shall it be used as the basis for computing required seating for restaurants and dining rooms, or as grounds for claiming exemption from such requirements under the provisions of any Town ordinance or State law.

(o) The area between the exterior walls of a restaurant or other eating establishment and the edge of sidewalk devoted to a sidewalk café shall be designated as public space. The placement of tables and chairs in this public space shall not constitute a building improvement which otherwise triggers structural improvements to the operating business under the provisions of the Florida Building Code or any State statute.

(p) In the event an operator of a restaurant or other eating establishment creates a sidewalk café pursuant to the terms of this section and such creation entails actual structural improvements to any portion of the structure other than the public space, or in the event the creation of the sidewalk café permanently obstructs ingress or egress to the restaurant or eating establishment, then, ~~in that event,~~ all applicable provisions of the South Florida Building Code or State statutes necessitating improvements to the property shall apply.

(q) The permittee shall notify the Town Manager or designee when operation of the sidewalk café

begins. Said notice shall be delivered to the Town Manager or designee within 24 hours of such commencement.

(~~rp~~) No food preparation fire, or fire apparatus, shall be allowed on the public sidewalk, other than that employed in the course of ordinary tableside service, including, but not limited to, menu items which require table preparation, whether or not such area is covered by this permit.

(~~sq~~) Upon the issuance of a "Hurricane Warning" or "Hurricane Watch" by the Broward County Office of Emergency Management, the permittee shall forthwith remove and place indoors all tables, chairs, awnings and other equipment located on the sidewalk.

Sec. 17-92. --~~Denial,~~Revocation or suspension of permit; removal and storage fees; emergencies.

(a) The approval of a sidewalk café permit is conditional at all times. The holder of a permit has no vested right or property interest in the continuation of the permit or the activity it allows. A sidewalk café permit can be denied, revoked or suspended if it is found that:

(1) Any necessary business or health permit has been suspended, revoked or cancelled.

(2) The permittee exceeds the approved square footage of ~~by placing any additional tables, chairs, etc., beyond~~ the approved area.

(3) Changing conditions of pedestrian or vehicular traffic which causes congestion necessitating removal of the sidewalk café. Such decision may be based upon findings of the Town Manager that the minimum ~~four~~five-foot pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety or general welfare of pedestrians or vehicular traffic.

(4) The permittee has failed to correct violations of this article or conditions of the permit within 24 hours of receipt of the Town Manager's notice of same delivered in writing to the permittee.

~~(b)~~(5) In the event the permittee fails to remove any tables, chairs, and other objects related to the sidewalk café within 24 hours of receipt of the Town Manager's final notice of violation~~denial~~, revocation or suspension, the Town Manager may direct Town staff to remove said objects. The permittee shall be responsible for the expenses incurred by the Town for the removal and storage of said objects.

~~(b) Upon denial of the permit, the Town Manager shall give written notice of such action to the permittee.~~

(c) If the Town Manager believes that a permittee has engaged or is engaged in conduct warranting the suspension or revocation of the permit, he/she shall serve the licensee by certified mail or hand delivery, at his/her business address as disclosed in his/her application for the permit, a written notice of ordinance violation which affords reasonable notice of facts or conduct which warrant the intended action, and a reasonable time for the permittee to cure the violation. The complaint shall state what is required to be done to eliminate the violation, if any. The permittee shall be given adequate opportunity to request a hearing before the Town Commission, unless the Town Manager finds that an emergency condition exists involving serious danger to public health, safety and welfare, in which case advance notice and hearing shall not be required. In the case of an emergency suspension or revocation, the licensee shall immediately be advised of the Town Manager's action. In the event the permittee does not cure the violation within the reasonable time designated by the Town Manager, penalties shall be imposed pursuant to section 17-93 and/or revocation of permit shall be enforced and if applicable

revocable License agreement terminated and sidewalk café items removed.

Sec. 17-93. - ~~Penalties.~~ Enforcement.

(a) This Article shall be enforced as follows:

(1) The Town Code Enforcement Special Master shall have jurisdiction to hear and decide cases in which violations of this chapter are alleged; or

(2) The Town may enforce the provision of this Code by supplemental code or ordinance enforcement procedures as provided by F.S. ch. 162, part 2; or

(3) The Town may prosecute violations by issuance of notices to appear for violation of a Town ordinance.

(b) The penalty for a violation of this Article shall be as follows:

(1) First violation \$100.00

(2) Second violation within 12 months of adjudication of first violation 250.00

(3) Third violation within 12 months of adjudication of first violation 500.00

(4) Each day on which a violation exists shall constitute a separate violation for the purpose of determining the fine.

(c) The Town Attorney, with authorization from the Town Commission, may bring suit on behalf of the Town to enjoin any violation of this chapter

~~The following civil fines shall be imposed for violators of this article:~~

~~First citation \$100.00~~

~~Second citation (within a one-year period) 250.00~~

~~Third citation (within a one-year period) 500.00~~

Sec. 17-94. - Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.

(a) The Town of Lauderdale-By-The-Sea may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.

(b) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it

may be enforced in the same manner as a court judgment by the Sheriffs of this State, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the Town may foreclose or otherwise execute on the lien.

Secs. 17-95—17-100. - Reserved.