

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, RELATING TO SIDEWALK CAFES; AMENDING SECTION 54.28, ORLANDO CITY CODE, TO ADJUST AND CLARIFY SIDEWALK CLEAR ZONE AND SIDEWALK FURNITURE ZONE DIMENSIONAL STANDARDS AND TO PROVIDE EXEMPTIONS FROM THE GENERAL REQUIREMENT OF PROVIDING APPROVED BARRIERS SEPARATING THE SIDEWALK CLEAR ZONE FROM THE APPROVED SIDEWALK CAFÉ AREA FOR CERTAIN EATING AND DRINKING ESTABLISHMENTS; PROVIDING FOR SEVERABILITY, CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, Chapter 54 of the Code of the City of Orlando, Florida (the "Orlando City Code"), currently provides authority for City staff to issue permits allowing sidewalk cafes within the City's sidewalk right-of-way in certain zoning districts; and

WHEREAS, the purpose of this ordinance is to amend various provisions of the Orlando City Code relating to sidewalk cafes in order to clarify existing regulations, further encourage sidewalk cafes by eliminating confusing or unnecessary regulations, adequately protect pedestrian access to the public sidewalk, and otherwise improve the City's existing laws in this regard; and

WHEREAS, the Orlando City Council hereby finds and determines that this ordinance is in the best interest of the public health, safety, and welfare; and

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, AS FOLLOWS:

SECTION 1. SECTION 54.28, AMENDED. Section 54.28, Orlando City Code, is hereby amended as follows:

Sec. 54.28. Sidewalk Cafes.

(a) *Sidewalk cafes authorized.* Sidewalk cafes within the City's sidewalk right-of-way that conform to the requirements of this section and other applicable provisions of this Code, including permit conditions made pursuant to this section or other provisions of this Code, are hereby made exempt from the prohibition on conducting business within a public right-of-way as provided by section 54.27.1 of this Code.

(b) *Permit required.* In order to operate a sidewalk café under this section, the operator of a licensed eating and drinking establishment must apply for, receive, and operate pursuant to an active and lawfully issued sidewalk café permit from the City. Sidewalk café permits are only allowed for eating and drinking establishments located entirely within the MU-1, MU-2, AC-1, AC-2, AC-3, AC-3A, AC-N, or MXD-2 zoning district, or within a planned development zoning district that allows eating and drinking

establishments. An application for a sidewalk café permit must be submitted to the City permitting official on a form provided for such purpose. The application form must include a description of all the information, documents, and other submissions that City officials will need in order to review the proposal for compliance with this Code, including, at a minimum, the following:

1. Scaled drawings of the eating and drinking establishment's internal layout, including tables, chairs, bars, host or hostess stations, windows, doors, waiting areas, and other features that may affect the movement and gathering of customers.

2. Scaled drawings of the proposed sidewalk café area, including a plan of the layout of tables, chairs, host or hostess stations, barriers, stanchions, umbrellas, utility stations, and any other features of the sidewalk café. The drawings must include measurements to the nearest property lines, including the curb lines and boundaries of the rights-of-way.

3. A permit application fee as set by Council.

4. Proof of insurance as required by subsection (h) of this section.

5. Proof of consent to the sidewalk café application by the operator of the associated eating and drinking establishment.

6. The hours of operation for the eating and drinking establishment and the sidewalk café and whether or not alcoholic beverages will be served within the sidewalk café area.

Each sidewalk café permit is valid for one year, but may be renewed annually after application to the permitting official. The permitting official may accept renewal applications without updated scaled drawings if no changes are proposed to the features described in subsections 58.28(b) 1. and 2. With at least five days written notice, the City may temporarily suspend sidewalk café permits if necessary to safely accommodate special events such as parades, street festivals, or foot or bicycle races, or other function of the City.

(c) *General regulations.* All sidewalk cafés must conform to the following regulations:

1. Sidewalk cafés may not include any permanent installations or improvements within the public right-of-way unless otherwise approved by a separate encroachment agreement or license.

2. The area authorized for use as a sidewalk café must be delineated with metal pins placed into and flush with the sidewalk surface. The pins will be provided and

installed by the City. The area within the boundary of the pins is the area permitted for use as a sidewalk café. The only time that the sidewalk café may expand outside of the area delineated by the sidewalk pins is when the adjacent street is closed to traffic by the City for a special event. In this event, the sidewalk café area may extend to the back of curb if the permittee posts adequate notice that the sidewalk within the expanded sidewalk café area is closed to pedestrian traffic and if the permittee submitted and received approval of plans depicting the expanded sidewalk café area from the City permitting official.

3. The sidewalk café must be accessory to a legally existing and conforming principal use eating and drinking establishment.

4. The sidewalk café must not need a zoning or design variance in order to be implemented according to its approved plan.

5. The sidewalk café must allow for a clear, straight, unobstructed pedestrian pathway at least five feet wide measured from the sidewalk café area to the sidewalk furniture zone. For purposes of this Code, this clear, unobstructed pedestrian pathway may be known as the "sidewalk clear path," and the area of the sidewalk between the back of curb and the sidewalk clear path where public utilities, landscaping, and furniture are often installed may be known as the "sidewalk furniture zone." For purposes of this section, the sidewalk furniture zone is typically five feet in width measured from the back of curb, but may be less in downtown. At corners, the sidewalk furniture zone is at least five feet in width measured from the back of access ramps, except outside the AC-3A/T zoning district, where it may be as narrow as four feet in width. The permitting official may approve a narrower sidewalk clear path for sidewalk cafes outside the AC-3A/T zoning district if the sidewalk café area is at least six feet from the back of the street curb, five feet from any vertical obstruction in the sidewalk (e.g. utility poles and street furniture), four feet from any horizontal obstruction in the sidewalk (e.g. tree grates, planters, and ramps), and the permitting official finds that the remaining sidewalk clear path is safe and adequate for normal pedestrian and disabled access. The sidewalk café area is prohibited within the sidewalk furniture zone except in mixed-use planned development zoning districts where the sidewalk furniture zone may be adjacent to on-street parking as well as adjacent to the building. In such cases, the permitting official must find that the sidewalk furniture zone provides adequate area to safely accommodate the proposed sidewalk café furniture and pedestrian movements through the café area.

6. The sidewalk café area, including the furniture, barriers, and business wares comprising the sidewalk café, along with the adjacent sidewalk clear path and sidewalk furniture zone, must be kept in a clean and safe condition at all times.

7. Sidewalk cafes must be built and maintained in accordance with their approved plans.

8. Sidewalk café permittees must have the sidewalk café area, the adjacent sidewalk clear path, and the adjacent sidewalk furniture zone pressure washed with a commercial-grade pressure washer at least monthly. The permittee must maintain records of each pressure washing and must provide these records to the City upon request. Satisfying this requirement does not absolve the permittee from otherwise keeping the sidewalk café area, the adjacent sidewalk clear path, and the adjacent sidewalk furniture zone in a clean and safe condition at all times.

9. The design, appearance, and dimensions of all furniture within the sidewalk café area is subject to review and approval by minor certificate of appearance approval or minor certificate of appropriateness, if either is required by Code, or by the appearance review official if outside the jurisdiction of the Appearance Review Board and the Historic Preservation Board.

10. Signs are prohibited within the sidewalk café area except for menu boards approved pursuant to section 64.249 of this Code and onsite signs printed on approved café umbrellas. Signs on café umbrellas are exempt from maximum sign area restrictions. Menu boards associated with sidewalk cafés must be kept out of the sidewalk clear path, but may be placed within the sidewalk furniture zone or the sidewalk café area.

11. Outdoor speakers may be approved for use in the sidewalk café area. The design, appearance, dimensions, and directional orientation of speakers are subject to review and approval by minor certificate of appearance approval or minor certificate of appropriateness, if either is required by Code, or by the appearance review official if outside the jurisdiction of the Appearance Review Board and the Historic Preservation Board. Sound from outdoor speakers is subject to the City's noise ordinance.

12. All sidewalk cafes must include tables and chairs. At all times the number and location of the tables and chairs must be maintained in accordance with the sidewalk cafes' approved site plan. Assembly occupancy is prohibited within the sidewalk café area.

Figure 54.28-1 depicts an example of a sidewalk café and its spatial relationship to the sidewalk clear path and the sidewalk furniture zone. This figure is for illustrative purposes only and to the extent that it contradicts any part of this Code, the Code prevails.

****[Drafter's note – Figure 54.28-1 is located here in the official version of the Orlando City Code, but is omitted from this ordinance.]****

(d) *Special permit conditions.* The city permitting official may impose special conditions upon a sidewalk café permit if he or she finds it necessary in order to preserve the public health, safety, or welfare.

(e) *Permit revocation.* A sidewalk permit may be revoked if:

1. The sidewalk café, the building housing the principal use eating and drinking establishment associated with the sidewalk café, or the business running the sidewalk café is found in violation of law.

2. The sidewalk café is not built and maintained as depicted on its approved plans.

3. The sidewalk café is not built and maintained in accordance with the requirements of this section.

4. The sidewalk café is not built and maintained in accordance with its special permit conditions.

(f) *Nature of the permit.* The sidewalk café permit is a license to temporarily use the City's sidewalk right-of-way. It is not intended and shall not be construed as an interest in real property.

(g) *Alcohol service.* Sidewalk cafes where alcoholic beverages are offered for sale or are otherwise provided to guests or customers must conform to the following additional regulations:

1. The principal use eating and drinking establishment to which the sidewalk café is associated must be properly permitted by all applicable government agencies to dispense alcoholic beverages for consumption on premises. All government permits that authorize the dispensation of alcoholic beverages must reflect the sidewalk café area as part of the licensed premises. Once such permits reflect the sidewalk café area as part of the licensed premises, the sidewalk café area is hereby made exempt from the prohibition on the sales and consumption of alcoholic beverages outside of a licensed building as provided at section 33.09 of this Code.

2. During all business hours of the sidewalk café, a conspicuous sign must be posted within the sidewalk café area that effectively notifies patrons that section 33.10 of this Code prohibits removing open containers of alcoholic beverages from the licensed premises. The location, dimensions, and design of this notice is subject to review and approval by the City. This sign is hereby made exempt from the calculation of maximum sign area as regulated by this Code.

3. Seating and other customer gathering areas ~~within the sidewalk café~~ must be separated from the sidewalk clear path by stanchions, railings, or other approved barrier at least three feet in height. The design, appearance, and dimensions of the stanchions, railings, or other approved barrier are subject to review and approval by minor certificate of appearance approval or minor certificate of appropriateness, if either is appropriate, or by the appearance review official if outside the jurisdiction of the Appearance Review Board and the Historic Preservation Board. The following are exempt from this subsection:

A. Sidewalk cafes located outside of the Downtown Activity Center future land use map designation if the associated eating and drinking establishment derives at least 51% of its gross revenues from the sale of food and non-alcoholic beverages. In determining whether a sidewalk café qualifies for this exemption, the permitting official shall apply the provisions of section 58.713(D) of this Code.

B. Sidewalk cafes located within a mixed-use planned development zoning district where the planning official finds that a barrier described by this subsection would unreasonably interfere with the purpose and intent of the planned streetscape design.

(h) *Insurance required.* All sidewalk café permittees must maintain comprehensive liability insurance covering against personal injury and property damage in an amount consistent with City policy. A certificate of insurance naming the City as an additional insured and requiring that the City be notified at least 30 days before termination or decrease in coverage must be delivered to the permitting official before the permit is issued.

SECTION 2. CODIFICATION. The City Clerk and the City Attorney shall cause the Code of the City of Orlando, Florida, to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 3. SCRIVENER'S ERROR. The City Attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the City Clerk.

SECTION 4. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 5. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE FIRST READING, by the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2014.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Orlando, Florida, by the City Clerk of the City of Orlando, Florida, this _____ day of _____, 2014.

DONE, THE SECOND READING, THE PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of a majority of a quorum present of the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2014.

BY THE MAYOR/MAYOR PRO TEMPORE
OF THE CITY OF ORLANDO, FLORIDA:

Mayor / Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE
CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA:

City Clerk

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

Assistant City Attorney

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