ARTICLE X. SIDEWALK CAFES

Sec. 78-341. Definitions.

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

Menu board means a board allowing for the posting of a restaurant's complete menu and fabricated in such a manner so as not to constitute a form of general advertising or restaurant identification.

Permittee means the recipient of a sidewalk cafe permit under the terms and provisions of this article.

Restaurant means any lawfully licensed food service establishment that is maintained and operated as a place where food and beverages are prepared, served and sold for consumption.

Right-of-way means land in which the state department of transportation, county, or the city owns or has an easement devoted to or is required for use as a transportation facility, street or alleyway.

Sidewalk means that portion of the right-of-way which is located between the curb line or the lateral line of a street and the adjacent property line and which is intended for use by pedestrian.

Sidewalk cafe means a use located on a public sidewalk which is associated with a restaurant where food and beverages are prepared, served and sold and are delivered for consumption on the sidewalk. It is characterized by tables and chairs and may be shaded by awnings, canopies or umbrellas if permits for such awnings, canopies or umbrellas have been obtained. Special events permitted by the city shall not be deemed sidewalk cafes.

Sidewalk cafe site map means a city-approved map detailing the location of the pedestrian pathway as it relates to a sidewalk cafe. The sidewalk cafe site map shall be available for viewing in the planning and zoning division.

Sign means the definition given in chapter 94 of this Code.

Specials board means a board allowing for the posting of a restaurant's daily specials and fabricated in such a manner as to not constitute a form of advertising or establishment identification.

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

Usable sidewalk area means the frontage of the property with the sidewalk cafe times the width of the sidewalk, less the clearance described in subsection 78-345(d), minus the area constituting sidewalk obstacles such as sidewalk benches, bus stops, above-ground utility fixtures, etc.

(Code 1979, § 26-335)

Cross reference— Definitions generally, § 1-2.
Sec. 78-342. Permits.

(a) It shall be unlawful for any person to operate a sidewalk cafe on any sidewalk or public right-of-way within the city without obtaining a permit as required by this article. Sidewalk cafes shall only be located where permitted by the city's zoning regulations set forth in chapter 94 of this Code. No person shall establish a sidewalk cafe on any public roadway or sidewalk unless such person has obtained a valid permit to operate that sidewalk cafe pursuant to this chapter.

(b) The mayor shall have the right to order the removal of any tables, chairs and other objects on public property which are used in connection with a sidewalk cafe which does not have a valid permit, after 48 hours' notice. Such notice may be given by hand delivery, or by posting such notice on the door of the restaurant.

(Code 1979, § 26-336)

Sec. 78-343. Application.

(a) The planning, zoning and building department shall prepare an application form for sidewalk cafe permits. The application shall specify the minimum documentation and information required, as well as the total of number of copies required.

(b) Application for a permit to operate a sidewalk cafe shall include, but not be limited to, the following information:

(1) The name, address and telephone number of the applicant.

(2) The name and address of the restaurant.

(3) A copy of a valid and current city occupational license to operate a restaurant in front of the property where the proposed sidewalk cafe will be, or any other license or permit required by the city for operation.

(4) A copy of the current certificate of insurance in the amounts and categories required by subsection 78-346(b).

(5) A drawing (to scale) showing the layout and dimensions of the existing sidewalk area and adjacent private property, existing fire hydrants, tree guard railings, fixed tree planters, utility and above-ground fixtures, proposed location, size and number of tables, chairs, steps, planters, umbrellas, location of doorways, location of trees, parking meters, bus stops and shelters, sidewalk benches, trash receptacles and any other sidewalk obstructions, either existing or proposed, within the pedestrian area.

(6) Photographs, drawings or manufacturers’ brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects related to the sidewalk cafe.

(7) An affidavit from the owners of the properties in front of which the proposed sidewalk cafe will be located, consenting to the operation of the sidewalk cafe at the proposed location.

(c) The annual application shall be accompanied by a nonrefundable base application fee and a per-square-foot-of-sidewalk-area-used fee, as set forth by separate resolution and approved by the city commission.

(d) Applications shall be reviewed for compliance with city ordinances and must be approved by the public utilities department, planning, zoning and building department, fire rescue department, the finance department and any other city department deemed necessary by city staff.

(Code 1979, § 26-337)

Sec. 78-344. Fees; renewal fees; penalties for late payments for renewal fees.

(a) The annual permit fee for establishing or maintaining a sidewalk cafe and a per-square-foot-of-sidewalk-area-used fee, shall be as set forth by separate resolution approved by the city commission, as may be amended from time to time.

(b) The mayor may suspend or prorate the annual permit fee in cases of public construction or emergency situations.

(c) Permit fees shall be paid on or before October 1 of each year and shall cover the time period from October 1 through September 30 of the following calendar year. No permit shall be issued for any portion of a year. Except as provided in section 78-345, no refund of the fees shall be granted.

(d) Late payments for permit renewal fees shall accrue at the rate of ten percent per annum for the first 30 days. If the permit renewal fee is not paid within 60 days after it is due, the permit shall terminate automatically.
Any continued operation of the sidewalk cafe after termination shall be construed as operating a sidewalk cafe without a permit, and the mayor shall have the right to order the removal of any tables, chairs and any other objects used in connection with the sidewalk cafe, after 48 hours' notice. Such notice may be given by hand, or by posting such notice on the door of the restaurant.

(Code 1979, § 26-338)

Sec. 78-345. Standards, criteria and conditions.

(a) Sidewalk cafes are restricted to the sidewalk frontage of the licensed restaurant for which the permit is issued or within the sidewalk frontage of the building where the validly licensed restaurant is located, provided that written approval is supplied by the building owner. The design of sidewalk cafes shall be so that there is a free flow of pedestrian access on the sidewalks.

(b) Permits will not be issued where the tables and chairs would be placed within five feet of bus stops, taxi stands, fire hydrants or nonpedestrian alleyways.

(c) No tables, chairs, umbrellas or other fixtures will be permitted within five feet of a pedestrian crosswalk or a handicapped corner curb cut.

(d) Sidewalk cafes shall be located in such a manner that a distance of not less than 44 inches is maintained at all times as a clear and unobstructed pedestrian path, or must comply with the American with Disabilities Act requirements, whichever is greater.

(e) No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the free use of the tables and chairs by the general public or which would have the effect of obstructing the pedestrian path.

(f) Tables, chairs, umbrellas and other permissible objects provided with the sidewalk cafe shall be of quality, design, materials, size, elevation and workmanship both to ensure the safety and convenience of users.

(g) Umbrellas and other decorative material shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. Signs are permitted on umbrellas, chairs, tables and other permissible fixtures which are located on the public right-of-way.

(h) Prior to the issuance or renewal of a sidewalk cafe permit, the city's finance director shall certify that there are no outstanding liens, fines, moneys, fees, taxes or other charges owed to the city by the person requesting a sidewalk cafe permit. A sidewalk cafe permit will not be issued until all outstanding debts to the city are paid in full.

(i) A maximum of one menu board and one specials board shall be permitted per sidewalk cafe. The locations, size, and materials of the menu board and specials board shall be approved by the planning department prior to the issuance of a sidewalk cafe permit, and the menu board and specials board location shall be shown on the sidewalk cafe site map. Specials boards and menu boards shall be restricted to the frontage of the licensed restaurant for which the permit is issued. Menu boards shall comply with the following standards:

   (1) Shall be no larger than four feet in height and two feet in width;
   (2) Shall be kept in good condition;
   (3) Shall be located within ten feet of the sidewalk cafe's main entrance;
   (4) Backdrop night lighting may be incorporated, but must be integrated within the menu board and shielded to reduce glare; and
   (5) Information displayed on the menu board shall be limited to the specific restaurant's menu, hours of operation, and logos.

(j) Specials boards shall comply with the following standards:

   (1) Shall be no larger than four feet in height and two feet in width square feet;
   (2) Shall be kept in good condition;
   (3) May not be internally illuminated;
   (4) Can only have two faces; and
   (5) Information displayed on the menu board shall be limited to the specific restaurant's specials and logos.

(k) Each permit shall be effective for one year, beginning on October 1 and ending on September 30, and shall be prorated for partial years on a monthly basis.
(l) The permit issued may be transferred to a new owner only for the location and area listed on the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued. New applications must be made for transferred permits, and such permittees must comply with the insurance provisions of section 78-346.

(m) The mayor may require the temporary removal of sidewalk cafes when street, sidewalk, or utility repairs necessitate such action. If such temporary removal exceeds 15 calendar days, the remaining permit fee shall be prorated for each additional day the sidewalk cafe is removed and a credit shall be applied towards the following year's permit fee or, if requested to do so by the permittee, the remaining fee shall be refunded to the permittee.

(n) The mayor may order the immediate removal or relocation of all, or parts of, a sidewalk cafe in emergency situations or for safety considerations, without notice.

(o) The city and its officers and employees shall not be responsible for sidewalk cafe fixtures relocated during emergencies.

(p) The permittee shall use positive action to assure that its use of the sidewalk in no way interferes with sidewalk users or limits their free, unobstructed passage.

(q) Tables, chairs, umbrellas, and other permissible objects provided with a sidewalk cafe shall be maintained with a clean appearance and shall be in good repair at all times.

(r) The area covered by the permit, including the sidewalk, curb and gutter immediately adjacent to it, and all sidewalk frontage of the licensed restaurant for which the permit is issued, shall be maintained in a neat and orderly appearance at all times by the permittee. The area shall be kept clear of all debris. The permittee shall also be responsible for cleaning the ground or floor surface on which the sidewalk cafe is located and the gutter area immediately adjacent to the sidewalk cafe. Such cleaning shall include pressure cleaning. If the area covered by the permit is not maintained in a neat and orderly appearance after five days' written notice, the city may then take steps necessary to place the property in a neat and clean order and charge the permittee with the reasonable cost of repairs. Such action by the city does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the city for any damages to the property if such repairs were completed in good faith.

(s) No advertising signs or business identification signs shall be permitted in the public right-of-way except as permitted in subsections (i) and (j) of this section.

(t) No tables, chairs, or any other parts of sidewalk cafes shall be attached, chained or in any manner affixed to any tree, post, sign or other fixture, curb, or sidewalk in or near the permitted area.

(u) The permit covers only the public sidewalk. Tables and chairs on private property will be governed by other applicable regulations. No additional outdoor seating authorized pursuant to this chapter shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of a liquor license for any establishment; nor shall the outdoor seating 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 city ordinance or state law.

(v) No cooking or fire apparatus shall be allowed on the public sidewalk, whether or not such area is covered by this permit.

(w) Upon the issuance of a hurricane warning by the county, the permittee shall forthwith place indoors all tables, chairs and other equipment located on the sidewalk. The issuance of such a hurricane warning shall constitute an emergency situation as referenced in this article.

(x) Only the sidewalk cafe equipment specifically shown on the approved drawing shall be allowed in the permit area. The estimated chair count per table may vary within the prescribed area, provided that the chairs remain within the approved sidewalk cafe area. No permanent storage of chairs, tables, dishes, silverware or other sidewalk cafe equipment shall be allowed in the permit area, in any portion of the public right-of-way or outside the structural confines of the building in which the restaurant is located; however, the permittee may maintain such nonpermanent structures as rolling service stations in the permit area during hours of operation.

(y) There shall be no live entertainment or speakers placed in the permit area unless approved and properly permitted by the city.

(z) The permittee shall comply with the state accessibility code for building construction.

(Code 1979, § 26-339)
Sec. 78-346. Liability and insurance.

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

(b) The permittee agrees to meet and maintain for the entire permit period, at its 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 city must be named as an additional insured on this policy, and a certificate of insurance containing an endorsement must be issued as part of the policy.

2. For sidewalk cafes which serve alcoholic beverages, alcoholic-license liability insurance in the amount of $1,000,000.00 per occurrence for bodily injury and property damage. The city must be named as an additional insured on this policy and a certificate of insurance containing an endorsement must be issued as part of the policy.

3. Workers' compensation and employers' liability as required by the state.

4. All policies must be issued by companies authorized to do business in the state and rated B+:VI or better per Best's Key Rating Guide, latest edition.

5. The city must receive 30 calendar days' written notice prior to any cancellation, nonrenewal or material change in the coverage provided.

6. The permittee must provide and have approved by the city an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations. Failure to comply with these requirements shall cause a suspension or revocation of the permit.

(Code 1979, § 26-340)

Sec. 78-347. Conditions of permit.

The permit shall be issued on the form provided by the city. In addition to naming the permittee and any other information deemed appropriate by the city, the permit shall contain the following conditions:

1. Each permit shall be effective for one year subject to annual renewal.

2. The permit issued shall not be transferable in any manner except as provided in subsection 78-345(l).

3. The mayor may require the removal, temporary or permanent, of the sidewalk cafe when redevelopment of the street or sidewalk or utility repairs necessitate such action, or the permittee fails to comply with the criteria set forth in this subdivision.

4. The permittee shall be responsible for expenses incurred in removing the sidewalk cafe.

5. The city's officers and employees may immediately remove all or part of the sidewalk cafe in an emergency situation, without notice.

6. The city and its officers and employees shall not be responsible for sidewalk cafe components relocated during emergencies.

7. The permit shall be specifically limited to the area shown on the sidewalk cafe site map as defined in section 78-341.

8. The permit covers only the public right-of-way. Tables, chairs and other property will be governed by other applicable regulations.

(Code 1979, § 26-341)

Sec. 78-348. Revocation or suspension; emergencies.

(a) The approval of a sidewalk cafe permit is conditional at all times. A sidewalk cafe permit may be revoked or suspended if it is found that:

1. Any necessary business or health permit or license has been suspended, revoked or canceled.

2. The permittee does not have insurance which is correct and effective in the minimum amounts described in section 78-346.
(3) The permittee exceeds the approved square footage by placing any additional tables, chairs, etc., beyond the approved area.

(4) The permittee has failed to correct violations of this article or conditions of this permit within 72 hours of receipt of the mayor's notice of such violations delivered in writing to the permittee.

(b) If the permittee fails to remove any tables, chairs, and other objects related to the sidewalk cafe within 72 hours of receipt of the mayor's final notice of revocation or suspension, the mayor shall have the right to order the immediate removal of such objects.

(c) If the mayor believes that a permittee has engaged, or is engaged, in conduct warranting the suspension or revocation of the permit, where an emergency does not exist, the mayor shall cause the permittee to be served by certified mail or hand delivery, as permitted by state statute, at the permittee's business address as disclosed in the application for the permit, a written administrative complaint which affords reasonable notice of facts or conduct which warrants the intended action. The complaint shall state what is required to eliminate the violation, if any. The permittee shall be given adequate opportunity to request a prior administrative hearing before a special master appointed as provided in this Code, unless the mayor finds that an emergency condition exists involving serious danger to public health, safety, or welfare, in which case advance notice and hearing shall not be required. In the case of an emergency suspension or revocation, the permittee shall immediately be advised of the mayor's action and afforded a prompt post-suspension or revocation hearing in accordance with the procedures set forth in this Code.

(Code 1979, § 26-342)

Sec. 78-349. Removal and storage fees; disposition of property.

If, pursuant to this chapter, the mayor orders the removal of any tables, chairs, or other objects related to a sidewalk cafe, the permittee or sidewalk cafe operator shall be responsible for the reasonable expenses incurred by the city for the removal and storage of such objects. The mayor shall promulgate and review, as needed, regulations regarding such storage and the disposition of property under this article.

(Code 1979, § 26-343)

Sec. 78-350. Appeals.

(a) All appeals from the mayor's decision to revoke or suspend a permit shall be to the special master in accordance with the procedures set forth in chapter 26, article II, of this Code.

(b) Appeals shall be initiated within ten calendar days of the effective date of the revocation or suspension of a permit by filing a written notice of appeal with the office of the city attorney.

(c) The appeal shall be placed on the next regularly scheduled code enforcement hearing.

(d) Appeals from the decisions of the special master shall be to a court of competent jurisdiction by a petition for writ of certiorari.

(e) The filing of a notice of appeal by a permittee shall not stay an order by the mayor to remove a sidewalk cafe or parts thereof. Vestiges of the sidewalk cafe shall be removed immediately as set out in this article, pending disposition of the appeal and final decision of the special master.

(Code 1979, § 26-344)

Secs. 78-351—78-380. Reserved.
NON-REFUNDABLE FEE OF $150.00 IS REQUIRED AT TIME OF APPLICATION. PAYMENT OF THE APPLICATION FEE DOES NOT GUARANTEE APPROVAL.

Application Process (PLEASE READ CAREFULLY)

In order to obtain a Sidewalk Café Permit, this application must be completed, signed and the required documents must be submitted to the Development Services Department (first floor of City Hall).

1) A copy of a City of West Palm Beach Occupational License to operate the restaurant that is adjacent to the proposed Sidewalk Café. [MANDATORY]

2) A copy of an original Certificate of Insurance with the following coverage, limits, and requirements:
   [MANDATORY]
   A) Commercial general liability in the amount of $1,000,000 per occurrence for bodily injury and property damage. Sidewalk Cafés serving alcoholic beverages must provide alcoholic-license liability insurance in the amount of $1,000,000 per occurrence for bodily injury and property damage. The City must be named as an additional insured party on said policy(s) and an endorsement must be issued as part of the policy reflecting the requirement.
   B) Worker’s Compensation and employer’s liability as required by the State of Florida.
   C) All policies must be issued by companies authorized to do business in the State of Florida and rated B+:VI or better, per Best’s Key Rating Guide, latest edition.
   D) The City must receive thirty (30) days written notice prior to any cancellation, non-renewal or material change in the coverage provided.

3) Copy of liquor license including extension to serve alcohol on a sidewalk. [MANDATORY]

4) Two copies of a drawing (drawn to scale or dimensioned) showing the following:
   [MANDATORY]
   A) The layout and dimensions of the existing sidewalk area and adjacent private property.
   B) Existing fire hydrants, utility and above-ground fixtures.
   C) Tree guard railings and fixed tree planters.
   D) Proposed location, size and number of tables, chairs, steps, planters and umbrellas.
   E) Location of doorways, trees, parking meters, bus stops and shelters, sidewalk benches, trash receptacles and any other sidewalk obstructions, either existing or proposed, within the pedestrian area.

5) Photographs, drawings or manufacturers’ brochure fully describing the appearance of all proposed tables, chairs, umbrellas, menu boards or specials boards, or other objects relating to the Sidewalk Café. [MANDATORY]

6) A notarized affidavit from the owners of the properties in front of which the proposed Sidewalk Café will be located consenting to the operation of the Sidewalk Café at the proposed location. [MANDATORY]

One (1) copy of the approved plans must be stored on-site and made available to City Code Enforcement Officers upon request. The application is not approved until the Engineering Services Department issues the Sidewalk Café Permit. All outstanding amounts due to the City must be paid prior to issuance of the permit. Please do not begin operation of a Sidewalk Café until a permit has been issued or it will be deemed a violation of the City Code.
Application is hereby made for the Sidewalk Café permit described hereon. The undersigned has reviewed this application and all information contained herein is true and correct. I understand that this is an application only and submission thereof does not authorize me to begin operation of the Sidewalk Café. I may begin operation only after a permit has been issued. I acknowledge that the application fee is non-refundable. I understand that the application, attachments and fees become part of the Official Records of the Engineering Services Department and are not returnable. I also acknowledge that the payment of the application fee does not guarantee approval. Any questions regarding this process shall be directed to the Engineering Services Department. I have read "City Code Chapter 78, Article X, Sidewalk Cafes” and understand the regulations pertaining to sidewalk cafes.

Applicant’s Signature________________________ Date________________________

Print Name________________________

FOR OFFICIAL USE ONLY:

Total Square Feet________________________ Permit No.________________________

Alcohol License________________________

* If the Applicant is not the Owner of the restaurant, the application must be accompanied be an affidavit from the Owner consenting to the operation of a Sidewalk Café.

Rev. 08-19-2015 G.B.P.
Use this form to sketch the outside table and chair layout. Include light poles, fire hydrant, parking meters, trees and planters and any other permanent structures on the sidewalk. Add entrance to building, dimensions from front of building to curb, table location, distance between tables and distance from structures also provide a north arrow.