

ORDINANCE NO. 2018-2142

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, AMENDING SECTIONS 7.11.14 THROUGH 7.11.20 OF CHAPTER 7 OF THE LAND DEVELOPMENT CODE, PERTAINING TO SIDEWALK CAFES IN THE DOWNTOWN ZONING DISTRICT; PROVIDING FOR STREET CAFES; PROVIDING FOR PERMITTING AND CRITERIA FOR APPROVAL; PROVIDING MAINTENANCE REQUIREMENTS; PROVIDING FOR REVOCATION OF PERMITS; PROVIDING FOR AMENDMENT OF SECTION 2.01.00, DEFINITIONS, TO ADD DEFINITIONS FOR “SIDEWALK CAFES” AND “STREET CAFES”; PROVIDING FOR AMENDMENT OF SUBPARAGRAPH (1) OF SUBSECTION (C) OF SECTION 3-5 OF THE CODE OF ORDINANCES PERTAINING TO EXCEPTIONS TO THE PROHIBITION ON CONSUMPTION OF ALCOHOLIC BEVERAGES; ALLOWING FOR CONSUMPTION OF ALCOHOLIC BEVERAGES IN STREET CAFES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is limited space in the downtown area for sidewalk cafes in certain locations;

WHEREAS, outdoor dining activities add to the atmosphere and vibrancy of the downtown area;

WHEREAS, the allowance of street cafes downtown will add to the atmosphere and vibrancy thereof;

WHEREAS, the current Land Development Code does not have specific standards relating to street cafes;

WHEREAS, the current Land Development Code contains no standards or permitting procedures for street cafes;

WHEREAS, notice of this Ordinance has been provided as required by applicable law; and

WHEREAS, the New Port Richey City Council finds it necessary to implement these regulations to promote the health, safety, and welfare of the citizens of New Port Richey.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA:

SECTION I. Sections 7.11.14 through 7.11.20 of Chapter 7 of the Land Development Code, pertaining to sidewalk cafes, are hereby amended as follows (strikeout text is deleted and underlined text is added):

7.11.14 Sidewalk and Street cafe subdistrict.

Sidewalk and Street cafes meeting the requirements of this section shall be permitted within the downtown zoning district.

7.11.15 Persons authorized to operate sidewalk and street cafes.

Any person who complies with the provisions of this section may be authorized to operate a sidewalk or street cafe provided that the sale of alcoholic beverages is incidental or accessory to a principle or primary restaurant use, or such other use where the sale of on-premises consumption of alcoholic beverages is authorized under this Code.

7.11.16 Application, review and approval procedures.

The procedures for application and review of permits for sidewalk and street cafes shall be as set forth in this section. ~~follows:~~

1. Applications. Before operating a sidewalk or street cafe, application for a sidewalk or street cafe permit shall be made to the city manager or his or her designee ("city manager"). ~~Application for sidewalk cafe permit shall not be required for outdoor seating which is located entirely within private property.~~ Such applications shall include, but not be limited to, the following information:
 - a. The name, address, phone number and form of business of the applicant;
 - b. Evidence of registration of a fictitious name or trade name, if any, under which the applicant proposes to do business;
 - c. A reproducible copy (8 1 / 2 × 11, 8 1 / 2 × 14, 11 × 17), or eight (8) copies, of a detailed site plan including, but not limited to, the following information:
 - (1) Relationship of the sidewalk or street cafe to the adjacent existing or proposed building and their uses and entrance locations;
 - (2) The location of any above ground utilities that might affect or be affected by the proposal;
 - (3) The relationship of the sidewalk or street cafe to the centerline of the adjacent street, if applicable, and to any existing or proposed public improvements including, but not limited to, benches, fire hydrants, light standards and landscaping;
 - (4) The total square footage, approximate dimensions and seating layout of the proposed sidewalk or street cafe;

- (5) The location of all planned improvements and amenities, including, but not limited to, chairs, tables, fencing, awnings, umbrellas, planters and heaters; and
 - (6) The proposed seating count for the subject business, including the sidewalk and street café, and all other seating ~~outdoor cafe and restaurant~~.
- d. Evidence of written notification, on a form provided by the City, to all immediately abutting property owners regarding the applicant's submission of an application for a sidewalk or street cafe permit; and
 - e. Plans for the operation of the sidewalk or street cafe including, but not limited to, hours of operation, maintenance of the sidewalk or street cafe and services to be provided.
2. Application review and approval. Applications for sidewalk or street cafes within the sidewalk or street cafe subdistrict shall be forwarded to the city's development review committee ("DRC") and reviewed as provided herein. follows:
- a. The development review committee ("DRC") shall examine the application and associated documentation.
 - b. The DRC may approve plans, designs and specifications that do not unreasonably interfere with any of the following:
 - (1) Adequate pedestrian flow;
 - (2) Access to public utilities, building entrances, crosswalks, bus stops and transient entrances; or and
 - (3) Pedestrian and traffic safety.
 - c. The DRC shall will review the application to ensure that the Operational Guidelines set forth in this section are addressed in the application.
 - d. The DRC may advise the applicant of the revisions to the applicant's plans, designs and specifications that will result in an application that conforms to the provisions of this subdivision.
 - e. The DRC may deny an application for a sidewalk or street cafe permit if, in the reasonable discretion of the DRC:
 - (1) The applicant has failed to comply with any of the submission requirements contained in this section;
 - (2) The sidewalk or street cafe, as the applicant represents how it will be operated, fails to comply with the criteria set forth in this section;
 - (3) Any material information submitted by the applicant is found to be incorrect; or
 - (4) The sidewalk cafe is not an extension of an existing or new restaurant, or such other use where the sale of on-premises consumption of alcoholic beverages is authorized under this Code, which is or will be adjacent to one (1) or more city rights-of-way. For the purposes of this section, a restaurant shall be defined as in chapter 2, section 2.01.00 of the Land Development Code.

f. ~~The DRC shall limit the hours of alcoholic beverage sales to the hours of operation for the principle business use.~~

3. Reapplication. Any current holder of a sidewalk or street cafe permit shall reapply for a new permit if substantive changes are proposed to the permitted sidewalk or street cafe.

7.11.17 Permit issuance.

Upon approval of an application and submission of the following items, the DRC shall issue a sidewalk or street cafe permit:

1. Copies of a valid City of New Port Richey and Pasco County local business tax receipt as required by the provision of this Code requiring a local business tax receipt for use of the property as a sidewalk or street cafe;
2. Copies of all required permits to operate a sidewalk or street cafe from all other governmental agencies having jurisdiction;
3. Except for sidewalk cafes located entirely upon private property, including all serving areas, a properly executed certificate of insurance on forms which are to be furnished by the city manager providing liability insurance in the amount of one million five hundred thousand dollars (\$1,0500,000.00) combined single limit per each occurrence, which. ~~All~~ insurance policies shall:
 - a. Be from a company duly authorized to do business in the State of Florida;
 - b. Provide that the city is an additional insured as to any and all liability arising out of the applicant's use or occupation of the premises licensed to the applicant pursuant to a license agreement or operation of said licensed premises as a sidewalk or street cafe;
 - c. Include a severability of interest provision; and
 - d. Provide that the city be given ~~thirty (30) days'~~ written notice of any cancellation or reduction in the coverage thereunder.
4. Except for sidewalk cafes located entirely upon private property, including all serving areas, a fully executed revocable sidewalk or street cafe license agreement in the form provided by the city, which shall include an indemnity provision holding the city harmless from any and all liability arising out of the issuance of the sidewalk or street cafe permit, execution of the sidewalk or street cafe license agreement, the applicant's use or occupation of the licensed premises under the license agreement or operation of the sidewalk or street cafe on the licensed premises;
5. ~~The sidewalk or street cafe permit fee of one hundred dollars (\$50.00); and;~~
6. Satisfactory written evidence of the permittee's liquor license, if applicable.

7.11.18 Conditions of permit.

The permit shall be issued ~~on~~ in the form provided by the city manager. In addition to naming the permittee and any other information deemed appropriate by the city manager, the permit shall be subject to and contain the following conditions set forth in this section.:

1. Each permit shall be effective for the life of the sidewalk or street cafe subject to the provisions of this chapter.
2. The permit issued shall be personal to the permittee only.
3. A permit may be transferred to another person or entity provided (i) the insurance requirements under this section are met, (ii) the transferee or assignee executes a license agreement in favor of the city, if one is required hereunder, or otherwise assumes the obligations of the permittee under the license agreement executed by the transferor or assignor, and (iii) that no changes will be made to the site plan or use.
4. The city manager may require the temporary or permanent removal, at the permittee's business or adjacent property owners expense, of any portion of the sidewalk or street cafe on public property when (i) redevelopment of the street or sidewalk or utility repairs necessitate such action, (ii) the permittee breaches the license agreement, ~~or~~ (iii) the permittee fails to comply with the criteria set forth in this chapter, (iv) other conditions exist that render the location unsuitable for the sidewalk or street café, or (v) the license agreement is terminated for any reason.
5. To the extent that the provisions of this chapter conflict with any of the terms, provisions, covenants or conditions of the license agreement, the terms, provisions, covenants and conditions of the license agreement shall prevail.
6. The hours of alcoholic beverage sales at the approved sidewalk or street café shall coincide with the hours of operation for the principle business use associated therewith.

7.11.19 Operational guidelines.

The following guidelines shall govern the location and operation of sidewalk and street cafes. The DRC shall use these guidelines to review applications for a sidewalk or street cafe ~~and they may relax these standards as long as the intent of for the standard is met.~~

1. Location guidelines.
 - a. The width of the sidewalk or street cafe on public property is restricted to the width of the front or side of the associated business premises ~~adjoining restaurant~~.
 - b. An adequate pedestrian right-of-way of no less than four (4) feet must be maintained, with special attention to sidewalk or street cafe facilities abutting intersections and handicap ramps so as to avoid impacts to crosswalks. This minimum distance shall be measured from the portion of the sidewalk or street cafe boundary which is nearest either the curb or the nearest obstruction.

For purposes of this section, including the calculation of all distance measurements, the boundary of the sidewalk cafe boundary shall include a minimum of three (3) feet ~~feet~~ ~~distance~~ from any table intended for the use with ~~of~~ chairs. The sidewalk cafe boundary shall also include any extension created by the use of an umbrella, unless there is a minimum of eight (8) feet of unobstructed clearance between adjacent grade and the lowest portion of any such umbrella when fully opened. In no event may recesses in the sidewalk cafe boundary be used to satisfy this unobstructed width requirement, except

that the corners of the sidewalk cafe may be rounded or mitered. Clearance at the corners of sidewalk cafes shall be measured in radius.

For the purpose of the minimum clear path, but not the clearance from corners of sidewalk cafes, clearance to trees which have grating flushed to grade without fences or guards shall be measured from the nearest edge of the trunks of such trees.

- c. Sidewalk and street cafes shall be a minimum of four (4) feet from large obstructions. For the purpose of this section, large obstructions shall be bus stops, newsstands, existing planters or any other above ground object greater than fifteen (15) square feet in area.
- d. Access to fire hydrants, fire hose connections for sprinkler systems or standpipes and entrances and exits of all buildings shall not be obstructed at any time by barriers or seating. Fire lanes shall not be obstructed at any time.
- e. Sidewalk or street cafes shall be located only as an extension of an approved adjacent restaurant use, or such other use where the sale of on-premises consumption of alcoholic beverages is authorized under this Code, which ~~restaurant~~ shall be adjacent to one (1) or more city rights-of-way. For the purposes of this section, a restaurant shall be defined as in chapter 2, section 2.01.00 of the Land Development Code.

2. Construction guidelines.

- a. Sidewalk and street cafes shall ~~have demonstrate that~~ sufficient lighting ~~is provided~~ which illuminates the cafe boundaries and adjacent pedestrian walkway in such a manner as to allow perception and safe negotiation of potential obstructions within said areas.
- b. Use of movable planters is permissible, and are required for delineation of drinking areas for sidewalk and street cafes serving alcoholic beverages.
- c. Awnings are permissible, provided the awning and support materials meet all applicable building and life/safety codes and either do not interfere with utilities or can be easily removed for maintenance of utilities.
- d. All signs shall ~~must~~ be in compliance with the Land Development Code. No sign is permitted within the sidewalk or street cafe, except on the storefront or umbrellas.
- e. No heating or cooking of food or open flames are ~~generally~~ permitted in the sidewalk or street cafe unless approved by the Fire Department.
- f. Sidewalk and street cafe seating shall be counted in determining the ~~adjoining associated business's restaurant's~~ requirements for bathroom facilities, but shall not be counted in determining the required number of parking spaces.
- g. All sidewalk and street cafe improvements shall comply with the sight distance restrictions found in chapter 8 of the Land Development Code.

7.11.20 Revocation or suspension of permit.

The revocation or suspension of permits is subject to the following:

1. The city manager shall provide written notice of the city's intent to revoke or suspend a permit for any sidewalk or street cafe if it is found or believed that:
 - a. Any necessary business or health permit has been suspended, revoked or canceled;
 - b. The permittee does not have insurance which meets the requirements of this chapter, if required;
 - c. Except for sidewalk cafes located entirely upon private property, including all serving areas, ~~c~~Changing conditions of pedestrian or vehicular traffic cause congestion necessitating the removal of the sidewalk or street cafe. Such decisions shall be based upon the findings of the city manager ~~or the DRC~~ that the existing conditions represent a danger to the health, safety or general welfare of the public;
 - d. The permittee fails to maintain or keep the sidewalk or street cafe clean;
 - e. The sidewalk or street cafe operations constitute a public nuisance, ~~in the opinion of the chief of police,~~ because of the frequency and duration of calls to the city police department for assistance;
 - f. The permittee has failed to correct violations of any of the foregoing ~~this~~ within five (5) days of receipt of written notice from the city manager of such violations, which notice shall be delivered by certified mail, return receipt requested, or by posting in a conspicuous place at the sidewalk or street cafe or adjoining associated business restaurant; or
 - g. The permittee has failed to abide by one or more of the terms, provisions, covenants or conditions of the license agreement, if applicable.
2. The city manager or his or her designee shall give notice of the City's intent to revoke or suspend the permit to the permittee in writing stating the intended action and the reason therefore. ~~In addition, the city manager shall schedule a meeting of the DRC to hear whether or not the permit should be revoked or suspended. The city manager shall provide written notice of such hearing and the permittee shall be provided a reasonable opportunity to present arguments and testimony as to why the permit should not be suspended or revoked. The DRC shall make the final decision as to whether the permit should be revoked or suspended. To the extent the DRC votes to suspend or revoke the permit, such revocation or suspension shall become effective within ten (10) days following the date of the DRC hearing.~~
3. Upon the revocation of the sidewalk or street café permit ~~expiration of the ten (10) day period following the DRC hearing,~~ the permittee shall immediately remove the sidewalk or street cafe. ~~In the case of suspension of the sidewalk cafe permit, the permittee shall be required to remove the sidewalk cafe for the duration of any suspension which exceeds thirty (30) days.~~ Should the permittee fail to remove the sidewalk or street cafe within ten (10) days of the revocation of the sidewalk or street café permit ~~DRC hearing,~~ the city's officers and employees may remove the sidewalk or street café, or any portion thereof, on public property, and the costs of such removal shall become a lien on the adjoining property in the manner of other code enforcement liens.

SECTION II. Section 2.01.00, Definitions, of the New Port Richey Land Development Code is hereby amended to add the following definitions thereto (strikeout text is deleted and underlined text is added):

Sidewalk café. An area of a public sidewalk authorized by the City for exclusive use by a qualified adjacent business, or an outdoor area on private property, used for the consumption of food and drinks by the customers of the business.

Street café. An area of a public street authorized by the City for exclusive use by a qualified adjacent business for the consumption of food and drinks by the customers of the business.

SECTION III. Subparagraph (1) of Subsection (c) of Section 3-5 of Chapter 3 of the Code of Ordinances, pertaining to exceptions to the prohibition of consumption of alcoholic beverages, is hereby amended as follows (strikeout text is deleted and underlined text is added):

- (1) Alcoholic beverages served and consumed at a duly licensed restaurant, ~~or~~ sidewalk café, or street café, pursuant to chapter 7 of the New Port Richey Land Development Code;

SECTION IV. If any phrase or portion of this Ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases and their application shall not be affected thereby.

SECTION V. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall be codified and made a part of the New Port Richey City Code, and that the sections of this Ordinance may be renumbered to accomplish such codification, and that the word Ordinance may be changed to “section” to accomplish such codification.

SECTION VI. This Ordinance shall become effective immediately upon its adoption as provided by law.

The above and foregoing Ordinance was read and approved on first reading at duly convened meeting of the City Council of the City of New Port Richey, Florida this 7th day of August, 2018.

The above and foregoing Ordinance was read and approved on second reading at duly convened meeting of the City Council of the City of New Port Richey, Florida this _____ day of _____, 2018.

ATTEST:

By: _____
Judy Meyers, City Clerk

By: _____
Robert Marlowe, Mayor

(Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE
SOLE USE AND RELIANCE OF THE CITY OF NEW
PORT RICHEY, FLORIDA:

Timothy P. Driscoll, City Attorney