

ORDINANCE 09-4837

AN ORDINANCE OF THE CITY OF SARASOTA, FLORIDA AMENDING THE SARASOTA CITY CODE, CHAPTER 30, STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES, ARTICLE II, RIGHT-OF-WAY PERMITS AND FEES, CREATING SECTION 30-22; PERTAINING TO SIDEWALK CAFÉ REGULATION, ENFORCEMENT, AND APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR READING BY TITLE ONLY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Sarasota allows citizens and businesses to apply for sidewalk café permits so that food service establishments may have accessory sidewalk cafes within the public right-of-way subject to reasonable limitations and conditions; and,

WHEREAS, the review of a sidewalk café permit application is an administrative process conducted by the City Engineer; and,

WHEREAS, the enforcement and regulation of sidewalk cafe permits is administered by the City Engineer; and,

WHEREAS, the City Administration has recommended to the City Commission that, the Code of the City of Sarasota should be amended so as to better enable and improve the process for issuance, regulation and enforcement of sidewalk café permits.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF SARASOTA, FLORIDA:

Section 1. The Code of the City of Sarasota, Chapter 30, Streets, Sidewalks, and Other Public Places, Article II, Right-of-Way Permits and Fees , is hereby amended as follows:

(New text is shown in underline format.)

(Repealed text is shown in ~~strike-through~~ format.)

(Unrevised subsections have been omitted.)

Sec. 30-22. Right-of-Way Usage Permits for Sidewalk Cafés.

Any establishment serving food and beverages, abutting a sidewalk which is a public right-of-way, or any food and drink establishment that is within 50-feet of a business that is abutting a sidewalk which is a public right-of-way, may apply to the City for a right-of-way usage permit for a sidewalk café ("sidewalk café permit"), which would allow the establishment to utilize the applicable City right-of-way for sidewalk café use. The sidewalk café permit is an administrative process of review by the City Engineer. Applications for and the issuance, and regulation of sidewalk café permits shall be governed by the following provisions:

(a) *Application Process.*

(1) *Application.* The applicant must submit an application for a sidewalk café permit to the City Auditor and Clerk's office on forms specified by the City Engineer, and accompanied by the correct fee as enumerated in the Resolution establishing A Fee Schedule for Processing of Petitions for Development Approval, a copy of which shall be available in the city auditor and clerk's office and the Office of the City Engineer. The application shall include and address the following:

a. The application shall be supported with a drawing or sketch which will include the dimensions of the proposed permit area where the operation of a

sidewalk café will occur. The drawing shall also indicate the general location of tables and chairs.

b. The permit area shall be that portion of the public right-of-way as delineated and approved on the permit application and restricted to a portion of the right-of-way which is located between the curbline or the lateral line of a street and the adjacent private property line, excluding any area required for use by pedestrians.

c. The permit area shall be on public right-of-way abutting the restaurant requesting the sidewalk café permit (or on public right-of-way abutting the property of another when that property is within 50 feet of the ground floor access to the restaurant of the applicant; in such case, the applicant must have provided written notification to the owner and lawful occupant, if different, of the property in front of which the sidewalk café will be located).

d. In the CT and Commercial Storefront (CSD) zone districts, the application shall be supported with a landscaping plan if the applicant requests permission to remove or add landscaping within the permit area. The landscaping proposal shall comply with all city greenspace requirements.

- (2) Review. All applications shall be reviewed by the City Engineer, to determine compliance with each of the requirements of this section, and all other City policies and procedures. The operation of the sidewalk café in the location delineated in the application shall not adversely affect or be detrimental to the general health, safety and welfare of the neighborhood or community at large. In making a determination as to whether this standard is satisfied, the City Engineer, shall be guided in his or her discretion by the following considerations:
- a. Whether the proposed sidewalk café permit area is needed by the City for any public purpose;
 - b. Whether issuance of the sidewalk café permit will be contrary to the stated intent, or would result in a violation of, the Sarasota City code or any provision thereof;
 - c. Whether the issuance of the sidewalk café permit will be contrary to the intent of the zone district regulations for the property abutting the sidewalk café.
 - d. Whether the intensity of the proposed sidewalk café would adversely impact pedestrian access along the sidewalk and adjacent public right-of-way; or

otherwise adversely impact pedestrian safety or the flow of pedestrian traffic.

(3) Processing Time. Upon determining that the sidewalk café application is complete, the City Engineer, shall make a decision to approve, approve with conditions, or deny the request within 15 calendar days of the date. The City Engineer may allow for an extension of this time limit, not to exceed one additional 15-day period, if he or she determines additional study and information is necessary.

(4) Decision. In making the administrative decision, the City Engineer, may consult with the property owner, applicant, other citizens, city departments, other public, or private organizations, to solicit information relevant to the sidewalk café request. The decision is based on the City Engineer's findings with regard to the considerations identified for the sidewalk café use of each specific section of City right of way. The City Engineer 's findings shall be based on an evaluation of the facts, the submitted application material, the applicable code regulations, and all other applicable guidelines. Since the physical characteristics of various permit areas may differ substantially, any

sidewalk café permit may contain such conditions as the City Engineer deems warranted to protect the use of adjacent right-of-way for its intended purpose and to otherwise carry out the purpose and intent of this section and this Code. The written, final decision of the City Engineer shall be presented to the applicant, and shall include any conditions, time limits, or other restrictions that may apply to the sidewalk café permit.

(b) Term, Renewal process. The term for a sidewalk café permit shall be one (1) year, from October 1st to September 30th. By August 1st of any year in which a permittee is operating under a valid permit, the permittee must contact the City with his or her intention to either renew or let lapse the sidewalk café permit. If the permittee desires to renew the permit, he or she must fill out the applicable renewal paperwork as required by the City Engineer. The granting of a renewal of the sidewalk café permit is an administrative decision to be made by the City Engineer. In no circumstances will a sidewalk café permit be renewed if it is determined by the City that the permittee has any uncorrected violations under this, or any other, City regulations.

(c) Prior amounts due city. No sidewalk café permit shall be granted, or renewed, pursuant to this section, unless the finance director shall certify that there are no outstanding fines, fees,

taxes, or other charges due and owed to the City by the permittee.

(d) *Discontinuance of permit due to public need.* The use of public right-of-way as a sidewalk café shall be subject to discontinuance by the City in the interest of the public health, safety, and welfare. To the extent that a permit area is needed by the city for the purposes for which it was originally dedicated, or any other public purpose, the City may discontinue the sidewalk café permit and assume full possession and control of the permit area. The City shall provide the permittee with written notice of such required discontinuance, including an effective date, and shall provide the permittee with a reasonable timeline, given the circumstances, in which to cease sidewalk café operations and remove any such furniture or equipment in use in the right of way. In such event, if the permittee has not done so, the city shall be authorized to remove all furniture and other objects of the permittee from the permit area. If the sidewalk cafe encroaches onto the right-of-way of a governmental entity other than the City, a permittee shall cease the use of the right-of-way on the demand of the governmental entity having jurisdiction over or ownership of the right-of-way, the issuance of a right-of-way usage permit notwithstanding.

(e) *Enforcement, Revocation of permit.*

(1) *Enforcement.* Enforcement and notification of violations of any provisions of this Section 30-22, or any other

section of the Sarasota City Code, shall be conducted by the Code Compliance Division of the Neighborhood and Development Services Department and shall be implemented according to existing code enforcement procedures, found in sections 2-306 thru 2-321, Sarasota City Code. The following shall also be violations of this Section 30-22:

a. Any lapse of insurance coverage as enumerated in the application, until proof of reinstatement of insurance is provided to the city.

b. Operation of a sidewalk café without a permit shall be a violation of this section. In such event, the City may immediately assume full possession and control of the permit area and the City shall be authorized to remove all furniture and other objects of the permittee from the permit area.

c. Operation of a sidewalk café on a suspended or revoked permit shall be a violation of this section. In such event, the City may immediately assume full possession and control of the permit area and the City shall be authorized to remove all furniture and other objects of the permittee from the permit area.

(2) Revocation of Permit. In addition to the enforcement and notification measures enacted by the Code Compliance Division of the Neighborhood and Development Services

Department, the City Engineer may, at his or her discretion, take action to revoke any right-of-way usage permit issued pursuant to this section for the failure of the permittee to adhere to any standard or requirement of the permit, this section, or for the violation of any standards or requirements of the Sarasota City Code. The City Engineer shall adhere to the following revocation process:

- a. The permittee shall be given written notice of an impending revocation and the action necessary to prevent the revocation. Notice shall be hand delivered or mailed to the permittee by U.S. registered mail, return receipt requested.
- b. The notice shall specify a time within which the permittee shall take the prescribed action to prevent revocation. In the event the permittee shall fail to take the preventative action, within the time specified, the sidewalk café permit shall be deemed revoked and of no further force and effect. The City Engineer shall then provide the permittee with a notice of revocation of the applicable sidewalk café permit which shall reference the date of revocation. Upon receipt of notification of revocation, the permittee shall cease the operation

of the sidewalk café, and within three calendar days the permittee shall have removed all furniture and other objects placed within the permit area. Should permittee fail to do so, the city shall collect all furniture and objects from the permit area. Furniture will not be returned until all fees and fines hereunder have been paid.

(f) Appeal.

(1) Regarding any violation of this Section 30-22, or any other City code section referenced by the Code Compliance Division, the permittee shall have the right to appear before the Code Compliance Special Magistrate, pursuant to code enforcement procedures, and all such procedures and legal rights shall apply.

(2) Regarding an impending or completed revocation by the City Engineer, as under subparagraph (e) herein, within three (3) days of the date of a notice of impending revocation or notice of revocation, the permittee may appeal the finding of such violation and impending revocation or revocation. An appeal of the City Engineer's action shall be deemed perfected when the permittee has submitted, in writing, a statement that an appeal is being taken and the grounds or reasons therefore, with the city auditor and clerk. The Code

Compliance Special Magistrate at his or her next available regular meeting shall schedule the revocation appeal for consideration. At such an appeal hearing before the Code Compliance Special Magistrate, the permittee shall be given a reasonable opportunity to be heard and to present evidence, in order to show why the finding of a violation and impending revocation or revocation was incorrect. After hearing from the permittee and such other persons or sources as the Code Compliance Special Magistrate shall deem appropriate, the Special Magistrate shall render his or her decision on the appeal of the City Engineer's finding. The action of the Special Magistrate shall be the final decision of a review body within the City.

(g) *Additional city remedies.* Nothing herein contained shall prevent or restrict the city from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or situation of noncompliance. Such other lawful action shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

(h) *Fees.* The amounts of the initial application fee and annual renewal fee shall be set by the City Resolution which

establishes A Fee Schedule for Processing of Petitions for Development Approval, and may be amended from time to time.

Section 2. Should any section, sentence, clause, part or provision of this ordinance be held or declared invalid or unenforceable by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part held or declared to be invalid.

Section 3. This ordinance shall take effect immediately upon second reading. This ordinance shall apply to applications for new sidewalk cafe permits which permits become effective on October 1, 2010 and thereafter, and shall further apply to all applications for renewal of existing sidewalk care permits filed after the effective date hereof.

PASSED on first reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to first reading, as authorized by Article IV, Section 2, Charter of the City of Sarasota, Florida this ____ day of _____, 2010.

PASSED on second reading and finally adopted this ____ day of _____, 2010.

CITY OF SARASOTA, FLORIDA

Kelly Kirschner, Mayor

ATTEST:

Pamela M. Nadalini
City Auditor & Clerk

cityatty/ordinances/09-4837(sidewalk café)/jks/hb/01-01-10