

ORDINANCE NO. 22-03

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,
AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES
ENTITLED "ADMINISTRATION" BY AMENDING SECTION
2-939 "LICENSES" TO AUTHORIZE THE CITY MANAGER
TO PERMIT THE REVOCABLE USE OF CITY RIGHT OF
WAY FOR SIDEWALK DINING UNDER SPECIFIED
CONDITIONS; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEAL OF INCONSISTENT
PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission desires to amend the Code of Ordinances to allow for the revocable use of City right of way for the purpose of allowing sidewalk dining under specified conditions and finds that doing so will promote the public's health, safety and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 2-939 of the Code of Ordinances is hereby amended as follows*:

Sec. 2-939. Licenses.

[. . .]

(f) The City Manager, or his or her designee, is authorized to issue a revocable license which allows a non-permanent use of city right of way for sidewalk dining under the following

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circumstances:

(1) The applicant fully completes a Sidewalk Café Permit application that illustrates compliance with all applicable regulations.

(2) Sidewalk cafes are restricted to the usable sidewalk area and adjacent outdoor seating area on private property of the licensed restaurant to which the permit is issued or within the usable sidewalk area of the building where the validly licensed restaurant is located, provided that written approval is supplied by the building owner. Sidewalk café seating may also be approved in front of immediately adjacent businesses, if the applicant provides the City with an Affidavit of Non-Objection signed by the adjacent property owner and business owner. Use of right-of-way of adjacent business(es) will be revoked if aforementioned consent is withdrawn.

(3) Permits will not be issued where the tables, chairs or other personal property would be placed within five feet of bus stops, taxi stands, fire hydrants, alleys, pedestrian crosswalk or handicap corner curb cut.

(4) Sidewalk cafes shall be located in such a manner that a distance of not less than four feet is maintained at all

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times as a clear unobstructed pedestrian path and a clear line of sight maintained around or through the sidewalk cafe. In instances where curbside seating promotes the clear line of sight and pedestrian walkway, sidewalk café seating may be ~~it is~~ permitted given the following criteria are met.

~~— (a) Areas where there is no on-street parking allowed, will be permitted to place tables out near the curb to encourage the clear line of sight condition.~~

(a)(b) The In areas adjacent to on-street parking, the sidewalk café site plan including seating layout demonstrates the cafe seating will not obstruct vehicle passengers from exiting their cars with the placement of their curbside tables, and

(b)(c) In areas adjacent to on-street parking, Curbside tables must be two-seater tables no larger than 30 inches wide with an orientation parallel to the sidewalk so no chairs will be placed in the pedestrian walkway or back up to the exiting passenger from a parked vehicle, unless the City Manager or their designee determine there is sufficient space to adhere to all clearance provisions of this section. ~~Areas where no on-street parking exists, given an approved site plan by the director or designee, may be exempt from this parameter.~~

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(5) All table layouts will be approved on a site by site basis by the City Manager or designee and curbside table placement, orientation, and size will require an on-site demonstration of the requirements above. This site plan must be posted and displayed in a conspicuous, easily accessed location along with the sidewalk cafe permit.

(6) No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of obstructing the pedestrian path.

(7) Tables, chairs, umbrellas and other permissible objects provided with sidewalk cafe 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. No plastic tables or chairs shall be permitted.

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

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(9) Umbrellas or similar fixtures that are sensitive to windy conditions must be sufficiently weighted to prevent movement, and the City Manager or ~~his~~ their designee may require removal of these umbrellas or similar fixtures on windy days to prevent injury to pedestrians.

(10) Umbrellas and other decorative material shall be fire-retardant or manufactured of fire-resistive material and shall comply with applicable building and fire codes. The lowest part of the umbrella top must be a minimum of seven feet above the sidewalk. Signs are prohibited on umbrellas, chairs, tables, and other permissible personal property and fixtures which are located on the public right-of-way.

(11) Any signage displayed in conjunction with the operation of sidewalk café must be in accordance with the applicable sign regulations for the area in which the associated restaurant is located.

(12) For the purpose of public safety, at any time after obtaining a sidewalk cafe permit, the permittee may be limited to use of non-breakable beverage containers after the code compliance division receives a report attesting to the need to amend the sidewalk cafe permit to impose a non-breakable beverage provision.

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A determination to impose this condition may be appealed to the code compliance special magistrate.

(13) The permit issued may be transferred to a new owner only for the location as listed on the permit. The new owner shall assume any remaining impact fee payments and shall complete a transfer of ownership application with the licensing department, and pay the associated fee. ~~The transferred permit shall be valid only for the remainder of the period for which it was originally issued.~~

(14) The City Manager may require the temporary removal of sidewalk cafes when street, sidewalk or utility repairs necessitate such action.

(15) The City Manager may cause the immediate removal or relocation of all or parts of the sidewalk cafe in emergency situations or for safety considerations.

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

(17) The permit shall be specifically limited to the area as approved on the permit and illustrated in the site plan.

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(18) The permittee shall assure that its use of the sidewalk in no way interferes with sidewalk users or limits their free, unobstructed passage throughout the operation of the sidewalk cafe during all business hours. All tables, chairs, or other personal property shall be removed after business hours unless permission is granted by the City Manager for such tables, chairs, or other sidewalk obstructions to remain after the applicant has demonstrated that tables, chairs, or personal property may safely remain on the sidewalk without causing pedestrian or public safety obstructions.

(19) The area covered by the permit and the sidewalk and roadway immediately adjacent to it shall be maintained in a neat, clean and orderly appearance at all times by the permittee, and the area shall be cleared of all debris as needed during the day, and again at the close of each business day. The permittee shall also be responsible to wash with soap and water, or pressure clean, the sidewalk surface on which the sidewalk cafe is located regularly so as to maintain safe and clean sidewalk areas as determined by the City Manager.

(20) The permit covers the public sidewalk and the portion of outdoor seating area visible from the public right-of-

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way on the private property of the restaurant adjacent to the public sidewalk. Tables and chairs on private property will be governed by other applicable regulations. No additional outdoor seating authorized pursuant to this article shall be used for calculating seating requirements pertaining to applications for or issuance of an alcoholic beverage 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. Up to 12 additional outdoor seats may be added to any approved restaurant without having to amend the zoning conditional use permit for the restaurant. For all additional seating beyond 12 seats, a ~~new~~ revised conditional use permit must be obtained.

(21) Upon the issuance of a hurricane or high wind hazard by the weather bureau or the city, the permittee shall immediately remove all tables, chairs and other equipment located on the sidewalk and outside the building. The issuance of such a warning shall constitute an emergency as referenced in this article.

(22) Only the sidewalk cafe equipment specifically shown on the approved application and not otherwise prohibited shall be

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allowed in the permit area.

(23) No live entertainment or speakers shall be placed in the permit area unless permitted as a special event.

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

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

(26) The permittee shall comply with the following design requirements regarding outdoor seating: Clear knee space under tables - 27 inches in height, 30 inches in width, 19 inches in depth and 34 inches in maximum table height to top of table. Alternatively, equivalent accessible seating may be provided. An acceptable example of equivalent seating would be a round table of 36 inches diameter, four inches stem and base with individual supports. The pedestal and base shall not encroach in the clear floor area.

(27) The hours of operation of the sidewalk cafe are limited to the legal hours of operation of the business holding

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the sidewalk cafe permit. The City Manager may suspend the Sidewalk Café Permit Program in any area, at any time, for conflicting events.

(28) Beer, wine or other alcoholic beverages may be served or consumed at a sidewalk cafe provided that the restaurant operating the sidewalk cafe holds the appropriate license from the State of Florida and the city to serve alcoholic beverages. Approval of a sidewalk cafe permit shall be conditioned upon obtaining the necessary state alcoholic beverage license and meeting all state alcoholic beverage requirements as applicable. The approved site plan by the state for the state alcoholic beverage license to allow service outside of the establishment must conform to the proposed site plan for the cafe seating and must be submitted with the application for a sidewalk cafe permit. All tables and chairs must not exceed the boundaries of the state alcoholic beverage plan and the sidewalk cafe plan.

(29) Fees. There shall be an application fee for a permit which shall be established and subsequently amended by Resolution.
~~The annual base application fee for a permit shall be \$100.00. The annual Revocable License fee shall be \$500.00 (not pro-rated).~~

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Additionally, pursuant to an approved site plan, ~~a~~there shall be a fee to modify existing permits which shall be established and subsequently amended by Resolution.~~a one-time fee of \$500.00 per approved seat shall apply.~~

(30) Insurance. Applicant must have current commercial general liability insurance in the amount of no less than one million dollars and must name the City as an additional insured.

(31) Modifications. Any desired modifications to approved site plans demonstrating seating layouts, or the material or design of tables, chairs, or associated equipment, must be submitted to the City of Key West for review and approval by the City Manager or their designee.

~~(31)~~ (32) Revocation or suspension of license.

(a) If a sidewalk seating revocable license holder is found in violation or admits to a violation of this section, the city manager may conduct a revocable license suspension or revocation hearing, as applicable. The permit holder shall be afforded due process. The city manager may impose a revocable license suspension or revocation as follows:

(1) One violation: Up to 30 days' suspension of sidewalk seating license.

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(2) Two violations: Up to 60 days' suspension of sidewalk seating license.

(3) Three or more violations: Up to a year's suspension or revocation of the revocable license.

(b) Before reaching any decision under subsection (a) of this section, the city manager shall:

(1) Afford the revocable license holder a reasonable opportunity to be heard.

(2) Consider the revocable license holder's past record of compliance with this section and with the entire Code.

(3) Consider the seriousness of the violation.

(c) The city manager's decision to suspend or revoke shall be issued in writing and shall inform the revocable license holder of his right to appeal to the city commission by filing a written appeal with the city clerk within ten days of receipt of the notice. No sidewalk seating revocable license holder shall provide sidewalk seating or services while his or her permit is suspended or revoked. The city manager or their ~~his~~ designee may post the exterior of the property notifying the public of the violation hereunder. An appeal to the city commission shall be in

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accordance with the procedural elements set out in Sec. 90-431(1)-(6).

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 4th day of January, 2022.

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Read and passed on final reading at a regular meeting held
this 19th day of January, 2022.


Authenticated by the presiding officer and Clerk of the
Commission on 20th day of January, 2022.

Filed with the Clerk January 20, 2022.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>No</u>
Commissioner Jimmy Weekley	<u>Yes</u>


TERI JOHNSTON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

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EXECUTIVE SUMMARY

To: Patti McLauchlin, City Manager
 Cc: Todd Stoughton, Assistant City Manager
 Jim Young, Director of Code Compliance
 Amanda Brady, Licensing Official

From: Katie P. Halloran, Director of Planning Department
 Date: January 4, 2022
 Subject: Sidewalk Dining/Sidewalk Cafe Fees

Action statement:

Commission approval to adjust the fees for Café Dining/Café Seating licenses, effective immediately.

Background:

Per F.S Sec. 166.221 Regulatory fees.—A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Currently, revocable license holders in the Café Seating program must pay an annual base application fee of \$100 to participate in the program. The licensing program also required a \$500 per seat Revocable License Fee. In addition, the City charges a one-time per seat impact fee of \$592, billed over seven years.

City elected officials and staff received input from restaurateurs and other local business owners expressing concern regarding the costs associated with the Sidewalk Café program. The City subsequently convened a workshop on June 8, 2021, to further discuss concerns related to the program with the public. City officials have expressed a desire to support and facilitate this program, especially in light of the public health benefits of outdoor dining during the pandemic.

At this time, staff recommends amending the Café Dining/Seating ordinance to require a one-time \$100 application fee and payment of the aforementioned impact fees, however at this time the

revocable license fee is recommended to be removed; these fee changes would be amended directly through Resolution of the City Commission. The proposed new fee schedule is attached to this document and to the Resolution as Exhibit A.

Other minor amendments to the ordinance include clarification of the requirement for an Affidavit of Non-Objection from adjacent property and business owners if a restaurant validly licensed for the Café Seating program would like to also place tables in front of an adjacent property/business.

Options/Advantages/Disadvantages:

Option 1: Approve the proposed amendments to Café Seating fees.

1. Consistency with the City's Strategic Plan, Vision, and Mission: This action would provide enhanced services consistent with the mission and vision of the City. Additional businesses may choose to request a Sidewalk Café license.
2. Financial Impact: The proposed amendment would reduce the total fees collected associated with this program.

Option 2: Deny the proposed amendments to Café Seating fees.

1. Consistency with the City's Strategic Plan, Vision, and Mission: This action may limit the number and type of businesses that can take advantage of this licensing program.
2. Financial Impact: There would be no impact to the City.

RECOMMENDATION:

Staff proposes the City Commission approve the proposed amendments to the Café Dining/Seating ordinance, Option 1, and adopt a resolution reducing the Sidewalk Café fees, as noted above and in the attached Exhibit A, effective immediately.