

City of Bartow Sidewalk Café Regulations

**Draft
1/15/13**

Sec. 6-7. – Possession or consumption of alcoholic beverages in public places.

- (a) It shall be unlawful for any person to possess in open containers or consume any alcoholic beverage in any public place in the city, including such possession or consumption within a motor vehicle.
- (b) "Public place" shall mean any public building, grounds, street, alley, sidewalk, park or any other open property within the city to which the general public is licensed or invited to enter, which such open property specifically includes parking lots and parking areas of commercial establishments.
- (c) Notwithstanding the prohibitions hereinabove set forth, the city manager or his designee may suspend the operation of this section through a special written permit for dances, bazaars, carnivals, celebrations, civic functions, fund raising endeavors, city-sponsored events, operation of sidewalk cafes pursuant to DRC approval, or other related activity of a community nature. In deciding whether to issue a permit under this section, the city manager or his designee shall consider the number and age of persons likely to be in attendance, the likelihood of injury, the ability to provide police and fire protection, the ability to provide medical services, the ability to implement effective crowd control measures, the availability of sanitary facilities, the likelihood of accumulation of litter and/or debris, and the proximity of location to religious or educational institutions, hospitals, youth or public recreation centers or areas, playgrounds, child care centers and residential areas.

2.06.00 Sidewalk Cafes. Sidewalk cafes may be permitted on sidewalks located within a public right-of-way as an accessory use to an existing or proposed restaurant, bakery, drinking establishment, tea room, or convenience store (no gas) in the C-1, C-2, C-3 or C-4 Zoning Districts. All sidewalk cafes shall meet the following requirements:

- (A) Procedures:
 - (1) Persons or entities proposing to operate a sidewalk cafe shall apply for and receive approval from the Development Review Committee (DRC).
 - (2) All applications for sidewalk cafes shall be reviewed by the DRC for compliance with this section. After DRC review, the applicant shall be given the opportunity to correct any noted deficiencies and resubmit the request to the DRC, which shall then approve, approve with conditions, or deny the application for a sidewalk cafe permit.
 - (3) Approved sidewalk cafe applications shall be valid for a period of one (1) year, and shall be renewed on an annual basis, concurrently with the annual business tax payment of the principal use.
 - (4) The sidewalk cafe permit application shall include the following:
 - a. A completed application form, which shall include, but not necessarily be limited to, the following:
 - 1) Name of the establishment, its address and phone number;
 - 2) Name, address, and phone numbers, both day and evening, of the establishment's owner/operator;
 - 3) Name, address, and phone numbers, both day and evening, of the building owner;
 - 4) Signature(s) of the establishment's owner/operator and the building owner.

- b. A scale diagram or sketch plan of the area for the sidewalk cafe. This should also include the location and description of all furniture, structures, and materials requested to be in the right-of-way and contiguous private property, including where such materials are proposed to be stacked, stored, and secured after the sidewalk café ceases its daily operation. The diagram shall indicate dimensions and proposed seating capacity.
- c. A certificate of insurance in a sufficient amount to protect the City, as determined by the City's Risk Manager, based on the proposed occupancy of the principal use and cafe, the type of principal use and the current limits of the City's liability under Florida's general legislative waiver of sovereign immunity. The City of Bartow shall be named as additionally insured on all certificates of insurance.
- d. Location of existing, and any proposed, restroom facilities, including number of fixtures.
- e. Other information as may be requested by the DRC.
- f. The current Business Tax Receipt for the principal use.
- g. A copy of all other necessary business operation permits as required by Florida law or local ordinance for the principal use.

(B) Rules, Regulations, and Conditions of Permit:

- (1) The operation of a sidewalk cafe shall be located such that there is:
 - a. A minimum forty-four inch (44") clear, unobstructed passageway between the edge of the sidewalk cafe and other permanent objects within the right-of-way;
 - b. A minimum eighty inch (80") from the edge of the sidewalk or back of curb; and
 - c. Sufficient space between the edge of the customer seating/table and the unobstructed passageway pursuant to the Florida Building Code.

The DRC may increase any of the above distances as necessary for public safety purposes.

- (2) The location of the sidewalk cafe may only be on the immediately adjacent and contiguous sidewalk or pedestrian alley to the applicant's business, and not interfere with any driveway, alleys, streets, or building entrances. The sidewalk cafe must not interfere with any functions, public or private, of the Americans with Disabilities Act (ADA).
- (3) Sidewalk cafes shall not be approved if the proposed location constitutes a safety hazard as determined by the Police and Fire Chiefs based on historical data related to vehicle and pedestrian accidents.
- (4) Sidewalk cafes may be allowed for downtown establishments whose primary purpose is food or beverage service to persons seated at a table. All food preparation shall occur within the existing principal use's established and approved kitchen and only pursuant to properly issued business operation permits under Florida law. Food shall not be prepared within the sidewalk cafe.

- (5) Additional seating within the sidewalk cafe shall be factored into the minimum number of plumbing fixtures provided on site as required by §403, Florida Building Code (Plumbing) as the same may be amended from time to time.
- (6) The sidewalk cafe and surrounding sidewalk areas shall be kept clean and free of litter by the owner/operator.
- (7) Only those items authorized by the permit and shown on the diagram may be placed in the public right-of-way. All furniture and objects shall complement and be compatible with surrounding areas. All furniture and objects within the sidewalk cafe shall not extend beyond the boundaries of the sidewalk cafe as delineated in the approved permit diagram.
- (8) Sidewalk cafes partially on private property and partially on the public right-of-way must adhere to all regulations for sidewalk cafes contained in this section. Sidewalk cafes solely on private property are exempt from the general permitting provisions of this section but must comply with all applicable Federal and State regulations, including but not limited to ADA standards, state building codes, hours of operation and removal of cafe furnishings in response to impending severe weather events.
- (9) All signage, including sandwich boards, awnings, canopies, and umbrellas, and other fixtures must be in compliance with all applicable City codes and regulations.
- (10) Furniture and other items associated with the sidewalk cafe, including but not necessarily limited to: tables; chairs; umbrellas; portable heaters; planter boxes; and bollards, must be durable and sufficiently stable to prevent displacement by winds of typical speed and intensity, as determined for Central Florida by the National Weather Service. The owner/operator is responsible for relocating, storing, and securing the outdoor furniture if the wind or wind gusts are of such strength that any displacement is likely. In the event severe weather conditions are expected, all items placed on the sidewalk shall be removed a minimum of twenty-four (24) hours prior to the severe weather event as forecasted by the National Weather Service. Those items not removed by the owner/operator shall be subject to removal by the City at the owner/operator's expense.
- (11) All items shall be promptly stacked, set aside, and secured immediately after the sidewalk cafe discontinues its daily operation and must be stored on private property or that part of the public sidewalk immediately adjacent to the building.
- (12) Hours of operation shall not begin prior to 7:00 AM nor continue later than 9:00 PM on Sundays through Thursdays. On Fridays and Saturdays, cafés may operate past midnight until 1:00 AM the following day. The City Commission may authorize by resolution expanded hours relating to holidays and specific City-sponsored or City-co-sponsored Special Events.
- (13) Music may be allowed during the hours of operation, subject to the regulations contained in the City's Code of Ordinances or Unified Land Development Code and any special conditions of the cafe permit.
- (14) An owner/operator of a sidewalk cafe may request that the City close one or more parallel parking spaces, or two or more angled parking spaces, along the street frontage adjacent to their place of business to allow additional space for the cafe, within the guidelines and regulations as noted above. Such request shall be made part of the initial sidewalk café application or subsequent amendment. Any cost attributed to the closure shall be borne by the applicant and paid in advance of the closure taking place.

- (C) Suspensions, Revocations, and Terminations: If necessary, a permit may be "temporarily suspended", "temporarily suspended with prejudice", "revoked", or "terminated".
- (1) Temporarily Suspended. In the event that the City needs temporary access or use of the right-of-way, a permit will be temporarily suspended. In most cases, the City will make a "good faith" effort to provide the sidewalk café a notice of the temporary suspension at least 48 hours in advance. The notice will indicate the reason for the temporary suspension, and the length of time that the suspension will be in place.
 - (2) Temporarily Suspended with Prejudice. In the event that the establishment is in violation of any portion of the Code of Ordinances, Unified Land Development Code or State or Federal regulations, or is deemed to be a public hazard, the sidewalk cafe permit will be temporarily suspended with prejudice. If the establishment is in violation of a portion of this section, notice will be issued by the DRC and the establishment will then have a specified period of time to correct the violation. If the establishment does not correct the violation within the specified time period, the sidewalk cafe permit will be Temporarily Suspended with Prejudice. The sidewalk cafe is to remain closed until the problem is corrected. If the sidewalk cafe's permit is temporarily suspended with prejudice more than two (2) times in a 12 month period, the approval for the use shall be revoked.
 - (3) Revoked. The DRC may revoke any sidewalk cafe permit for the purposes of public safety, welfare, termination of liability insurance, or necessity for public usage of the subject right-of-way. Owners whose permits have been revoked may re-apply for a sidewalk cafe permit ninety (90) days after the date of revocation.
 - (4) Terminated. The City reserves the right to terminate individual sidewalk cafe permits. The termination of any individual sidewalk cafe permit may prevent the re-issuance of a sidewalk cafe permit to the owner/operator and/or to the restaurant location, based upon the specific reasons involved in the termination.
- (D) Liability and Insurance Clause: The applicant shall furnish a signed statement, with the application, that the permittee shall defend, indemnify, and hold harmless the City, its officers, and employees, from any claims for damages to property or injury to persons which may occur in connection with an activity carried on under the terms of the permit. The applicant shall maintain such public liability, food products liability, liquor liability (if applicable), and property damages insurance as will protect the permittee and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than the municipal tort liability under the Florida Tort Claims Act. Such insurance shall be without prejudice to coverage otherwise existing, and shall name the City, its officers, and employees, as additional persons insured, and shall further provide that the policy shall not terminate or be canceled prior to the expiration of the permit without 30 days written notice to the City. If the insurance is cancelled or terminated, the DRC has the right to revoke the sidewalk café approval.