

Attachment 2

Section 3-909. - Outdoor cafés located within public right(s)-of-way.

A. *Applicability.* A bar, brewpub, indoor recreation/entertainment facility, microbrewery, museum, nightclub, restaurant, take-out food establishment with no indoor seating, or other use which includes the sale and or consumption of food or drink as determined by the Community Development Coordinator, may establish an outdoor café. Outdoor cafés shall be exempt from parking requirements.

1. Outdoor cafés are allowed only in/on:

- a. The Downtown District;
- b. Those properties located in the Tourist District on Clearwater Beach; and
- c. The east side of that area known as Beach Walk as existing on the east side of Gulfview Boulevard between the northerly terminus of Beachwalk south of the Gulfview/Coronado confluence and the southern terminus of Beach Walk approximately 330 feet south of Fifth Street and as located within the Beach Walk District as provided in Beach by Design and further located in the Open Space/Recreation [OS/R] District on Clearwater Beach provided the outdoor café is in conjunction with a permitted restaurant in the adjacent Tourist District.

2. Special provisions of this section apply to outdoor cafés located within the Cleveland Street Café District.

B. *Application process.* The community development coordinator shall review all outdoor cafés as an allowable encroachment into the public right(s)-of-way subject to compliance with the location, design and operational requirements below.

C. *Location and design requirements.*

1. Outdoor cafés are restricted to the sidewalk frontage of the subject business applying for a permit, except that outdoor cafés located within the Cleveland Street Café District may extend the linear

distance of any adjacent business frontage, in accordance with the provisions of Section 3-909.D.10.

2. Outdoor cafés shall be located in a manner that promotes efficient and direct pedestrian movement:
 - a. An unobstructed pedestrian path at least five feet wide shall be maintained at all times.
 - b. Within the Cleveland Street Café District the pedestrian path shall be maintained parallel to the abutting business.
 - c. An unobstructed passage shall be provided to building entrances which shall include at least two feet of clearance on each side of all entrances.
 - d. The community development coordinator may require a wider pedestrian path than established above, and/or that the pedestrian path is delineated by those means set forth in subsection 7, below.
 - e. Failure to comply with any of the above requirements may result in the revocation of the outdoor café permit pursuant to Section 3-909.E.4.
3. All furnishings shall be of good design and made of quality materials.
4. No tables, chairs or any other furnishing or item shall be chained or attached to any building, sidewalk, tree, post, sign or other fixture.
5. No furniture shall be permitted within the sight visibility triangle as required by the Community Development Code. Furniture shall not be placed within four feet of bus stops, telephone booths, fire hydrants, or counter service windows or within two feet of any entrances and/or exits.
6. Outdoor cafes pursuant to Section 3-909.A.1.c, above, are restricted to sidewalk frontage of the subject business applying for a permit and may extend no more than 25 feet from the façade of the subject business. Under no circumstances may any portion of an outdoor

café extend into or obstruct any portion of the main pedestrian thoroughfare (promenade) of Beach Walk.

7. The perimeter of outdoor cafés may be defined through the use of self-supporting fencing, landscape planters, or other such devices and methods as presented to and approved by the City.
8. Any area in which an outdoor café is permitted shall be clearly delineated on a drawing accurately depicting the area and specifically delineating where alcohol beverage sales are intended to occur. Such a drawing shall be submitted to and approved by the City as part of a Level One approval.

D. *Operational requirements.*

1. All furnishings shall be maintained by the outdoor café operator in a clean and attractive appearance and shall be in good repair at all times.
2. No amplified music shall be allowed.
3. No food storage or preparation shall be allowed within the right(s)-of-way.
4. The hours of operation of an outdoor café shall coincide with those of the associated business.
5. The outdoor café operator is responsible for repair of any damage to the right(s)-of-way caused by the restaurant or its patrons.
6. By use of any permit granted hereunder, the outdoor café operator agrees to indemnify, defend, save and hold harmless the city, its officers, agents and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of the use of the public right(s)-of-way. The outdoor café operator shall enter into a written agreement with the city to evidence this indemnification. Such agreement must have the written approval of the city attorney prior to issuance of permit.
7. The outdoor café operator shall show evidence of:

- a. Comprehensive general liability insurance on an "occurrence" basis in an amount not less than \$1,000,000 combined single limit bodily injury liability and property damage liability. The city is to be specifically included as an additional insured on the policy.
 - b. Workers' Compensation insurance applicable to its employees, if any, for statutory coverage limits in compliance with Florida laws, including employers' liability which meets all state and federal laws.
8. The outdoor café operator shall provide the city with the certificate(s) of insurance evidencing required coverages. Current certified copies of such required coverages shall be provided to the city when specifically requested in writing.
9. All policies of insurance must be endorsed to provide the city with 30 days notice of cancellation or restriction.
10. For outdoor cafés located within the Cleveland Street Café District that intend to use the public right(s)-of-way in front of an adjacent business, the applicant must submit a notarized statement from the adjacent property owner(s) indicating consent to use the right(s)-of-way in front of their business as an outdoor café.
11. As necessitated by right(s)-of-way repairs, the city may require the temporary removal of outdoor cafés and all related furnishings. The outdoor café operator shall be responsible for removing all furnishings at least 24 hours prior to the date identified in writing by the city. The city shall not be responsible for any costs associated with the removal or the return and installation of any such furnishings.
12. The city may cause the immediate removal or relocation of all or any part of the outdoor café in emergency situations. The city, its officers, agents and employees shall not be responsible for any damages or loss of furnishings used in association with an outdoor café relocated during emergency situations and shall not be responsible for any costs associated with the removal or the return and installation of any such furnishings.

13. The city shall have the authority to secure or remove any furnishing(s) associated with the outdoor café if necessary in the interest of public safety.
 14. Alcoholic beverages may be served in conjunction with any lawfully permitted outdoor café provided the business to which the outdoor café is accessory is in possession of all required licenses.
- E. *Revocation of permit.* Upon revocation of a permit, the community development coordinator shall give written notice of such action by certified mail, return receipt requested, to the permittee at the address listed on the application, stating the reason(s) for revocation. The revocation shall become effective 15 days following mailing of the notice if not appealed as provided in section 4-501A. The community development coordinator may revoke a permit for any outdoor café if it is found that:
1. Any necessary business or health permit has been suspended or revoked; or
 2. Changing conditions of pedestrian or vehicular traffic cause congestion necessitating the removal of the outdoor café. Such decision shall be based upon findings of the community development coordinator, after consulting with the city engineer, that the existing conditions represent a danger to the health, safety or general welfare of the public and cannot be resolved through modification to the outdoor café layout; or
 3. The outdoor café operator fails to comply with one or more requirements of the permit.
 4. The outdoor café is deemed to be a threat to public safety, in which case the permit may be revoked immediately without notice or compliance with the requirements described above.
 5. The outdoor café is deemed by the city to not be in the city's or the public's best interest, no longer meets the purpose and/or intent of the zoning district or any applicable overlay/special area plan and/or is simply no longer a desired use/activity.

(Ord. No. 8042-09, § 3, 6-4-09; Ord. No. 8331-12, § 1, 7-19-12; Ord. No. 8810-16, § 13, 1-21-16; Ord. No. 8931-16, § 14, 9-1-16; Ord. No. 9149-18, § 5, 8-2-18)