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ORDINANCE NO. 2005- 306

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, AMENDING THE CITY OF TAMPA CODE OF ORDINANCES, CHAPTER 22, THE CITY OF TAMPA STREETS AND SIDEWALKS ORDINANCE TO PROVIDE, SUBJECT TO CERTAIN CONDITIONS, FOR A SIDEWALK CAFÉ TO EXTEND ACROSS A PUBLIC RIGHT OF WAY IN FRONT OF AN ADJACENT OWNER'S PROPERTY A MAXIMUM OF 50 FEET ON EITHER SIDE OF THE PRIMARY PERMITTEES' PROPERTY; AMENDING SECTION 22-224 PERSONS AUTHORIZED TO OPERATE SIDEWALK CAFES, APPLICATION, REVIEW AND APPROVAL PROCESS, TO INCLUDE THE REQUIREMENTS FOR SUBMITTING EVIDENCE OF CONSENT BY AN ADJACENT PROPERTY OWNER TO ALLOW THE SIDEWALK CAFÉ ON THE PUBLIC RIGHT OF WAY IN FRONT OF THEIR PROPERTY; AMENDING SECTION 22-225, PERMIT ISSUANCE, TO AMEND THE COMMERCIAL GENERAL LIABILITY INSURANCE REQUIREMENT SET IN 1992 AT \$500,000 AND HEREAFTER REQUIRE PERMITTEES TO OBTAIN AND MAINTAIN LIABILITY INSURANCE AT THE CURRENT INDUSTRY STANDARD OF \$1 MILLION; AMENDING 22-226 CONDITIONS OF PERMIT, TO AMEND THE PROVISION REQUIRING REMOVAL OF TABLES AND CHAIRS IN EMERGENCY SITUATIONS TO INCLUDE TROPICAL STORM AND HURRICANE WARNINGS AND PROVIDING A \$500.00 PENALTY FOR VIOLATION THEREOF; AMENDING SECTION 22-227, OPERATIONAL GUIDELINES, TO ADD AUTHORITY FOR AN APPLICANT FOR A SIDEWALK CAFÉ PERMIT TO EXTEND BY A MAXIMUM OF 50 FEET IN THE PUBLIC RIGHT OF WAY ON ONE SIDE AND/OR THE OTHER OF THE APPLICANT'S PROPERTY BOUNDARY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

1 (1) General Application Criteria: Before operating a sidewalk café,
2 application for a sidewalk café permit shall be made to the official on a
3 form provided by the official. Such applications shall include, but not be
4 limited to, the following information:

5 a. The name, address, phone number ~~and form of applicant-business,~~
6 and name of duly authorized representative of the applicant;

7 b. Evidence of registration of a fictitious name or trade name, if any,
8 under which the business applicant proposes to do business or is
9 doing business;

10 c. Two (2) copies of a detailed site plan including, but not limited to,
11 the following:

12 1. The proposed use, materials, colors and design;

13 2. Relationship of the sidewalk café to the adjacent existing
14 building and their uses and entrance locations;

15 3. The location of any utilities that might effect or be affected
16 by the proposal;

17 4. The relationship of the sidewalk café to the centerline of
18 the adjacent street, if applicable, and to any existing or
19 proposed public improvements, including, but not limited
20 to, benches, fire hydrants, light standards and landscaping;

21 5. The legal description, total square footage and exact
22 dimensions of the proposed sidewalk café;

23 6. The existing and proposed pedestrian circulation pattern;

24 7. Floor plan of the existing building and any proposed
25 modification, showing the relationship of food preparation
26 areas to the sidewalk cafe;

27 d. ~~d.~~ The adjacent abutting property owner's' written consent for
28 the minimum period of one (1) year to the applicant's application if
29 seeking to operate a sidewalk café that extends to a public right of
30 way in front of an adjacent owner's property. It is contemplated
31 hereby that an applicant and adjacent property owners may enter
32 into an agreement for the right to extend a sidewalk café in front of
33 an adjacent owner's property, therefore, for purposes of this
34 ordinance, an applicant shall provide, at the applicant's option,
35 evidence of consent by either presenting the agreement or short
36 form agreement that, at minimum:

37 i. Identifies and contains the notarized signature, with two
38 witnesses, of all interested property owner(s); and

39 ii. Express language evidencing consent for the minimum
40 period required by this ordinance; and,

1 iii. An acknowledgement by the consenting party that the City
2 shall be provided notice of any revocation or suspension of
3 consent by registered mail, return receipt requested, within
4 five business (5) days of exercising said revocation or
5 suspension

6 iv. An acknowledgement that the city shall be held harmless
7 from any and all liability arising out of the issuance of a
8 sidewalk café permit, and

9 e. e.—Plans for the operation of the sidewalk café, including, but
10 not limited to, hours of operation, maintenance of the sidewalk
11 café and services to be provided.

12
13 (2) Application Criteria and Method of Review for Sidewalk Cafés on
14 Franklin Street Mall, Herman C. Massey Park, NCNB Plaza, or on public
15 sidewalks in the Franklin Street Mall Phase II District or Ybor City
16 review and approval.

17 a. Criteria: Any restaurant (the “applicant”) that complies with the
18 provisions of this subsection, which are in addition to those above,
19 is authorized to operate a sidewalk café and obtain issuance of a
20 permit therefor. Applications for sidewalk cafés to be located on
21 the Franklin Street Mall, Herman C. Massey Park, NCNB Plaza, or
22 on public sidewalks in the Franklin Street Mall Phase II District or
23 Ybor City as defined in this chapter, shall be reviewed as follows:

24 1. The official shall examine the qualifications of the
25 applicant and the applicant's plan for operation and
26 maintenance of the sidewalk café.

27 2. The official shall approve plans, designs and specifications
28 that do not unreasonably interfere with any of the
29 following:

- 30 i. Adequate pedestrian flow;
- 31 ii. Access to public utilities, building entrances,
32 crosswalks, bus stops and transient entrances;
- 33 iii. Pedestrian and traffic safety; and
- 34 iv. Aesthetic compatibility with the surrounding area.

35 3. The official may advise the applicant of the revisions to the
36 applicant's plans, designs and specifications that will result
37 in an application that conforms to the provisions of this
38 subdivision.

39 4. The official shall deny an application for a sidewalk café
40 permit if:

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- i. The applicant has failed to comply with any of the submission requirements contained in this section;
- ii. The sidewalk café, as the applicant represents how it will be operated, fails to comply with the criteria set forth in this subdivision;
- iii. Any information submitted by the applicant is found to be incorrect; or
- iv. The official finds that the sidewalk café would create an obstruction to, or cause congestion of, pedestrian or vehicular traffic due to existing conditions on the surrounding public right-of-way so as to represent a danger to the health, safety or general welfare of the public.

b. Method of Review: Applications for sidewalk cafés to be located on public sidewalks in the city, except on the Franklin Street Mall, Herman C. Massey Park, NCNB Plaza, or on public sidewalks in the Franklin Street Mall Phase II District or Ybor City as defined in this chapter, shall be reviewed as follows:

- 1. The official shall transmit one (1) copy of the application to the city clerk for presentation to the city council to set a public hearing.
- 2. The official shall cause an analysis to be made of the application based upon the criteria provided in subsection (2)a. of this section, and prepare a recommendation for consideration by the city council.
- 3. Prior to consideration of the application for approval of the sidewalk café, a public hearing thereon shall be held by the city council. The procedures for such public hearing shall be as follows:
 - i. The city council shall set, by motion, a date for a public hearing on the application, which public hearing shall be scheduled not less than fifteen (15) days and no more than seventy-five (75) days from the date of the motion. Notice of the public hearing shall be published in a newspaper of general circulation in the city at least fifteen (15) days prior to the public hearing.
 - ii. The applicant shall immediately, upon the passage of the motion fixing a date for a public hearing and not less than fifteen (15) days prior to the date set for the public hearing, send a notice to the owner, according to the latest ad valorem tax records, of

1 every parcel of land within a distance of one
2 hundred fifty (150) feet, excluding roads or streets,
3 in all directions from the proposed sidewalk cafe
4 which is the subject of the application. This notice
5 shall be mailed to such owner at his usual post
6 office address, by certificate of mailing. ~~ed-mail,~~
7 ~~with return receipt requested.~~ The applicant shall
8 prepare an affidavit showing: (a) i. the lands that lie
9 within one hundred fifty (150) feet, excluding roads
10 and streets, in all directions from the subject
11 property; (b) ii. the names of the owners of such
12 lands, (c) iii. the date and post office address to
13 which each copy of the notice was mailed. The
14 applicant shall attach to the affidavit ~~copies of the~~
15 ~~postmarked receipts for certificate~~ certified of
16 mailing showing the date the notices were mailed
17 and a photograph of the sign as posted on the
18 property. The affidavit ~~and the copies of the~~
19 ~~postmarked receipts for certified mail~~ and a
20 photograph of the sign as posted on the property
21 shall be filed with the city clerk not less than five
22 (5) days prior to the date of the public hearing.

23 iii. The official shall provide a sign to be posted by the
24 applicant in a conspicuous place on and near the
25 front of the property where the proposed sidewalk
26 cafe is to be located, fifteen (15) days prior to the
27 scheduled public hearing. The sign, which may be
28 cardboard, metal or other substance, shall be of a
29 size of not less than eighteen (18) inches by twenty-
30 four (24) inches upon which shall appear the
31 following information:

32 Public Notice--Sidewalk Cafe Hearing Before City
33 Council, City of Tampa, City Council Chambers,
34 City Hall (insert date and hour of hearing).

35 iv. The applicant shall pay a fee, as established by the
36 city council, at the time of filing. No fees shall be
37 refunded unless the sidewalk cafe application has
38 been unnecessarily filed due to administrative error
39 and without the applicant's fault. In such cases the
40 city council, by a majority vote, may authorize the
41 director of finance to refund the fee.

42 v. If the notices of the time and date of the public
43 hearing, ~~as required herein,~~ are hearing are not
44 mailed to property owners as required herein, or the

1 requisite sign is not posted on and near the front of
2 the property as required herein, at least fifteen (15)
3 days prior to the scheduled date of the public
4 hearing by the applicant or or the affidavit, together
5 with the certificate of mailing copies of the
6 postmarked receipts for certified mail and a
7 photograph of the sign as posted on the property, is
8 not filed with the city clerk as required herein at
9 least five (5) days prior to the scheduled date of the
10 public hearing, then public hearing shall be
11 continued for no less than four (4) weeks and the
12 applicant shall be required to amend the his
13 application as provided herein. There shall only be
14 one continuance permitted for failure to meet the
15 requirements herein, accordingly, in the event
16 of a second violation the petition shall be deemed
17 withdrawn and the petitioner will be required to file
18 the petition anew.

19 vi. Amended application. An application may be
20 amended to correct an error or omission. If this
21 amendment requires re-advertisement of the notice
22 of public hearing, the applicant shall pay an
23 amendment fee, as established by resolution of the
24 city council, to cover the cost and expenses as a
25 result of the amendment at the time the amendment
26 is filed.

27 4. After completion of the public hearing, the city council
28 shall approve, approve with conditions or deny the
29 sidewalk café application.

30 5. The official shall cause notice of the disposition of the
31 application to be sent to the applicant. The official, in the
32 case of approval or approval with conditions, shall issue a
33 permit in accord with the council's actions upon submission
34 by the applicant of the items listed in section 22-225 of this
35 Code.

36 (3) *Reapplication.* Any current holder of a sidewalk café permit shall reapply
37 for a new permit, subject to the applicable conditions above, if changes are
38 proposed to the permitted sidewalk café.
39

40 **Section 4.** That Sec. 22-225. *Permit Issuance*, is hereby amended as follows.
41 The change in insurance coverage limits made effective herein shall be applicable to all
42 permits and renewals issued subsequent to enactment of this ordinance.
43

44 Sec. 22-225. Permit issuance.

1 (a) Prior to the issuance of a permit, the applicant shall furnish the official
2 with the following:

3 (1) A copy of a valid City of Tampa occupational license tax receipt as
4 required by this Code;

5 (2) Copies of all required health department permits to operate a sidewalk
6 cafe;

7 (3) A properly executed certificate of insurance on forms which are to be
8 furnished by the city providing commercial general liability insurance in
9 the amount of one million five hundred thousand dollars (\$1,500,000.00)
10 combined single limit each occurrence. All insurance shall be from
11 companies duly authorized to do business in the State of Florida. All
12 liability policies shall provide that the city is an additional insured as to
13 the operation of the sidewalk cafe and shall provide the severability of
14 interest provision. Thirty (30) days' written notice must be given the city
15 of any cancellation or reduction in the policy coverages;

16 (4) A fully executed sidewalk cafe lease, which includes a hold harmless
17 provision holding the city harmless from any and all liability arising out of
18 the issuance of a sidewalk cafe permit and/or execution of a sidewalk cafe
19 lease.

20 (5) The sidewalk cafe permit fee.

21 (b) Upon approval of an application and submission of the aforesaid items, the
22 official shall issue a sidewalk cafe permit.
23
24

25 **Section 5.** That Sec. 22-226. *Conditions of Permit*, is hereby amended as
26 follows:
27

28 The permit shall be issued on the form provided by the official. In addition to
29 naming the permittee and any other information deemed appropriate by the official, the
30 permit shall be subject to the following conditions:

31 (1) Permit Period: Each permit shall be effective for one (1) year subject to
32 annual renewal;

33 (2) Permittee: Non-transferability: The permit ~~issued~~ shall be issued personal
34 to the applicant restaurant (the "permittee") ~~only~~ and shall not be
35 transferable in any manner;

36 (3) Removal for Right of Way Development or Maintenance: The official may
37 require the removal, temporary or permanent, of the sidewalk cafe when
38 redevelopment of the street or sidewalk, or utility repairs necessitates such
39 action, or the permittee fails to comply with the criteria set forth in this
40 subdivision;

41 (4) Emergency Situation: Removal for Severe Inclement Weather: Upon

1 declaration of a state of emergency, upon the issuance of a tropical storm
2 or hurricane warning or warning of severe inclement weather by the
3 county, the permittee shall forthwith place indoors all tables, chairs and
4 other equipment located on the public right of way. The issuance of such a
5 warning shall constitute an emergency situation, therefore, violation of
6 this subsection may~~shall~~ result in a fine not to exceed ~~the issuance of an~~
7 ~~immediate~~ \$500.00 fine. The city's officers and employees may
8 immediately remove all or parts of the sidewalk cafe in an emergency
9 situation. Any and all costs incurred by the city for removal or storage of
10 sidewalk cafe tables, chairs and other equipment ~~equipment~~ shall be the
11 responsibility of the permittee. In the event the city removes sidewalk
12 café tables, chairs and other equipment pursuant to this ordinance, the city
13 shall provide each applicable permittee written notice of removal, notice
14 of costs assessed or a fine, and thirty (30) days to recover all sidewalk café
15 tables, chairs and other equipment removed pursuant to this subsection.
16 The city is not responsible for any damages or loss of equipment
17 removed pursuant to this subsection, which is lawfully confiscated.

18 (4) ~~Responsibility for expenses: The permittee shall be responsible for~~
19 ~~expenses incurred in removing the sidewalk cafe;~~ (5) ~~The city's officers and~~
20 ~~employees may immediately remove all or parts of the sidewalk cafe in an~~
21 ~~emergency situation;~~ (6) ~~The city and its officers and employees shall~~
22 ~~not be responsible for sidewalk cafe components relocated during~~
23 ~~emergencies;~~ (7) Site Plan Controlled: The permit shall be
24 specifically limited to the area shown on the exhibit attached to and made
25 part of the permit;

26
27 (68) Permit Scope: The permit covers only the public right-of-way. Tables,
28 chairs and other equipment ~~chattels~~ will be governed by other applicable
29 regulations.

30
31 **Section 6.** That Sec. 22-227. Operational ~~guidelines;~~ Guidelines is hereby
32 amended as follows:

33
34 (a) Location requirements.

35 (1) ~~(1)~~ The width of the sidewalk café is restricted to:

36 i. ~~the sidewalk frontage of the property subject of the permit~~ width
37 of the front or side of the adjoining restaurant. However, the
38 area of the permit may also extend by a maximum of 50 feet on
39 one side and/or the other of the permittee's business, subject to
40 the provisions of subsection (ii) of this section.

41 ii. An applicant for a sidewalk café permit may be permitted to
42 extend by a maximum of fifty (50) contiguous feet in the public
43 right-of-way on one side and/or the other side of the applicant's

1 property so long as the applicants property abuts the public right
2 of way. In order for the subject area of the permit to extend to a
3 public right of way in front of an adjacent owner's property, the
4 applicant must obtain written permission for use of such area
5 from the adjacent property owner(s) for a minimum period of
6 one (1) year. Such permission shall at all times take into
7 consideration applicable federal, state and local accessibility and
8 safety requirements. The revocation or suspension of such
9 permission shall not operate to grant the permittee a refund of the
10 annual permit fee or any other fees paid to the city for operation
11 of a sidewalk café. The party revoking or suspending such
12 permission shall have a continuing duty to inform the city, in
13 writing, of the revocation; upon receipt of said notice the area of
14 the permit shall be automatically constricted to exclude the area
15 subject of the revocation. In the event the 50 foot allowable area
16 includes consent from more than one adjacent owner, and the
17 revocation by one owner will result in breaking the contiguous
18 quality of the sidewalk café area extending from a particular side
19 of the permittee's property, then that entire side of the sidewalk
20 café shall constrict to the permittee's property boundary,
21 regardless of the continuing consent of the other property
22 owner(s) on the affected side or reinstatement of consent by the
23 original revoking party.

24 (2) An adequate pedestrian right-of-way of no less than four (4) feet shall be
25 maintained for each cafe and shall be reviewed by the traffic engineer or
26 their designee to determine the appropriate width based on the existing
27 and projected pedestrian demand. The pedestrian walkway shall be on the
28 outside of the sidewalk cafe and not through the middle of the cafe. The
29 operational hours of the cafe shall be determined by the transportation
30 manager or his/her designee through the permitting process. The minimum
31 distance shall be measured from the portion of the sidewalk cafe boundary
32 which is nearest either the curb line or the nearest obstruction. In no event
33 may recesses in the sidewalk cafe boundary be used to satisfy this
34 unobstructed width requirement, except that the corners of the sidewalk
35 cafe may be rounded or mitered. Sidewalk cafes shall maintain a clearance
36 of four (4) feet around the corners of the sidewalk cafes measured in
37 radius. For the purpose of the minimum clear path, but not the clearance
38 from corners of the sidewalk cafes, parking meters, traffic signs and trees
39 which have grating flushed to grade without fences or guards shall not
40 count as obstructions.

41 (3) The boundary of a sidewalk cafés shall at all times maintain a minimum
42 pedestrian path be a minimum of four (4) feet from large obstructions. No
43 tables, or chairs, umbrellas or other fixtures shall be permitted within four
44 (4) feet of a pedestrian crosswalk or corner curb cut. For the purpose of
45 this section, large obstructions shall be bus stops shelters, newsstands,

1 existing planters or any other object greater than fifteen (15) square feet in
2 area.

3 ~~(4)~~ (4) — Access to fire hydrants, fire hose connections for sprinkler
4 systems, and entrances and exits of all buildings shall not be obstructed at
5 any time by barriers or seating. The twenty (20) feet fire lane shall not be
6 obstructed at any time.

7 ~~(5)~~ (5) No object shall be permitted around the perimeter of an area occupied by
8 tables and chairs which would have the effect of forming a physical or
9 visual barrier discouraging the free use of the tables and chairs by the
10 general public or which would have the effect of obstructing the
11 pedestrian path.

12 (b) *Construction; Signage; Maintenance and Umbrella-Rrequirements.*

13 (1) Appropriate lighting of the sidewalk café is required;

14 (2) Use of landscaping and planters is permissible;

15 (3) All signage must be in compliance with this Code. ~~No signage is permitted~~
16 ~~within the sidewalk café, except on the storefront or umbrellas.~~ Signs are
17 prohibited on umbrellas, chairs, tables and other permissible fixtures
18 which are located on the public right of way, except that the establishment
19 identified on the permit and/or its logo shall be is-permitted on umbrellas.

20 (4) Use of removable barriers to define the sidewalk café are permissible;

21 (5) No heating, cooking or open flames are permitted in the sidewalk
22 café. However, space heaters are permitted provided that they are an
23 outdoor approved type, are located in accordance with the manufacturer's
24 recommendations, and are located at least two feet from the edge of any
25 umbrella canvas, any foliage, or any other flammable object or material;

26 (6) No food preparation, plastic food displays, food storage, or refrigeration
27 apparatus shall be allowed on the public right of way.

28 (76) Umbrellas and other decorative material shall be fire-retardant, pressure-
29 treated or manufactured of fire-resistant material. No portion of an
30 umbrella shall be less than six feet eight inches (80 inches) above the
31 sidewalk. An applicant seeking authority to build an awning over the
32 sidewalk café area, excluding that area of right-of-way on one side and/or
33 the other side of the applicant's property, may seek approval
34 administratively in such manner as provided for in Section 27-455(g) of
35 this Code.

36 (8) Sidewalk café seating shall be counted in determining the requirements
37 for parking and bathroom facilities of the restaurant subject of the permit. adjoining
38 restaurant's

39 requirements for bathroom facilities.

40 **Section 7.** That Section 27-455(g), *Development Design Standards,*

1 *Encroachments*, is hereby amended as follows:

2 (g) *Encroachments*. Encroachments into the public right-of-way for awnings,
3 awning signs or architectural features may be authorized administratively through
4 the commercial site plan review process. ~~A separate encroachment application for~~
5 ~~awnings or architectural features will not be required~~ provided the projections
6 comply with the following criteria:

7 (1) Such features shall be at least eight (8) feet above grade and have a
8 maximum projection into the right-of-way of six (6) feet, or, in the case of
9 sidewalk cafés, a maximum projection adequate to cover the area of the
10 sidewalk café.

11 (2) Building columns are prohibited from projecting into the right-of-way.

12 (3) In such manner as provided in the transportation technical manual
13 authorized by this code, a copy of which is on file with the city clerk,
14 ~~Encroachments~~ shall leave street corners free of obstruction to allow for
15 safe traffic movement and proper placement of utilities.

16 (4) Proper lighting underneath awnings, awning signs and architectural
17 features~~overhangs~~ shall be provided and maintained by the property
18 owner.

19 (5) A hold harmless agreement must be signed by the owner and submitted to,
20 and approved by, the city attorney's office prior to issuance of building
21 permits.

22 A separate encroachment application for awning signs will not be required
23 provided the projections comply with section 27-455(f)(3) and a hold harmless agreement
24 is provided. Encroachments into the public right-of-way for awnings, awning signs or
25 architectural features authorized prior to June 1, 2005 are exempt from the requirements
26 of this section.

27
28 **Section 8.** That should a court of competent jurisdiction declare any part of
29 this ordinance invalid the remaining parts hereof shall not, in any way, be affected by
30 such determination as to the invalid part.

31
32 **Section 9.** That all ordinances or parts of ordinances in conflict herewith are
33 hereby repealed to the extent of any conflict.
34

1 **Section 10.** That this Ordinance shall take effect immediately upon becoming a
2 law.

3
4 PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY
5 OF TAMPA, FLORIDA, ON NOV 1 0 2005.

6
7
8 **ATTEST:**

9 *Shirley Fox-Knowles*
10 _____
11 CITY CLERK

CITY COUNCIL:

Everdelyn M. Miller

CHAIRMAN/CHAIRMAN PRO TEM

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14
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16 PREPARED AND APPROVED BY:

APPROVED BY ME ON NOV 1 0 2005

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19 E/S/DocGenda
20 ROLANDO J. SANTIAGO, ESQ.
21 ASSISTANT CITY ATTORNEY

Pam Iorio

PAM IORIO, MAYOR

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