

ORDINANCE NO. O-07-67 - Revised

AN ORDINANCE AMENDING CHAPTER 3, SECTIONS 3-5 AND ADDING SECTIONS 21-104 TO CHAPTER 21, ARTICLE II, DIVISION 6 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER HAVEN, FLORIDA, RELATING TO THE ESTABLISHMENT OF SIDEWALK CAFÉS, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Haven, Florida, has determined that sidewalk cafés in the Downtown District will add to the pedestrian friendly atmosphere and ambiance;

WHEREAS, enhancing downtown's ambiance can further strengthen the economic vitality of this historic commercial area;

WHEREAS, the City Commission finds that it is appropriate to revise language to allow and regulate sidewalk cafés within the City's Downtown Business District;

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. Chapter 3, Section 3-5, of the Code Ordinances of the City of Winter Haven, Florida is hereby amended to read as follows (Added language underlined, deleted language ~~stricken through~~):

Sec. 3-5 Consumption on public property prohibited

(3) Public property means lands and improvements owned or leased by the federal government, the state, the county, the city or any other governmental entity, and includes, but is not limited to, buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way and other similar property, but does not mean any such property on which any person has a beverage license issued by the state pursuant to F.S. Ch. 561, authorizing and permitting the sale of alcoholic or intoxicating beverages, nor shall it mean any public property upon or within when the City Manager, or his designee, has authorized the sale or consumption of alcoholic or intoxicating beverages in conjunction with a specific event and as authorized under this Code and subject to the imposition of such terms and conditions as determined to be necessary or appropriate.

2. Chapter 21, Article II, Division 6, Section 21-104, of the Code of Ordinances of the City of Winter Haven, Florida is hereby added and to read as follows (Added language underlined):

Sec. 21-104- Sidewalk Cafés

Sidewalk cafés shall be permitted on sidewalks located within a public right-of-way as an accessory use to an existing or proposed restaurant in the C-1 (Downtown) Zoning District. All sidewalk cafés shall meet the following requirements:

(a) Procedures:

1. All restaurateurs proposing to operate sidewalk cafés shall apply for a sidewalk café permit. No sidewalk café may be operated without permit approval from the City Manager or designee.
2. All applications for sidewalk cafés shall be reviewed by the City's Development Review Committee. The Development Review Committee shall review the sidewalk café application and make a recommendation to the City Manager or designee, who will then approve, approve with conditions, or deny the application for a sidewalk café permit, within 30 days from the receipt of a completed application.
3. Approved sidewalk café permits shall be valid for a period of one (1) year, and shall be renewed on an annual basis, concurrent with the restaurant's annual business tax receipt. The City reserves the right to assess a fee prior to annual renewal based upon any damage to the public right-of-way.
4. The sidewalk 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 restaurant, its address and phone number;
 2. Name, address, and phone numbers, both day and evening, of the restaurant owner/operator;
 3. Name, address, and phone numbers, both day and evening, of the building owner;
 4. Signature(s) of the restaurant owner/operator and the building owner.

- b. A scale diagram or sketch plan of the area for the sidewalk café. 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. Insurance in the amount of at least \$1,000,000.00 (see Section (d), Liability and Insurance Clause), and indicating the City of Winter Haven as an additional insured.
- d. Location of existing, and any proposed, restroom facilities, including number of fixtures.
- e. Other information as may be requested by the Development Review Committee.
- f. If serving alcohol, a copy of the State Liquor License, and appropriate materials.
- g. Current Business Tax Receipt.
- h. Copy of the permit from the Department of Hotels and Restaurants.

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

1. The operation of a sidewalk café shall be located such that there is at least a forty-four inch (44") clear, unobstructed passageway between the edge of the sidewalk café and other permanent objects within the right-of-way and/or the edge of the sidewalk or back of curb. The Development Review Committee may require more than forty-four inches (44") if necessary for public safety purposes. The location of the sidewalk café 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 café must be consistent with the Americans with Disabilities Act (ADA).
2. Sidewalk cafés may be allowed for downtown restaurant establishments whose primary purpose is food service to persons seated at a table. A restaurant associated with a sidewalk café shall

mean any full service food establishment that is maintained and operated as a place where food and beverages are prepared, served and sold for consumption within the premises, and where more than 50 percent of the gross revenue is derived from food sales versus alcoholic beverage sales. Beer, wine or other alcoholic beverages may be served or consumed at a sidewalk café provided that the restaurant or food service establishment as defined herein operating the sidewalk café and as permitted hereunder holds the appropriate license from the State of Florida and the city to serve alcoholic beverages and provided that the sidewalk café shall be part of a restaurant that is otherwise authorized, permitted and licensed under this Code or state law to serve and sell alcoholic beverages for consumption on premises. All food preparation shall occur within the existing restaurant or food establishment's established and approved kitchen. Food shall not be prepared within the sidewalk café area.

3. Additional seating within the sidewalk café shall be factored into the minimum number of plumbing fixtures provided on site as required by Section 403 of the Florida Plumbing Code, 2004 as may be amended from time to time.
4. The sidewalk café and surrounding sidewalk areas shall be kept clean and free of litter by the café owner/operator.
5. 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 café shall not extend beyond the boundaries of the sidewalk café. No plastic tables or chairs shall be permitted unless approved by the City Manager or designee.
6. Sidewalk cafés partially on private property and partially on the public right-of-way must adhere to all regulations for sidewalk cafés contained in this code. Sidewalk cafés solely on private property are exempt from this section of the Code, except for those sections relating to applicable Federal and State regulations, including but not limited to ADA standards and State Building and Plumbing Codes.
7. Not more than one (1) menu board shall be allowed for each sidewalk café. The menu board shall not exceed four (4) square feet, and shall be located outside of any designated pedestrian path. All signage, including the menu board, awnings, canopies, and umbrellas, and other fixtures must be in compliance with City codes regulating signage.

8. Furniture and other items associated with the sidewalk café, 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 speed and intensity, typical for Central Florida. 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 the National Oceanic and Atmospheric Administration's National Weather Service (www.noaa.gov) issues a tropical weather system or tornado warning, all items placed on the sidewalk shall be removed immediately. Those items not removed by the owner/operator shall be subject to removal by the City at the owner/operator's expense.
9. All items shall be promptly stacked, set aside, and secured immediately after the sidewalk café discontinues its daily operation or not later than 11:00 P.M. and must be stored on private property and screened from public view.
10. The hours of operation of the sidewalk café are limited to the legal hours of operation of the business holding the sidewalk café permit or from 7:00 A.M. to 10:00 P.M., Monday through Sunday, whichever is more restrictive. The City Manager or designee may authorize expanded hours for the sidewalk café for holidays including New Year's Eve and specific City-sponsored or City-co-sponsored Special Events. The sale, distribution, and consumption of alcoholic beverages shall be consistent with those sections of this Code concerning alcoholic beverages, (Chapter 3).
11. Music may be allowed during the hours of operation, subject to the regulations contained in the Code of Ordinances, Chapter 12, Article II, Noise.
12. An owner/operator of a sidewalk café may petition the City Manager or designee to 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 a sidewalk café, within the guidelines and regulations as noted above. Any request for closure will be considered by the City's Development Review Committee. The cost of such closure will be borne by the applicant.
13. No sidewalk café shall create a traffic sight-line or visibility obstruction. Cafés shall comply with the traffic visibility triangle restrictions in conformance with those sections of the Municipal Code concerning visibility at street intersections, (Section 18-11 and Section 21-126).

(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 Municipal Code, State or Federal regulations, or is deemed to be a public hazard, the sidewalk café permit will be temporarily suspended with prejudice. If the establishment is in violation of a portion of this code, a citation will be issued. 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 café permit will be Temporarily Suspended with Prejudice. The sidewalk café is to remain closed until the problem is corrected. If the sidewalk café’s permit is temporarily suspended with prejudice more than one (1) time in a 12 month period, the permit shall be revoked.
3. Revoked. The City Manager or designee shall reserve the right to revoke any sidewalk café permit for the purposes of public safety, welfare, termination of any insurance required under this code, or public usage of the subject right-of-way. Owners whose permits have been revoked may re-apply for a sidewalk café permit one (1) year after the date of revocation.
4. Terminated. The City reserves the right to terminate individual sidewalk café permits. The termination of any individual sidewalk café permit may prevent the re-issuance of a sidewalk café 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:

1. 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.

2. The applicant shall at its expense and at all times and during the entire permit period maintain such public/ commercial general liability, food products liability, liquor/ alcoholic-license liability (if applicable), and property damages insurance and any other insurance the City may require 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 \$1,000,000.00 per occurrence for bodily injury and property damage. 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 policies shall not terminate or be canceled prior to the expiration of the permit without 30 days written notice to the City. All insurance required hereunder shall be issued by Insurance Companies acceptable to the City. An endorsement must be issued as part of any policy to reflect compliance with this requirement and necessary certificates (satisfactory to the City) evidencing such coverage must be furnished to the City. The applicant shall also maintain workers' compensation and employers' liability insurance as required by the state.
3. All ordinances in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect.
4. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.
5. This Ordinance shall take effect immediately upon passage at second reading.

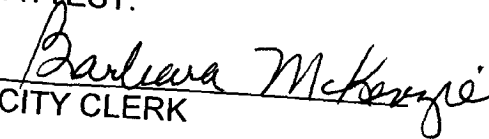
INTRODUCED on first reading this 8th day of October, 2007.

PASSED on second reading this 22nd day of October, 2007.

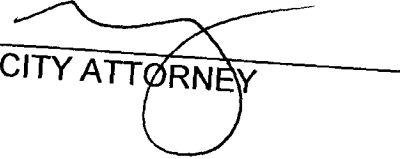
CITY OF WINTER HAVEN, FLORIDA

MAYOR-COMMISSIONER

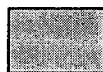
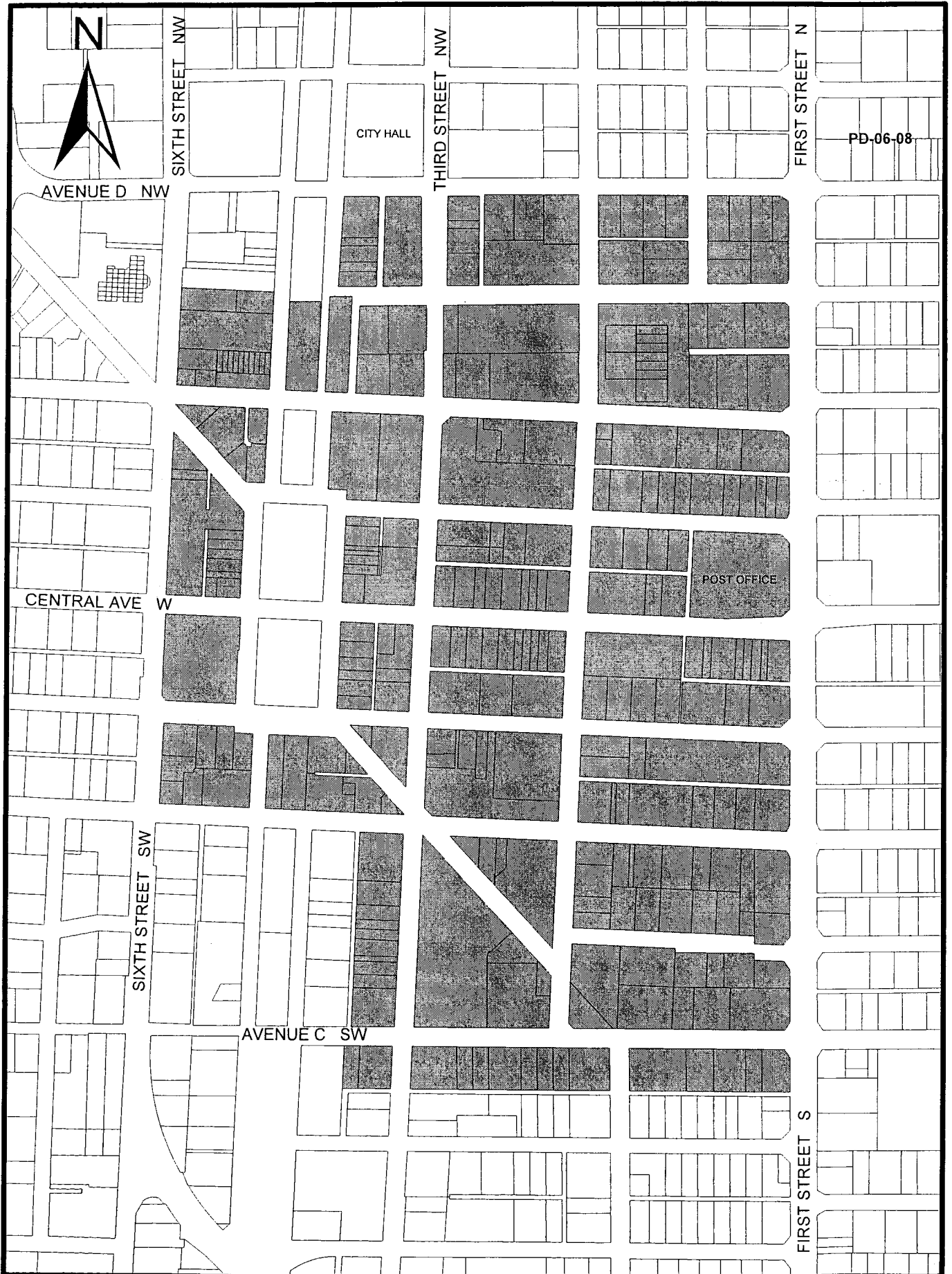
ATTEST:


CITY CLERK

Approved as to form:


CITY ATTORNEY

Location Map



Downtown Commercial (C-1) Zoning District