

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING ARTICLE VIII ENTITLED "CITY PROPERTY"; AMENDING SECTION 2-939 TITLED "LICENSES" TO INCLUDE SIGNAGE, TO REQUIRE INSURANCE, TO PROVIDE FOR FEES, TO SUBSTITUTE THE LICENSING OFFICIAL FOR THE BUILDING OFFICIAL TO ADMISTIER LICENSING; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission for the City of Key West finds that the need to have insurance coverage for businesses who desire to have awnings and signs that are over the public right of way serves a compelling interest in protecting the public health safety and welfare of visitors and citizens alike, and;

WHEREAS, The City Commission for The City of Key West further finds that tasking the City of Key West Licensing Official with issuing these licenses and ensuring annual compliance is a better streamlined approach, and;

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

**Section 1: That Chapter 2 of the Code of Ordinances for the City of Key West, is amended as follows\*:**

**Sec. 2-939. - Licenses.**

(a) The city may grant a revocable license for a nonpermanent use of city property. A revocable license shall be revocable at the will of the city.

(b) A nonpermanent use may include but not be limited to planters, awnings, signs, trash receptacles, planted areas, benches, flagpoles, guardrails, ramps and light fixtures, but shall not include buildings or accessory structures affixed to real property.

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\*(Coding: Added language is underlined; deleted language is ~~struck through~~. Added language for second reading is double-underlined; deleted language is ~~double struck through~~)

(c) Except for the procedure specified for awnings, signs and sidewalk dining described in paragraphs (e) and (f) below, the same notice requirements pertaining to applications for easement in section 2-938(a)(1) and (2) shall apply to applications for a revocable license.

(d) Except for a license issued in accordance with paragraph (e) and (f) below, if the city grants an applicant's request for a license, the applicant shall pay an annual fee to the city in the amount of \$100.00. This fee shall be prorated based on the effective date of the license. The applicant shall pay the fee each subsequent year the license is in effect.

(e) The chief ~~building~~ licensing official is authorized to issue a revocable license which allows a nonpermanent use of city airspace for an awning or sign under the following circumstances:

(1) The applicant has obtained, or will obtain contemporaneously with the request for a

nonpermanent use of city airspace, a properly issued building permit for such awning or sign; and

(2) The applicant shall obtain HARC approval where applicable; and

(3) Unless the circumstances dictate that stricter standards are applicable under the Florida Building Code, the awning or sign may extend across the front of a building and may only project a maximum of two-thirds of the width of a sidewalk, or, to within 18 inches of the face of the curb, whichever is less. There shall be a minimum eight feet of clearance between the lowest point or projection of the awning and a sidewalk or public travelway immediately below. Any valance attached to an awning shall not project above the top surface of the awning. In no event shall a permit be issued that will adversely impact vehicular or pedestrian traffic and determined by

the chief building official in conjunction with the city engineering department; and

(4) Prior to the issuance of a permit, the applicant shall furnish the chief ~~building~~ licensing official with a signed and notarized application confirming statement that the permittee shall hold harmless and indemnify the city, its officers and employees from any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit; and

(5) All revocable licenses for awnings shall be applied by and in the name of the property owner. All revocable licenses for signs shall be applied by and in the name of the business owner. If applying for an awning, the owner shall submit a copy of the deed. When applying for a sign the business owner shall submit a copy of the lease and proof of the registration of the business name. The revocable licenses shall be non-transferable.

~~(5)~~(6) Permittee shall furnish and maintain such public liability and property damage insurance protecting the city from all claims and damage to property or bodily injury, including death, which may arise from the existence of the awning or sign. Such insurance shall provide coverage of not less than \$1,000,000.00 for bodily injury and property damage respectively, per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insureds the city, its officers and employees and shall further provide that the policy shall not terminate or be cancelled without 45 days' written notice to the chief ~~building~~ licensing official, sent via certified mail; and

(7) The annual base application fee for a license shall be \$100.00. (not pro-rated) This license shall expire on the same expiration date as the liability insurance associated with the awning or sign.

(8) Any person who does not provide the liability insurance and does not pay the required annual fee within 30 days of the initial notice of payment due, and who does not obtain the required revocable license for an awning and/or sign is subject to enforcement pursuant to the code enforcement authority of the special master in section 2-637.

(9) For a period of 60 days after the effective date of this section. The licensing department shall collect the \$100.00 annual fee for all existing revocable licenses for awnings and signs. There shall be a \$25.00 late fee payable to the city for all existing revocable licenses for awnings and signs not paid after the 60-day grace period.

~~(6)~~ (10) If found to be necessary by the city for the protection of the health, safety and welfare of the public, awnings and signs shall be immediately removed upon the request of the city and in the event an awning or sign is not removed or due to an emergency the city finds it necessary to act

immediately, the city may remove same and shall not be responsible for damage incurred due to such removal. The costs incurred by the city associated with any such removal shall be borne by the permittee.

(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 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.



(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 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 it is permitted given the following criteria are met.

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

(b) The sidewalk cafe demonstrates the cafe seating will not obstruct vehicle passengers from

exiting their cars with the placement of their curbside tables, and

(c) 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 backing up to the exiting passenger from a parked vehicle. Areas where no on-street parking exists, given an approved site plan by the director or designee, may be exempt from this parameter.

(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.

(9) Umbrellas or similar fixtures that are sensitive to windy conditions must be sufficiently weighted to prevent movement, and the City Manager or his 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. 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 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 café 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.

(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-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 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 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 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.* The annual base application fee for a permit shall be \$100.00. The annual Revocable License fee shall be \$500.00 (not pro-rated). Additionally, pursuant to an approved site plan, 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) *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.
- (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 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 accordance with the procedural elements set out in Section 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 \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Authenticated by the presiding officer and Clerk of the Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Filed with the Clerk \_\_\_\_\_, 2020.

Mayor Teri Johnston	_____
Commissioner Gregory Davila	_____
Commissioner Mary Lou Hoover	_____
Commissioner Sam Kaufman	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

\_\_\_\_\_  
TERI JOHNSTON, MAYOR

ATTEST:

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CHERYL SMITH, CITY CLERK