



Planning and Zoning Board

Jarvis Hall 4505 N. Ocean Drive 33308

Planning and Zoning Board

PLANNING AND ZONING BOARD

Being held at Tuesday, January 07, 2020
Jarvis Hall 4505 N. Ocean Drive 33308

1. **CALL TO ORDER**
 2. **PLEDGE OF ALLEGIANCE TO THE FLAG**
 3. **APPROVAL OF MINUTES**
 - 3.a December 5, 2019 Minutes
[CoverPage - PZ Min.pdf](#)
[PZ 2019 12.05 \(DEC\).pdf](#)
 4. **PUBLIC COMMENTS**
 5. **TOWN PLANNER REPORT**
 6. **NEW BUSINESS**
 - 6.a Review of Sidewalk Cafe Regulations
[CoverPage - Sidewalk Cafe.pdf](#)
[Ex1 Minutes 2019-05-16 - Special.pdf](#)
[Ex2 Ord 2020-02 Sidewalk Cafe 3GD1740.pdf](#)
 - 6.b Review of Outdoor Dining Regulations
[CoverPage - Outdoor Dining.pdf](#)
[Ex1 Ord 2020-01 Outdoor Dining 3GA1304.pdf](#)
 7. **OLD BUSINESS**
 8. **UPDATES/BOARD MEMBER COMMENTS**
 9. **ADJOURNMENT**
-

THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES NECESSARY TO AFFORD INDIVIDUALS AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE TOWN COMMISSION. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE TOWN CLERK NO LATER THAN TWO (2) DAYS PRIOR TO THE MEETING AT (954) 640-4200 FOR ASSISTANCE.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE TOWN COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO INSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PROCEDURES FOR PUBLIC COMMENTS:

Public Comments may address issues that are not on this meeting's agenda, but should relate to the business of the Town, and should not contain personal attacks. If your comment requires follow up, the Town Manager will have a staff person respond to your concerns, and will advise us of the outcome.

The Town Clerk will read off the names of those who have signed up to speak. When your name is called, please come to the podium, state your name for the record, and indicate whether you are a Town resident. Do not state your address. You have up to three minutes to make your comments, but there is no requirement to use the entire time. If you wish to address a particular Commissioner or member of Town Administration, please do so by use of their title.

If you wish to approach the Commission dais to hand out a document or for some other reason, please request permission and state your reason for doing so. All documents to be provided to the Commission should be handed to the Town Clerk for distribution.

These procedures have been developed to assure that the Town Commission meeting time is efficiently used, and that meetings are conducted in a polite and respectful manner. More information on the decorum rules for Town Commission meetings is available in Section 2-23 of the Town Code of Ordinances.



Planning and Zoning Board Agenda Item Report

Meeting Date: January 7, 2020

Submitted by: Linda Connors

Submitting Department: Development Services

Item Type: Minutes

Agenda Section: APPROVAL OF MINUTES

Subject Title:

December 5, 2019 Minutes

Explanation:

December 5, 2019 Minutes

Recommendation:

Approve

Attachments:

1. December 5, 2019 Minutes

NON APPROVED

**TOWN OF LAUDERDALE-BY-THE SEA
PLANNING AND ZONING BOARD
MEETING MINUTES**

*Jarvis Hall - 4505 Ocean Drive
Thursday, December 5, 2019*

1. CALL TO ORDER

Chair Ferrante called the Planning and Zoning (P&Z) Board meeting for the Town of Lauderdale-By-The-Sea (L-B-T-S) to order at 6:04 PM.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

ROLL CALL

Members present were Chair William Ferrante, Jeffrey Whyte, Alan Bluestein, Howard Goldberg and 1st Alternate Emeline Savidge (arrived when New Business was presented). Members absent were Bernard Petreccia and 2nd Alternate Wayne Dillistin. Also present were Town Attorney James White, Development Services Director Linda Connors, Planner Jhanelle Campbell and Planning Technician Sydney Ramirez.

3. APPROVAL OF MINUTES

a. Previous Meeting Minutes – November 6, 2019

Mr. Whyte made a motion to approve the minutes of November 6, 2019 as presented. The motion was seconded by Mr. Bluestein. The motion carried 4-0.

4. PUBLIC COMMENTS

Chair Ferrante called for general public comments now which were not specific to the items on the agenda but no one wished to speak. The Chair closed public comments at this time.

5. NEW BUSINESS

- a** Case Number 2018-L2-SPM-07: Level 2 Site Plan Modification to replace the existing swimming pool with a new rectangular shaped 5'-0" (five foot) depth swimming pool, replace an existing water feature, provide a new covered walkway in Building 3, provide a new covered walkway in Building 4, replace existing hardscaping and concrete pathways, construct new hardscape/landscaping throughout the property, relocate existing trees on site, construct a new volleyball court, construct new fencing along the east side of the property and complete interior renovations.

Planner Jhanelle Campbell said that this was a hotel located at 4320 El Mar Drive formerly known as Eastward Strand and now Sea Side Villas. The applicants are Crystal Wong and Sheung Han and they were requesting extensive modifications to the property. As of today, there have been no negative or positive comments from the public. Staff reviewed this request against the Town Code and it was also reviewed by the Town's planning consultant, Linda Strutt, the Town Engineer, the Town Fire Marshal, our Trash and Recycling Coordinator, Broward County Sheriff Office and Planner Campbell. This project has 28 units on file that were

approved between 1952 and 1957. In addition, eleven existing kitchen units would be converted to non-kitchen units. There would also be a new, enclosed trash area. She explained the few existing non-conformities (density, setbacks, building separation, and vehicular use area landscaping). Because this proposal includes twenty-eight units increasing to thirty units, the Town considered this a Level 2 Site Plan Modification Review. The proposed thirty units without kitchens would be an allowable density. There were no changes to the setback requirements. The parking requirements would be affected by this application and the parking spaces would be modified to provide two handicap spaces as a requirement of the Code. The Town Fire Marshal was requiring installation of a new fire hydrant as a condition of approval. The Broward Sheriff Office performed their crime review and their recommendations were in the report. The Trash and Recycling Coordinator would have to review and approve the proposed trash and recycling plan. There was a list of fourteen findings and recommendations in the report that the applicant would have to meet should the site plan modification be approved. Based on the review, Staff felt that the site plan modification application met the Town Code requirements. Ms. Campbell asked for questions. Ms. Connors explained that the applicants were renovating the existing building and improving the site because it has been neglected for some time. They were not changing the footprint of the building at all. They were renovating the interior and exterior, upgrading the landscaping, and bringing the parking closer to Code. This was being done to keep the existing building and to make sure that the approvals for those units would be built with proper permitting. As there were no board questions the Chair opened the floor to public comments. As no one wished to speak, public comments were closed.

Board Discussion:

Mr. Goldberg said the site would be cleaned up, made usable, and the Town would get tax revenue. Mr. Whyte was answered about the construction fence by Ms. Campbell and David Meeks, contractor, answered that the fence would be a rail material and not a solid fence.

Mr. Goldberg made a motion to recommend approval of this agenda item to the Town Commission as presented with Staff's recommendations. The motion was seconded by Mr. Whyte. The motion carried 5-0.

- b Case Number 2019-L2-SPM-01: Level 2 Site Plan Modification for 100 Commercial Blvd to add one (1) 500 sq. ft. (square foot) interior mezzanine to the existing one (1) story building.

Planner Jhanelle Campbell said that this application was a request to add an interior mezzanine to the existing one-story building. This was a Level 2 Site Plan Modification for 100 Commercial Boulevard. The applicant, Yaniv Sananes, has submitted a Site Plan Modification and the application required review and consideration by Town Staff, the Planning and Zoning Board and final consideration by the Town Commission for approval. Staff reviewed the documents listed in the report against Town Code Section 30-123, which provided a process for which a previously approved site plan could be modified. The setbacks would not be changing but the parking requirements would be changing as a result of this application. Two parking spaces would be needed. The applicant planned to solve this issue by applying for payment in lieu of parking. This application for payment in lieu of parking must be approved in order for the application to add an interior mezzanine could be approved. The applicant would be providing planters for the vehicular use area landscaping requirements. The Town Fire Marshal, the Town Engineer and the Broward Sheriff Office had no comments regarding this application. A letter from our Trash and Recycling Coordinator would be required as a condition of approval of this request. All Town Staff recommended approval of the site plan modification according to the conditions provided in the report. The applicant was here to speak, if the board members

had any questions. Chair Ferrante clarified that Staff recommended approval subject to their findings and recommendations. As there were no board questions, the Chair opened the floor to public comments. Tina Mastendrea pointed out where her store was located. She did not want to lose her view to the ocean. Ms. Connors explained what they were allowed to do per Code which was to go thirty-three feet but were not using that amount. Ms. Mastendrea asked the height of the tallest portion of the store and was told by Martin Litman, representing the applicant, that the current height at that corner where the store was sixteen feet four inches and explained where it would grow to twenty-one feet eleven inches. He pointed out where the planters would go. Mr. Litman showed additional pictures. As there were no further public questions or concerns, the public hearing was closed.

Board Discussion:

Mr. Goldberg requested Mr. Litman show him where the mezzanine was on the plans and he showed it on his set of plans. Ms. Savidge asked about losing parking spaces. Ms. Connors explained that the parking there now was non-conforming. They were asked to provide some landscaping as a buffer to the sidewalks to make it safer. They would also be striping it. She explained the payment in lieu of parking program for two parking spaces and how the Town could use the funds. Mr. Litman explained that the extra 500 sq. ft. was for storage and, therefore, did not require parking spaces. . . .

Mr. Whyte made a motion to recommend approval of this agenda item to the Town Commission as presented with Staff's recommendations. The motion was seconded by Mr. Goldberg. The motion carried 5-0.

6. OLD BUSINESS

7. UPDATES/BOARD MEMBER COMMENTS

Ms. Campbell explained that the two agenda items would go in front of the Town Commission for final approval on December 10, 2019. Ms. Connors wished everyone Happy Holidays and Happy New Year. She said that the January 1, 2020 P&Z Meeting would be changed probably to January 8, 2020 and Sydney Ramirez would communicate with the board members.

8. ADJOURNMENT

Mr. Whyte made a motion to adjourn at approximately 6:30PM. The motion was seconded by Mr. Bluestein. The motion carried 5-0.

Chair William Ferrante

ATTEST:

Date Accepted: _____

Development Services Director Linda Connors



Planning and Zoning Board Agenda Item Report

Meeting Date: January 7, 2020

Submitted by: Linda Connors

Submitting Department: Development Services

Item Type: Discussion Item

Agenda Section: NEW BUSINESS

Subject Title:

Review of Sidewalk Cafe Regulations

Explanation:

Background:

On May 16, 2019, the Town Commission held a workshop to discuss downtown issues such as noise, signs and sidewalk café regulations. After discussion, the Town Commission requested Staff to bring forward ordinances to amend the current sidewalk café and sign code regulations. No changes were proposed to the noise regulations. Minutes from this meeting are attached as **Exhibit 1**.

The proposed sidewalk café ordinance (**Exhibit 2**) is the subject of this report. Outdoor dining is the subject of a separate report on tonight's agenda.

Discussion

The Town's sidewalk café regulations were originally adopted in 1993. While there have been updates over the years, the Town Commission has not completed a comprehensive review of these regulations since they were adopted.

In 2014, the Town completed a revitalization of the Commercial Boulevard corridor. This included widening the sidewalks and adding decorative paving, landscaping and lighting. These improvements, along with code incentives to encourage the establishment of restaurants, had a significant impact on the number of sidewalk cafés located in the Town. The proposed ordinance addresses the proliferation of sidewalk cafés and associated recurring issues by amending and adding current regulations.

Specifically, the proposed ordinance accomplishes the following:

1. Reorganizes the code for ease of reference;
2. Adds standards that were previously regulated as policies;
3. Deletes previous code provisions that are no longer imposed;
4. Adds and amends some definitions; and
5. Adds new concepts to update and improve the sidewalk café program; and
6. Amends the existing language to clarify and update the code.

1. Reorganize Code for Ease of Reference

The prior sidewalk café regulations were difficult to follow and the policies, included since its inception, did not follow a consistent pattern. Due to the significant amount of changes required, Staff is proposing to delete the existing sidewalk café code in its entirety and replace it with the newly organized code. As provided in the proposed ordinance, the reorganized code is more customer friendly.

2. Add Standards that were Previously Regulated as Policies

Staff is also proposing to add policies that are currently being adhered to and outlined in the sidewalk standards that the Commission approved in 2014 but were not officially incorporated in the Town Code. These policies include:

1. Limiting the size of the umbrella to 8.5' with a minimum of 8' of clearance from the sidewalk;
2. Prohibiting tents and canopies;
3. Establishing the number of people per square foot of sidewalk café area to one seat per ten (10) square feet of sidewalk café area for chairs and one barstool seat per 24 inches for bar stools (this is an increase to the existing policy of 1 person for 15 square feet);
4. Establishing a buffer zone from the sidewalk and the street (5' if adjacent to parking, 1' if there is no parking);
5. Setting the minimum width of the pedestrian path – 7' if west of Ocean Drive and fronting Commercial Boulevard, 5' for all other areas. The Town Manager has the authority to select the final location of the path and is authorized to require a wider path if necessary, for the public's health, safety and welfare.

3. Deletes Previous Code Provisions

References to Fees – The Town Commission establishes Sidewalk café fees by Resolution. Currently, after one (1) year in business, the Town charges \$18 per square foot for sidewalk café's east of Seagrape Drive and \$10 per square foot in the plazas. The Town Commission previously deleted additional fees charged for the number of chairs included in the sidewalk café. The proposed ordinance deletes the reference to this fee.

Prohibition against affixed furniture – Staff is recommending a change to the code to allow sidewalk cafés to affix its tables to the sidewalk. However, any damage to the sidewalk pavers is the responsibility of the restaurant if the tables are removed or relocated.

4. Adds and Amends Definitions

The following definitions were amended or added for clarification purposes:

Buffer Zone
Fixtures
Food Store
Furniture
Maintenance Area
Restaurant
Right of Way
Sidewalk café

5. Adds New Concepts.

The following new concepts are proposed in this ordinance:

Establishes Procedures to Accept Payment for Sidewalk Café less than 12 months of the Year – One of the Town's sidewalk café owners would like to operate their sidewalk café for a portion of the year. However, the current code requires payment for no less than 12 months. Regulations have been included in this draft ordinance to allow an owner to determine the number of months they would like to operate their sidewalk café; they will then be charged accordingly.

Adds Time Requirement for Staff to review a sidewalk café application to ensure a timely review – The proposed time frame is consistent with those established in the land development code for other applications processed by the Development Services Department.

Requires Fire Department Review to ensure egress in and out of the building is maintained.

Prohibits live or amplified music within the confines of the sidewalk café area – In addition, speakers emitting music from inside the sidewalk café area shall be placed and directed so that the music's amplification is directed internally into the restaurant. If a television is located outside the building, no sound can be audible outside of the sidewalk café area.

Prohibits lights, decorations and other objects to be placed in the sidewalk café area other than those that were specifically approved as part of the sidewalk café permit – Further, the proposed ordinance prohibits any decorations or lights placed outside of the sidewalk café area, including in the Town's landscaping and on the Town furniture and light poles.

Allows for the storage of furniture and fixtures on the sidewalk in a neat and orderly manner no earlier than 10:30 p.m. – The layout must be restored by 10:30 a.m.

6. Clarifies Regulations

Throughout the ordinance, the language was amended to more clearly express the Town requirements.

Recommendation:

Review proposed amendments to Chapter 17 "Streets, Sidewalks, and Other Public Places," Article VI, "Sidewalk Cafes" of the Town's Code of Ordinances.

Attachments:

1. Commission Minutes
2. Ordinance 2020-02

TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
SPECIAL MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Thursday, May 16, 2019
5:30 PM

1. CALL TO ORDER

Mayor Chris Vincent called the meeting to order at 5:30 p.m. Also present were Vice Mayor Elliot Sokolow, Commissioner Edmund Malkoon, Commissioner Alfred “Buz” Oldaker, Commissioner Randy Strauss, Town Manager Bill Vance, Deputy Town Manager Tony Bryan, Development Services Director Linda Connors, Town Attorney Susan L. Trevarthen, Municipal Services Director Ken Rubach, Special Projects Coordinator Debbie Hime, Public Information Officer Steve d’Oliveira, and Town Clerk Tedra Allen.

2. PUBLIC COMMENT

At this time Mayor Vincent opened public comment.

Jim Rogers, resident, addressed the problem of noise levels in the Silver Shores area and played a recording of noise from the Downtown area as heard at his home. He did not feel citations were a deterrent to the businesses responsible for the noise. He recommended that permitted entertainment be limited to one night per week, with permits issued once per event, and require monitoring of noise levels.

John Frasene, resident, recalled that some years ago the *Sun-Sentinel* reported that Lauderdale-By-The-Sea permits some of the highest decibel levels in Broward County at 85 dBA between 7 and 10 p.m. in the commercial district and 75 dBA between 10 p.m. and 7 a.m. He expressed concern that Lauderdale-By-The-Sea could be perceived as a “party town.”

As there were no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

3. DISCUSSION ITEM

3.a Downtown Discussion – Music

Development Services Director Linda Connors explained that the Commission had requested a workshop addressing the issues of music levels, signage, and sidewalk cafés in the Downtown area. The workshop was slightly delayed until Town Manager Bill Vance was able to assume all duties.

In 2009, the Town amended its Noise Ordinance, which did not refer to specific decibel levels at that time. These levels were necessary so the Ordinance could be easily implemented. The Town adopted decibel levels of 90 dBA/95 dBc. In 2014, the Commission voted to decrease allowable noise levels to 85 dBA/dBc from 7 a.m. to 10 p.m. After 10 p.m., these levels are reduced to 75 dBA/dBc.

There are two methods of noise measurement: in the absence of a special event, noise readings are taken by trained Code Officers or Broward Sheriff's Office (BSO) Staff. These readings are taken at the property line. If there is a special event, noise readings are taken 100 ft. away from the source of music.

In response to complaints in February and March 2019, Staff took several noise readings for both indoor and outdoor music. Most events at which these readings were taken violated the Noise Ordinance by reaching a level of 86 dBA or higher. Development Services Director Connors also advised that the number of Downtown events should be considered, as these have increased over the years: in 2010, there were 68 events Downtown, while by 2014 this had increased to 102 events. Thus far in 2019, 88 events have been approved or are pending.

Town Manager Vance has offered the following suggestions to amend the Noise Ordinance:

- Cease issuing special event permits for weekly single establishments, and issue special event permits only as part of a cooperative effort involving more than one establishment and use of Town right-of-way
- Establish a Conditional Use permit for musical entertainment to be located inside the business, to be issued to the property owner and include location of music inside the building, dates and times music will be played, specific information regarding allowable sound levels, and contact information and response requirements
- Totally prohibit amplified music outside soundproofed rooms except as part of a Town-approved special event

Town Manager Vance explained that noise related to musical entertainment in the Downtown area was one of the first concerns brought to his attention when he assumed the duties of Town Manager. He reached out to property and business owners in the Downtown area and felt that some collectively negotiated informal agreements may lead to improved conditions.

At present, Code provides little structure, as there is no further limitation than 75 dBA until 7 a.m. Town Manager Vance proposed that some of the informal agreements with businesses be formalized as Conditional Use permits to document a formal understanding of when music may be played and the noise levels it may reach. He expressed confidence that the businesses will continue to earn the privilege of holding musical events in the Downtown area in the future once agreements are in place.

Mayor Vincent recalled that when Friday night musical events began, they were well-received overall, with few complaints regarding noise. Over the last 10 years, as the Town made capital improvements and reinvented itself, a new environment has been created on Commercial Boulevard which is similar to an entertainment district. He pointed out that due to the Town's size, they do not wish to create an entertainment area because of the proximity of residential and commercial neighborhoods. He emphasized the need to work together to reach a mutually beneficial solution.

Development Services Director Connors noted that in addition to the Noise Ordinance, which is in Chapter 13 of Town Code, there are additional regulations in Chapter 3, Alcoholic Beverages. These regulations require that music must be played within an enclosed area after 12 a.m., and businesses must close at 2 a.m. The requirement for music to be played within closed doors after midnight has not been enforced.

Mayor Vincent observed that alternatives might be to bring speakers indoors or face them inward, which could lower the volume significantly. He noted that some businesses provide music multiple nights of the week, as they are on private property. These businesses must still adhere to the decibel restrictions and the closing of doors after midnight.

The Commissioners discussed the issue further, with Commissioner Oldaker noting that any music coming from an electronic device is considered amplified. This would include speaker systems on sidewalks outside some establishments. Development Services Director Connors clarified that under the proposed changes, sound systems would need to be indoors, with music pointing toward the business, rather than outside and toward the street.

Vincent Foti, business owner, asked if this meant no amplified music could be played in businesses after midnight. Mayor Vincent replied that businesses may close their doors after midnight to lessen the sound outside the establishment. He reiterated that this is required by current Code.

Mr. Foti stated that decibel readings have been very high in the absence of amplified music, depending upon crowd activity and size. He characterized the decibel limit as unattainable. Mayor Vincent pointed out that part of the issue may be multiple businesses providing music at the same time, which was not a problem when the Noise Ordinance was enacted. He also observed that while crowd noise and voices may not carry into residential neighborhoods, music does carry.

Vice Mayor Sokolow cautioned that decibel levels may be dependent upon regular calibration of decibel meters and other mitigating factors. He added that it may be difficult to strike a balance between maintaining a vibrant nightlife within the Downtown area and affecting property values in residential areas if noise remains an issue.

Commissioner Malkoon asked how the Noise Ordinance is currently enforced. Town Manager Vance replied that no decibel meters have been used in the past five to six weeks while he reached out to the owners of various establishments. He has contact information from business owners so he can communicate with them in the event of an issue. He reiterated that he is in favor of a written agreement clearly establishing how the Ordinance will be enforced in the future.

Commissioner Strauss proposed that noise might be mitigated through the use of acoustic tiling that can reduce the projection of sound outside an establishment.

Bill Ciani, resident, stated that as a building owner, he would not be willing to sign any agreements that stated his tenants' music must remain within the permitted decibel level. He expected the Town to deal with this issue through Code Enforcement. He also asserted that residents have seen an increase in their property values due in part to the Town's success in attracting businesses and visitors for a vibrant nightlife.

Town Manager Vance noted that it should be possible to arrive at agreements regarding the days and times when entertainment is provided. He recalled that when he first arrived in Lauderdale-By-The-Sea, he excused business owners from appearances before the Special Magistrate related to Noise Ordinance violations, as he knew this issue would be discussed in depth by the Commission.

Vice Mayor Sokolow recommended that any agreements be mindful of the fact that a landlord is not responsible for a tenant's actions. He also agreed with Town Manager Vance that it is easier to work one-on-one with business owners to address the problem than contribute to any animosity between businesses, the Town, and residents.

Commissioner Oldaker commented that the current Fort Lauderdale Entertainment District was once considered a blighted area; however, this is no longer the case, and as more residential development moves into the area, that city may be receiving some complaints from residents regarding the permitted decibel level.

Mayor Vincent addressed Town Manager Vance's Conditional Use proposal, asking how compliance might be enforced. Town Manager Vance replied that the Commission would have the ultimate flexibility to work with property or business owners: if negotiations did not lead to a positive outcome, the Town Manager could recommend that the business's permit be discontinued. While the recent informal understanding between the Town and business owners has improved the situation, greater structure to these agreements could contribute to a better solution. No Special Magistrate involvement was proposed at this time.

Mr. Foti reiterated his concern that the decibel limit of 85 dBA may be unattainable at some times of the year, and asked how this issue might be addressed going forward. Mayor Vincent replied that Town Manager Vance's proposed solution of better communication is the first step in the process; however, he emphasized that help is

needed from the business owners as well, including the possibility of lower volume, change of speaker direction, and other potential solutions.

Mr. Foti felt that requiring businesses to secure permits and enter into agreements for live music events would result in those businesses seeking to relocate. He declared that asking establishments to close their doors after midnight would significantly diminish business. Mayor Vincent pointed out that this has not yet been asked of any business, nor has it been previously enforced although it is part of Code.

Town Manager Vance continued that the agreement would allow an owner to show performers what s/he has agreed to so they are aware of what has been negotiated. He emphasized that his primary intent was for clarity.

Town Attorney Susan Trevarthen asked if there was sufficient Commission consensus for Staff to begin work on appropriate language and documentation. Town Manager Vance requested that an update be provided at a Commission meeting in approximately one month, after which time a recommendation could be brought forward.

3.b Downtown Discussion – Signage

Development Services Director Connors recalled that Vice Mayor Sokolow had requested recommendations on specific changes to the Town's Sign Code.

The first issue was the prohibition of "sandwich signs," which are portable, foldable, and freestanding A-frame boards that are not secured or attached to the ground. Staff has reviewed current requirements and recommends that these signs continue to be prohibited in the East Commercial Boulevard area due to traffic and sidewalk activity. If Code is changed, however, Staff recommends the following:

- Sandwich signs are to be limited to one per business
- Signs must be adjacent to the building
- Placement of signs ensures a 5 ft. minimum pedestrian path
- Signs are of a design consistent with Lauderdale-By-The-Sea branding

Mayor Vincent recalled that previous discussion of this issue had considered designating an area for sandwich signs or menu boards. He proposed that the Commission discuss this further to ensure there is no room for error.

Vice Mayor Sokolow stated that he did not agree with the proposal for sandwich signs to be consistent with the Town's branding, as the purpose is for businesses to brand themselves rather than the Town. He also requested clarification of why the proposed change would not apply to other businesses in the area. Development Services Director Connors replied that this recommendation could be changed if it was the Commission's desire.

Development Services Director Connors noted that Staff had considered regulations in the Downtown areas of West Palm Beach, Delray Beach, Fort Lauderdale, and other nearby communities. One issue that led to the branding proposal was the wide variety of sandwich board styles. Staff felt strongly that there should be some standard of style, such as a typical size or material.

Vice Mayor Sokolow advised that he felt the only areas where prohibition of sandwich signs remains necessary would be west of Commercial Boulevard and El Mar Drive north of Commercial Boulevard, where pedestrian traffic is heavy at night. He felt a uniform sign size was not unreasonable.

Development Services Director clarified that these signs would be exempt from permitting, as they are relatively inexpensive and the Town did not wish to require additional permits. She added that menu board signs would also be exempt from permitting in the future.

Development Services Director Connors continued that the Vice Mayor had also requested Staff look into the standard for maximum letter size. This was discussed extensively when the Sign Code was reviewed in 2014. It was determined that letter size and legibility are contingent upon a number of factors, including font, color, traffic speed, and the lane in which a car is traveling.

Because the area east of Ocean Drive is more pedestrian in nature, there was no reason not to allow signs with large lettering. Height range is between 12 and 15 in., subject to change if the sign is in all capital letters, which are considered more difficult to read. In 2014, the Commission voted to limit letter size on signage east of A1A to 12 in., while west of A1A and on Ocean Drive allows a maximum letter size of 18 in.

Vice Mayor Sokolow requested clarification of why larger letters are allowed if they follow Midcentury Modern design. Development Services Director Connors explained that a defining element of this architectural and sign style features a large first letter. Mayor Vincent noted that Midcentury Modern is recorded as the Town's preferred architectural style. Vice Mayor Sokolow stated that he did not feel it was reasonable to penalize individuals or businesses who chose not to follow this style.

Mr. Ciani stated that the standard 12 in. letter size permitted east of A1A is too small, and felt 18 in. was a more appropriate size. He also noted that some corner buildings require two different lettering sizes depending upon their location. Mayor Vincent suggested that corner buildings could permit larger letters on both sides due to the proximity of the main road. The Commissioners agreed by consensus to have Staff look further into this issue and bring back a proposed policy change for greater flexibility on corner buildings.

Commissioner Oldaker asked what a business would have to do to request consistently sized signs on two sides of a corner building. Development Services Director Connors

replied that this would either require a Code change or the smaller sign would need to change to Midcentury Modern. Some signs may not be changed because of the restrictions of nonconforming structures.

Town Manager Vance advised that Staff plans to initiate development team meetings where topics such as this can be discussed at length, including goals for individual business and/or property owners. He and Development Services Director Connors can review Code with these owners to identify the potential for greater flexibility.

Development Services Director Connors continued that another issue was the limitation of signs to three colors. This Code provision dates back to 2001 and is intended to ensure some level of relationship between multiple signs on a single building. Greater flexibility is allowed if a business has a registered trademark.

Vice Mayor Sokolow reiterated that he was not in favor of this type of uniformity and would prefer to see greater individuality expressed through signage. He considered the flexibility afforded trademarks to be an inconsistency. Town Attorney Trevarthen advised that this is also in respect for federal trademark law.

Mayor Vincent agreed that the Town's unique character should allow for more than one color on a building. He felt the current system is reasonable for most businesses. It was determined that there was no new direction to be explored with regard to color regulations.

The current industry standard for sign area, with and without a background, is measured by width and height. In the case of signs with a larger first letter, the measurement is based on the height of the largest letter.

Vice Mayor Sokolow noted that most systems used to design signs can instantaneously calculate the area of letters, logos, and other features. He did not believe Midcentury Modern signs should be allowed a greater area. If differently sized sections of a sign, such as lettering and logos, are calculated differently, the resulting total could be significantly smaller.

Anthony Delia, representing 101 Ocean, commented that the restaurant was only allotted one sign despite multiple storefronts, and asked if it would be possible to add another sign on either the Commercial Boulevard or the El Mar Drive side. Town Manager Vance suggested that Mr. Delia meet with the Staff management team to determine if there were ways to increase the business's flexibility.

Development Services Director Connors noted that 32 sq. ft. is an industry standard for signage, which means sign companies are often familiar with providing signs of these dimensions. Most sign square footage requested is less than 32 sq. ft., as the Town's store frontages are relatively small. Code also allows for buildings set back a certain

distance from the street or above a certain height to increase the size of the sign's letters. Very few signs exceed the 32 ft. limitation, no matter how they are measured, unless the signs are grandfathered under Code or use Midcentury Modern design.

Mr. Foti asked if there is a limit to the number of signs allowed on a building. Development Services Director Connors explained that in the B-1 district, a business may have one permanent sign per building street frontage, with an additional permanent awning, directory, or hanging sign allowed, up to a total of 32 sq. ft. If a building houses multiple businesses, they may have as many signs as businesses. Window or decal signs are not considered permanent signage and may cover up to 25% of a window.

3.c Downtown Discussion – Sidewalk Café

Development Services Director Connors advised that Staff is currently reviewing the Town's Sidewalk Café Ordinance, as some of its provisions are outdated. Staff looked at the regulations of other nearby cities and would like direction from the Commission on potential changes to the Ordinance, including whether or not outdoor bars should be addressed and whether wait staff stations may be located outside.

With regard to outdoor bars, Development Services Director Connors explained that some businesses have added these features to their outdoor dining areas. Code does not specifically prohibit outdoor bars. In addition, when the Ordinance was first written in 1993, permanent barriers were required for sidewalk café areas; however, this language was later deleted to promote a more inviting area. Some businesses have since asked if they could erect barriers.

Mayor Vincent proposed considering the barrier issue on a case-by-case basis. Development Services Director Connors advised that the barriers, which could include features such as planters, could block a portion of public sidewalk. There was Commission consensus that barriers not be allowed in the public right-of-way.

Another issue is storage of sidewalk cafés. Staff suggests allowing on-street storage at night, but ensuring that the tables are open and unchained by a set time in the next morning.

Development Services Director Connors concluded that some businesses would like to provide sidewalk cafés, but only for a limited time, without the full year-round charge. At present, businesses must pay for the full year for a sidewalk café. She recommended that if this provision is added to Code, the business owner should specify how long s/he would like to have the sidewalk café at the beginning of the fiscal year in October. They can be charged on a quarterly basis. The Commission agreed by consensus against this provision.

Lauderdale-By-The-Sea
Town Commission Workshop
May 16, 2019

It was pointed out that some businesses with sidewalk cafés are less thorough than others in keeping those areas clean, and that the Town should ensure that each business takes care of this necessity. Town Manager Vance agreed that Staff would follow up on this issue.

4. ADJOURNMENT

With no further business to come before the Commission at this time, the meeting was adjourned at 7:33 p.m.



Mayor Chris Vincent

ATTEST:



Town Clerk Tedra Allen



Date

ORDINANCE 2020-02

1 **AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-**
2 **THE-SEA, FLORIDA AMENDING CHAPTER 17,**
3 **“STREETS, SIDEWALKS AND OTHER PUBLIC PLACES,”**
4 **ARTICLE VI, “SIDEWALK CAFÉS” TO MODIFY**
5 **APPLICATION, PERMIT, LICENSE, AND OPERATION**
6 **REGULATIONS RELATED TO SIDEWALK CAFES AND**
7 **TO REORGANIZE THE ARTICLE TO STREAMLINE AND**
8 **IMPROVE FUNCTIONALITY; PROVIDING FOR**
9 **CODIFICATION; PROVIDING FOR SEVERABILITY;**
10 **PROVIDING FOR CONFLICTS; PROVIDING FOR AN**
11 **EFFECTIVE DATE**
12

13 **WHEREAS,** the Town Commission recognizes that changes to the adopted Code of
14 Ordinances are periodically necessary in order to ensure that the Town’s regulations are current
15 and consistent with the Town’s planning and regulatory needs; and

16 **WHEREAS,** the Town Commission desires to amend the Town Code to modify the
17 application, permit, right-of-way licensing, and operational provisions related to Sidewalk Cafés;
18 and

19 **WHEREAS,** the Town Commission has determined that this Ordinance is in the best interest
20 of the Town and its residents.

21 **NOW, THEREFORE BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN**
22 **OF LAUDERDALE-BY-THE-SEA, FLORIDA THAT:**

23 **Section 1. Recitals.** The foregoing “Whereas” clauses are ratified and incorporated as
24 the legislative intent of this Ordinance.

25 **Section 2. Article VI Repealed.** That Chapter 17, “Streets, Sidewalks, and Other Public
26 Places,” Article VI, “Sidewalk Cafés” of the Town’s Code of Ordinances attached hereto as
27 Exhibit “A,” is hereby repealed.

ORDINANCE 2020-02

Section 3. Amendment. That Chapter 17, “Streets, Sidewalks, and Other Public Places,”

Article VI, “Sidewalk Cafés” of the Town’s Code of Ordinances is hereby created to read as follows¹:

Chapter 17 - STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES

ARTICLE VI. - SIDEWALK CAFÉS

Sec. 17-85. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning.

Affected party shall mean any property owner whose property directly abuts the property upon which the business is located who has applied for or been issued a permit for a sidewalk café.

Buffer zone shall mean a clear pedestrian path for the visual and physical separation between the street curb and any sidewalk café furniture and/or fixture.

Fixtures shall mean objects, other than furniture, such as greeting podiums, bussing stations, heaters/misters and fans that are utilized as part of the sidewalk café.

Food store shall mean an establishment that sells food and beverages items, which may include alcoholic beverages, for off premises consumption, but shall not include a package store or a convenience store. The definition of food store shall include grocery store and supermarkets.

Furniture shall mean tables, chairs, umbrellas and similar objects, other than fixtures, that are utilized as part of the sidewalk café.

Maintenance area shall mean the Sidewalk café area(s) plus the sidewalks (including the Pedestrian Paths and Buffer Zones) in, around and adjacent to the Sidewalk cafe area(s) that the owner/operator is responsible for maintaining.

Pedestrian path shall mean the Town designated portion of the ROW adjacent to the sidewalk café that is required to be kept free and clear to allow a safe passageway for walking.

Permittee shall mean the owner/operator of the restaurant or food store (who may or may not be the property owner) associated with and issued a sidewalk café permit obtained pursuant to the terms and provisions of this article.

Restaurant shall mean any establishment where facilities are provided for preparing and serving food to the public. At least 51 percent of total gross revenues must come from retail sale on the licensed premises of food and non-alcoholic beverages. Proceeds of catering sales shall not be included in the calculation of total gross revenues. Catering sales include food or non-alcoholic beverage sales prepared by the licensee on the licensed premises for service by the licensee outside the licensed premises. The tables must be of adequate size to accommodate the service of full course meals in accordance with the number of chairs or other seating facilities provided at the table. Sale of alcoholic beverages for off-premise consumption is not permitted.

¹ Additions to the text are shown in underline. Deletions to the text are shown in ~~strike through~~.

ORDINANCE 2020-02

Right-of-way (ROW) shall mean land in which the State, the Florida Department of Transportation, Broward County or the Town of Lauderdale-By-The-Sea owns the property or has an easement devoted to or required for use as a transportation facility or street.

Sidewalk shall mean that area, whether privately owned or a portion of the ROW, which is located between the curbline or the lateral line of a street and the adjacent building and which is intended for use by pedestrians.

Sidewalk café (or sidewalk café area) shall mean an area, or combination of areas, located on a sidewalk or a portion of the ROW which is associated with, and used for seating by a restaurant or food store, including any Maintenance area(s). It shall be characterized by the presence of furniture and fixtures if approved as part of the sidewalk café permit.

Street means that portion of a ROW improved, designed or ordinarily used for vehicular traffic or parking.

Sec. 17-86. – Sidewalk Café Permit and Revocable Right-of-Way (ROW) License and Encroachment Agreement Required.

(a) It shall be unlawful for any person to operate a sidewalk café on any sidewalk or public ROW within the Town without first obtaining a permit from the Town. In such cases where the ROW is owned or controlled by another governmental entity other than the Town, the Applicant shall also be required to obtain authorization and approval from that entity. The approved permit shall be recorded by the Town at the Permittee's sole expense and shall include:

(1) A revocable ROW license and encroachment agreement, in a form approved by the Town Attorney, with the Town for any portion of the Town's ROW which is used for a sidewalk café;

(2) The location and square footage of each of the approved sidewalk café area(s);

(3) Specifications and photograph(s) or illustration(s) of the approved furniture and fixtures;

(4) The total number of seats within each of the sidewalk café areas;

(5) Identification and location of additional fixtures and signage that are permitted within the sidewalk café area;

(6) Owner Consent and Release, if applicable; and

(7) Additional information and conditions as required by the Town.

(b) The ROW license shall be revocable in accordance with section 17-91 and shall not constitute a vested property interest in any portion of the public ROW.

(c) Any person or entity operating a sidewalk café without a permit and ROW license and encroachment agreement or any property owner allowing the operation of a sidewalk café without a permit and a ROW license and encroachment agreement upon or adjacent to his/her/its property shall be subject to penalties as provided in this article.

Sec. 17-87. Sidewalk Café Permit Application and Right-of-Way (ROW) License Fees.

ORDINANCE 2020-02

(a) Permit Application Fee. A sidewalk café application fee as established and amended from time to time by resolution of the Town Commission, shall be non-refundable, and shall accompany the sidewalk café application.

(b) Town Right-of-Way (ROW) License Fee.

(1) Each Permittee of a sidewalk café that operates in a portion of the Town ROW shall pay to the Town an annual ROW license fee, as established, and amended from time to time, by resolution of the Town Commission.

(2) The Town ROW license fee shall be calculated per square foot of ROW area utilized and included in the sidewalk café permit for the approved sidewalk café area.

(3) The Town ROW license fee shall be charged annually based upon the total amount of ROW square footage utilized by the sidewalk café and the number of calendar months during the year that the sidewalk café is operated. If no individual calendar months are selected, the Town shall charge the annual ROW license fee based upon the entire twelve (12) month period. Pro-rated monthly selections shall only be calculated utilizing full calendar month increments. Changes to the monthly selection must be made in writing, a minimum of thirty (30) days prior to any change, and prior to payment.

(4) Payment of Fees.

a. Town ROW license fees shall be due and paid annually on or before October 1.

b. Notwithstanding the requirements set forth in (4) a. above, the total Town ROW license fee may be divided into quarterly payments upon receipt of written request from the Permittee.

c. All Town fees paid are non-refundable upon payment.

d. Payment received more than ten (10) calendar days after the due date shall be charged a late fee of ten (10) percent of the payment amount due. Failure to make a required payment within thirty (30) calendar days of the due date may result in immediate sidewalk café permit and ROW license revocation.

e. The fees collected pursuant to this section from sidewalk cafés located in the Town of Lauderdale-By-The-Sea shall be placed in the general revenue fund.

(5) If a sidewalk café is located on State of Florida ROW, Florida Department of Transportation ("FDOT") approval is required along with any applicable FDOT fees that may be required.

(c) Violation. It is a violation of this Code and any applicable sidewalk café permit to operate a sidewalk café during unapproved time periods which have not been included in an active sidewalk café permit or for which the Town ROW license fee has not been paid. In addition to any penalties imposed pursuant to this Chapter, the Permittee shall be required to file either an amended application or a new application for a sidewalk café permit and Town ROW license for the unpermitted time periods during which they were in operation. The retroactive Town ROW license fee for any unpermitted time period (minimum fee shall be calculated on a monthly basis) during which a sidewalk café is operated shall be double the Town ROW license fee.

Sec. 17-88. – Sidewalk Café Permit and Town ROW License Application.

ORDINANCE 2020-02

(a) Application. Application for a sidewalk café permit and ROW license to operate a sidewalk café shall be commenced by the filing of a complete application on a form provided by the Town with the Development Services Department. Such application shall include the following:

(1) Name, address and telephone number of the applicant.

(2) Name and address of business.

(3) Evidence of insurance containing terms required under section 17-90 of this article.

(4) A minimum of 8½ × 11 inch drawing to legible scale showing the layout and dimensions of the existing sidewalk area and adjacent private property, proposed location, size and number of all furniture and fixtures, steps, trees, parking meters, bus shelters, sidewalk benches, trash receptacles, and any other objects located outside of the adjacent sidewalk café area or sidewalk obstruction either existing or proposed within the pedestrian path.

(5) Manufacturer's brochures and photographs or illustrations fully describing the appearance of all proposed furniture/fixtures including, but not limited to, dimensions and colors, related to the sidewalk café.

(6) Identification of all calendar months for which the Permittee desires to operate the sidewalk café. Town ROW Licenses shall only be available for full calendar month increments.

(7) Signature of the owner of the building.

(8) A nonrefundable application fee as established, and amended from time to time, by resolution of the Town Commission.

(b) Application Review. Applications shall be reviewed for compliance with the standards and requirements set forth in this Article as well as any other applicable Town Code provisions by the Town Manager or designee.

(1) No application shall be accepted until it is deemed complete.

(2) The Town Manager or designee shall review the submitted application within twenty (20) business days and either accept the application if it is complete or, if incomplete, reject the application with a written notice of incompleteness, specifying the data missing from the application.

(3) If an application is rejected, the applicant may resubmit the application with the additional information required. Upon each resubmittal, the Town manager or designee shall have ten (10) business days to review the resubmitted application and either accept the application as complete or provide written notice of any corrections, revisions or deficiencies. This process shall continue until the applicant has submitted a complete application or demands that the application be reviewed as is, without further revisions.

(4) If an applicant fails to provide the additional information as requested by the Town Manager or designee within sixty (60) days of the request for additional information, the Town Manager or designee may deem the application to be withdrawn by the applicant and the application considered null and void. Upon request, the applicant shall be entitled to one sixty (60) day extension, provided the extension request is granted prior to the expiration of the above referenced sixty (60) day time period.

ORDINANCE 2020-02

(5) For any application in which the sidewalk café is not located directly in front the associated restaurant or food store, the Town will send a courtesy notice to those businesses directly abutting the proposed sidewalk café. Any affected person may provide written comments to the Town Manager or designee within ten (10) days of the date of the mailed notice, for the consideration of the Town Manager or designee. Failure to mail or receive such courtesy notice shall not affect actions taken under this Article.

(6) Prior to issuance of a sidewalk café permit or annual renewal of a Town ROW license, the Town Clerk shall certify that there are no outstanding fines, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting a sidewalk café permit. A sidewalk café permit or ROW license may not be issued until all outstanding fees and/or fines owed to the Town are paid in full.

(7) The Town Manager or designee shall approve, approve with conditions, or deny an application based on the requirements of this Article and compliance with the Town Code. Approval shall be in the form of a Sidewalk Café Permit and ROW License as provided for in Section 17-86 of this Article. A denial of a sidewalk café application shall be made in writing and shall provide the reasons for such denial. The applicant or an affected property owner may appeal the Town Manager or designee's decision on the sidewalk café permit application to the Town Commission.

Sec. 17-89. - Sidewalk Café Permit Standards and Requirements.

(a) Sidewalk Café Permit.

(1) Each sidewalk café permit shall be effective for one (1) year commencing on October 1st through September 30th and subject to annual payment as provided for in Section 17-87 of this Article.

(2) The Sidewalk Café permit shall be personal to the permittee only and shall not be transferable.

(3) The Sidewalk Café permit issued shall be specific to the location and is not transferrable to another location.

(b) Sidewalk café designation. The Town will designate the approved boundaries of the sidewalk café area by placing medallions at the corners of the sidewalk café area, in accordance with the scale layout drawing attached to and made a part of the approved Sidewalk Café permit.

(c) Location.

(1) Sidewalk cafés shall only be located in the following areas:

a. The sidewalk frontage of the licensed business to which the Sidewalk Café permit is issued;

b. The sidewalk frontage of the building where the licensed business is located, if the requirements found in Section 17-89 (c)(2) below have been satisfied; or

c. The sidewalk frontage of an adjacent property, if the requirements found in Section 17-89 (c)(2) below have been satisfied.

(2) Adjacent property or adjacent tenant space. If the proposed sidewalk café area extends in front of adjacent property or adjacent tenant space then the Permittee shall obtain written

ORDINANCE 2020-02

permission from the adjacent property owner, adjacent tenant, or both, if applicable, for use of this area to be included in the Sidewalk Café area.

(3) Location of Furniture and/or Fixtures. Furniture and/or fixtures shall be prohibited within a three (3) foot radius of the ingress or egress of a building and within a five (5)-foot radius of bus stops, taxi stands, parking meters, fire hydrants, pedestrian crosswalks or handicap ramps.

(4) Pedestrian safety areas.

a. Buffer Zone

(1) Adjacent to parking. Where parking exists between the sidewalk area proposed for use and the portion of the ROW used for vehicular travel, a sidewalk café shall be located in such a manner that a minimum five (5)-foot wide Buffer Zone is maintained adjacent to the parking, at all times.

(2) No parking. Where no parking exists, a minimum one (1)-foot wide Buffer Zone between the edge of the sidewalk closest to the ROW used for vehicular travel and the sidewalk café area Buffer Zone shall be maintained at all times. In areas of congestion, the Town Manager or designee may require additional clearance.

b. Pedestrian Path.

(1) In addition to any Buffer Zone required pursuant to Section 17-89 (4)(a) each sidewalk café area shall provide a pedestrian path, designated by the Town of no less than:

i. seven (7) feet for sidewalk café areas located east of Ocean Drive and fronting Commercial Boulevard; or

ii. five (5) feet for sidewalk café areas except as provided for in subsection b. (1)(i).

(2) The Town Manager or designee shall have the authority to select the final location of the pedestrian path located within the sidewalk café area. In areas of congested pedestrian activity, the Town Manager or designee, is authorized to require a wider Pedestrian Path than the standard set forth in Section 17-89 (c)(4) (b)(1) as may be necessary for the health, safety and welfare of the general public.

c. All Pedestrian Paths, Buffer Zones, building ingress and egress, and fire access lanes designated by the Town Fire Marshall shall be kept clear and unobstructed at all times. Patrons shall not be permitted to loiter or dance in a designated Buffer Zone or Pedestrian Path. Service staff may traverse designated Pedestrian Paths but shall not impede the pedestrian traffic while taking orders or delivering food and drink orders.

(d) Maintenance of the right-of-way.

(1) The Town Manager or designee shall designate a Maintenance Area, including portions of the ROW covered by the sidewalk café permit.

(2) The permittee shall be responsible for removal of stains in the designated Maintenance area, including but not limited to those caused by dirt, grease and food or beverages.

ORDINANCE 2020-02

(3) The Maintenance Area shall be cleared of all debris as may be necessary throughout the course of the day, and then again at the close of each business day.

(4) The Permittee will be charged for the costs of materials and labor that may be necessary to replace any and all landscaping, paving and other public improvements which are damaged and/or stained resulting from the operation of the sidewalk café. The cost of labor and materials calculated under this Section shall be premised upon the same quality of materials and workmanship previously approved and utilized by the Town for landscaping, paving and other public improvements.

(e) Physical barriers.

(1) No objects shall be permitted around the perimeter of a sidewalk café area which would have the effect of forming a physical or visual barrier.

(f) Exterior bars. Exterior Bars located within the sidewalk café area shall be prohibited.

(g) Music.

(1) Live and/or amplified music shall be prohibited within the confines of a sidewalk café area.

(2) Speakers emitting music from inside the restaurant or food store serving the sidewalk café area shall be placed and directed in such a manner that the music's amplification is directed internally into the restaurant or food store.

(h) Fire Hazards.

(1) Other than candles, which are used in the course of ordinary tableside service, no food preparation involving fire or fire apparatus of any kind shall be allowed on the public sidewalk.

(i) Seating. The maximum seating capacity shall be limited to one seat per ten(10) square feet of sidewalk café area for chairs and one barstool seat per twenty-four (24) inches of the linear outside bar area.

(j) Sidewalk café furniture and fixtures.

(1) General Review Standards. The placement and configuration of furniture and fixtures, as well as replacement furniture and fixtures shall be reviewed for consistency with the following:

a. compatibility with the Town's aesthetic standards;

b. compatibility of the scale of the furniture and fixtures with the sidewalk café area and adjacent buildings and structures,

c. fire safety and accessibility;

d. compatibility with the Buffer Zones and Pedestrian Paths; and

e. compliance with the requirements of this Article and any other applicable provisions of the Town Code.

(2) Shade structures.

ORDINANCE 2020-02

a. Umbrellas. Shall be no larger than 8.5 feet in diameter and shall maintain a minimum vertical clearance from the sidewalk of not less than eight (8) feet in height.

b. Tents, canopies and pergolas or other similar structures are prohibited.

(3) Greeting podiums and service stations.

a. All furniture and fixtures, including any greeting podium and/or service station, shall remain within the confines of the designated sidewalk café area, located as close to the building as feasibly possible and shall not impede the pedestrian path.

b. If a sidewalk café is adjacent to an outdoor dining area, any greeting podium and/or service station, shall be located in the confines of the designated outdoor dining area and not within the designated sidewalk café area.

(4) Quality and appearance. Furniture and fixtures located within the sidewalk café area shall be:

a. of sufficient quality, design, materials, size, color, elevation and workmanship both to ensure the safety and convenience of users, and to enhance the visual and aesthetic quality of the urban environment;

b. mildew and rust resistant; and

d. maintained with a clean and attractive appearance and in good repair at all times.

(5) Design. The design, materials and colors of the sidewalk café furniture and fixtures shall be approved by the Town Manager or designee prior to the issuance of the sidewalk café permit.

(6) Materials. All fabrics and materials utilized in the sidewalk café shall be fire-retardant, pressure-treated or manufactured with fire resistive materials.

(7) Affixed. The Town Manager or designee may approve certain tables to be permanently affixed to the sidewalk. If approved, the permittee is responsible for replacing the pavers and repairing the sidewalk for any damages caused by the relocation and removal of the table(s).

(8) Storage. Furniture and fixtures may be stored on the sidewalk, after closing, in a neat and orderly manner, provided that such furniture is stacked no earlier than 10:30 p.m. and the furniture layout for the sidewalk café area is restored no later than 10:30 a.m.

(9) Furniture and fixture removal. Permittee is responsible for removing all unaffixed furniture and fixtures from the sidewalk at the close of business the day before a Town scheduled sidewalk cleaning date. Failure to remove all unaffixed furniture and fixtures from the sidewalk may result in removal by the Town or its designee at the Permittee's expense.

(10) Identification of the restaurant or food store. In order to communicate the identity of the restaurant or food store associated with the sidewalk café, the name and logo of the restaurant or food store may be located once on a table or tablecloth, once on each panel of an umbrella, and once on chair covers at a letter height not exceeding four (4) inches. All other endorsements or advertising which are not intended to communicate the identity of the restaurant or food store are prohibited.

ORDINANCE 2020-02

338 (11) Fire and hurricane hazards.

339 a. The configuration of all sidewalk café areas, including the location of all furniture and
340 fixtures, shall be approved by the Town Fire Marshall.

341 b. Upon the issuance of a “Hurricane Warning” or “Hurricane Watch” by the Broward
342 County Office of Emergency Management, the Permittee shall be required to remove all
343 furniture and fixtures from the sidewalk café area. Failure to remove any furniture and/or
344 fixtures related to the sidewalk café within twenty-four (24) hours from the issuance of a
345 “Hurricane Warning” or “Hurricane Watch”, may result in the Town Manager or
346 designee directing Town staff to remove said furniture and/or fixtures. The Permittee
347 shall be responsible for any and all expenses incurred by the Town for the removal,
348 storage, and return of said furniture, fixtures or objects. The Town shall not be
349 responsible for any damages to sidewalk café furniture and/or fixtures resulting from the
350 removal, storage and return.

351 12. Use limitations.

352 a. A television may either be located inside the building or, if outside the building,
353 attached to the building, provided no television sound is audible outside the perimeter
354 of the sidewalk café area.

355 b. No furniture, fixtures, decorations, lights or other objects shall be placed in a sidewalk
356 café area, other than those items specifically approved as part of the sidewalk café
357 permit.

358 c. No furniture, fixtures, decorations, lights or other objects shall be placed outside of a
359 sidewalk café area including, but not limited to areas on the sidewalk, landscaping,
360 light poles or Town furniture.

361 Sec. 17-90. - Liability and insurance.

362 (a) The Permittee agrees to indemnify, defend, save and hold harmless the Town, its officers and
363 employees from any and all claims, liability, lawsuits, damages and causes of action which
364 may arise out of this permit, or the Permittee's activity on the premises by executing a license
365 and encroachment agreement.

366 (b) The Permittee shall meet and maintain the minimum insurance requirements set forth in
367 Section 17-9(3) of the Town Code for issuance of a sidewalk café permit.

368 Sec. 17-91. Revocation, suspension or denial of permit.

369 (a) Revocation and/or Denial. The approval of a Sidewalk Café permit is conditional at all times.
370 The holder of a permit has no vested right or property interest in the continuation of the permit
371 or the activity it allows. A Sidewalk Café permit may be denied and/or revoked if it is found
372 that any of the following has occurred:

373 (1) Any applicable business or health permit for the restaurant or food store associated with
374 the Sidewalk Café Permit has been suspended, revoked or cancelled.

375 (2) The permittee exceeds the approved square footage of the approved Sidewalk Café Permit
376 area.

ORDINANCE 2020-02

(3) Changing conditions of pedestrian or vehicular traffic which cause congestion necessitating removal of the sidewalk café. Such decision may be based upon findings of the Town Manager or designee that the pedestrian path and/or buffer zone is insufficient under existing circumstances and represents a danger to the health, safety or general welfare of pedestrians or vehicular traffic.

(4) Revocation of Permission from Property owner or Adjacent Owner, if applicable.

i. If the owner of the building in which the restaurant or food store operating the sidewalk café revokes permission for the sidewalk café, then the entire sidewalk café permit shall be revoked.

ii. If the owner of an adjacent property in front of which the sidewalk café extends revokes permission, then only that portion of the sidewalk café permit authorizing the area in front of the adjacent property shall be revoked.

iii. Revocation of a sidewalk café permit shall only be effective sixty (60) days after the owner of the building provides written notice to the Town of such revocation.

(5) The Permittee has failed to correct violations of this Article or conditions of the sidewalk café permit within twenty-four (24) hours of receipt of written notice from the Town Manager or designee. Once notice has been given for a violation, a violation of the same condition is considered a repeat violation and the Town Manager or designee shall have the right to revoke the sidewalk café permit as set forth in 17-91 (d).

(6) The Permittee fails to maintain the minimum insurance requirements set forth in Section 17-9(3) of the Town Code or conditions of the Sidewalk Café Permit.

(7) The Permittee fails to maintain compliance with any other applicable provision of the Town Code.

(8) The Permittee fails to pay annual fees associated with the Sidewalk Café Permit or any other outstanding fees which may be owed to the Town.

(b) Suspension.

(1) The permit may be temporarily suspended and furniture and fixtures required to be removed by the Town Manager, designee or authorized law enforcement official when necessary for the following reasons:

a. to clear sidewalk areas for a “community or special event” authorized by a permit issued by the Town;

b. when street, sidewalk, or utility repairs necessitate such action;

c. In emergency situations (police fire life safety). In such an event, the Town and its officers and employees shall not be responsible for sidewalk café furniture and fixtures relocated during emergencies.

(c) Removal of furniture and fixtures.

(1) In the event the Permittee fails to remove any furniture and fixtures or other objects related to the sidewalk café within twenty-four (24) hours of receipt of the Town Manager's or designee's final notice of violation, revocation or suspension, the Town Manager or designee may direct Town staff to remove said objects. The Permittee shall be responsible

ORDINANCE 2020-02

for any and all expenses incurred by the Town for the removal, storage, and return of said furniture, fixtures or objects. The furniture and fixtures shall only be released upon a proper showing of ownership and payment of reasonable and actual removal, administrative and storage charges, as set forth and approved by the Town Commission.

(2) Any furniture, fixtures or objects removed by the Town shall be stored for a period not to exceed thirty (30) days. In the event the furniture or fixtures are not claimed within the thirty (30) day storage period, the furniture, fixture or object shall be deemed unclaimed property in possession of the town and may be disposed of pursuant to law.

(3) Notwithstanding subsection (c) (1) above, the Town Manager or designee shall have the right to remove or relocate without notice, any furniture and fixtures that presents a safety hazard to traffic or pedestrian flow or that are not specifically identified in sidewalk café permit. In such an event, the Town and its officers and employees shall not be responsible for any damages to sidewalk café furniture and fixtures that may have resulted during removal and/or relocation. The Permittee may be responsible for any and all expenses incurred by the Town for the removal, storage, and return of said furniture, fixtures or objects.

(d) Procedures for Permit Suspension or Revocation.

(1) If the Town Manager or designee believes that a Permittee has engaged or is engaged in conduct warranting the revocation of the permit, he or she shall serve the Permittee by certified mail or hand delivery, at the address provided in the application for the permit, a written notice of violation which affords reasonable notice of facts or conduct which warrant the intended action, and a reasonable time for the Permittee to cure the violation.

(2) The written notice of violation shall state the required remedial action to eliminate the violation. The Permittee shall be afforded a reasonable opportunity to request a hearing before the Town Commission on the notice of violation, unless the Town Manager or designee finds that an emergency condition exists involving serious danger to public health, safety and welfare, or the permittee is a repeated violator of the requirements of this article, in which case advance notice and hearing shall not be required.

(3) In the case of an emergency suspension or revocation, the Permittee shall immediately be advised of the Town Manager's or designee's action.

(4) In the event the Permittee does not cure the violation within the reasonable time designated by the Town Manager or designee, the sidewalk café furniture and fixtures may be removed and penalties may be imposed pursuant to Section 17-92.

Sec. 17-92. Enforcement.

(a) This Article shall be enforced as follows:

(1) The Town Manager or designee shall have jurisdiction to hear and decided cases involving Sidewalk Café permits.

(2) The Code Enforcement Special Magistrate shall have jurisdiction to hear and decide cases involving sidewalk cafes where a permit has not been issued or has previously been revoked and/or suspended.

ORDINANCE 2020-02

(3) The Town may enforce the provision of this Article by supplemental code or ordinance enforcement procedures as provided by F.S. ch. 162, pt. 2; or

(4) The Town may prosecute violations by issuance of notices to appear for violation of a Town ordinance.

(b) The penalty for a violation of this Article pursuant to Section 17-92 (a) (2) shall be as provided by F.S. ch. 162.

(c) The Town Attorney, with authorization from the Town Commission, may bring suit on behalf of the Town to enjoin any violation of this Article.

Sec. 17-93. - Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.

(a) The Town of Lauderdale-By-The-Sea may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.

(b) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the Town may foreclose or otherwise execute on the lien.

Section 4. Codification. This Ordinance shall be codified in accordance with the foregoing.

It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the Town of Lauderdale-By-The-Sea Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such intentions.

Section 5. Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 6. Conflicting Ordinances. All prior ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of said conflict.

Section 7. Effective Date. This Ordinance shall be in full force and effect immediately upon its passage on second reading.

Passed on the first reading, this ____ day of _____, 2020.

ORDINANCE 2020-02

487 Passed and adopted on the second reading, this ____ day of _____, 2020.

488

489

MAYOR CHRIS VINCENT

490

491

492

493

First Reading

Second Reading

494 Mayor Vincent

495 Vice-Mayor Sokolow

496 Commissioner Malkoon

497 Commissioner Oldaker

498 Commissioner Strauss

499

500 ATTEST:

501

502

503 _____
Tedra Allen, Town Clerk

504

505 (CORPORATE SEAL)

506

507 APPROVED AS TO FORM:

508

509

510 _____
Susan L. Trevarthen, Town Attorney

511

512

513

514

515

516

517

518

519

520

521

ORDINANCE 2020-02

Exhibit "A"

ARTICLE VI. ~~SIDEWALK CAFÉS~~

~~Sec. 17-85. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning.~~

~~*Affected party* shall mean any property owner whose property directly abuts the property upon which the business is located which has applied for or been issued a permit for a sidewalk café.~~

~~*Furniture/fixtures* shall mean tables, chairs, umbrellas and any other objects utilized as part of the sidewalk café.~~

~~*Pedestrian path* shall mean the portion of the right-of-way adjacent to the sidewalk café that is required to be kept free and clear to allow a safe passageway for walking.~~

~~*Permittee* shall mean the owner/operator of the restaurant (who may or may not be the property owner) associated with and holding a sidewalk café permit obtained pursuant to the terms and provisions of this article.~~

~~*Right-of-way* shall mean land in which the State, the Florida Department of Transportation, Broward County or the Town of Lauderdale By The Sea owns the fee or has an easement devoted to or required for use as a transportation facility or street.~~

~~*Sidewalk* shall mean that area, whether privately owned or a portion of the right-of-way, which is located between the curbline or the lateral line of a street and the adjacent building and which is intended for use by pedestrians.~~

~~*Sidewalk café* shall mean a use located on a sidewalk or portion of the right-of-way which is associated with a restaurant, or food establishment. It shall be characterized by the presence of tables and chairs and may be shaded by awnings, canopies or umbrellas if permits for same have been issued.~~

~~*Street* means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic or parking.~~

~~Sec. 17-86. Permit and revocable license required.~~

~~(a) It shall be unlawful for any person to operate a sidewalk café on any sidewalk or public right-of-way within the Town without first obtaining a permit from the Town. The approved permit shall include:~~

~~(1) A revocable license agreement in a form approved by the Town Attorney, with the Town for any portion of the Town's right-of-way which is used for a sidewalk café;~~

~~(2) The location, square footage and table placement of sidewalk cafes; and~~

~~(3) Additional information and conditions as required by the Town.~~

~~(b) The license is revocable in accordance with section 17-92 and shall not constitute a vested property interest in any portion of the public right-of-way.~~

ORDINANCE 2020-02

~~(c) Any person or entity operating a sidewalk café without a permit or any property owner allowing the operation of a sidewalk café without a permit upon his/her/its property shall be subject to penalties as provided in this article.~~

~~(d) Each operator of a sidewalk café that operates in a portion of the right of way shall pay to the Town a monthly right of way license fee established by the Town Commission by resolution for each square foot of right of way licensed for use. In addition, the Town may require maintenance fees.~~

~~Sec. 17-87. Permit fee.~~

~~(a) All sidewalk café operators shall pay a permit fee based on the number of seats depicted on the Town approved site drawing required by these regulations. Such fees shall be set and may be amended from time to time by resolution of the Town Commission.~~

~~(b) The permit fee shall be paid on or before October 1 and shall cover the time period from October 1 through September 30 of the following calendar year. No permit shall be issued for any fractional portion of the year; provided, however, that any person or entity operating a sidewalk café for a period beginning after May 1, may obtain a permit for the remaining portion of the fiscal year upon payment of one half of the permit fee required by this article. No refund of fees shall be allowed.~~

~~(c) The permit fees collected pursuant to this section from sidewalk cafés located in the Town of Lauderdale By The Sea shall be placed in the general revenue fund.~~

~~Sec. 17-88. Permit and license application.~~

~~(a) Application for a permit and license to operate a sidewalk café shall be commenced by the filing of a complete application on a form provided by the Town and filed with the Development Services Department. Such application shall include:~~

~~(1) Name, address and telephone number of the applicant.~~

~~(2) Name and address of business.~~

~~(3) A copy of a valid Town of Lauderdale By The Sea business tax receipt to operate a business adjacent to the sidewalk area which is the subject of the application.~~

~~(4) Evidence of insurance containing terms required under section 17-90 of this article.~~

~~(5) An 8½ × 11 [inch] drawing to legible scale showing the layout and dimensions of the existing sidewalk area and adjacent private property, proposed location, size and number of tables, chairs, steps, trees, parking meter, bus shelters, sidewalk benches, trash receptacles, and any other furniture/fixtures or sidewalk obstruction either existing or proposed within the pedestrian area.~~

~~(6) Photographs, drawings or manufacturer's brochures fully describing the appearance of all proposed furniture/fixtures related to the sidewalk café.~~

~~(7) Signature of the owner of the building.~~

~~(8) A nonrefundable application fee established by the Town Commission by resolution.~~

~~(b) Applications shall be reviewed for compliance with Town ordinances and must be approved by the Town Manager or designee.~~

ORDINANCE 2020-02

~~(c) The Town Manager or designee may deny an application that does not comply with this section. Such denials shall be written and shall provide the reasons for the denial. The applicant or an affected property owner may appeal the Town Manager or designee's decision to the Town Commission.~~

~~Sec. 17-89. Requirements of a sidewalk café permit.~~

~~(a) Location.~~

~~(1) Sidewalk cafés shall be located only in the following places:~~

~~a. The sidewalk frontage of the licensed business to which the permit is issued; or~~

~~b. The sidewalk frontage of the building where the validly licensed business is located.~~

~~Such sidewalk cafés may also occupy a portion of the non-vehicular right-of-way.~~

~~(2) Adjacent property or adjacent tenant space. In the event the area of the proposed sidewalk café extends in front of an adjacent tenant space or adjacent property, the following provisions apply:~~

~~a. The permittee must obtain written permission from the relevant adjacent property owner for use of this area. Failure to obtain such written permission will not justify a refund of the annual permit fee or any other fees paid to the Town of Lauderdale-By-The-Sea for operation of a sidewalk café.~~

~~b. The Town will send a courtesy notice to those businesses directly abutting the proposed sidewalk café. Any affected person may provide written comments to the Town Manager or designee within ten days of the date of the mailed notice, for the consideration of the Town Manager or designee. Failure to mail or receive such notice shall not affect actions taken under this article.~~

~~(3) Permits shall not be issued to place tables and chairs within a ten-foot proximity of bus stops, taxi stands, fire hydrants, a pedestrian crosswalk, or handicap ramp.~~

~~However, the Town Manager or designee may permit an exception to the distance requirement from ten feet to five feet where established pedestrian and tram paths shall not be obstructed and where public safety shall not be adversely affected.~~

~~(4) Proximity to vehicular right-of-way.~~

~~a. Where parking exists between the sidewalk area proposed for use and the portion of the right-of-way used for vehicular travel, a sidewalk café shall be located in such a manner that a minimum five-foot wide clear pedestrian path on the sidewalk is maintained at all times.~~

~~b. Where no parking exists, a minimum one-foot wide clear area between the edge of the sidewalk closest to the right-of-way used for vehicular travel and the sidewalk café shall be maintained at all times. In areas of congestion, the Town Manager or designee is authorized to require additional clearance.~~

~~(b) Physical barriers. No objects shall be permitted around the perimeter of a sidewalk area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of the sidewalk by the general public.~~

ORDINANCE 2020-02

(c) ~~*Pedestrian path.* In areas of congested pedestrian activity, the Town Manager or designee, is authorized to require a wider pedestrian path than that provided herein as circumstances dictate.~~

(d) ~~*Sidewalk café designation.* The Town will designate the approved boundaries of the sidewalk café.~~

(e) ~~*Sidewalk café furniture/fixtures.*~~

(1) ~~Furniture/fixtures utilized as part of the sidewalk café 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.~~

(2) ~~Design, materials and colors shall be approved by the Town Manager or designee prior to the issuance of the sidewalk café permit.~~

(3) ~~All fabrics shall be fire retardant, pressure-treated or manufactured of fire resistive material.~~

(f) ~~*Monies owed to Town.* Prior to issuance of a sidewalk café permit or annual renewal, the Town Clerk shall certify that there are no outstanding fines, moneys, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting a sidewalk café permit. A sidewalk café permit will not be issued until all outstanding debts to the Town are paid in full.~~

(g) ~~*Open air design.* Any business or food establishment that qualifies under the conditions of this article may redesign the face of their establishment to allow for doors or panels that permit the establishment to have totally open sides allowing for an indoor/outdoor "café" design. These changes in the building can only be made after a proper building permit is issued, said changes otherwise comply with the "Code of Ordinances of the Town of Lauderdale By The Sea," the Florida Building Code, and all appropriate fees paid.~~

(h) ~~*Maintenance of the right of way.* Permittee will be charged for the costs of materials and labor to replace any and all landscaping, paving and other public improvements which are damaged and/or stained resulting from the operation of the sidewalk café utilizing the same quality of materials and workmanship as approved by the Town.~~

~~Sec. 17-90. Liability and insurance.~~

(a) ~~The permittee agrees to indemnify, defend, save and hold harmless the Town, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of this permit, or the permittee's activity on the premises by executing a written hold harmless agreement.~~

(b) ~~The permittee agrees to meet and maintain for the entire permit period, at his/her own expense, insurance meeting the requirements of section 17-9(3).~~

~~Sec. 17-91. Sidewalk café permits.~~

(a) ~~Each permit shall be effective for one year from October 1 until September 30, subject to annual renewal with the approval of the Town Manager or designee.~~

ORDINANCE 2020-02

- 674 (b) ~~The permit issued shall be personal to the permittee only and shall be transferable only with~~
675 ~~the approval of the Town Manager or designee.~~
- 676 (c) ~~The permit may be temporarily suspended by the Town Manager or designee when necessary~~
677 ~~to clear sidewalk areas for a "community or special event" authorized by a permit issued by~~
678 ~~the Police Department.~~
- 679 (d) ~~The Town Manager or designee may require the temporary removal of sidewalk cafés when~~
680 ~~street, sidewalk, or utility repairs necessitate such action.~~
- 681 (e) ~~The Town Manager or designee, and/or an authorized Police Officer of the Town may cause~~
682 ~~the immediate removal or relocation of all or parts of the sidewalk café in emergency~~
683 ~~situations.~~
- 684 (f) ~~The Town and its officers and employees shall not be responsible for sidewalk café~~
685 ~~components relocated during emergencies.~~
- 686 (g) ~~The permit shall be specifically limited to the area shown on the scale layout drawing~~
687 ~~attached to and made a part of the permit. The Town Manager or designee shall have the right~~
688 ~~to remove without notice, any tables, chairs or other objects not in the permit area.~~
- 689 (h) ~~The permittee shall act to assure that its use of the sidewalk in no way interferes with~~
690 ~~pedestrians or limits their free unobstructed passage. The Town Manager or designee may~~
691 ~~require relocation of furniture/fixtures at any time for safety or pedestrian flow consideration.~~
- 692 (i) ~~The sidewalk café shall be opened for use by the general public, although such seating may~~
693 ~~be restricted by the permittee to the patrons of the permittee.~~
- 694 (j) ~~Furniture/fixtures provided with a sidewalk café shall be maintained with a clean and~~
695 ~~attractive appearance and shall be in good repair at all times.~~
- 696 (k) ~~The sidewalk area covered by the permit, and sidewalk and roadway immediately adjacent~~
697 ~~to it, shall be maintained in a neat and orderly appearance at all times, and the area shall be~~
698 ~~cleared of all debris as needed during the day, again at the close of each business day and as~~
699 ~~may be directed by the Town Manager or designee.~~
- 700 (l) ~~Sidewalk cafe and outdoor dining furniture/fixtures.~~
- 701 (1) ~~Tables may include the establishment name and registered trademark logo.~~
- 702 (2) ~~Umbrellas may include the establishment name, limited to once on each of the~~
703 ~~umbrella's panels.~~
- 704 (3) ~~Lettering may not exceed four inches in height.~~

ORDINANCE NO. 2020-xx

- ~~(4) Signs are otherwise prohibited on any other furniture/fixtures.~~
- ~~(m) No furniture/fixtures shall be attached, chained, or in any manner affixed to any tree, post, sign or other fixture, curb or sidewalk within or near the permitted area.~~
- ~~(n) No outdoor seating authorized herein shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of a liquor license for any establishment; nor shall it 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 Town ordinance or State law.~~
- ~~(o) The area between the exterior walls of a business or other eating establishment and the edge of sidewalk devoted to a sidewalk café shall be designated as public space. The placement of tables and chairs in this public space shall not constitute a building improvement which otherwise triggers structural improvements to the operating business under the provisions of the Florida Building Code or any State statute.~~
- ~~(p) In the event an operator of a business or other eating establishment creates a sidewalk café pursuant to the terms of this section and such creation entails actual structural improvements to any portion of the structure other than the public space, or in the event the creation of the sidewalk café permanently obstructs ingress or egress to the business or eating establishment, then all applicable provisions of the South Florida Building Code or State statutes necessitating improvements to the property shall apply.~~
- ~~(q) No food preparation fire, or fire apparatus, shall be allowed on the public sidewalk, other than that employed in the course of ordinary tableside service, including, but not limited to, menu items which require table preparation, whether or not such area is covered by this permit.~~
- ~~(r) Upon the issuance of a "Hurricane Warning" or "Hurricane Watch" by the Broward County Office of Emergency Management, the permittee shall forthwith remove and place indoors all furniture/fixtures and other equipment located on the sidewalk.~~
- ~~Sec. 17-92. Revocation or suspension of permit; removal and storage fees; emergencies.~~
- ~~(a) The approval of a sidewalk café permit is conditional at all times. The holder of a permit has no vested right or property interest in the continuation of the permit or the activity it allows. A sidewalk café permit can be denied, revoked or suspended if it is found that:~~
- ~~(1) Any necessary business or health permit has been suspended, revoked or cancelled.~~
- ~~(2) The permittee exceeds the approved square footage of the approved area.~~
- ~~(3) Changing conditions of pedestrian or vehicular traffic which cause congestion necessitating removal of the sidewalk café. Such decision may be based upon findings of the Town Manager that the minimum five-foot pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety or general welfare of pedestrians or vehicular traffic.~~
- ~~(4) The permission of the owner of the building in front of which the sidewalk café, or a portion of a sidewalk café, is located has been revoked. Revocation of a sidewalk café permit, pursuant to this subsection (4) shall be effective 60 days after the owner of the building provides written notice to the Town of such revocation. If the owner of the~~

ORDINANCE NO. 2020-xx

building in which the restaurant operating the sidewalk café is located revokes permission for the sidewalk café, the entire sidewalk café permit shall be revoked. If the owner of an adjacent property in front of which the sidewalk café extends revokes its permission, then only that portion of the sidewalk café permit authorizing the area in front of the adjacent property shall be revoked.

(5) The permittee has failed to correct violations of this article or conditions of the permit within 24 hours of receipt of the Town Manager's notice of same delivered in writing to the permittee.

(6) The permittee fails to maintain compliance with the requirements of section 17-90 of this article.

(b) In the event the permittee fails to remove any furniture/fixtures or other objects related to the sidewalk café within 24 hours of receipt of the Town Manager's final notice of violation, revocation or suspension, the Town Manager may direct Town staff to remove said objects. The permittee shall be responsible for the expenses incurred by the Town for the removal and storage of said objects.

(c) Action warranting suspension or revocation.

(1) If the Town Manager believes that a permittee has engaged or is engaged in conduct warranting the suspension or revocation of the permit, he shall serve the licensee by certified mail or hand delivery, at his business address as disclosed in his application for the permit, a written notice of ordinance violation which affords reasonable notice of facts or conduct which warrant the intended action, and a reasonable time for the permittee to cure the violation.

(2) The complaint shall state what is required to be done to eliminate the violation, if any. The permittee shall be given adequate opportunity to request a hearing before the Town Commission, unless the Town Manager finds that an emergency condition exists involving serious danger to public health, safety and welfare, in which case advance notice and hearing shall not be required.

(3) In the case of an emergency suspension or revocation, the licensee shall immediately be advised of the Town Manager's action.

(4) In the event the permittee does not cure the violation within the reasonable time designated by the Town Manager, penalties shall be imposed pursuant to section 17-93.

Sec. 17-93. Enforcement.

(a) This article shall be enforced as follows:

(1) The Town Code Enforcement Special Master shall have jurisdiction to hear and decide cases in which violations of this chapter are alleged; or

(2) The Town may enforce the provision of this Code by supplemental code or ordinance enforcement procedures as provided by F.S. ch. 162, pt. 2; or

(3) The Town may prosecute violations by issuance of notices to appear for violation of a Town ordinance.

ORDINANCE NO. 2020-xx

- 784 ~~(b) — The penalty for a violation of this article shall be as provided by F.S. ch. 162.~~
- 785 ~~(c) — The Town Attorney, with authorization from the Town Commission, may bring suit on~~
- 786 ~~behalf of the Town to enjoin any violation of this chapter.~~
- 787 ~~Sec. 17-94. — Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.~~
- 788 ~~(a) — The Town of Lauderdale-By-The-Sea may institute proceedings in a court of competent~~
- 789 ~~jurisdiction to compel payment of civil fines.~~
- 790 ~~(b) — A certified copy of an order imposing a civil fine may be recorded in the public records and~~
- 791 ~~thereafter shall constitute a lien upon any other real or personal property owned by the violator~~
- 792 ~~and it may be enforced in the same manner as a court judgment by the sheriffs of this state,~~
- 793 ~~including levy against the personal property, but shall not be deemed to be a court judgment~~
- 794 ~~except for enforcement purposes. After two months from the filing of any such lien which~~
- 795 ~~remains unpaid, the Town may foreclose or otherwise execute on the lien.~~
- 796
- 797



Planning and Zoning Board Agenda Item Report

Meeting Date: January 7, 2020

Submitted by: Linda Connors

Submitting Department: Development Services

Item Type: Discussion Item

Agenda Section: NEW BUSINESS

Subject Title:

Review of Outdoor Dining Regulations

Explanation:

Background

As previously provided, the Town Commission held a workshop to discuss downtown issues such as noise, signs and sidewalk café regulations. After discussion, the Town Commission requested that staff bring forward ordinances to amend the current sidewalk café and sign code regulations. The amendments to the sidewalk café regulations are scheduled on the agenda.

A sidewalk café is seating for a restaurant or food store in the Town's right-of-way and is regulated in Chapter 17 of the Town's Code of Ordinances. In some instances, a restaurant may have outdoor seating located on its private property. Such outdoor seating is regulated as outdoor dining, instead of as a sidewalk café. Outdoor dining regulations are located in Chapter 30 of the Town's Code of Ordinances and mirrors the sidewalk café regulations. For consistency purposes, Staff has prepared Ordinance 2020-01(**Exhibit 1**), which incorporates the proposed changes to the Town's sidewalk café regulations into the outdoor dining regulations.

Discussion

Outdoor dining is similar to sidewalk café dining in that the furniture and fixtures are outside the restaurant and have an impact on the aesthetics of the Town. However, since outdoor dining is located on private property, there is no monthly fee for using the outdoor area for seating.

The proposed ordinance accomplishes the following:

1. Clarifies and updates the Town Code by amending existing language;
2. Establishes a timeframe for permit review;
3. Adds a distance requirement for tables and chairs from bus stops, taxi stands, etc.; and
4. Adds standards for the size of shade structures, density of outdoor seating and location of greeting podiums.

The ordinance is scheduled for first reading before the Town Commission at the January 14th Commission meeting.

Recommendation:

Review proposed amendments to Chapter 30, "Unified Land Development Regulations," Article V "Zoning," Division 2 "Districts," Subdivision L "B-1-A District Regulations" of the Town's Code of Ordinances regarding outdoor dining.

Attachments:

1. Ordinance 2020-01

**AN ORDINANCE OF THE TOWN OF LAUDERDALE-
BY-THE-SEA, FLORIDA AMENDING CHAPTER 30
“UNIFIED LAND DEVELOPMENT REGULATIONS,”
ARTICLE V “ZONING,” DIVISION 2 “DISTRICTS,”
SUBDIVISION L “B-1-A DISTRICT REGULATIONS,”
AND SUBDIVISION M “B-1 DISTRICT
REGULATIONS” TO MODIFY REGULATIONS AND
STANDARDS RELATED TO OUTSIDE SEATING FOR
RESTAURANTS ON PRIVATE PROPERTY, OTHER
THAN A SIDEWALK; PROVIDING FOR
CODIFICATION; PROVIDING FOR SEVERABILITY;
PROVIDING FOR CONFLICTS; AND PROVIDING FOR
AN EFFECTIVE DATE**

WHEREAS, the Town Commission recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the Town’s regulations are current and consistent with the Town’s planning and regulatory needs; and

WHEREAS, the Town Commission desires to amend the Town Code to modify regulations and standards related to outside seating for restaurants on private property, other than a sidewalk; and

WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, has reviewed the contents of this Ordinance at a duly noticed public hearing on January 7, 2019, and recommended the amendments be approved; and

WHEREAS, the Town Commission conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Town Commission has determined that this Ordinance is consistent with the Town’s Comprehensive Plan and in the best interest of the Town, its residents, and its visitors.

**NOW, THEREFORE BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN
OF LAUDERDALE-BY-THE-SEA, FLORIDA THAT:**

Section 1: The foregoing “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2: Chapter 30, “Unified Land Development Regulations,” Article V “Zoning,” Division 2 “Districts,” Subdivision L “B-1-A District Regulations” of the Town’s Code of Ordinances is hereby amended as follows¹:

Sec. 30-261. - B-1-A district—Business.

(a) *B-1-A uses permitted.*

- (1) *Permitted uses.* No building or premises shall be used and no building with the usual accessories shall be erected or altered other than a building or premises arranged, intended, or designed for any of the following uses, not to exceed 10,000 square feet in gross floor area:

* * * * *

hhh. Restaurant, which may also include the following accessory uses:

1. Sidewalk cafés which would be appurtenant to, and a part of, a restaurant, subject to the requirements of chapter 17, article VI, sidewalk cafés.
2. Outside seating for restaurants, on private property other than a sidewalk, that is accessory to the principal restaurant use and that is not regulated under chapter 17, article VI, and subject to the regulations set forth in subsection (eh), below.
3. Walk-up windows for food and/or beverage service.

* * * * *

- (h) Outside seating for restaurants, on private property other than a sidewalk, that is accessory to the primary restaurant use may be permitted subject to the following regulations:

¹ Additions to the text are shown in underline. Deletions to the text are shown in ~~strike through~~.

- (1) *Permit required.* It shall be unlawful for any person to provide outside seating for a restaurant on private property within the Town without first obtaining a permit from the Town. The location of an outside seating area for a restaurant shall be approved by the Town Manager or designee.
- (2) *Permit fee.* The fee for a permit for outside seating for a restaurant shall be as established by resolution of the Town Commission, shall be non-refundable, and shall accompany the outdoor seating application. ~~A permit fee shall be established by resolution of the Town Commission.~~
- (3) *Permit application.* Application for a permit to provide outside seating for a restaurant shall be commenced by the filing of a complete application on a form provided by the Town with the Development Services Department. Such application shall include the following: ~~made at the office of the Town Clerk. Such application shall include:~~
- a. Name, address and telephone number of the applicant.
 - b. Name and address of business.
 - c. A copy of a valid Town of Lauderdale-By-The-Sea business tax receipt to operate a restaurant adjacent to the outside seating area which is the subject of the application.
 - d. An 8½ × 11 inch drawing or larger at a minimum scale of one inch equals 20 feet showing the following:
 1. The store front and all openings (doors, windows);
 2. The location and dimensions of the private property area being utilized for the outside seating area, including: structures located thereon; proposed location, dimension and number of tables, chairs, and umbrellas proposed within the outside seating area;
 3. Clear delineation of the boundary between private property and the public right-of-way;
 4. The location of tables and chairs complying with the Americans with Disabilities Act (ADA) standards.
 - e. When the outside seating is visible from a public right-of-way, the application shall also include:
 1. Photographs and/or manufacturer brochures fully describing the appearance of all proposed chairs, tables, umbrellas and other private features, including but not limited to lighting to be used in the proposed outside seating area.
 2. A trash management and maintenance plan for the outside seating area, which shall include a plan for pickup and disposal of any trash or food on or around the tables and chairs or sidewalk, and periodic pressure cleaning of the area used for outside seating. This plan shall ensure that the outside seating area is maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day and at the close of each business day to ensure a healthy and safe environment.

- 102 f. Written consent from the building owner for the proposed outside seating area.
- 103 g. In the event the outside seating area is proposed in front of an adjacent owner's
- 104 property, the applicant must provide written consent from the adjacent property
- 105 owner for use of this area.
- 106 h. Non-refundable application fee.
- 107 i. ~~Applications shall be reviewed for compliance with the Town Code and may be~~
- 108 ~~approved by the Town Manager or designee.~~
- 109 j. ~~The Town Manager or designee may deny an application that does not comply with~~
- 110 ~~this section. Such denials shall be written and shall provide the reasons for the~~
- 111 ~~denial. The applicant or any property owner whose property directly abuts the~~
- 112 ~~property which is the subject matter of the application may appeal the Town~~
- 113 ~~Manager or designee's decision to the Town Commission.~~

114 (4) Permit Application Review. The Town Manager or designee shall review applications

115 for compliance with the standards and requirements set forth in this Article as well as

116 any other applicable Town Code provisions.

- 117 a. No application shall be accepted until it is deemed complete.
- 118 b. The Town Manager or designee shall review the submitted application
- 119 within twenty (20) business days and either accept the application if it is
- 120 complete or, if incomplete, reject the application with a written notice of
- 121 incompleteness, specifying the data missing from the application.
- 122 c. If an application is rejected, the applicant may resubmit the application
- 123 with the additional information required. Upon each resubmittal, the
- 124 Town manager or designee shall have ten (10) business days to review the
- 125 resubmitted application and either accept the application as complete or
- 126 provide written notice of any corrections, revisions or deficiencies. This
- 127 process shall continue until the applicant has submitted a complete
- 128 application or demands that the application be reviewed as is, without
- 129 further revisions.
- 130 d. If an applicant fails to provide the additional information as requested by
- 131 the Town Manager or designee within sixty (60) days of the request for
- 132 additional information, the Town Manager or designee may deem the
- 133 application to be withdrawn by the applicant and the application
- 134 considered null and void. Upon request, the applicant shall be entitled to
- 135 one sixty (60) day extension, provided the extension request is granted
- 136 prior to the expiration of the above referenced sixty (60) day time period.
- 137 e. For any application in which the outdoor seating area is not located
- 138 directly in front the associated restaurant, the Town will send a courtesy
- 139 notice to those businesses directly abutting the proposed outdoor seating.
- 140 Any affected person may provide written comments to the Town Manager
- 141 or designee within ten (10) days of the date of the mailed notice, for the
- 142 consideration of the Town Manager or designee. Failure to mail or receive
- 143 such courtesy notice shall not affect actions taken under this Article.

(6) Prior to issuance of an outdoor seating permit or annual renewal, the Town Clerk shall certify that there are no outstanding fines, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting an outdoor seating permit. An outdoor seating permit may not be issued until all outstanding fees and/or fines owed to the Town are paid in full.

(7) The Town Manager or designee shall approve, approve with conditions, or deny an application based on the requirements of this Article and compliance with the Town Code. Approval shall be in the form of an outdoor seating permit and as provided for in this Article. A denial of an outdoor seating application shall be made in writing and shall provide the reasons for such denial. The applicant or an affected property owner whose property directly abuts the property, which is the subject matter of the application, may appeal the Town Manager or designee's decision on the outdoor seating permit application to the Town Commission.

(45) *Location requirements.* The location of an outside seating area for a restaurant shall be subject to the following locational regulations:

- a. An outside seating area shall only be permitted on private property that is adjacent to a licensed restaurant business to which the permit is issued.
- b. Tables and chairs shall not be located within a (10) ten-foot proximity of bus stops, taxi stands, fire hydrants, a pedestrian crosswalk, driveway or handicap ramp.
- c. The Town Manager or designee may permit an exception to the distance requirement of subsection b. above from (10) ten feet to (5) five feet where established pedestrian and tram paths shall not be obstructed and where public safety shall not be adversely affected.
- d. Markers approved by the Town Manager or designee shall be embedded into the property to distinguish the approved boundaries of the outside seating area. This requirement may be waived by the Town Manager or designee if the proposed outside seating area is not on or adjacent to any private or public sidewalk, parking or other pedestrian area if the area is otherwise clearly delineated.

(56) *Additional regulations for outside seating for a restaurant.*

- a. The outside seating area shall be accessory to and under the same ownership or control as the primary restaurant, which is operated within a permanently enclosed building located on the same or adjacent parcel. The outdoor seating permit shall be personal to the permittee only and shall not be transferrable. The outdoor seating permit issued shall be specific to the location and is not transferrable to another location.
- b. ~~There shall be no use, operation, or playing of any musical instrument, loud-speaker, sound amplifier, or other machine or device for the production or reproduction of sound in such a manner as to disturb the peace, quiet, or comfort of~~

~~the neighboring inhabitants or at any time with louder volume than is otherwise regulated by chapter 13, Noise, of the Town Code.~~

Live and/or amplified music shall be prohibited within the confines of the outdoor seating area. Speakers emitting music from inside the restaurant or food store serving the sidewalk café area shall be placed and directed in such a manner that the music's amplification is directed internally into the restaurant or food store.

- c. Food preparation shall only occur in the fully enclosed area of the licensed primary restaurant.
- d. Hours of operation shall not exceed the hours of operation established for the principal licensed restaurant.
- e. All fabrics shall be fire-retardant, pressure-treated or manufactured of fire resistive material.
- f. No objects shall be permitted around the perimeter of the outside seating area that is occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of a sidewalk by the general public.
- g. Additionally, when the outside seating area is visible from a public right-of-way:
 - 1. No tables, chairs, or any other part of an outside seating area shall be permanently attached, chained, or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area.
 - 2. Tables, chairs, umbrellas, canopies, awnings, and any other objects utilized as part of the outside seating area 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.
 - 3. Design, materials and colors shall be approved by the Town Manager or designee prior to the issuance of the permit to allow the outside seating area.
- h. Shade Structures.
 - 1. Umbrellas. Shall be no larger than 8.5 feet in diameter and shall maintain a minimum vertical clearance from the sidewalk of not less than eight (8) feet in height.
 - 2. Tents, canopies and pergolas or other similar structures are prohibited.
- i. Outdoor seating. The maximum seating capacity shall be limited to one seat per ten (10) square feet of outdoor seating area for chairs and one barstool seat per twenty-four (24) inches of the linear outside bar area.
- j. Greeting podiums and service stations. All furniture and fixtures, including any greeting podium and/or service station, shall remain within the confines of the designated outdoor seating area, located as close to the building as feasibly possible and shall not impede the public right-of-way.

- (67) Prior to issuance of a permit for an outside seating area, the Town Clerk shall certify that there are no outstanding fines, moneys, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting a permit for

outside seating. A permit to allow outside seating will not be issued until all outstanding debts to the Town are paid in full.

- (78) Any primary restaurant which obtains a permit to have outside seating as an accessory use to a primary restaurant, pursuant to subsection 30-261(1) and (6) may redesign the face of their establishment to allow for doors or panels that permit the establishment to have open sides allowing for an indoor/outside restaurant design. Any proposed alterations, modifications or changes to the building shall require the issuance of a building permit, compliance with the Town Code and payment in full of all applicable fees.

* * * * *

Section 2: Chapter 30, “Unified Land Development Regulations,” Article V “Zoning,” Division 2 “Districts,” Subdivision M “B-1 District Regulations” of the Town’s Code of Ordinances is hereby amended as follows:

Subdivision M. - B-1 District Regulations

Sec. 30-271. - B-1 district—Business.

(a) *B-1 uses permitted.*

- (1) *Permitted uses.* No building or premises shall be used and no building with the usual accessories shall be erected or altered other than a building or premises arranged, intended, or designed for any of the following uses, not to exceed 10,000 square feet in gross floor area, except for waterfront hotel uses:

* * * * *

hhh. Restaurant, which may also include the following accessory uses:

1. Sidewalk cafés which would be appurtenant to, and a part of, a restaurant, subject to the requirements of chapter 17, article VI, sidewalk cafés.
2. Outside seating for restaurants, on private property other than a sidewalk, that is accessory to the principal restaurant use and that is not regulated under chapter 17, article VI, and subject to the regulations set forth in subsection (eh), below.
3. Walk-up windows for food and/or beverage service.

* * * * *

(h) Outside seating for restaurants, on private property other than a sidewalk, that is accessory to the primary restaurant use may be permitted subject to the following regulations:

(1) *Permit required.* It shall be unlawful for any person to provide outside seating for a restaurant on private property within the Town without first obtaining a permit from the Town. The location of an outside seating area for a restaurant shall be approved by the Town Manager or designee.

(2) *Permit fee.* The fee for a permit for outside seating for a restaurant shall be as established by resolution of the Town Commission, shall be non-refundable, and shall accompany the outdoor seating application. ~~A permit fee shall be established by resolution of the Town Commission.~~

(3) *Permit application.* Application for a permit to provide outside seating for a restaurant shall be commenced by the filing of a complete application on a form provided by the Town with the Development Services Department. Such application shall include the following: ~~made at the office of the Town Clerk. Such application shall include:~~

- a. Name, address and telephone number of the applicant.
- b. Name and address of business.
- c. A copy of a valid Town of Lauderdale-By-The-Sea business tax receipt to operate a restaurant adjacent to the outside seating area which is the subject of the application.
- d. An 8½ × 11 inch drawing or larger at a minimum scale of one inch equals 20 feet showing the following:
 1. The store front and all openings (doors, windows);
 2. The location and dimensions of the private property area being utilized for the outside seating area, including: structures located thereon; proposed location, dimension and number of tables, chairs, and umbrellas proposed within the outside seating area;
 3. Clear delineation of the boundary between private property and the public right-of-way;
 4. The location of tables and chairs complying with the Americans with Disabilities Act (ADA) standards.
- e. When the outside seating is visible from a public right-of-way, the application shall also include:
 1. Photographs and/or manufacturer brochures fully describing the appearance of all proposed chairs, tables, umbrellas and other private features, including but not limited to lighting to be used in the proposed outside seating area.
 2. A trash management and maintenance plan for the outside seating area, which shall include a plan for pickup and disposal of any trash or food on or around the tables and chairs or sidewalk, and periodic pressure cleaning of the area used for outside seating. This plan shall ensure that the outside seating area is

- 300 maintained in a neat and orderly appearance at all times and the area shall be
301 cleared of all debris on a periodic basis during the day and at the close of each
302 business day to ensure a healthy and safe environment.
- 303 f. Written consent from the building owner for the proposed outside seating area.
- 304 g. In the event the outside seating area is proposed in front of an adjacent owner's
305 property, the applicant must provide written consent from the adjacent property
306 owner for use of this area.
- 307 h. Non-refundable application fee.
- 308 ~~i. Applications shall be reviewed for compliance with the Town Code and may be~~
309 ~~approved by the Town Manager or designee.~~
- 310 ~~j. The Town Manager or designee may deny an application that does not comply with~~
311 ~~this section. Such denials shall be written and shall provide the reasons for the~~
312 ~~denial. The applicant or any property owner whose property directly abuts the~~
313 ~~property which is the subject matter of the application may appeal the Town~~
314 ~~Manager or designee's decision to the Town Commission.~~
- 315 (4) Permit Application Review. The Town Manager or designee shall review applications
316 for compliance with the standards and requirements set forth in this Article as well as
317 any other applicable Town Code provisions.
- 318 (1) No application shall be accepted until it is deemed complete.
- 319 (2) The Town Manager or designee shall review the submitted application
320 within twenty (20) business days and either accept the application if it is
321 complete or, if incomplete, reject the application with a written notice of
322 incompleteness, specifying the data missing from the application.
- 323 (3) If an application is rejected, the applicant may resubmit the application
324 with the additional information required. Upon each resubmittal, the
325 Town manager or designee shall have ten (10) business days to review the
326 resubmitted application and either accept the application as complete or
327 provide written notice of any corrections, revisions or deficiencies. This
328 process shall continue until the applicant has submitted a complete
329 application or demands that the application be reviewed as is, without
330 further revisions.
- 331 (4) If an applicant fails to provide the additional information as requested by
332 the Town Manager or designee within sixty (60) days of the request for
333 additional information, the Town Manager or designee may deem the
334 application to be withdrawn by the applicant and the application
335 considered null and void. Upon request, the applicant shall be entitled to
336 one sixty (60) day extension, provided the extension request is granted
337 prior to the expiration of the above referenced sixty (60) day time period.
- 338 (5) For any application in which the outdoor seating area is not located
339 directly in front the associated restaurant, the Town will send a courtesy
340 notice to those businesses directly abutting the proposed outdoor seating.
341 Any affected person may provide written comments to the Town Manager

or designee within ten (10) days of the date of the mailed notice, for the consideration of the Town Manager or designee. Failure to mail or receive such courtesy notice shall not affect actions taken under this Article.

(6) Prior to issuance of an outdoor seating permit or annual renewal, the Town Clerk shall certify that there are no outstanding fines, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting an outdoor seating permit. An outdoor seating permit may not be issued until all outstanding fees and/or fines owed to the Town are paid in full.

(7) The Town Manager or designee shall approve, approve with conditions, or deny an application based on the requirements of this Article and compliance with the Town Code. Approval shall be in the form of an outdoor seating permit and as provided for in this Article. A denial of an outdoor seating application shall be made in writing and shall provide the reasons for such denial. The applicant or an affected property owner whose property directly abuts the property, which is the subject matter of the application, may appeal the Town Manager or designee's decision on the outdoor seating permit application to the Town Commission.

(45) *Location requirements.* The location of an outside seating area for a restaurant shall be subject to the following locational regulations:

- a. An outside seating area shall only be permitted on private property that is adjacent to a licensed restaurant business to which the permit is issued.
- b. Tables and chairs shall not be located within a (10) ten-foot proximity of bus stops, taxi stands, fire hydrants, a pedestrian crosswalk, driveway or handicap ramp.
- c. The Town Manager or designee may permit an exception to the distance requirement of subsection b. above from (10) ten feet to (5) five feet where established pedestrian and tram paths shall not be obstructed and where public safety shall not be adversely affected.
- d. Markers approved by the Town Manager or designee shall be embedded into the property to distinguish the approved boundaries of the outside seating area. This requirement may be waived by the Town Manager or designee if the proposed outside seating area is not on or adjacent to any private or public sidewalk, parking or other pedestrian area if the area is otherwise clearly delineated.

(56) *Additional regulations for outside seating for a restaurant.*

- a. The outside seating area shall be accessory to and under the same ownership or control as the primary restaurant, which is operated within a permanently enclosed building located on the same or adjacent parcel. The outdoor seating permit shall be personal to the permittee only and shall not be transferrable. The outdoor seating permit issued shall be specific to the location and is not transferrable to another location.

- b. ~~There shall be no use, operation, or playing of any musical instrument, loud-speaker, sound amplifier, or other machine or device for the production or reproduction of sound in such a manner as to disturb the peace, quiet, or comfort of the neighboring inhabitants or at any time with louder volume than is otherwise regulated by chapter 13, Noise, of the Town Code.~~

Live and/or amplified music shall be prohibited within the confines of the outdoor seating area. Speakers emitting music from inside the restaurant or food store serving the sidewalk café area shall be placed and directed in such a manner that the music's amplification is directed internally into the restaurant or food store.

- c. Food preparation shall only occur in the fully enclosed area of the licensed primary restaurant.
- d. Hours of operation shall not exceed the hours of operation established for the principal licensed restaurant.
- e. All fabrics shall be fire-retardant, pressure-treated or manufactured of fire resistive material.
- f. No objects shall be permitted around the perimeter of the outside seating area that is occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of a sidewalk by the general public.
- g. Additionally, when the outside seating area is visible from a public right-of-way:
1. No tables, chairs, or any other part of an outside seating area shall be permanently attached, chained, or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area.
 2. Tables, chairs, umbrellas, canopies, awnings, and any other objects utilized as part of the outside seating area 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.
 3. Design, materials and colors shall be approved by the Town Manager or designee prior to the issuance of the permit to allow the outside seating area.

h. Shade Structures.

1. Umbrellas. Shall be no larger than 8.5 feet in diameter and shall maintain a minimum vertical clearance from the sidewalk of not less than eight (8) feet in height.

2. Tents, canopies and pergolas or other similar structures are prohibited.

- i. Outdoor seating. The maximum seating capacity shall be limited to one seat per ten (10) square feet of outdoor seating area for chairs and one barstool seat per twenty-four (24) inches of the linear outside bar area.

j. Greeting podiums and service stations.

1. All furniture and fixtures, including any greeting podium and/or service station, shall remain within the confines of the designated outdoor seating area, located as

close to the building as feasibly possible and shall not impede the public right-of-way.

(67) Prior to issuance of a permit for an outside seating area, the Town Clerk shall certify that there are no outstanding fines, moneys, fees, taxes or other charges owed to the Town by the current or past owners or operators of the property requesting a permit for outside seating. A permit to allow outside seating will not be issued until all outstanding debts to the Town are paid in full.

(78) Any primary restaurant which obtains a permit to have outside seating as an accessory use to a primary restaurant, pursuant to subsection 30-2671(1) and (6) may redesign the face of their establishment to allow for doors or panels that permit the establishment to have open sides allowing for an indoor/outside restaurant design. Any proposed alterations, modifications or changes to the building shall require the issuance of a building permit, compliance with the Town Code and payment in full of all applicable fees.

* * * * *

Section 3. Codification. This Ordinance shall be codified in accordance with the foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the Town of Lauderdale-By-The-Sea Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 5. Conflicting Ordinances. All prior ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of said conflict.

Section 6. Effective Date. This Ordinance shall be in full force and effect immediately upon its passage on second reading.

452 Passed on the first reading, this ____ day of _____, 2010.

453 Passed and adopted on the second reading, this ____ day of _____, 2010.

454

455 _____

456 **MAYOR CHRIS VINCENT**

457

458

459

	First Reading	Second Reading
460		
461 Mayor Vincent	_____	_____
462 Vice-Mayor Sokolow	_____	_____
463 Commissioner Malkoon	_____	_____
464 Commissioner Oldaker	_____	_____
465 Commissioner Strauss	_____	_____
466		

467

468 ATTEST:

469

470 _____

471 Tedra Allen, Town Clerk

472

473 (CORPORATE SEAL)

474

475

476 APPROVED AS TO FORM:

477

478 _____

479 Susan L. Trevarthen, Town Attorney

480

481

482

483

484

485

486

487

488

489 u:\0 projects\sidewalk cafe 2019\sidewalk cafe 2019\draft ordinance outdoor dining _ 12_31_19

490 lc.doc