

DIVISION 14. - CONDITIONAL APPROVAL OF A SPECIAL EXCEPTION FOR SIDEWALK AND/OR PRIVATE PROPERTY OUTDOOR CAFE SEATING ONLY FOR RESTAURANTS, DINING ROOMS, RETAIL SPECIALTY FOOD INCLUDING THE SALE OF PREPARED FOOD FOR TAKEOUT ONLY, AND PRIVATE SOCIAL, SWIMMING, TENNIS AND YACHT CLUBS.

Footnotes:

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Editor's note— Ord. No. 16-2021, § 17, adopted August 11, 2021, repealed the former Div. 14, §§ 134-2104—134-2109, and enacted a new Div. 14 as set out herein. The former Div. 14 pertained to administrative approval of outdoor seating and derived from Ord. No. 5-09, § 1, adopted April 15, 2009.

Sec. 134-2104. - Requirements fees and security deposit.

- (a) It shall be unlawful for any person to provide outdoor cafe seating without an outdoor cafe seating permit from the town. Outdoor cafe seating shall only be permitted in the R-D(2), C-TS, C-WA, C-OPI, and C-B zoning districts if conditions of approval set forth in sections 134-2105 through 134-2108 are met and an outdoor cafe seating permit is issued by the town.
- (b) There is an annual outdoor cafe seating permit fee established in the town's master fee schedule and included in the annual business tax receipt.
- (c) Prior to the issuance of an outdoor cafe permit, the permittee shall provide a security deposit to the town in the amount as identified in the town's master fee schedule if any portion of the outdoor cafe seating is located within a town right-of-way or on town property.

(Ord. No. 5-09, § 1, 4-15-09; Ord. No. 16-2021, § 17, 8-11-21)

Sec. 134-2105. - Application.

After town council approval of a special exception zoning application, the applicant shall file for an outdoor cafe seating permit application to the director of the planning, zoning and building department or his or her designee (individually or collectively referred to in this chapter as "director"). The permit application shall be provided by the planning, zoning and building department.

(Ord. No. 5-09, § 1, 4-15-09; Ord. No. 16-2021, § 17, 8-11-21)

Sec. 134-2106. - Standards and criteria for special exception and outdoor cafe permit application review.

The standards and conditions required to be met as part of the special exception application and outdoor cafe seating permit approval are those provisions provided for in section 123-229 and the following criteria and conditions:

- (a) Criteria and conditions required to be met for approval of outdoor cafe seating on a street sidewalk.
 - (1) Outdoor cafe seating is not allowed to increase the capacity of a restaurant, dining room, retail specialty food including the sale prepared foods for takeout only, or private, social, swimming, golf, tennis or yacht club. The exception is that a specialty food use, including the sale of prepared foods for takeout only that is under 2,000 square feet in gross leasable area may request up to eight [additional] outdoor cafe seats over the inside capacity provided that the seating meets the conditions herein.
 - (2) Bars/lounges and nightclubs are not permitted to have outdoor cafe seating.

- (3) An outdoor cafe seating area is restricted to the area abutting the boundary lines of the property on which it is owned by the applicant is located.
 - (4) Outdoor cafe seating shall not be allowed where the outdoor seating furniture would be placed within five feet of bus stops, loading zones, valet parking stands, sight triangles or other structures or areas determined by the director to require clearance for the public. For the purpose of this chapter outdoor cafe seating furniture is defined as tables, chairs, umbrellas, portable heaters, mist sprayers and any other customarily usual objects used in the outside cafe seating area.
 - (5) No outdoor cafe seating furniture shall be allowed within five feet of a pedestrian crosswalk.
 - (6) All outdoor cafe seating furniture shall be located in such a manner that a minimum five foot-wide unobstructed pedestrian path is maintained at all times.
 - (7) No outdoor cafe seating furniture shall be permitted around the perimeter of an outdoor seating area that would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian sidewalk.
 - (8) An outdoor cafe seating area is prohibited from having music.
 - (9) No wait stations shall be allowed outside on the sidewalk. All wait stations on private property shall not be visible from a sidewalk or street.
 - (10) All kitchen equipment used to service the outdoor cafe seating shall be located within a building.
 - (11) All outdoor cafe seating furniture and associated lighting shall be aesthetically and architecturally pleasing and approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable.
 - (12) An outdoor cafe seating area shall not count toward any maximum square footage limitations.
 - (13) All outdoor cafe seating furniture, including all accessory appurtenances including but not limited to approved space heaters, misters and portable umbrellas that are located within the outdoor seating area shall be stored inside a building after close of business.
 - (14) No outdoor cafe seating furniture located within the public right-of-way shall be attached, chained or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area.
 - (15) The area covered by an outdoor cafe seating permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times and clear of any trash or refuse by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation and again at the close of each business day, or as may otherwise be determined by the director.
- (b) Criteria and conditions required to be met for approval of outdoor cafe seating on private property not within a street sidewalk:
- (1) Outdoor cafe seating is not allowed to increase the capacity of a restaurant, dining room, retail specialty food including the sale of prepared food for takeout only, or private, social, swimming, tennis or yacht club. The exception is that a specialty foods use, including sale of prepared foods for takeout only that is under 2,000 square feet in gross leasable area may request up to eight [additional] outdoor cafe seats over the inside capacity provided that the seating meets the conditions herein.
 - (2) Bars/lounges and nightclubs are not permitted to have outdoor cafe seating.

- (3) Outdoor cafe seating is restricted to boundary lines of the property on which the business owned by the applicant is located.
- (4) All tables, chairs, umbrellas, mist sprayer, space heaters or other customarily usual outdoor cafe seating furniture shall be located in such a manner that a minimum four foot-wide unobstructed pedestrian path is maintained at all times.
- (5) No objects shall be permitted around the perimeter of an outdoor cafe seating area occupied by tables and chairs that would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path.
- (6) An outdoor cafe seating area on private property shall only be allowed to have low-level, background music that does not exceed the maximum noise decibel requirements in sections 42-226 through 42-228 if approved by the town council as part of the special exception application approval.
- (7) No wait stations shall be allowed outside on a street sidewalk. All wait stations on private property shall not be visible from a sidewalk or street.
- (8) All kitchen equipment used to service the outdoor cafe seating shall be located within a building.
- (9) All outdoor cafe seating furniture, including all accessory appurtenances including but not limited to approved space heaters, misters and portable umbrellas that are located within the outdoor seating area shall be stored inside a building after close of business.
- (10) All outdoor cafe seating furniture, including the tables, chairs, awnings and space heater equipment shall be aesthetically and architecturally pleasing and approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable.
- (11) The area covered by an outdoor cafe seating permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times and clear of any trash or refuse by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation and again at the close of each business day, or as may otherwise be determined by the director.
- (12) Areas associated with the outdoor cafe seating shall not count toward any maximum square footage limitations.

(Ord. No. 5-09, § 1, 4-15-09; Ord. No. 16-2021, § 17, 8-11-21)

Sec. 134-2107. - Liability and insurance.

- (a) Prior to the issuance of a business tax receipt the applicant shall furnish the town with a signed statement that the permit shall hold harmless the town, its officers, employees, Palm Beach County or the Florida Department of Transportation (FDOT) (if within or abutting either governmental entities rights-of-way) for claims of damages to property or injury to person which may be occasioned by any activity carried out under the terms of the business tax receipt and approved outdoor sidewalk cafe permit. The statement shall include that the permittee shall be responsible, shall indemnify and shall hold the Town, Palm Beach County and/or FDOT harmless for performance of and payment for any environmental remediation that may be necessary, as determined by the FDOT, as a result of permittee's use of the area of the outdoor sidewalk cafe.
- (b) Permittee shall furnish and maintain public liability, food products liability, liquor liability, and property damage insurance for the benefit of the Town and/or Palm Beach County or FDOT (if within or abutting either

governmental entities rights-of-way) from all claims and damage to property or bodily injury, including death, which may arise from operations under the business tax receipt or in connection therewith. Such insurance shall provide coverage of not less than \$1,000,000.00 for bodily injury or death to any one person or any number of persons in any one occurrence and property damage, respectively, per occurrence, or a combined coverage of not less than \$2,000,000.00. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insureds the town, Palm Beach County and/or FDOT, their officers and employees, if within or abutting either's rights-of-way and shall further provide that the policy shall not terminate or be canceled prior to the completion of the business tax receipt period without 45 days written notice to the risk manager at the address shown on the business tax receipt.

- (c) Damage to the public sidewalk or any public structure as a result of the outdoor cafe seating operation shall be the responsibility of the property owner to repair to the satisfaction of the town.
- (d) The town and its officers and employees shall not be responsible for sidewalk seating components relocated or damaged during emergencies.

(Ord. No. 5-09, § 1, 4-15-09; Ord. No. 16-2021, § 17, 8-11-21)

Editor's note— Ord. No. 16-2021, § 17, adopted August 11, 2021, amended the title of § 134-2107 to read as herein set out. The former § 134-2107 pertained to conditions specific to outdoor seating on public rights-of-way.

Sec. 134-2108. - Denial, revocation or suspension of approval.

- (a) An outdoor cafe seating permit shall be denied if all of the requirement and/or conditions in sections 134-2106 and 134-2107 are not met. An outdoor cafe seating permit may be modified, suspended or revoked by the planning, zoning and building director if it is determined that the business is violating the requirement and/or conditions in sections 134-2106 and 134-2107 or if it is determined by the town that the outdoor cafe seating is negatively impacting neighboring property owners or tenants.
- (b) The director may require the temporary removal of sidewalk cafe outdoor seating when street, sidewalk or utility repairs necessitate such action.
- (c) If found to be necessary for the protection of the health, safety and welfare of the public, the departments of public works, police and fire-rescue or other emergency service providers may require the applicant to immediately remove or relocate all or parts of the sidewalk outdoor cafe seating and, if necessary, the town may remove or relocate same in emergency situations.

(Ord. No. 5-09, § 1, 4-15-09; Ord. No. 16-2021, § 17, 8-11-21)

Sec. 134-2109. - Appeal of denial, suspension or revocation by the director of planning, zoning and building department.

The town council shall hear any appeal of a denial, suspension or revocation of an outdoor cafe seating permit by the planning, zoning and building director or designee pursuant to sections 134-141 through 134-145 of the code.

(Ord. No. 5-09, § 1, 4-15-09; Ord. No. 16-2021, § 17, 8-11-21)