

## **ORDINANCE 1022**

**AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA, AMENDING THE ARCADIA UNIFIED LAND DEVELOPMENT CODE; AMENDING ARTICLE 4, ADDING A NEW SECTION 4.15.00 PROVIDING REGULATIONS FOR SIDEWALK CAFÉS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 163.3167(c), Florida Statutes, empowers the City of Arcadia to adopt land development regulations to guide the growth and development of the City; and

**WHEREAS**, pursuant to Section 166.041(3)(c)2, Florida Statutes, the City Council of the City of Arcadia has held meetings and hearings to amend the Unified Land Development Code as presented in the attached exhibit, such exhibit being Exhibit "A" made a part hereof; and the meetings were advertised and held with due public notice, to obtain public comment; and having considered written and oral comments received during public hearings, find the changes necessary and appropriate to the needs of the City; and

**WHEREAS**, in exercise of its authority, the City Council of the City of Arcadia has determined it necessary to adopt these amendments, which are shown in Exhibit "A" attached hereto and made a part hereof, to encourage the most appropriate use of land consistent with public interest.

**NOW, THEREFORE BE IT ENACTED** by the City Council of the City of Arcadia, Florida,

**Section 1.** Article 4 is hereby amended, by adding a new Section 4.15.00 providing regulations for Sidewalk Cafés, as shown in Exhibit "A".

**Section 2.** **Severability:** If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

**Section 3.** **Codification:** It is the intention of the City Council that the provisions of this Ordinance shall become and be made a part of the Unified Land Development Code of the City of Arcadia; and regardless of whether such inclusion in the Code is accomplished, sections of this Ordinance may be renumbered or relettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Administrator or his or her designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

**Section 4.** **Effective Date:** The effective date of this Ordinance shall be the date of its adoption.

**Section 5.** A certified copy of this enacting ordinance shall be located in the Office of the City Clerk of the City of Arcadia. The City Clerk shall also make copies available to the public for a reasonable publication charge.

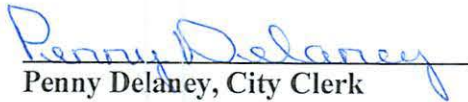
INTRODUCED AND PASSED on First Reading the 2nd day of May, 2017.

PASSED AND DULY ADOPTED, on Second Reading with a quorum present and voting, by the City Council of Arcadia, Florida, this 16th day of May, 2017.

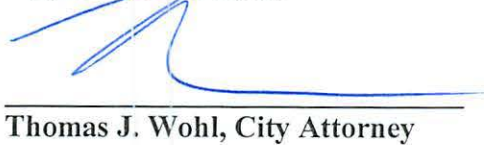
CITY OF ARCADIA, FLORIDA

  
Judy Wertz-Strickland, Mayor

ATTEST:

  
Penny Delaney, City Clerk

Approved as to form:

  
Thomas J. Wohl, City Attorney



**EXHIBIT "A"**

Proposed Text Amendments to the  
City's Unified Land Development Code

**(Sidewalk Cafés in the B-2 Zoning District)**

**Section 4.15.00. Sidewalk Cafés**

**A. Applicability.**

1. Sidewalk cafés shall be permitted only within the Downtown Central Business (B-2) zoning district.
2. Sidewalk means the portion of a public street right-of-way between the curb line, or the lateral line of a road way, and the adjacent property lines which is improved for use by pedestrians.
3. Sidewalk Café means a use, located on a sidewalk, which is associated with a business establishment which receives 50% of their revenue from the sale of food or beverage products, and is located in the abutting building.

**B. Permit Required.**

It shall be unlawful for any person to operate a sidewalk café on any sidewalk or public right-of-way without a permit as provided by this Section. Receipt of a sidewalk café permit shall exempt the permittee from obtaining an easement from the City for any fixture or structure approved by the permit. A sidewalk café permit shall be license to use the sidewalk or public right-of-way and shall not grant nor shall it be construed or considered to constitute a vacation or abandonment by the City of its interest in the right-of-way or easements contained therein.

**C. Permit Fee.**

1. Each permit shall be paid on or before October 1 and shall be effective for one year from October 1 until September 30 and must be renewed annually.
2. The annual permit fee for establishing and maintaining a sidewalk café shall be as established by the City Council of the City of Arcadia.
3. Where a permit is issued after October 1 and before September 30, the permit fee will be prorated on a per month basis. Any portion of a month shall be considered a full month for the purpose of calculating the prorated permit fee.

**D. Permit Application.**

Applications for a sidewalk café permit must contain, but is not limited to the following:

1. Name, address, and telephone number of the applicant.
2. Name and address of the abutting, permitted business establishment.
3. A copy of a valid City of Arcadia business tax receipt to operate the business establishment abutting the proposed sidewalk café for which the sidewalk café is intended to serve.
4. A copy of the current certificate of insurance in the amounts and categories as required and in accordance with Subsection "G" of this section.

5. A drawing (drawn to scale) showing the layout and dimensions of the sidewalk, sidewalk café area and adjacent private property, proposed location, size and number of tables, chairs, steps, umbrellas, awnings, receptacles, railings, decorative chains and any other fixture, structure, or obstruction, either existing or proposed, within the sidewalk café. This drawing must readily identify any object to be permanently anchored within the sidewalk café.

E. Permit Review Process.

1. Applications, including all supporting documents and attachments shall be submitted to the City Administrator, or his or her designee, for processing. The City shall have ten (10) working days following the receipt of the application to review and provide written comments to the applicant. The City Administrator, or his or her designee, may request additional information as needed to review the request.
2. Once the City Administrator, or his or her designee, has determined that all comments have been adequately addressed, the City Administrator, or his or her designee, may approve, approve with changes, or deny the request, based on written comments and recommendations, and a permit approval may be issued.
3. A approved sidewalk café permit allows the permittee to construct a sidewalk café per the approved drawing on file with the City.

F. Sidewalk Café Criteria and Standards.

1. Only a holder of a valid City of Arcadia business tax receipt for a business establishment abutting the proposed sidewalk café for which the sidewalk café is intended to serve, may be issued a permit.
2. Sidewalk cafés shall be located in a manner that promotes efficient and direct pedestrian movement. A minimum unobstructed pedestrian path of at least five feet (5'), measured from the curb line to the edge of the café, shall be maintained at all times. In areas of congested pedestrian activity, or if the public health, safety, and welfare should require it, the City Administrator, or his or her designee, may require a wider unobstructed pedestrian path before issuance of a permit. A narrower unobstructed pedestrian path may be permitted by the City Administrator, or his or her designee, only upon a showing by the applicant, one or more of the following:
  - a. A narrower path would not endanger the health, safety, and welfare of the general public;
  - b. A significant finding that a narrower path would add to the design, character, and environment of the downtown area; and
  - c. An unusual circumstance, including, but not limited to, lack of future significant pedestrian activity or unusual and unique locale justifies a narrower unobstructed pedestrian path.
3. Sidewalk cafés shall not interfere with any driveways, public non-pedestrian alleys, streets, or building entrances, and must comply with all local ordinances, state and federal laws.
4. Sidewalk cafés must have at least one outdoor trash receptacle.
5. Sidewalk cafés may use awnings, canopies, or umbrellas for shade, provided that the awnings, canopies or umbrellas comply with all applicable laws.
6. The perimeter around the sidewalk café may be delineated using nonpermanent fixtures such as railings, potted plants, decorative chains, or other approved items. Permanent anchoring of tables, chairs, awnings, canopies umbrellas, railings, or other fixtures may be approved by the City Administrator, or his or her designee, provided such anchoring meets all applicable laws.

Permanent anchoring of items by a permittee requires the permittee to repair the sidewalk or public right-of-way consistent with City requirements for sidewalk repair in the event anchored items are removed.

7. No furnishing or fixture may extend beyond the delineated boundaries of sidewalk cafés.
8. Only items authorized in the approved drawing on file with the City may be placed in sidewalk cafés. Furniture and other items placed in sidewalk cafés must be durable and sufficiently stable to prevent removal by winds. All furniture and objects shall compliment and add to the design, character, and environment of the downtown area.
9. Sidewalk cafés may display one (1) folding movable menu or display board, not exceeding four (4) square feet of display space on either side. The menu or display board must not be located in any designated pedestrian path and must comply with all applicable signage regulations. No signs shall be permitted outside of the sidewalk café area.
10. Sidewalk café permits and design constraints apply only to uses on public sidewalks or public right-of-way. Other laws and regulations govern related uses on private property.
11. Unanchored furnishings and objects must be removed from the sidewalk café during the hours in which the abutting business establishment is closed for business.
12. Sidewalk cafés, sidewalk café furniture and fixtures, and the sidewalk frontage from the edge of the café to the curb line shall be kept clean and free of litter by the permittee.
13. No fixtures of the sidewalk café may be attached to or affixed in any fashion to a sign, tree, post, or other fixtures.
14. The hours of operation of the sidewalk café are limited to the legal hours of operation of the business holding the sidewalk café permit or from 7:00 a.m. to 10:00 p.m., Monday through Sunday, whichever is more restrictive. The City Administrator or designee may authorize expanded hours for the sidewalk café for holidays including New Year's Eve and specific City-sponsored or City-approved special events.
15. No food preparation shall be allowed on the sidewalk. No cooking, cooling, storage, refrigeration, or other equipment shall be located on the sidewalk.
16. Permittee shall meet all applicable City, County, State, and Federal Laws.
17. Upon reasonable written notice, the City may require the temporary removal of a sidewalk café by the permittee. The permittee shall be responsible for removing all sidewalk café items within twenty-four (24) hours prior to the date identified in writing by the City. The City shall not be responsible for any costs associated with the removal or return and installation of any sidewalk café fixtures.
18. The City may cause the immediate removal or relocation of all or any part of any sidewalk café or sidewalk café fixtures in emergency situations. The City, its officers, employees, and agents shall not be responsible for any damages or loss of sidewalk café fixtures relocated during emergency situations and shall not be responsible for any costs associated with the removal or return and installation of any sidewalk café fixtures.

G. Liability and Insurance.

1. By use of any permit granted in accordance with this Section, the permittee agrees to indemnify, defend, save, and hold harmless the City, its officers, agents and employees for any and all claims, liability, lawsuits, damages and causes of action which may arise out of the permit or the permittee's activity regarding the sidewalk café. The permittee shall enter into a

written agreement with the City to evidence this indemnification in considerations of grant of license or permit under this Section before the permit is issued.

2. Permit holders shall maintain public liability, food products liability, and property liability insurance as will protect the permittee and the City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than the municipal tort liability under Florida Tort Claims Act. Such insurance shall be without prejudice to coverage otherwise extending, and shall name the City, its officers and employees as additional insured, and shall further provide that the policy shall not terminate or be canceled prior to the expiration of the permit without thirty (30) days written notice to the City Administrator.

H. Revocation or Suspension of Permit.

1. The City Administrator, or designee, may revoke any sidewalk café permit for any sidewalk café, upon thirty (30) days written notice, for any of the following:
    - a. Repeated violation of this code;
    - b. Serious public safety concerns; or
    - c. Redemption of the public right-of-way.
  2. The permittee shall be responsible for all expenses incurred in removal of the sidewalk café, whether removal is performed by the City or by the permittee. Additionally, the permittee shall be responsible for restoring the sidewalk or right-of-way to its original or pre-sidewalk café condition.
  3. The City Administrator, or his or her designee, may revoke or suspend any sidewalk café permit for any sidewalk café for violation of this or any other City ordinance. Upon issuance of a citation of violation, the sidewalk café shall have forty-eight (48) hours to correct any violation of this or any other City ordinance. If the violation is not corrected within forty-eight (48) hours, the sidewalk café permit shall be suspended and the sidewalk café shall cease to operate until such time as the violation may be remedied.
- I. Appeals. An administrative decision to deny a permit, suspend a permit, or revoke a permit may be appealed to the Board of Adjustment pursuant to Section 11.12.00 of this Code.