

ORDINANCE NO 2014 – 700

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF INVERNESS, FLORIDA, AMENDING CHAPTER 18, STREETS AND SIDEWALKS, ARTICLE III, SIDEWALK CAFES,; PROVIDING FOR REPEAL OF INCONSISTENT ORDINANCES; PROVIDING FOR SEVERABILITY AND INTERPRETATION OF THIS ORDINANCE; PROVIDING FOR INCLUSION INTO THE CODE OF ORDINANCES, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Inverness, Florida desires to amend Chapter 18, Streets and Sidewalks, Article III, Sidewalk Cafes.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Inverness this _____ 18th _____ day of _____ March _____, 2014, as follows:

Section 1. The Code of Ordinances of the City of Inverness, more particularly Chapter 18, Streets and Sidewalks, Article III Sidewalk Cafes are hereby amended so as to read as follows:

Article III Sidewalk Cafes.

Sec. 18-21. Purpose and definitions.

Sec. 18-21.1 Purpose.

The purpose of this article is to provide for regulation of sidewalk cafes operated by qualified businesses on public sidewalks, and to more fully promote the public interest by contributing to a viable and attractive commercial and pedestrian environment. In recognition thereof, reasonable regulation of sidewalk cafes is necessary to protect the public health, safety, and welfare, and the interest of the city and the primary use of the public streets and sidewalks by vehicular and pedestrian traffic

Sec. 18-21.2 Definitions.

As used in this Article, the words below shall have the following meaning:

- 1) *City Manager* - shall mean the City Manager of the City of Inverness and those to whom he or she delegates or assigns duties under this section.
- 2) *Operator or Permittee* - shall mean the person operating the qualified business with its associated sidewalk cafe, and shall include, but not be limited to, an owner, lessor, renter or manager.

- 3) *Person*- shall mean both natural persons, and legal persons such as corporations, partnerships or LLC's.
- 4) *Restaurant* - shall mean an establishment that derives more than 51 percent of its annual revenue from the sale of food, nonalcoholic and alcoholic beverages served for consumption on the premises.
- 5) *Sidewalk Cafe* – shall mean a use for serving of food or beverage located within the public way or outside private property, and associated with a restaurant. It may be characterized by tables and chairs and may be shaded by awnings, canopies or umbrellas.
- 6) *Sidewalk Cafe Area* - shall mean the area within the public way or outside private property, where the permitted sidewalk cafe is located for serving of food or beverage.

Sec. 18-22. Permit requirements, application and fees.

Any person who complies with the provisions of this Code and is issued a permit hereunder is authorized to operate a sidewalk cafe pursuant to the permit terms and conditions. Each permit shall be effective for one (1) year, subject to annual renewal and immediate revocation if any of the terms and conditions of the permit is breached.

Sec 18-22.1 Permit requirements.

The use of sidewalk café area for restaurant tables and seating shall only be permitted incidental to the operation of a "restaurant" as defined in the City of Inverness Code of Ordinances which such incidental sidewalk area is found directly in front of an establishment and remain within the width of the business itself

A permit is required for any/all sidewalk café operations. Furthermore, the use of the sidewalk to operate a sidewalk cafe is a privilege and not a right, and any person who violates the conditions of this Article and/or the permit shall be subject to having said permit revoked and forbidden to operate a sidewalk café thereafter. Should a violation occur, notice shall be given to the Permittee and a hearing held with notice by the Code Enforcement Board with respect to the violations(s).

Sec. 18-22.2 Permit application.

Anyone desiring to establish a sidewalk cafe may apply for a sidewalk cafe permit from the department of community development on forms provided by the department. Such application shall include, but not be limited to the following information:

- 1) Name, address, telephone number and form of business of the applicant.

- 2) The written consent of the property owner owning the real property immediately adjacent to the sidewalk area subject to the application.
- 3) A copy of applicant's valid business tax receipt.
- 4) A copy of applicant's valid certificate of occupancy for the building in which applicant operates its restaurant.
- 5) A copy of the applicant's commercial general liability insurance from one or more U.S. domiciled insurance companies licensed to do business in the State of Florida which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least \$1,000,000 for each occurrence, and \$2,000,000 in the aggregate, with a maximum policy deductible of \$5,000. An Occurrence policy is required.
- 6) A detailed site plan (minimum scale of one-fourth inch equals one foot ($\frac{1}{4}'' = 1'$))
- 7) Photographs, drawings or manufacturers' brochures fully describing the appearance of all proposed tables, chairs, umbrellas, or other objects relating to the sidewalk cafe.
- 8) A plan for the maintenance and cleaning of:
 - a) The sidewalk area where the sidewalk cafe will be located and the applicant's personal property located within the sidewalk cafe area;
 - b) Any trash or food on or about the tables and chairs or sidewalk; and,
 - c) The disposal of any trash or debris generated from the operation of the sidewalk cafe.
- 9) Any permits or approvals required from any other governmental agency necessary to operate a sidewalk cafe.
- 10) A description of the operation of the sidewalk cafe, including, but not limited to, hours of operation, maintenance of the sidewalk cafe and the services to be provided by applicant from the sidewalk cafe.
- 11) A nonrefundable application fee which shall be credited toward applicant's first year permit fee, should the application be approved.
- 12) Such annual permit is not transferrable nor assumable.

Section 18-22.3 Permit fees.

The application fee and annual permit fee for establishing or maintaining a sidewalk cafe shall be determined by the city council and shall be set forth by council resolution.

Section 18-23 Temporary closing of sidewalk cafes.

- 1) Sidewalk cafes may be ordered closed temporarily by the City of Inverness when deemed necessary in the sole discretion of the City, whenever the area may be needed for a public purpose, including but not limited to: construction, maintenance, public health, safety or welfare, emergencies, and public events such as parades or street parties.
- 2) The City may order the immediate removal or relocation of all, or parts of, a sidewalk cafe in emergency situations, or for safety considerations, without notice. The City and its officers and employees shall not be responsible for sidewalk cafe fixtures relocated during emergencies.

Section 18-24. Restrictions on use of sidewalks.

- 1) Issuance of a permit to conduct a sidewalk café under this Article shall have no property rights whatsoever to the respective space and such permit shall be issued for one year only and may be renewed by the City for one year term provided however the permit may be denied on any anniversary date should the City in its sole discretion determine that the specific sidewalk café is not operating within the requirements of this Article, or the operation of sidewalk cafes in general is not in the public interest in safeguarding the health, safety and welfare of the public or needed for another purpose.
- 2) In no event shall permitted uses by this article, reduce that portion of any sidewalk customarily used by pedestrians to less than five (5) feet in width. Additionally, contiguous pedestrian flow must be maintained between two (2) or more adjacent sidewalk cafes. The City may designate portions of the sidewalk which must not be obstructed under any circumstance, and may restrict usage in any manner deemed necessary by the City to maintain the public's well-being.
- 3) Nothing will be placed within five feet of a fire hydrant, pedestrian crosswalk or handicapped corner curb cut.
- 4) The City reserves the right of access to all portions of the sidewalk included in areas permitted for the purposes of sidewalk repair or other necessary purposes.
- 5) Sidewalk cafe operators shall maintain the sidewalk and the curb and gutter immediately adjacent to it in a clean and safe condition. Full daily cleaning is required to collect and remove litter, clean food deposits and remove stains. Refuse shall not be disposed of in the City's public sidewalk trash receptacles. The operator shall also be responsible for maintaining a clean area at all times, and for cleaning the ground or floor surface on which the sidewalk cafe is located and the gutter area immediately adjacent to the sidewalk cafe. Such cleaning shall include pressure cleaning. If the area is not maintained in a neat and orderly appearance after notice the City may then take steps necessary to place the property in a neat and clean order and charge the operator with the reasonable cost of cleaning or repairs. Such action by the City does not create a continuing obligation on the part of the City to make further repairs or to maintain the property and does not create any liability against the City for any damages to the property if such cleaning or repairs were completed in good faith.
- 6) No tables, chairs, or any other parts of sidewalk cafes shall be attached, chained or in any manner affixed to any tree, post, sign or other fixture, curb, or sidewalk in or near the permitted area.
- 7) Umbrellas and other decorative materials included in applicant's sidewalk cafe shall be fire-retardant, or manufactured of fire-resistive material and shall comply with applicable building and fire codes. Signs are prohibited on umbrellas, chairs, tables and other permissible personal property and fixtures located in applicant's sidewalk cafe, except

that the applicant's name and/or its logo is permitted on umbrellas. Lettering and/or logos may not exceed six (6) inches in height.

- 8) Plastic tables or chairs are not permitted within a sidewalk cafe.
- 9) No advertising signs or business identification signs shall be permitted within the permit area except menu boards identified on applicant's site plan.
- 10) Only one menu board or specials board shall be permitted per sidewalk cafe.
- 11) Only the area in front of a qualified restaurant business, as defined by projecting its interior width outward perpendicular to the street to a point at which it intersects the roadway (or within the sidewalk frontage of the building where the validly licensed qualified restaurant business is located provided that written approval is supplied by the building owner), can be used by the qualified business owner. Placement of tables and chairs will be permitted in areas more than ten (10) feet from the front of the building only when City Manager determines it is in the best interest of the public to permit such placement. All tables and chairs shall be of commercial grade and quality and shall be of a café design and style and shall be wrought iron in construction.

Section 18-25. Insurance prerequisite.

- 1) The operator of a sidewalk cafe agrees to, and does by its operation of a sidewalk cafe, indemnify, defend, save, and hold harmless the City, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of operator's activity on the demised premises. The operator shall provide indemnification to the City in writing on a form provided by the City Manager

It shall be unlawful to operate a sidewalk cafe, unless the applicant has provided to the City Manager a Certificate of Insurance evidencing commercial general liability insurance. Should the sidewalk café serve alcohol, the applicant shall also provide to the City Manager a Certificate of Insurance evidencing alcohol license liability insurance in addition to commercial general liability insurance. Policies of insurance should name the City as an additional insured insuring the City against any liability resulting from the uses permitted pursuant to this section. The coverage limits of which shall not be less than the amounts required by Sec. 18-22.2.

It shall not be lawful to operate a sidewalk cafe at any time the insurance required by this section is not maintained and evidence of its continuance filed with the City.

Section 18-26 Revocation and penalties.

Section 18-26.1 Revocation.

The privilege of an operator to use the sidewalk of the City of Inverness may be revoked at any time by written notice to be served on the operator; such service to be by certified mail or personal service. Upon receipt of such revocation notice, the permittee shall have ten (10) days to appeal such revocation to the Zoning Board of Appeals, whose decision after notice and hearing as required by the governing Zoning Appeals section of this code shall be final.

Section 18-26.2 Penalties.

In addition to losing the privilege of operating a sidewalk cafe, any person, firm, corporation or agent, servant, employee, officer or contractor for any person, firm or corporation who shall violate any provision, requirement, term, or condition of this ordinance shall be guilty of a misdemeanor and each day of such violation shall constitute a separate offense.

Section 18-27. Sale of Alcoholic Beverages at Sidewalk Cafe's.

Only a properly permitted qualified business with a sidewalk cafe, which holds a valid alcohol license for consumption on the premises, may serve alcohol to customers in the sidewalk cafe, subject to the following restrictions, which the business is responsible to meet:

- 1) Alcohol may only be possessed in a non-disposable container within~~in~~ the sidewalk cafe portion of the qualified business between the hours of 10:00 a.m. and 12 p.m. midnight.
- 2) Only a single serving of alcohol may be in possession of any patron at any time.
- 3) Patrons must be seated or remain in the allocated café area while consuming an alcoholic beverage.
- 4) Patrons may not remove any alcohol from the premises of the qualified business where the alcoholic beverage was purchased.

Sec. 18-28. Right to limit or deny admission or service.

Within the designated area of a cafe, the operator holding a permit under this article shall have the right to limit access and occupancy to only bona fide paying customers of that operator's qualified business who are behaving in a peaceful, lawful manner.

Section 2. REPEAL OF INCONSISTENT ORDINANCES

Any ordinance in conflict with this Ordinance is hereby repealed by implication.

Section 3. SEVERABILITY AND INTERPRETING THIS ORDINANCE

If any section or portion of this Ordinance is found to be invalid, unlawful or unconstitutional, all other sections of this Ordinance shall remain valid and enforceable.

Section 4. INCLUSION INTO THE CODE OF ORDINANCES

The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Inverness as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code of Ordinances.

Section 5. EFFECTIVE DATE

The effective date of the Ordinance shall be ___ March 25th ___, 2014

Upon motion duly made and carried on first reading, the foregoing Ordinance was approved on the 4th day of ___ March ___, 2014.

Upon motion duly made and carried on second reading, the foregoing Ordinance was approved on the _18th_ day of _____ March _____ 2014.

CITY OF INVERNESS, FLORIDA

BY /s/ Linda Bega
Linda Bega
President, City Council

ATTEST:

/s/ Deborah David
DEBORAH DAVIS, City Clerk

The foregoing was approved by me as Mayor of the City of Inverness on the 25th_ day of March .
_____, 2014.

/s/ Bob Plaisted
Bob Plaisted, Mayor

Approved as to form and correctness:

/s/ Larry Haag
LARRY HAAG, City Attorney