

ORDINANCE NO. 1197

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 17 ENTITLED "STREETS AND SIDEWALKS" BY CREATING ARTICLE VIII, ENTITLED "SIDEWALK CAFÉS" TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE THROUGH THE REGULATION OF PLACEMENT, TYPE, APPEARANCE, AND LOCATION OF SIDEWALK CAFÉS ON CITY PUBLIC RIGHTS-OF-WAY; PROVIDING FOR REPEAL, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Council find that there exists the need for outdoor eating establishments (sidewalk cafés) in certain areas of the city to provide a unique environment for relaxation and food consumption; and

WHEREAS, the Mayor and City Council wish to regulate the standards for the existence and operation of sidewalk cafés to facilitate and ensure a safe environment in these areas; and

WHEREAS, the Mayor and City Council desire to amend the City's Code of Ordinances to create this regulation.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 17 of the City's Code of Ordinances, entitled "Streets and Sidewalks," is amended as follows:

ARTICLE VIII. SIDEWALK CAFÉS

Sec. 17-217. Definitions.

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

Director means the director of the community planning and development department.

Fast-food establishment means a restaurant facility with some or all of the following characteristics: standardized limited menu; fast food preparation; orientation to take-out or eat-in service; utilization of disposable eating utensils and packaging; no waiter or waitress service at the tables.

Permittee means the recipient of a sidewalk café permit under the terms and provisions of this article.

Restaurant means a facility with the following characteristics: a varied, nonstandardized menu; preparation of food by cooks or chefs; primary orientation to eat-in service; utilization of nondisposable eating utensils, plates, glasses, and cups; waiter or waitress service at the tables.

Sidewalk means that portion of the right-of-way, which is located between the curb line or the lateral line of a street and the adjacent property line, which is intended for use by pedestrians.

Sidewalk Café means the placing, locating or permitting of the placement of chairs, umbrella, benches and or tables within the sidewalk area abutting and adjoined to a business licensed to operate as a restaurant, or fast-food establishment.

Sec. 17-218. Permit Required.

- (a) It shall be unlawful for any person to operate a sidewalk café on any city sidewalk or public right-of-way within the city without obtaining a permit, as required by this article, from any and all local, state and federal authorities having exclusive or concurrent jurisdiction over the area where the proposed sidewalk café will be established. It shall be the sole responsibility of the Applicant to secure all necessary permit(s) or license(s) from any and all local, state and federal authorities having exclusive or concurrent jurisdiction over the area where the proposed sidewalk café will be established. The issuance of a permit to use the City's right of ways shall not relieve the Applicant of the duty to secure other required local, state or federal license(s) or permit(s).
- (b) No person shall establish a sidewalk café on any sidewalk unless such person has obtained a valid permit to operate that sidewalk café in the manner prescribed by this article.
- (c) A permit for a sidewalk café shall be issued only to the owner of a valid licensed and operating fast-food establishment or restaurant, intending to provide tables and chairs on the sidewalk abutting and adjoined to their restaurant or fast-food establishment.
- (d) The application fee and annual permit renewal fee for establishing or maintaining a sidewalk café shall be set forth in a duly adopted resolution, and may be amended from time to time.

Sec. 17-219. Permit Application.

Application for a permit to operate a sidewalk café shall include, but not be limited to, the following information:

- (1) The name, address and telephone number of the applicant.

- (2) Written consent of the property owner.
- (3) The name and address and legal description of the restaurant or fast-food establishment.
- (4) A copy of, or an application for, a valid city occupational license to operate a restaurant or fast-food establishment where the proposed sidewalk café will be established. The number of chairs to be utilized for the sidewalk café must be calculated and included in the total number of chairs authorized by the underlying occupational license.
- (5) A copy of, or an application for, a valid certificate of use for the restaurant or fast-food establishment where the proposed sidewalk café will be established.
- (6) A copy of a current certificate of insurance in the coverage limits and categories required by the City's Risk Management Department.
- (7) A drawing which accurately depicts the layout and dimensions of the existing sidewalk area and adjacent private property, proposed location, size and number of tables, chairs, steps, planters, umbrellas, location of doorways, location of trees, parking meters, bus shelters, sidewalk benches, trash receptacles and any other measurements depicting sidewalk obstruction, whether existing or proposed, within the pedestrian area, necessary for the City to ensure the health, safety and welfare of its residents.

Sec. 17-220. Application Review.

- (a) Applications shall be reviewed for compliance with city ordinances by the City's Staff Review Committee.
- (b) Within fourteen (14) working days of receipt of a completed application, the Director shall issue a letter of intent to approve or deny the permit.

Sec. 17-221. Standards, Criteria and Conditions for Application Review.

The following standards and criteria shall be used in reviewing the application:

- (a) Sidewalk cafés are restricted to the sidewalk area abutting or adjoining the boundary line of the property where the fast-food establishment or restaurant, owned or leased by the Applicant, is located.
- (b) Permits will not be issued where the tables and chairs would be placed within four (4) feet of pedestrian crosswalk, bus stops, taxi stands, site triangles or other structures or areas determined by the City that may compromise the public's safety or

fail to provide the necessary pathway clearance for the public.

- (c) Tables, chairs, umbrellas and any other objects associated with the sidewalk café shall be of quality, design, materials and workmanship, to ensure the safety and convenience of users, and to enhance the visual and aesthetic quality of the urban environment. Design, materials and colors shall be sympathetic and harmonious with the urban environment and compliment the design and paint colors on the building.
- (d) Sidewalk cafés shall be located in such a manner that a distance of not less than four (4) feet is maintained at all times as a clear and unobstructed pedestrian path. For the purposes of the minimum clear path, parking meters, traffic signs, trees and all similar obstacles shall constitute obstructions.
- (e) No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the free use of the tables and chairs by the general public or which would have the effect of obstructing the pedestrian path or the public access. The Staff Review Committee may permit the use of plant containers (planters), the number and size to be reviewed by the Staff Review Committee at time of application. Placement of planters on permitted sidewalk café areas shall be five feet centers (5'-0" o.c.) or greater. The weight of planters shall be a major consideration, as it shall be the permittee's responsibility to remove said planters expeditiously in case of emergency or other special circumstances. Maximum size of planters shall not exceed the following:
 - (1) Rectangular planters: 30 inches long, by 15 inches wide by 20 inches high.
 - (2) Round planters: 24 inches diameter by 24 inches high.
 - (3) Planters 20 inches or higher shall be on rollers or on rolling bases. Plants shall be properly maintained and distressed plants shall be promptly replaced or removed. Because plant fertilizers contain material that may stain the sidewalks, water drainage from any plants onto the sidewalk shall not be allowed. Potted plants shall have saucers or other suitable systems to retain seepage. Hedges or other types of landscape which form a solid visual barrier in excess of 18 inches in width shall not exceed four (4) feet in height.
- (f) Tables, chairs, umbrellas, decorative railings or fencing, or other permissible objects to designate the sidewalk café's boundaries, including planters, shall be approved by the Staff Review Committee prior to the issuance of a sidewalk café permit. Such permissible material shall be of high quality material, design and workmanship, and shall be fire-retardant, pressure-treated or manufactured of fire-resistant material, to ensure the safety of the public. All umbrellas shall be reviewed and approved on a case-by-case basis by the Staff Review Committee based on compatibility with the surrounding urban area, the number, and proposed location of such umbrellas. Signs

are prohibited on umbrellas, chairs, tables and other permissible fixtures which are located on the public right-of-way, except that the establishment name and/or its logo is permitted on umbrellas. Lettering and/or logos may not exceed eight (8) inches in height.

- (g) A sidewalk café permit will not be issued until all outstanding City fines, liens or debts against the Applicant or the subject business are paid in full.
- (h) For new applications, one menu board plus one specials board shall be permitted per sidewalk café for every 25 feet of frontage. The menu board and specials board shall not be a sandwich board or A-frame sign.
- (i) The permit issued may be transferred to a new owner only for the location and area listed on the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued.
- (j) The city may require the temporary removal of sidewalk cafés when street, sidewalk or utility repairs necessitate such action.
- (k) The city may cause the immediate removal or relocation of all or parts of the sidewalk café in emergency situations or for safety considerations.
- (l) The city and its officers and employees shall not be responsible for sidewalk café fixtures relocated during emergencies.
- (m) No food preparation, food displays, food storage, refrigeration apparatus or equipment, or fire, fire apparatus or fire equipment, shall be allowed on the public sidewalk, whether or not such area is covered by a sidewalk café permit. However, space heaters are permitted provided that they are an outdoor approved type, are located in accordance with the manufacturer's recommendations, and are located at least two feet from the edge of any umbrella canvas, any foliage, or any other flammable object or material.
- (n) Upon the issuance of a hurricane warning by the county, the permittee shall immediately, but no later than three (3) hours after a hurricane warning has been issued, secure and place indoors all tables, chairs and other equipment located on the sidewalk. The issuance of such a hurricane warning shall constitute an emergency situation as referenced in this article. Failure to comply with this sub-section shall be cause for immediate revocation of the violator's permit.

Sec. 17-222. Liability and Insurance.

- (a) The permittee agrees to 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 the permit or the permittee's activity on the

demised premises.

- (b) The permittee agrees to meet and maintain, for the entire permit period, at its own expense, the following requirements:
- (1) Commercial general liability insurance in the minimum amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The city must be named an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.
 - (2) Workers' compensation and employers' liability, as required by the federal, state and local laws and regulations.
 - (3) All policies must be issued by companies authorized to do business in the state and rated B+: VI or better per Best's Key Rating Guide, latest edition.
 - (4) The city must receive 30 days' written notice prior to any cancellation, nonrenewal or material change in the coverage provided.
 - (5) The permittee must submit an original certificate of insurance approved by the City's Risk Management Department, in compliance with the insurance requirements set forth in this section, prior to commencing operations. Failure to comply with these requirements shall cause a suspension or revocation of the permit.

Sec. 17-223. Revocation or Suspension of Permit; Removal and Storage Fees; Emergencies.

- (a) The approval of a sidewalk café permit is conditional at all times. A sidewalk café permit may be revoked or suspended if it is found that:
- (1) Any necessary business or health permit has been suspended, revoked or canceled.
 - (2) The permittee does not have insurance, which is correct and effective in the minimum amounts described in section 17-222.
 - (3) The permittee exceeds the approved area by placing any additional tables, chairs, etc., beyond the permitted area.
 - (4) The permittee has failed to correct violations of this article or conditions of this permit within three (3) days of receipt of the director's notice of such violations delivered in writing to the permittee. Except that during emergency situations, permittee shall adhere to the stricter standards provided

in sub-section 17-221(n).

- (b) If the permittee fails to remove any tables, chairs and other objects related to the sidewalk café within three (3) days of receipt of the director's final notice of revocation or suspension, the City may remove the tables, chairs and other objects related to the sidewalk, and a reasonable fee charged for labor, transportation and storage may be assessed to the permittee.

Sec. 17-224. Appeals.

- (a) Appeals shall be initiated within ten (10) days of the effective date of the denial or revocation of permit by filing a written notice of appeal with the city manager.
- (b) The city manager shall place the appeal on the next regular City Council agenda. At the appeal hearing, a permittee shall have the opportunity to present his/her case before the City Council. The decision of the City Council shall be final and become effective immediately upon passage.
- (c) The filing of a notice of appeal by a permittee shall not stay an order by the city to remove a sidewalk café or parts thereof. Vestiges of the sidewalk café shall be removed immediately as set out in this article, pending disposition of the appeal and final decision of the city council.

Sec. 17-225. Enforcement Procedures.

Any sidewalk café in violation of any provision of this article shall be subject to the procedures, remedy and due process under Chapter 2, Article III of the City's Code of Ordinances.

Section 2. Repeal. All Ordinances or parts of Ordinances in conflict or inconsistent are repealed.

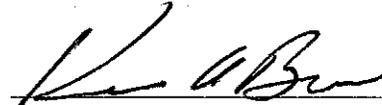
Section 3. Conflict. That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed.

Section 4. Severability. If any word, clause, phrase, sentence, paragraph or Section of this Ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or Section of this Ordinance.

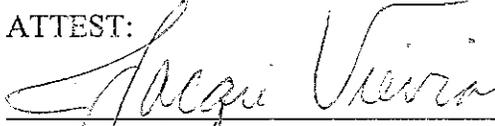
Section 5. Effective Date. This ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 11 day of October, 2005.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 1 day of November, 2005.



KEVIN A. BURNS
MAYOR

ATTEST:


FRANK WOLLAND
CITY CLERK

Reported

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


BARRY KUYUN
CITY ATTORNEY

SPONSORED BY: MAYOR KEVIN A. BURNS

CO-SPONSORED BY: COUNCILPERSON SCOTT GALVIN

Moved by: Councilman Galvin

Seconded by: Councilman Blynn

Vote:

Mayor Kevin A. Burns	<u>X</u>	(Yes)	_____	(No)
Vice Mayor Marie Erlande Steril	<u>X</u>	(Yes)	_____	(No)
Councilperson Scott Galvin	<u>X</u>	(Yes)	_____	(No)
Councilperson Michael R. Blynn	<u>X</u>	(Yes)	_____	(No)
Councilperson Jacques A. Despinosse	<u>X</u>	(Yes)	_____	(No)

Additions shown by underlinings, and deletions shown by ~~overstriking~~.