

Chapter 17

STREETS AND SIDEWALKS*

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***Cross references**—Animals on sidewalks, § 5-1; planning, ch. 15; solid waste, ch. 16; traffic and vehicles, ch. 18; vehicles for hire, ch. 20; zoning, app. A.

State law references—Local improvements, F.S. ch. 170; obstructing streets, F.S. § 316.2035 et seq.; solicitation of rides on streets, F.S. § 316.2045; uniform standards for streets, F.S. § 336.045.

ARTICLE I. IN GENERAL**Sec. 17-1. Obstructions.**

(a) Any persons who shall stand congregated or assemble upon any of the sidewalks or corners of the street or in around or about the market, park or other public place or buildings in the town in such a manner as to block the free passage of passersby shall be liable to arrest. It shall be the duty of the police to order all persons violating this section to move away or disperse and, in case of neglect or refusal to obey such order, to arrest or cause to be arrested the persons so refusing or neglecting to obey.

(b) It shall be unlawful for any person to close, obstruct or encroach upon, under any pretense, any of the squares, streets or sidewalks of the town; provided that nothing in this section shall be so construed as to prevent merchants and others from receiving and delivering their goods and wares in the usual manner, or to prevent the erection of scaffolds and ladders or the storing of material for the purpose of building and repairing.

(Code 1980, §§ 16-5, 19-1)

Sec. 17-2. Construction and repair of sidewalks.

(a) The town council may designate certain streets or parts of streets where sidewalks shall be constructed and maintained at the expense of the owner of the abutting real estate.

(b) The owners of real estate within the town shall construct and always keep in good repair, at their own expense, good and substantial sidewalks around their lots, which shall always be the width prescribed by the town.

(c) Upon the failure of such real estate owners so to do, the town manager shall notify them of such neglect, and that if such construction or repairs have not been done by them within 30 days, the town shall have the work done by the town at the expense of the owner of the lot, which shall be a lien on the lot and be enforced in the same manner as a mechanic's lien. The notice shall be in writing and specify the kind of sidewalk to be built or the repairs to be made.

(Code 1980, § 19-3)

Secs. 17-3—17-25. Reserved.**ARTICLE II. EXCAVATIONS****Sec. 17-26. Permit required.**

(a) It shall be unlawful for any person to do any construction or repair work involving the tearing up and relaying of any street or part of a street or to obstruct, dig up or into or in any way disturb any street or part of a street, including removal of earth from ditches, in the town without first procuring a written permit therefor from the town manager.

(b) The permit provided for in this section shall be issued under such conditions as may be prescribed by the town manager, shall accurately describe the portion of the street to be affected, shall make provision for the replacement of that part of the street which is to be replaced in the same condition as when disturbed, and shall state a definite time within which the permit shall be operative.

(Code 1980, § 19-21)

Sec. 17-27. Erection and lighting of barricades.

Any person carrying on or doing any construction, excavation or repair work in any street or part of street in the town pursuant to a permit from the town manager as provided in section 17-26 shall erect and maintain proper, safe and sufficient barricades. During that period of time between one-half hour after sunset and one-half hour before sunrise, such person shall maintain sufficient lights or flares around such barricades, work or excavations to warn persons of the presence of such excavations and work, and to prevent injury to persons and property.

(Code 1980, § 19-22)

Sec. 17-28. Replacing street.

Upon the expiration of any permit granted pursuant to the provisions of section 17-26, the permit holder shall replace that street or part of the street upon which such construction, excavation or repair work has been performed in the same condition as the street or part of the street existed prior to the construction, excavation or repair work; and failure to do so shall constitute a misdemeanor against the town by the permit holder.

(Code 1980, § 19-23)

Secs. 17-29—17-50. Reserved.

ARTICLE III. PARADES, DEMONSTRATIONS, ASSEMBLIES*

Sec. 17-51. Permission required.

Any person or group desiring to stage parades, demonstrations or assemblies shall make application to the chief of police at least 48 hours in advance of the time any such proposed activity is intended to be staged. An application shall be required for each such event. The chief of police, giving due consideration to the safety and convenience of the public generally, shall examine the application to determine whether or not such proposed activity is for a lawful purpose and shall be empowered to set limitations on the time and duration of the proposed activity, number of units to be involved and/or number of persons to participate in such activities, and the streets and locations where such activities shall be allowed.

(Code 1980, § 16-43(a))

***Cross reference**—Creation of loud or unnecessary noise—exceptions, § 13-117.

Sec. 17-52. Duties and responsibilities of applicant.

Any such activity as may be staged under the provisions of this article shall be under the supervision of the person making application for the activity, and any such activity shall be conducted in a peaceful and orderly manner and in compliance with the ordinances of the town.

(Code 1980, § 16-43(c))

Sec. 17-53. Signs, shields, banners.

In connection with any of the activities which shall be staged under this article, no signs, shields or banners shall be placed or carried by any person upon the sidewalks of the town that extend beyond the width of the person's body and shall not extend more than 24 inches above the person's head. Persons carrying any such signs, shields or banners shall be at least ten feet apart, shall not stand or loiter in front of any doorway, driveway or street intersection, and shall not interfere with the general flow of traffic, whether pedestrian or vehicular.

(Code 1980, § 16-43(b))

Secs. 17-54—17-75. Reserved.**ARTICLE IV. SIDEWALK CAFES****Sec. 17-76. Definitions.**

For purposes of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Cafe zones. Those geographical areas of the town within which sidewalk cafes shall be permitted, which geographical areas are designated by the town council and set forth in a resolution.

Manager. Town manager or his or her designee for the specific purposes of this article.

Permit. The grant of authority by the town to operate a sidewalk cafe subject to compliance with all requirements, conditions or criteria set forth in this article. A permit shall be valid for a maximum of one year in duration and shall be renewable on an annual basis upon compliance with all requirements as set forth in this article.

Permittee. The recipient of a sidewalk cafe permit under the terms and conditions of this article.

Sidewalk. That portion of the street situate, lying and being between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for use by pedestrians.

Sidewalk cafe. The placing, locating, or permitting of the placement or location of chairs, tables, benches, umbrellas, and/or other objects within the sidewalk area adjacent to a business licensed to operate as a restaurant or take-out food establishment.

(Ord. No. 282, § 2, 5-28-96)

Sec. 17-77. Sidewalk cafes permitted only within cafe zones.

Sidewalk cafes shall be permitted only within certain geographical areas of the town designated as "cafe zones" by the town council and set forth in a resolution to that effect.
(Ord. No. 282, § 3, 5-28-96)

Sec. 17-78. Permits required for sidewalk cafes.

Operating a sidewalk cafe on any sidewalks within the municipal limits of the town shall be unlawful without a permit. No person shall establish a sidewalk cafe or conduct business from a sidewalk cafe on any public street or sidewalk in the town unless such person has first obtained a valid permit to establish and operate such sidewalk cafe in the manner provided by this article.
(Ord. No. 282, § 4, 5-28-96)

Sec. 17-79. Applications for permits; fees.

(a) All applications for permits to establish or operate a sidewalk cafe shall be made to the manager on forms to be provided by the town. Such applications shall contain or be accompanied by the following information:

- (1) The name and address of the applicant.
- (2) A copy of a valid business license to operate a restaurant or take-out food establishment within the town's limits.
- (3) A copy of a valid deed, lease, or other written permission to use the building frontage adjacent to or within 200 feet of the sidewalk area which is the subject of the application.
- (4) A copy of a current liability insurance policy covering the premises meeting the requirements hereinafter set forth in this article.
- (5) A drawing (minimum scale of $\frac{1}{4}" = 1$ foot) showing the layout and dimensions of the existing sidewalk area and adjacent private property; proposed location, size and number of tables, chairs, benches, umbrellas and any other objects to be located within the sidewalk cafe; location of all doorways, trees, parking meters, bus shelters, sidewalk benches, trash receptacles, and any other sidewalk obstruction existing within or proposed within the pedestrian area.
- (6) Photographs, drawings, or manufacturer's brochures, fully describing the appearance of all tables, chairs, benches, umbrellas, or other objects related to the sidewalk cafe.

(b) All applications shall be accompanied by a non-refundable application fee of \$10.00 which shall be credited toward the first year of an annual permit fee of \$10.00 per year should the application be approved.

(c) All applications shall be submitted to the manager or his or her designee.
(Ord. No. 282, § 5, 5-28-96)

Sec. 17-80. Conditions of permit.

Permits for sidewalk cafes shall be issued only upon the following conditions:

- (1) Each permit shall be effective for one (1) year, subject to annual renewal on October 1.
- (2) The permit issued shall be personal to the permittee only and shall not be transferable in any manner.
- (3) The permit shall be specially limited to the area shown on the exhibit attached to and made a part of the permit.
- (4) The width of the sidewalk cafe is restricted to the width of the frontage or sidage of the adjoining licensed restaurant or food service establishment to which the permit is issued.
- (5) The permit covers only the public right-of-way.
- (6) Permits will not be issued where the tables and chairs would be placed within five feet of a bus stop, taxi stand, newsstand, existing planters, counter service window, or any other large obstructions.
- (7) Sidewalk cafes shall be located in such a manner so that a minimum six-foot wide clear pedestrian path is maintained at all times. In areas of congested pedestrian activity, the manager is authorized to require a wider pedestrian path as the circumstances dictate.
- (8) The permittee shall use positive action to assure that its use of the sidewalk in no way interferes with sidewalk users or limits free unobstructed passage.
- (9) Tables, chairs, benches, umbrellas, and any other objects located within a sidewalk cafe area shall be of such quality, design, materials and workmanship, both to insure the safety and convenience of users, and to enhance the visual and aesthetic quality of the historic atmosphere of downtown Havana.
- (10) Tables, chairs, benches, umbrellas, and any other objects located within a sidewalk cafe shall be maintained in good repair at all times and with a clean and attractive appearance.
- (11) Appropriate lighting of the sidewalk cafe is required if functioning after daylight hours.
- (12) All signage must be in compliance with the town's rules and regulations and no signage is permitted within the sidewalk cafe except on the adjacent store front or side or on umbrellas.
- (13) No heating, cooking, or open flames are permitted in sidewalk cafes.
- (14) Sidewalk cafe seating shall be considered in determining the adjoining restaurant's requirement for bathroom facilities.
- (15) The sidewalk area covered by the permit shall be 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 again at the close of business each day.

- (16) No tables, chairs, benches, or any other objects, shall be attached, chained, or in any other manner affixed to the sidewalk, curb, any tree, post, sign, or other fixture, within or near the permitted area.
 - (17) Access to fire hydrants, fire hose connections for sprinkler systems, and entrances and exits from all buildings shall not be obstructed at any time by seating or barriers in the permitted area.
 - (18) The permit may be suspended or modified by the manager for community or special events when such events have been scheduled with or approved by the town council or the manager.
 - (19) The manager may require the removal of the sidewalk cafe, whether temporarily or permanently, when street, sidewalk, or utility repairs or any redevelopment necessitates such action.
 - (20) The manager or other town officials may require the immediate removal or relocation of all or part of the sidewalk cafe in an emergency situation.
 - (21) The permittee, and not the town or its employees, shall be responsible for removing or relocating sidewalk cafe components when required under this article, and the permittee shall also be responsible for the expenses involved in same.
- (Ord. No. 282, § 6, 5-28-96)

Sec. 17-81. Liability and insurance.

Public liability and property damage insurance and a hold harmless agreement to the town must be furnished as hereinafter provided:

- (1) Prior to the issuance of a permit, the applicant shall furnish the manager with proof that the permittee has and maintains public liability insurance, including food products liability, and property damage insurance, for all claims and damages to property or bodily injury, including death, which may arise from any operations under the permit or in connection therewith, which insurance shall be in an amount of not less than \$500,000.00 combined single limit each occurrence. All such insurance shall be provided by companies duly authorized to do business in the State of Florida and acceptable to the manager. All such insurance shall name the Town of Havana, its officers, agents, or employees, as an additional insured as to the operation of the sidewalk cafe and shall provide that the policy shall not be terminated, canceled or modified prior to 45 days written notice to the manager of any cancellation or reduction in the policy coverages.
- (2) Prior to the issuance of a permit, the applicant shall furnish the manager with a signed statement or agreement agreeing to indemnify and hold the town, its officers, agents or employees, harmless from any and all claims or liabilities for damages to property or injury to persons arising out of the issuance of the sidewalk cafe permit and any activities to be carried on under the terms of the permit.

(Ord. No. 282, § 7, 5-28-96)

Sec. 17-82. Grant, denial, suspension, revocation, and renewal of permits.

(a) All applications, together with the accompanying documentation and application fee, shall be received and reviewed by the manager within 60 days of receipt. If the application is approved, the manager shall issue the appropriate sidewalk cafe permit on a form to be prepared by the town. If the application is not approved, the manager shall give notice of such action to the applicant in writing stating the reason(s) why the application has been denied.

(b) The manager may suspend or revoke a permit for a sidewalk cafe previously authorized by the town if it is found that any of the following have occurred:

- (1) Any necessary public license or health permit issued to the permittee has been suspended, revoked or canceled;
- (2) The permittee does not have the correct insurance coverage which is in the form and amounts as provided by this article;
- (3) Conditions of pedestrian or vehicular traffic have changed causing congestion which necessitates the removal of the sidewalk cafe;
- (4) The permittee has failed to correct violations of this article or conditions of the permit within three days of receipt from the manager of notice of same delivered in writing to the permittee; and/or,
- (5) Any conditions have changed so that under existing circumstances the sidewalk cafe would represent a danger to the health, safety and general welfare of pedestrians, vehicular traffic, or the public in general.

(c) Upon suspension or revocation of a sidewalk cafe permit, the manager shall give notice of such action to the permittee in writing stating the reasons therefor, and if the permit has been suspended, the manager shall state the time period to be allowed before reinstatement and the actions required for same, if any.

(d) A sidewalk cafe permit may be renewed at the expiration of the existing permit upon the payment by the permittee of the renewal permit fee and the submission of a renewal application on a form provided by the town for such purpose. The manager shall review the application and documents submitted and inspect the sidewalk cafe for which the permit had been issued to determine whether such sidewalk cafe continues to conform to the criteria set forth in this article. If the renewal application is approved, the manager shall issue a new permit within ten days of the date of submission. If the renewal application is not approved or if an existing sidewalk cafe permittee fails to submit a renewal application and the renewal fee within ten days prior to the expiration of the existing permit, a renewal permit shall be denied and the permittee shall be so notified in writing and the reasons stated therefor. If a renewal permit is not obtained, the permittee shall promptly remove all tables, chairs, benches, umbrellas, and other objects from the premises of the previously approved sidewalk cafe.
(Ord. No. 282, § 8, 5-28-96)

Sec. 17-83. Appeals.

Any aggrieved person may appeal the granting, denial, suspension, revocation, or non-renewal of a permit within ten days of the manager's action by filing a written notice of appeal

with the manager to be presented to the town council. The manager shall place the appeal on the agenda for the earliest town council meeting for which proper notice can be given. The town council shall hear and determine the appeal, and the decision of the town council shall be final and effective immediately. The filing of a notice of appeal by an applicant or permittee shall not stay an order by the manager either to deny or to remove a sidewalk cafe or parts thereof. Vestiges of the sidewalk cafe shall be removed immediately pending disposition of the appeal and final decision of the town council.

(Ord. No. 282, § 9, 5-28-96)

Sec. 17-84. Repeal of conflicting ordinances.

All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed, specifically such portions of section 17-1 pertaining to obstruction of streets and sidewalks to the extent applicable.

(Ord. No. 282, § 10, 5-28-96)