

INTRODUCED BY:



ORDINANCE NO. 2009-11

A BILL TO BE ENTITLED

**AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA AMENDING CHAPTER 27 UNIFIED LAND DEVELOPMENT REGULATIONS, ARTICLE X. STREETS, SIDEWALKS, AND RIGHTS-OF-WAY, SECTION 27-479 SIDEWALKS AND BIKEWAYS AND PROVIDING AN EFFECTIVE DATE.**

**Whereas**, the City Council of the City of Neptune Beach, Florida has determined that it is necessary to amend the following:

**Now, Therefore**, be it ordained by the City Council of Neptune Beach, Florida:

**Section 1.** Section 27-479 is hereby amended as follows:

Sec. 27-479. Sidewalks and bikeways.

- (a) Sidewalks shall be provided on one (1) side of residential streets where the average lot width at the street is greater than sixty (60) feet but less than one hundred fifty (150) feet.
- (b) Sidewalks shall be provided on both sides of residential streets where the average lot width at the street is sixty (60) feet or less.
- (c) *Access for physically handicapped persons.* Sidewalks shall be handicapped accessible.
- (d) *Right-of-way/sidewalk lease restriction.* Outside seating for restaurants, coffee shops and sidewalk cafe may be operated by the management of adjacent permitted food service establishments, subject to the following provisions:
  - (1) The city council shall determine and establish by resolution the charges, terms and termination procedures for right-of-way/sidewalk uses.
  - (2) Approval of the proposed right-of-way/sidewalk lease by the city council will be deemed the equivalent of the granting of a permit as subsequent sections state.
  - (3) The unenclosed portion of the restaurant or cafe shall be accessory to or under the same ownership or control as the restaurant or cafe which is operated within a totally and permanently enclosed building on the same lot.
  - (4) The area of unenclosed, outdoor customer service area of a restaurant or cafe shall not exceed fifteen (15) percent of the total enclosed area of the restaurant or cafe.
  - (5) Outside seating within public rights of way may be permitted under a renewable annual lease agreement approved by the city council. As a condition of the lease, the owner of such establishment shall agree in writing to maintain that portion of the right-of-way where the outside seating is located. The owner/lessee/lessor of the business establishment and the property owner shall agree in writing to hold the city harmless for any personal injury or property damage resulting from the existence or operation of, and the condition and maintenance of the right-of-

way upon which any outside seating is located, and shall furnish evidence of general liability insurance in the amount of one million dollars (\$1,000,000.00) per person and two million dollars (\$2,000,000.00) per occurrence with the city as additional named insured.

(6) Outdoor dining is permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the proposed activity. The outdoor dining area shall leave not less than five (5) consecutive feet of sidewalk width at every point which is clear and unimpeded for pedestrian traffic.

(7) Outside seating areas shall be defined by an enclosure of at least three (3) feet in height measured from the ground or sidewalk level. Enclosures shall be designed in compliance with ADA accessibility guidelines and shall provide safe pedestrian access to the public right-of-way and designated parking spaces. Such enclosure may consist of screens, planters, fencing or other similar materials.

(8) Alcoholic beverages shall not be allowed outside the limits of the outdoor seating area, and measures shall be taken to educate customers of the prohibition of alcohol leaving the premises.

(9) Alcoholic beverages shall be served with meals only.

(10) The hours of operation shall be limited to the open of business to ~~12:00~~ 1:30 a.m.

(11) No heating or cooking of food or open flames shall be allowed in outside seating areas.

(12) There shall be no use, operation, or playing of any musical instrument, loudspeaker, sound amplifier, or other machine for the production or reproduction of sound in such a manner as to constitute a violation of the City of Neptune Beach's ordinances which regulate noise.

(13) Lighting to serve outside seating areas shall be white in color and shall not project onto adjacent property.

(14) The outside seating area shall be designated as a non-smoking area. It shall be assumed that an outdoor dining area is a privilege and not a right. The city council or designee shall have the right to prohibit the operation of an outdoor dining area at any time because of anticipated or unanticipated problems or conflicts with the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades, marches, or repairs to the street or sidewalk. To the extent that is possible, the permittee shall be given prior notice of any time period during which the operation of the outdoor dining area will be prohibited.

(15) As stated in item 15, outdoor dining permits are to be considered a privilege and not a right. The outdoor dining permit may be revoked by the city council following notice of the permittee. The permit may be revoked if one (1) or more conditions outlined in this section have been violated, or if the outdoor dining area is being operated in a manner which constitutes a public nuisance not specifically outlined in the above article. Following the revocation of an outdoor dining permit, no application for the same site shall be filed within one (1) year from the date of revocation.

(16) The community development director, building official, code enforcement officer, or other person authorized by the city manager, shall be authorized to enforce provisions of this section and to take such action as may be necessary to ensure compliance with the regulations, general provisions or conditions imposed upon the outdoor dining permit.

**Section 2.** This Ordinance shall become effective immediately upon its final passage and adoption by the City Council.

**VOTE RESULTS OF FIRST READING:**

Mayor Harriet Pruette  
Vice Mayor John Weldon  
Councilor Fred Lee  
Councilor Eric Pardee  
Councilor Kara Tucker

Passed on First Reading this day of , 2009.

**VOTE RESULTS OF SECOND AND FINAL READING:**

Mayor Harriet Pruette  
Vice Mayor John Weldon  
Councilor Fred Lee  
Councilor Eric Pardee  
Councilor Kara Tucker

Adopted on Second and Final Reading this day of , 2009.

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Harriet Pruette  
Mayor

ATTEST:

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Lisa Volpe, CMC  
City Clerk

Approved as to form and correctness:

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Christopher A. White  
City Attorney