

and cross-examine witnesses. After considering the evidence and testimony, the hearing inspector or code enforcement board shall make a factual determination as to whether the property is (or was), with respect to subsection 62-170 in violation of this article. If the magistrate or code enforcement board determines that the property is (or was) in violation of this article, he/she/it shall affirm the code enforcement division manager's issuance of the notice of violation and, with respect to an appeal of action taken pursuant to subsections 62-170(a), (b) or (c), issue an order requiring the aggrieved party to promptly clean the property to terminate or abate the violation, and/or, with respect to an appeal of action taken pursuant to either subsection 62-170(b) or (c), issue an order affirming the existence of conditions warranting immediate termination or abatement of the violation(s). If the aggrieved party has not remedied the violation within five calendar days after the date of the code enforcement board's written order finding one or more violations of this article, then the code enforcement division manager may have the property cleaned and cleared to the extent necessary to remedy the violation, and the property owner shall be responsible for such costs and related expenses. If the code enforcement board makes a factual determination that the property is not (or was not) in violation of this article, then the filing fee shall be returned to the aggrieved party, and, if the city has incurred costs in the cleaning and clearing of the property, the city shall bear the responsibility for such costs and reimburse the owner to the extent that the owner has paid the city for same.

(e) Appeal of the code enforcement board decision, whether it is a first or subsequent offense, or an imminent health threat, shall be filed in a



timely manner with the circuit court in accordance with section 2-70 of the Winter Garden Code.

(Ord. No. 11-21, § 3, 10-13-11)

**Sec. 62-172. Liens; assessment.**

(a) After correcting a violation of this article as authorized in section 62-170, the code enforcement division manager shall certify to the city clerk the actual cost incurred in remedying such violation, whereupon such cost, plus a charge equal to 100 percent of such cost to cover city administrative expenses, shall become payable within ten days. If such costs are not paid within the allotted time, the city shall assess a special assessment lien and charge against the property, which shall be payable with interest at the rate of 12 percent per annum from the date of such certification until paid.

(b) Prior to approving and recording a claim of special assessment lien pursuant to subsection (c), the city shall, by hand or certified mail, return receipt requested, deliver or send a notice of assessment of costs to the last known owner of record of the subject real property. If the assessment is not paid or arrangements satisfactory to the city have not been made to pay such assessment within ten days after notice is received, then the city may record the claim of special assessment lien.

(c) A lien assessed pursuant to this article shall be enforceable in the same manner as a tax lien in favor of the city and may be satisfied at any time by payment thereof, including accrued interest. Notice of such lien may be filed in the office of the clerk of the circuit court and recorded among the public records of the county.

(d) The city attorney is authorized and directed to institute such proceedings in the name of the city in any court having jurisdiction over such matters against any property for which a lien has been filed pursuant to this article, and the property owner shall be liable for all costs, including reasonable attorney's fees, incurred in any such action.

(Ord. No. 11-21, § 3, 10-13-11)

**Sec. 62-173. Opposing, obstructing or resisting code inspector.**

No person shall oppose, obstruct or resist any code inspector or any person authorized by the code inspector in the discharge of his duties as provided in this article.

(Ord. No. 11-21, § 3, 10-13-11)

**Sec. 62-174. No liability for reasonable, good-faith trespass by code inspector.**

Any code inspector shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon property utilized or zoned for residential, professional office, commercial, or industrial use while in the discharge of duties imposed by this article.

(Ord. No. 11-21, § 3, 10-13-11)

**Secs. 62-175—62-200. Reserved.**

**ARTICLE VII. SIDEWALK CAFES AND MERCHANDISE DISPLAY**

**DIVISION 1. IN GENERAL**

**Sec. 62-201. 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:

*Bar* means any counter, table, surface or device from which alcoholic beverages are dispensed, or on which alcoholic beverages are mixed. A device does not include any bottle or pitcher provided to patrons within the sidewalk café area.

*Business or property owner* means any individual, including an employee or agent of a group of individuals, partnership, or corporation who is a tenant in or who owns property abutting the public way.

*City* means the City of Winter Garden, Florida. As used throughout, the term city also includes the designated agent of the city.

*City manager* means the City Manager of the City of Winter Garden or his designee.

*Historic downtown district* means that area as defined in section 98-188(1).

*Menu board* means a board allowing for the posting of the subject establishment's complete menu and fabricated in such a manner so as not to constitute a form of general advertising or establishment identification. The menu board shall be no larger than six square feet, may not be internally illuminated and the top of the sign shall not exceed five feet, six inches from grade.

*Merchandise* means any tangible or intangible item, including, but not limited to, plants, flowers, tickets, services, wearing apparel, jewelry, mechanical devices, ornaments, art work, household or office supplies, food or beverages of any kind not for immediate consumption, or other goods or wares.

*Outdoor merchandise area* means that area in front of a business where merchandise is located within the public ways for the purpose of displaying, exhibiting, selling or offering for sale merchandise.

*Outside private property* means that portion of privately owned parcels of real estate located outside of the building(s) located on such parcels.

*Pedestrian* means a person who is walking or otherwise traveling within the public ways.

*Pedestrian pathway* means the minimum width, within the public ways, which must remain unobstructed by merchandise or sidewalk cafes at all times in order to allow pedestrians and other travelers to proceed without obstruction, delay or inconvenience. Said minimum width shall be five feet.

*Permittee* means the recipient of a merchandise display permit or sidewalk cafe permit under the terms and provisions of the applicable division of this article.

*Public ways* means all areas legally open to public use and used and/or intended for pedestrian traffic. By way of example, not limitation, the public ways include sidewalks and that cer-

tain area measured from the exterior of buildings fronting the right of way to the exterior edge of the curb.

*Restaurant* means any full service food service establishment that is maintained and operated as a place where food and beverages are prepared, served and sold for consumption within the premises, and where more than 50 percent of the gross revenue is derived from food sales versus alcoholic beverage sales, and any coffee shop, ice cream shop, or similar shop where the principal source of revenue is from food sales, or any bookstore cafe.

*Sidewalk cafe* means 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.

*Sidewalk cafe area* means the area within the public way or outside private property, where the permitted sidewalk cafe is located for serving of food or beverage.

*Sidewalk cafe site map* means a city-approved map detailing the sidewalk cafe area, the location of the pedestrian pathway and sidewalk seating layout as it relates to a sidewalk cafe.

*Specials board* means a board allowing for the posting of the subject establishment's daily food or beverage specials and fabricated in such a manner as to not constitute a form of advertising or establishment identification. The specials board shall be no larger than four square feet, may not be internally illuminated and the top of the sign shall not exceed five feet, six inches from grade.

*To obstruct* means to so occupy the public ways so that the free use and enjoyment thereof by the public is in any way interrupted or interfered with, or such that the free ingress and egress to or from any building fronting on any public thoroughfare is impaired.

(Ord. No. 02-24, § 2, 5-23-02; Ord. No. 13-20, § I, 5-23-13)

**Sec. 62-202. Purpose.**

The purpose of this article is to regulate the public ways and provide reasonable limits on the use of the sidewalk cafes and the outdoor display of merchandise in conjunction with a legally operating restaurant or business and to ensure that sidewalk cafes and sidewalk café areas in the historic downtown district are used primarily for dining and entertainment and not primarily for the consumption of alcohol. The criteria herein are intended to ensure that said uses may be permitted while not creating a public health or safety hazard or a public nuisance.

(Ord. No. 02-24, § 2, 5-23-02; Ord. No. 13-20, § II, 5-23-13)

**Sec. 62-203. Declaration of necessity and intent.**

It is hereby found and declared that:

- (1) There is a need for sidewalk cafes and the outdoor display of merchandise in certain areas of the city to provide and encourage additional pedestrian traffic to these areas.
- (2) The presence of such establishments or displays may impede the free and safe flow of pedestrian traffic.
- (3) There is a need for regulations and standards governing such uses within and of the public ways to facilitate and ensure a safe environment in these areas.
- (4) The establishment of permit conditions and safety standards for the outdoor display of merchandise and sidewalk cafes are necessary to protect and promote the general health, safety and welfare of the residents of the city.

(Ord. No. 02-24, § 2, 5-23-02)

**Sec. 62-204. Scope.**

Except as a permit may be issued pursuant to this article, or other applicable provision of the Code, it shall be unlawful for any person to operate a sidewalk cafe or to sell, offer for sale, exhibit or demonstrate any merchandise, upon any public ways within the city.

(Ord. No. 02-24, § 2, 5-23-02)

**Sec. 62-205. Permits.**

(a) It shall be unlawful for any person to operate a sidewalk cafe or display merchandise within the public ways without obtaining a permit as required by this article. Failure to obtain a permit may result in the removal of all merchandise, chairs, tables and other items within the public ways by the city, within 24 hours of written notice to the business owner and/or the issuance of a citation.

(b) Permit fees shall be paid prior to issuance of a permit. Any operation of a sidewalk cafe or the display of merchandise within the public ways without a permit, may result in the city removing, within 24 hours of written notice to the business or restaurant owner, any tables, chairs, merchandise and any other objects within the public ways.

(c) Permits are neither transferable nor assignable. Upon a change in ownership, operator, use or scope of permit, a new permit must be applied for from the city and the appropriate permit fee paid.

(d) The permit must be conspicuously displayed by the permit holder while engaged in the activities allowed under the permit.



(e) The permit fee for the operation of a sidewalk cafe within the public way is \$100.00 per restaurant.

(f) The permit fee for the display of merchandise within the public way is \$50.00 per business.

(g) The permit fees provided in subsections (e) and (f) above may be amended by ordinance or resolution, from time to time, by the city commission.

(Ord. No. 02-24, § 2, 5-23-02)

**Sec. 62-206. Operations within the public ways.**

(a) Merchandise may be displayed and sidewalk cafes operated within the public ways upon receipt of a permit as provided for herein and compliance with this article.

(b) The procedure for obtaining a permit shall be as follows:

- (1) An application for a permit to operate a sidewalk cafe or display merchandise within the public way shall be submitted to the planning and zoning department and shall include the following minimum information:
  - a. The name, address and telephone number of the applicant and of the property owner.
  - b. The name, address and telephone number of the restaurant, business or organization on whose behalf the application is prepared.
  - c. A copy of a valid occupational license.
  - d. A copy of a current certificate of insurance in the amounts and categories required by section 62-210.
  - e. A drawing (to scale) showing the layout and dimensions of the existing public ways and adjacent private property; proposed location, size and number of tables, chairs, merchandise displays, steps and umbrellas; location of trees, bus shelters, sidewalk benches, trash receptacles, fire hydrants, signs, news racks, public

fixtures and any other sidewalk obstruction, either existing or proposed; and the pedestrian pathway.

- f. As to sidewalk cafes, photographs, drawings or manufacturers' brochures describing the appearance of all proposed tables, chairs, umbrellas or other objects intended to be located within the sidewalk cafe area.
  - g. Written authorization from all property owners consenting to the operation of the sidewalk cafe or the outdoor display of merchandise at the particular location. If the property is being leased, the lessee who will be operating the sidewalk cafe or displaying the merchandise shall also sign the application.
  - h. Such additional information as may be requested by the planning and zoning department which may be necessary to determine compliance with this article.
- (2) The application shall be accompanied by the appropriate fee as set forth in section 62-205.
  - (3) Applications shall be reviewed for compliance with city ordinances and a permit shall be issued by the planning and zoning department after approval by the public works department, planning and zoning department, fire department and other departments deemed necessary.
  - (4) A permit shall only be issued if the encroachment can be maintained without detriment to the health, safety and welfare of the general public. In determining what constitutes detriment to the health, safety and welfare of the general public, the following minimum factors shall be considered:
    - a. The location, type and size of the encroachment and encroaching structures or merchandise.
    - b. The proximity of the encroaching structures or merchandise to a traveled road, whether public or private.



- c. Whether the encroaching structures or merchandise will unreasonably interfere with pedestrian or vehicular passage or safety.
- d. Whether the encroaching structures or merchandise will interfere with an existing water or wastewater line, stormwater facility or other utility.

(c) If the property or business is sold or, in the case of a lessee, if the lease is terminated, after issuance of the permit, the permit shall be null and void and a new application must be filed prior to the issuance of permit.

(Ord. No. 02-24, § 2, 5-23-02)

**Sec. 62-207. Revocation or suspension of permit.**

(a) The approval of a permit under this article is conditional and grant thereof permissive at all times. Said permit may be suspended or revoked upon the occurrence of any of the following events in which the permittee or business owner has:

- (1) Provided false information or fraudulently misrepresented information in the permit application.
- (2) Violated this Code, any local, state, federal law or any regulations of the county health department or other applicable regulatory agency.
- (3) Failed to comply with the requirements of this article, the terms under which the permit is issued, or an order of the code enforcement board relating to the use of the public way.
- (4) Operated under the permit in such a manner as to create a public nuisance or to constitute any hazard to the public health, safety or welfare or to damage or destroy public property.
- (5) Failed to post conspicuously the permit at all times at the location where the activity is permitted.
- (6) Had any necessary business or health permit suspended, revoked or cancelled.

(b) If the city has knowledge that a permittee has engaged or is engaged in conduct warranting the suspension or revocation of a permit, the city shall serve the permittee by certified mail or hand delivery at his business address as disclosed in the application for the permit or at the permitted premises, a written statement of violation or a civil citation which affords reasonable notice of facts or conduct which warrants the intended action. The statement of violation or civil citation shall state the action required to remedy the violation, if any. An adequate opportunity to request a hearing or appeal of the decision shall be afforded to the permittee. A first time violation may result in a fine of up to \$250.00 per day; a second violation within 12 months may result in the revocation of the permit.

In the case of an emergency suspension or revocation, the permittee shall immediately be advised of the city's action and afforded a prompt post-suspension or revocation hearing in accordance with the procedures set forth in this Code. During the period of time commencing with the notification of the permit holder of the intent to revoke the permit and continuing until a final decision is made as to whether the permit shall be revoked or continue in full force and effect, the permit shall be suspended and the permittee shall not operate a sidewalk cafe nor display merchandise within the public ways.

(Ord. No. 02-24, § 2, 5-23-02)

**Sec. 62-208. Denial; appeals from the decision of the city manager.**

Any applicant whose permit is suspended, revoked or is denied a permit under this article shall receive a statement, in writing, outlining the reasons for the suspension, revocation or denial of the permit. The applicant may appeal the suspension, revocation or denial of the permit to the city manager within 15 working days after the date of the written suspension, revocation or denial. Appeals from decisions, including decisions of revocation, of the city manager made pursuant to this article shall be to the planning and zoning board at the next regularly scheduled meeting. Appeals from the decisions of the planning and zoning board shall be as provided in section 98-31 of the Code.

(Ord. No. 02-24, § 2, 5-23-02)