

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

**AN ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF CLERMONT, LAKE COUNTY, FLORIDA, ADDING TO THE CODE OF ORDINANCES, CHAPTER 122 ZONING; SECTION 122-357 SIDEWALK CAFÉ AND AMENDING CHAPTER 6 ALCOHOLIC BEVERAGES, SECTION 6-3 CONSUMPTION OR POSSESSION UPON PUBLIC PROPERTY; PENALTY; PROVIDING FOR CODIFICATION; SEVERABILITY; EFFECTIVE DATE; AND PUBLICATION.**

**WHEREAS**, pursuant to the provisions of Chapter 163, Florida Statutes, the City of Clermont Planning and Zoning Commission, acting as the Local Planning Agency of the City, has held a public hearing on December 2, 2014 and following such hearing found this Ordinance to be in the best interest of the City of Clermont, and recommended that the City Council adopt this Ordinance; and

**WHEREAS**, the City Council of the City of Clermont desires to add Section 122-357 Sidewalk Café and amend Chapter 6 Alcoholic Beverages, Section 6-3 Consumption or possession upon public property; penalty; of the City of Clermont's Code of Ordinances;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Clermont, Florida as follows:

**SECTION 1.**

The City Council of the City of Clermont has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 163 and 166, Florida Statutes.

**SECTION 2.**

The Land Development Code of the City of Clermont Code of Ordinances is hereby adding to read as follows:

**Section 122-357 Sidewalk café.**

1. Necessity and intent.
  - a. There is a need for regulations and standards for the existence and operation of sidewalk cafés to facilitate and ensure a safe environment in these areas.
  - b. The establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect and promote the general health, safety and welfare of the residents of the City.

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

2. Sidewalk café authorized. Restaurant operators, eating and/or drinking establishments located within the CBD Central Business District are allowed to operate a sidewalk café that conforms to the requirements of this section and other applicable provisions of this code, and are hereby made exempt from the prohibition of conducting business within a public right-of-way of this Code.
3. Definitions. The followings words, terms, and phrases, when used in this section, shall have meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

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

*Sidewalk café* means seating located on a sidewalk or pedestrian mall which is associated with an adjacent eating and/or drinking establishments where food or beverages are delivered for consumption on the premises. It is characterized by movable tables and chairs and may be shaded by umbrellas. Sidewalk cafés shall be permitted only as an accessory use to a licensed restaurant or food/drinking establishment.

4. Permit and application requirements.
  - a. It shall be unlawful for any person to operate a sidewalk café on any sidewalk or public right-of-way within the City without obtaining a permit as required by this article. Sidewalk cafés shall only be located where permitted by the City's Land Development Code. No person shall establish a sidewalk café on a public sidewalk unless such person has obtained a valid permit to operate that sidewalk café pursuant to this Code.
  - b. The Chief of Police or designee shall have the right to remove, after 24 hours notice, any tables, chairs and other objects on public property which are used in connection with a sidewalk café which do not have a permit, and shall have the right to immediately remove any tables, chairs or other objects on public property which impede pedestrian traffic or pose a threat to the public health, safety or welfare.
  - c. A permit for a sidewalk café shall be issued only to the operator of a valid food and/or drink license and operating restaurant who wishes to provide moveable tables and chairs on the sidewalk or pedestrian mall adjacent to the restaurant.
  - d. Application forms for permits to operate a sidewalk café are provided by the Development Services Department.

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

- e. A scaled drawing of the café area shall be required with each sidewalk café permit application with measurements outlining the location, boundary, tables, chairs, barriers, stanchions, host or hostess stations, and other features.
  - f. A copy of a valid Business Tax Receipt to operate a food and/or drinking establishment in front of which the proposed sidewalk café will be located. The number of chairs or seats to be utilized for the sidewalk café must be included in the number of seats authorized by the license.
  - g. A copy of the state alcoholic beverage license and state approved site plan identifying the extension of this permit to the sidewalk where the café seating will operate as required by this Code.
5. Fees may be required as adopted by resolution of the City Council.
6. Standards and criteria.
- a. Sidewalk cafés shall be located in such a manner that a minimum width of four feet is maintained at all times as an unobstructed pedestrian path.
  - b. Sidewalk cafés are restricted to the usable sidewalk area and adjacent outdoor seating area of the licensed establishment to which the permit is issued or within the usable sidewalk area of the building where the validly licensed restaurant is located.
  - c. All tables, chairs, umbrellas, heaters, signs or other personal or business property will not be permitted within four feet of a pedestrian crosswalk or handicap corner curb cut.
  - d. The sidewalk café demonstrates that the café's seating will not obstruct vehicle passengers from exiting their cars with the placement of their curbside tables.
  - e. All furniture shall be stored inside the establishment whenever the business is closed.
7. Special restrictions.
- a. Sidewalk cafés shall be required to keep the sidewalk and close proximity free of trash and debris as a result of the sidewalk café.

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

- b. Sidewalk café operations may be required to cease immediately at the sole discretion of the City.
  - c. The sidewalk café permit is a license to temporarily use the City's sidewalks within the City's rights-of-way. It is not intended and shall not be constructed as an interest in the real property.
  - d. For the purpose of public safety, at any time after obtaining a sidewalk café permit, the permittee may be limited to use of non-breakable beverage containers after the Police Department receives complaints or there are observations for the need to amend the sidewalk café permit to impose the non-breakable beverage provision.
  - e. The permit covers the public sidewalk and right-of-way adjacent to the establishment. Tables and chairs on private property will be governed by other applicable regulations. No additional outdoor seating authorized pursuant to this Code shall be used for calculating seating requirements pertaining to applications for or issuance of an alcoholic beverage license for any establishment; nor shall the outdoor seating be used as the basis for computing required seating for restaurants and dining rooms, or as grounds for claiming exemption from such requirements under the provisions of any City ordinance or state law. However, additional outdoor seating authorized pursuant to this Code shall be included in determining required plumbing or accessibility fixtures or other fire and building code requirements.
  - f. Approval of a sidewalk café permit shall be conditioned upon obtaining the necessary state alcoholic beverage license and meeting all state alcoholic beverage requirements. The approved site plan by the state for the state alcoholic beverage license to allow service outside of the establishment must conform to the proposed site plan for the café seating and must be submitted with the application for a sidewalk café permit. All tables and chairs must not exceed the boundaries of the state alcoholic beverage plan and the sidewalk café plan.
8. Alcohol service.
- a. Sidewalk cafés are hereby made exempt from the prohibition on the sales and consumption of alcoholic beverages outside of a licensed building as provided by this Code.

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

9. Liability and indemnification.
- a. Prior to the issuance of a permit, the applicant shall furnish a signed statement indemnifying the City, its officers and employees for any damages to property or injury to persons which may be occasioned by any activity carried under the terms of the permit.
  - b. A permittee shall pay, and by its acceptance of a permit specifically agrees to pay, any and all damages or penalties which the City may be legally required to pay as a result of the permittee's operation or maintenance of a sidewalk café under this part, whether or not the acts or omissions complained of are authorized, allowed or prohibited by the City.
  - c. A permittee shall also pay all expenses incurred by the City in defending itself with regard to any and all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, including a reasonable attorney's fee and the reasonable value of services rendered by any employee of the City.
  - d. The permittee shall maintain, throughout the term of the permit, liability insurance insuring the City and the permittee with regard to all damages mentioned in Subsection (a) above caused by the grantee or its agents, in the minimum amounts of:
    - (1) Workers' and unemployment compensation insurance as provided by the laws of this state.
    - (2) Two hundred thousand dollars for property damage, bodily injury, or death payable to any one person and \$1,000,000.00 for property damage, bodily injury or death when totaled with all other claims or judgments arising out of the same incident or occurrence.
    - (3) The insurance policies obtained by a permittee in compliance with this section shall be issued by a company or companies acceptable to the City and a current Certificate or Certificates of Insurance, along with written evidence of payment of all required premiums, shall be filed and maintained with the City during the term of the permit. The policies shall name the City as an additional insured and shall contain a provision that written Notice of Cancellation or reduction in coverage of the policy shall be delivered by registered mail to the City at least 30 days in advance of the effective date thereof.

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

- (4) An applicant for a permit shall be required to submit evidence of liability insurance.
10. Revocation or suspension; emergencies.
- a. The approval of a sidewalk cafe 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 this section.
    - (3) The permittee exceeds the approved number of seats by placing additional tables, chairs, et cetera, in or beyond the approved area.
    - (4) The permittee has failed to correct violations of this Code or conditions of this permit within 24 hours of receipt of the Director's notice of such violations delivered in writing to the permittee.
  - b. If the permittee fails to remove any tables, chairs and other objects related to sidewalk café within 48 hours of receipt of the Chief of Police or designee final notice of revocation or suspension, the Chief of Police or designee shall have the right to remove such objects.
  - c. If a permittee is found in violation of the codes and given a written citation on three occasions in a single year as identified as the beginning date of the permit issuance, the sidewalk café permit shall be suspended for a period of time or revoked as determined by the Chief of Police or designee, effective immediately upon receipt of a third violation. In addition, if the Chief of Police or designee believes that a permittee has engaged or is engaged in conduct warranting the suspension or revocation of the permit, the Chief of Police or designee 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 administrative complaint which affords reasonable notice of facts or conduct which warrant the intended action. The permittee shall be given adequate opportunity to request an administrative hearing before the Code Enforcement Board unless the chief of police or designee finds that an emergency condition exists involving serious danger to public health, safety or welfare, in which case advance notice and hearing shall not be required. In the case of an emergency

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

suspension or revocation, the permittee shall immediately be advised of the Chief of Police or designee's action and afforded a prompt post-suspension or revocation hearing in accordance with the procedures set forth in this Code. Appeals of applications or café seating plans rejected by the City may be heard by the Planning and Zoning Commission for either upholding the decision of the Chief of Police, further revising and approving the plan or approving the submitted plan.

**Chapter 6 - ALCOHOLIC BEVERAGES**

**Section 6-3 Consumption or possession upon public property; penalty.**

(a) Generally.

It shall be unlawful for any person to consume any alcoholic beverage, including beer and wine, upon any City-owned parks and beaches, City property or street, alley or sidewalk of the City. This section shall not apply to any City owned property which is subject to a management contract, or sidewalk cafés. For those properties, alcohol consumption shall be governed by rules established jointly by the managing entity and the City Manager. Further, this section shall not apply to those portions of the above named properties included within the boundaries established by the City Council for a special event for which permission to consume alcoholic beverages is given in conjunction with the permission for the event. In addition, the City Council shall have the right to limit the type of alcoholic beverage to be consumed when granting any such permit.

- (b) Carrying open containers. It shall be unlawful for any person to carry an opened bottle, can or other container containing an alcoholic beverage, including beer and wine, upon any City parks, City beaches, City property or street, alley or sidewalk of the City, provided that this subsection shall not apply to the interior of any vehicle driven upon the ways or property of the City. Further, this section shall not apply to those portions of the above named properties included within the boundaries established by the City Council for a special event for which permission to carry open containers of alcoholic beverages is given in conjunction with the permission for the event, or sidewalk cafés. In addition, the City Council shall have the right to limit the type of alcoholic beverage to be consumed when granting any such permit. In no event will consumption occur directly from glass containers.

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

- (c) Permits; procedure. Notwithstanding Subsections (a) and (b) of this Section, permits for the consumption of alcoholic beverages in parks and recreation areas may be obtained by application to the City Manager or the City Manager's designee in accordance with the following procedure:
- (1) A person seeking issuance of a permit shall file an application stating the following:
- a. The name, address and age of the applicant.
  - b. The name and address of the person or association sponsoring the activity, if any.
  - c. The day and hours for which the permit is desired.
  - d. The park or portion thereof for which the permit is desired.
  - e. Any other information reasonably necessary to a determination as to whether a permit should be issued.
  - f. Variances required from park rules.
- (2) A use permit shall issue if the City Manager determines:
- a. The proposed activity or use of the park will not unreasonably interfere with or detract from the general public's enjoyment of the park.
  - b. The proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.
  - c. The proposed activity or uses that are reasonably anticipated will not include violence, crime or disorderly conduct.
  - d. The proposed activity will not entail extraordinary or burdensome expense or police operation by the City.
  - e. The facilities desired have not been reserved for other use on the date and hour requested in the application.

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

- (d) **Appeal.** Within ten days after the receipt of an application the City Manager shall inform an applicant in writing of the City Manager's decision to grant or deny a permit. For denial, the notification shall include the reason for the denial. Any person denied a permit shall have the right to appeal to the City Council by serving written notice thereof on the City Clerk within five working days of such refusal. A copy of the notice of appeal, the application, and the reasons for the City Manager's refusal shall immediately be forwarded by the Clerk to the City Council.
- (e) The City Council shall rule on the appeal within ten days from the receipt of the appeal by the City Clerk or at its first meeting after the appeal, whichever is later. The decision of the City Council shall be final. The appeal to the City Council shall be de novo.
- (f) **Compliance with park rules.** A permittee shall be bound by all park rules and all applicable ordinances fully as though such were inserted in such permits.
- (g) **Insurance requirements.** An applicant for a permit shall be required to submit evidence of liability insurance in the amount of \$1,000,000.00 covering injuries to members of the general public arising out of such permitted activities.
- (h) **Revocation.** The City Council shall have the authority to revoke a permit upon a finding of violation of any rule or ordinance or upon good cause shown.
- (i) **Penalties.** A violation of this section shall constitute a second degree misdemeanor and shall be punishable in accordance with state statutes prescribing punishment for a second degree misdemeanor as of the date of the infraction.

*CITY OF CLERMONT*  
**ORDINANCE No. 2015-01**

PASSED AND ADOPTED by the City Council of the City of Clermont, Lake County,  
Florida on this 13th day of January, 2015.

CITY OF CLERMONT

*Ray Goodgame*  
~~Gail L. Ash, Mayor~~

*Ray Goodgame, Mayor Pro-Tem*

ATTEST:

*Tracy Ackroyd*  
Tracy Ackroyd, City Clerk

Approved as to form and legality:

*[Signature]*  
Daniel E. Mantzaris, City Attorney