

CITY OF APALACHICOLA, FLORIDA
ORDINANCE NUMBER 2017-03
PRIVATE PROPERTY AND COMMERCIAL ACTIVITIES
ON SIDEWALKS AND RIGHTS-OF-WAY

AN ORDINANCE AMENDING ORDINANCE NO. 2007-01 AND PREVIOUS ORDINANCE NO. 61-4 TO ADD A FEE FOR SIDEWALK USAGE BY ADJACENT BUSINESSES IN THE CITY OF APALACHICOLA; ADDING INSURANCE REQUIREMENTS NAMING THE CITY OF APALACHICOLA AS ADDITIONAL INSURED; PROVIDING FOR DOGS TO BE LEGAL TO ACCOMPANY PATRONS ON A PERMITTED SIDEWALK AREA OF THE ADJACENT BUSINESS; ADDING PROVISIONS FOR ENFORCEMENT AS A CIVIL INFRACTION; PROVIDING FOR PLACEMENT OF SIGNS IN SIDEWALK AREA LICENSED BY PERMIT TO BE LIMITED TO THOSE OF THE ADJACENT BUSINESS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING PROVISION OF OTHER ORDINANCES, CORRECTION OF SCRIVENERS ERRORS, AND PROVIDING FOR AN EFFECTIVE DATE.

Whereas, it is the intent of this Ordinance to promote, protect, and improve the health, safety, and welfare of the citizens of the City of Apalachicola by providing for authorization and regulations of commercial activities and placement or display of private property on the public sidewalks adjacent to businesses in the City of Apalachicola; and

Whereas, Chapter 163 of the Florida Statutes empowers the City of Apalachicola to adopt and enforce this Ordinance.

NOW THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF APALACHICOLA, FLORIDA, THE FOLLOWING ORDINANCE AMENDING ORDINANCE NO. 2007-01 TO IMPLEMENT REGULATIONS REGARDING OBSTRUCTIONS AND ACTIVITIES ON PUBLIC SIDEWALK AND RIGHTS OF WAY INCLUDING SIDEWALK CAFES AND OTHER RELATED ACTIVITIES ON OR ADJACENT TO THE PUBLIC SIDEWALK AND AMENDMENT TO ORDINANCE NO. 2007-01 TO ADD PROVISIONS REGARDING PERMITS AND INSURANCE REQUIREMENTS.

Section 1. When the words street, avenues, road, alley or sidewalk are used herein they are defined to mean, as the context permits, any public avenue, street, road, boulevard, circle, alleys, highway, sidewalk, or right of way within the City of Apalachicola singular or plural in number.

Section 2. No person shall erect, construct, place, exhibit, show or maintain any item (including, but not limited to items for sale, exhibition, show, storage or otherwise such as personal property, signs, advertisements, mats, rugs, utility items or trash or garbage receptacles or other items of private property) on the streets, alleys, rights of way or public space or property as defined above nor take any action or maintain an obstruction or encroachment whatsoever on the streets, alleys or sidewalks, rights of way or public space or property except where a permit has been issued by the City for the same and all requirements of this Ordinance and other rules, regulations and laws/ordinances of the City and other jurisdiction have been and are met.

Section 3. No person shall cause, allow, conduct or maintain on the street, sidewalk, right of way or public space or place as defined herein, commercial activity, including activity such as selling, serving or allowing or promoting the sale of food or beverage or other items or consumption of the same, on the street, sidewalk, right of way or public space or place as defined herein in front of or now adjacent to a commercial business or operation in the City of Apalachicola except where a permit has been issued by the City for the same and all requirements of this Ordinance and other rules, regulations, and laws/ordinances of the City and other jurisdiction have been and are met.

Section 4. No cars, trucks, boats, trailers or other vehicles or personal property items shall be allowed to stand or be parked on any street, sidewalk, right of way, a public space or place as defined herein for more than _____ hours without a permit from the City for the same and no such item shall be parked or placed or maintained on any street, sidewalk, right of way or public space or place so as to constitute a danger or harm and or obstruction to pedestrian or vehicle traffic.

Section 5. It shall be unlawful for an person in the construction or repair of any building to place or deposit, or cause or allow to be placed or deposited, on any street, alley or sidewalk, or public space within the limits of the City, any building materials whatsoever, or any other articles or things which may obstruct or hinder the traffic thereon, without a written permit from the City. Such permit shall state clearly what space will be allowed on which the same may be placed or deposited, the length of time the permit shall remain in force, and the terms and conditions upon which such material or other articles or things may be placed thereon. When in the discretion of the City, it becomes necessary for the further protection of pedestrians, the person erecting or repairing any building shall strictly observe such further safety provisions in the permit and shall take out liability insurance covering such risks to the public, passers-by, when deemed necessary by the City. Under no condition shall the sidewalk be so obstructed as not to allow pedestrian traffic.

Section 6. Permits granted under this Ordinance shall require the permittee to obtain insurance covering liability of the City for the sidewalk area in front of the business permitted under this Ordinance as further specified in this Ordinance naming the City of Apalachicola as an additional insured for an amount not less than \$1,000,000 U.S. dollars with a provision that does not allow cancellation without thirty (30) days written notice to the City.

Section 7. No private property shall be allowed to be placed, positioned, maintained or remain on the sidewalks, streets, right of way or public property in the City of Apalachicola downtown commercial area except by permit. No permit shall be issued for sale or display of private property or to conduct business activities on the streets, sidewalk or rights of way in the City of Apalachicola (except where special permission under required safety and other safeguards is approved by the City for Special events) which would so obstruct vehicular or pedestrian traffic or endanger or prohibit public use thereof. Business owners may apply for a permit as set forth in this Ordinance which shall as a minimum require the following with other requirements to be specified by resolution of the City Commission:

1. Items must not exceed nor be placed in an area in excess of 36" in depth from the front edge of the business property out into the sidewalk and in any event a minimum of at least 48" from the street edge of the sidewalk toward the business property shall remain clear (of private items or commercial activity or operations) for pedestrian traffic at all times. Business owners receiving permits under this Ordinance are responsible to clean and maintain all items of private property in the permitted area and ensure that they are safe and attractive for use by the public. Items on the permitted area must be owned by and relate directly to the commercial activities of

the adjacent permitted business. All permits issued will also require an encroachment agreement with the City on terms required by the City.

2. The City Administration shall have the right to order the immediate removal of any tables, chairs, benches, personal or private property (including items offered for sale or on display), or advertising of any kind or type which is located on the streets, avenues, roads, sidewalk or other public property (or property of the City of Apalachicola) placed or used in that location in front of or adjacent to a business or other commercial operation which does not have a valid permit for the same from the City of Apalachicola. Such notice may be given by hand delivery, or by posting such notice on the door of the adjacent business or commercial operation, or to the person to whom the object or items belongs. Repeat orders shall result in a violation of the provisions of this Ordinance punishable as provided herein or at the election of the City as a civil infraction under Ordinance No. 2017-02.

3. Application.

(a) The City Administrator shall prepare an application for permits to be issued under this Ordinance.

(b) Application for a permit to place or locate items on the sidewalk or street or public place or to conduct business on sidewalks or street or public place shall include, but not limited to, the following information:

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

(bb) The name and address of the adjacent business or commercial operation including the type of organization (corporation, LLC, partnership, etc.) and the names and addresses of the members, owners and officers of the owner and operation of the business as well as a statement of the business being conducted by the applicant in the adjacent business.

(cc) A copy of a valid and current City Occupational License to operate the business or commercial operation behind or adjacent to the sidewalk, street or public place where the items, personal property or commercial activity are requested to be located and any other license or permit required by the City for operation.

(dd) A copy of the current certificate of insurance in the amounts and categories and coverage types required by this Ordinance.

(ee) An affidavit from the owners of the property in front of which the proposed commercial activities or operation or items of personal property will be located, consenting to the operation of the commercial activity and/or items at the proposed location and joining in the hold harmless, indemnity and defense and liability insurance requirements of the City.

(ff) The annual application shall be accompanied by a nonrefundable base application fee of \$100 for retail businesses and \$150 for restaurant or bars and any additional fee for usage of sidewalk area in front of or adjacent to the

business as set forth by resolution and approved by the City Commission of the City of Apalachicola.

(gg) Applications shall be reviewed for compliance with City ordinances and must be approved as appropriate by the Planning & Zoning Department, Fire department, Police Department, the City Administrator, and any other City department deemed necessary by City staff.

(hh) The City Administrator may suspend or prorate the annual permit fee in cases of public construction or emergency situation in which case all items on the sidewalk shall be immediately (within 48 hours) removed by and at the expense of the permittee and all permitted commercial activity on the sidewalk shall cease or the City Administrator shall be and is hereby authorized by the permittee to remove the same at the expense of the permittee.

(ii) Permit fees shall be paid on or before October 1 of each year and shall cover the time period from October 1 through September 30 of the following calendar year. No permit shall be issued for any portion of a year. Except as provided in this Section, no refund of the fees shall be granted.

(jj) Late payments for permit renewal fees shall accrue at the rate of ten percent (10%) per annum. If the permit renewal fee is not paid within sixty (60) days after it is due, the permit shall terminate automatically. Any continued operation under the previous permit or otherwise by the business or commercial operator after termination shall be construed as operating without a permit, and the City Administrator shall have the right to order the removal of any tables, chairs and any other objects used in connection with the commercial activity, after forty-eight (48) hours' notice and all permitted commercial activities shall cease or be removed by the City at the expense of the permittee. Such notice may be given by hand, or by posting such notice on the door of the business.

Section 8. Liability, Indemnity and Insurance.

(1) The permittee agrees to indemnify, defend, save, and hold harmless the City, its officers and employees of, from and against, 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 permitted premises or adjacent thereto or invitees of the permittee, and shall sign a document agreeing to and evidencing such.

(2) The permittee agrees to meet and maintain for the entire permit period, at its own expense, the following requirements:

(a) Commercial general liability insurance in the amount of \$1,000,000.00, per occurrence, for bodily injury and property damage including any activities or items in or connected with the permitted area to cover any liability claimed or asserted or determined against the City of Apalachicola therefore. The City must be named as an additional insured on this policy and a certificate of insurance containing an endorsement must be issued as part of the policy.

- (b) For commercial operations permitted which serve alcoholic beverages, alcoholic-license liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage including any activities or items in or connected with the permitted area to cover any liability claimed or asserted or determined against the City of Apalachicola therefore, the City must be named as an additional insured on this policy, and a certificate of insurance containing an endorsement must be issued as part of the policy.
- (c) Workers' compensation and employers' liability as required by the state.
- (d) 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.
- (e) The city must receive thirty (30) calendar days' written notice prior to any cancellation, non-renewal or material change in the coverage provided.
- (f) The permittee must provide and have approved by the City an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations. Failure to comply with these requirements shall cause a suspension or revocation of the permit.

Section 9. Supplemental Enforcement.

(1) This Ordinance may also be enforced at the discretion of the City by notice and citation issued in accordance with the City of Apalachicola. "Supplemental Code/Ordinance Enforcement." Ordinance No. 2017-02 as a civil citation and by following the requirements of that supplemental procedure including hearing as necessary before the County Court. Fines when applied pursuant to that section shall be as provided therein (Ordinance No. 2017-02) as a civil infraction. Furthermore, continued violation shall be enjoined by the appropriate Court in Franklin County, Florida.

Section 10. Dogs.

(1) It is hereby authorized for persons seated at the table while outside dining on the sidewalk area pursuant to a valid permit granted by this Ordinance to have and keep their dog(s) by them at the table on a leash in a manner that does not disrupt or interfere with persons on sidewalk, street, right of way or other public place.

Section 11. Signs.

(1) All advertisements or signs in or on a public place within the City of Apalachicola in or on a public place within the City for a business or operation or commercial activity within the City shall only be placed in an area (and in a manner) that is permitted by Florida Law and City of Apalachicola laws, rules and regulations for that business or operation or commercial activities.

Section 12. Severability.

(1) If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provision of this Ordinance and severable.

Section 13. Conflict.

(1) All Ordinances or parts of Ordinances previously adopted and in conflict with this Ordinance are hereby repealed.

Section 14. Scrivener's Error.

(1) The City Attorney may correct scrivener's errors found in this Ordinance by filing a corrected copy of this Ordinance with the City Clerk.

Section 15. The City of Apalachicola by Resolution is authorized to set and change the permit application fee for permits applied for in this Ordinance No. 2017-03 of the City of Apalachicola which resolution(s) are incorporated by reference herein.

This Ordinance shall take effect immediately upon passage and is in effect as provided in and pursuant to Section 380.0555 Florida Statutes.

This Ordinance was read and adopted on NOVEMBER 7TH, 2017. Motion to adopt Ordinance made by Commissioner ELLIOTT, second by Commissioner GROVE.

Voting Aye: ELLIOTT, GROVE AND MAYOR JOHNSON

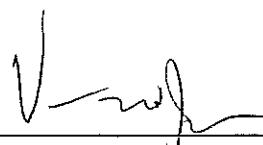
Voting Nay: BARTLEY

**FOR THE CITY COMMISSION OF THE
CITY OF APALACHICOLA**

ATTEST:



Lee Mathes, City Administrator



Van W. Johnson, Sr., Mayor