

INTRODUCED BY:

VICE MAYOR JONES



ORDINANCE NO. 2020-10

A BILL TO BE ENTITLED

AN ORDINANCE AMENDING SECTION 27-479 REGARDING SIDEWALK CONSTRUCTION AND USE REQUIREMENTS; AMENDING REQUIREMENTS REGARDING OUTDOOR SEATING IN RIGHTS-OF-WAY; PROVIDING FOR PAYMENT IN LIEU; PROVIDING APPEAL PROCEDURE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 27-479 of the Code of Ordinances of the City of Neptune Beach, the City regulates the construction and use of City sidewalks and rights-of-way; and

WHEREAS, in the course of conducting its operations, the City has determined that certain modifications are required to such provisions to regulate and finance the installation, maintenance, and use of sidewalks through the City; and

WHEREAS, the City desires to clarify and supplement such provisions; and

WHEREAS, the City Council for the City of Neptune Beach, Florida finds and declares that this ordinance is in the best interest of the public health, safety and welfare of the citizens and residents of the City, that it advances a significant and important governmental interest, and that it furthers the City's performance of municipal functions and rendering of municipal services.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA, THAT:

Section 1. Amending Section 27-479 of the City of Neptune Beach Code of Ordinances. Section 27-479 of the City of Neptune Beach Code of Ordinances is hereby amended to read as follows:

(a) No person shall lay any sidewalk or foot paving on the public rights-of-way of the city without a permit. Sidewalks laid in public rights-of-way shall be a minimum of five (5) feet wide and shall be laid with a slope of one-fourth inch per foot toward the street. Sidewalks, when constructed in front of any high traffic area or driveway apron, shall be at least six (6) inches deep. The Florida Design Manual is the basis for the design and construction for new sidewalks. Sidewalks are required to be maintained in good condition as determined by the Public Works Director, or designee. Any damage as a result of construction, age, neglect, or substandard design shall require payment to the City's Sidewalk Construction Fund or must be repaired or replaced by the property owner.

(b) Sidewalks shall be provided on one or both sides of residential streets as provided in sections (e)-(g) below.

(c) Access for physically handicapped persons. Sidewalks shall be handicapped accessible and a minimum width of five (5) feet.

(d) Right-of-way/sidewalk lease restriction. Outside seating for restaurants, coffee shops and sidewalk cafes 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 and all sales shall end at 1:30 a.m.
- (10) The hours of operation shall be limited to the open of business to 2:00 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 nonsmoking 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 subsection (14) above, 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. Any lease for the use of the city's right-of-way shall include a provision authorizing the right of city to terminate such lease in accordance with this section. In the event the lease fails to include such a provision, the operation of outdoor dining in accordance with such an outdoor dining permit shall be deemed to grant consent of the applicant to the right of the city to terminate any lease in accordance with this section without the requirement for further amendment to such lease. 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.

(e) *Sidewalks Required.* Except as provided otherwise herein, sidewalks shall be required on one or both sides of all streets in accordance with the City of Neptune Beach Sidewalk Plan adopted from time to time by the City Manager or their designee, subject to the following:

- (1) *Modification of Sidewalk Location.* The Public Works Director, or designee, shall be authorized to approve or require modifications in sidewalk locations to accommodate unique design characteristics or to protect existing trees or when there is a conflict between the required sidewalk and the provisions of this Code.

(f) *Payment in Lieu of Construction.*

- (1) *When Not Physically Practical.* Upon request of a building permit applicant, the Public Works Director, or designee, shall be authorized to determine that construction of sidewalks is not physically practical. Examples of factors that may make sidewalk construction not physically practical include but are not limited to the following:

- A. Existing physical impediments;
- B. Substantial grade changes;
- C. Trees;
- D. Impending road/right-of-way construction;
- E. Impacts on pedestrian network; and/or
- F. A determination made by the Public Works Director, or designee, that sidewalk construction is not physically practical.

- (2) *Sidewalk Construction Fund.* If the Public Works Director, or designee, determines that sidewalk construction is not physically practical, the permit applicant shall not be required to construct sidewalks. Instead, the permit applicant shall make a payment into the Sidewalk Construction Fund to be established by the City prior to issuance of any permit for development of the site. Such payment shall be the equivalent of the per linear foot cost to the City for installing the sidewalk, based upon the usual cost to the City to install sidewalk at such time, using a 6" minimum thickness of concrete for the driveway and a 4" minimum thickness of concrete for the remainder of the parcel frontage. The City shall expend proceeds from the Sidewalk Construction Fund for sidewalk construction only.

(g) *Appeals.*

- (1) Any person desiring to appeal a determination issued by the Public Works Director, or designee, is hereinafter referred to as "Appellant." In order to secure administrative review under this subsection, Appellant must file a written Notice of Appeal with the City of Neptune Beach City Manager within ten calendar (10) days of the decision sought to be appealed. A required processing fee, as established from time-to-time by the City Manager, may be required with the Notice of Appeal in order to defray actual administrative costs associated with processing the appeal.
- (2) All Notices of Appeal shall include a full explanation of the reasons for the appeal, specifying the grounds therefore, and containing any documentation which the applicant desires to be considered.
- (3) Within thirty (30) days following the receipt of the Notice of Appeal, the City Manager will review the submitted documents and any other relevant material. The thirty (30) day review period may be extended if additional information is needed from the Appellant in order to render a decision. Upon completion of the administrative review, the City Manager will provide a written response to the Appellant.
- (4) Appellant may appeal the determination of the City Manager by filing a written Notice of Appeal to City Council. Said filing shall be made with the City Clerk for the City within fifteen (15) days following receipt of the City Manager's determination. All Notices of Appeal to City Council shall include a full explanation of the reasons for the appeal, specifying the grounds therefore, and containing any documentation which the applicant desires to be considered. The appeal shall contain the name and address of the person(s) filing the appeal and shall state their capacity to act as a representative or agent if they are not the owner of the property.
- (5) The City Clerk is responsible for scheduling the appeal before the City Council and will provide at least ten (10) days' notice to the Appellant of the date of the designated Council meeting. Postponements of the City Council appeal date may be granted by the City Clerk if they are requested in writing at least ten (10) days in advance of the scheduled City Council meeting date. When an Appeal is scheduled before the City Council, the Appellant and the City staff shall each be given five (5) minutes for presentation at the meeting.

Section 2. Severability. If any section, sentence, clause, phrase, or word of this Ordinance is, for any reason, held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this Ordinance, and it shall be construed to be the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein.

Section 3. Effective Date. This Ordinance shall become immediately upon passage by the City Council.

VOTE RESULTS OF FIRST READING:

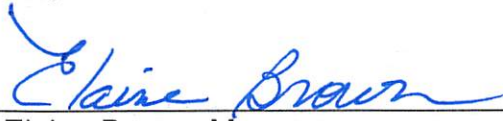
Mayor Elaine Brown	YES
Vice Mayor Fred Jones	YES
Councilor Kerry Chin	YES
Councilor Josh Messinger	YES
Councilor Scott Wiley	NO

Passed on First Reading this 8th day of September, 2020.


VOTE RESULTS OF SECOND AND FINAL READING:

Mayor Elaine Brown	YES
Vice Mayor Fred Jones	YES
Councilor Kerry Chin	YES
Councilor Josh Messinger	ABSENT
Councilor Scott Wiley	YES

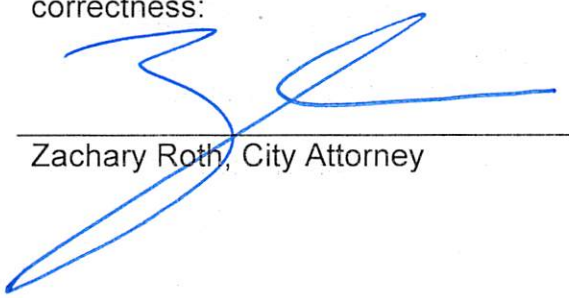
Passed on Second and Final Reading this 5th day of October, 2020.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, CMC, City Clerk

Approved as to form and
correctness:


Zachary Roth, City Attorney

