

**ORDINANCE NO. 20140828-074**

**AN ORDINANCE AMENDING CHAPTER 14-4 OF THE CITY CODE RELATING TO THE REGULATION AND PERMITTING OF SIDEWALK CAFÉS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** City Code Section 14-4-1 (*Definitions*) is amended to read as follows:

**§ 14-4-1 DEFINITIONS.**

In this chapter:

- (1) DEPARTMENT means the Public Works Department.
- (2) DIRECTOR means the director of the Public Works Department.
- (3) ~~[PENINSULA means the portions of the sidewalk along the 400-1100 blocks of Congress Avenue (North) that are elevated projections between the angle parking spaces.]~~
- [(4)] PUBLIC STREET has the meaning prescribed to "street" in Section 1-1-2 (*General Definitions*), excluding a designated state or federal highway or a designated county road.
- (4) [(5)] SIDEWALK CAFÉ [~~CAFE~~] means an outdoor dining area that:
  - (a) is associated with a property being used for a restaurant use or a food sales use as defined in Section 25-2-4 (*Commercial Uses Described*);
  - (b) is located on a sidewalk adjacent to and within the span of the façade of the property being used for a restaurant use or food sales use; and
  - (c) contains seating, [~~removable~~] tables, chairs, planters or other appurtenances.

**PART 2.** City Code Section 14-4-3 (*Sidewalk Café License Authorized*) is repealed and replaced with a new Section 14-4-3 to read as follows:

**§ 14-4-3 PERMIT REQUIRED.**

- (A) A person may not operate a sidewalk café without a permit issued by the director.

- (B) The director shall issue permits in accordance with this chapter. The director may not issue or renew a permit until the applicant has provided proof of insurance as required by Section 14-4-13 (*Liability and Insurance*) and complied with the provisions of this chapter.
- (C) A permit issued under this chapter is a grant of a privilege and is not a property right.

**PART 3.** City Code Chapter 14-4 (*Sidewalk Cafes*) is amended to add a new Section 14-4-4 to read as follows:

**§ 14-4-4 SIDEWALK CAFÉ PERMIT AUTHORIZED.**

- A. The director may issue a permit establishing and maintaining a sidewalk café on a part of a street, in compliance with Chapter 316 (*Use of Municipal Streets and Sidewalks for Public Conveniences and Amenities or for Private Uses*) of the Texas Transportation Code and this chapter.
- B. The director shall establish permitting criteria and requirements under this chapter, including:
  - (1) those necessary to protect public use of a street or a public utility company;
  - (2) required clearances between the sidewalk café and utility lines as prescribed by the Building Code;
  - (3) a requirement that the permit holder provide the City with a cash or surety bond sufficient to cover the cost to the City or a public utility to remove the sidewalk café, if necessary;
  - (4) a requirement that the permit holder pay the cost to relocate a City or public utility facility or improvement in a public street in connection with the installation of the sidewalk café;
  - (5) authorization for the City or a public utility to remove, without liability, part of the sidewalk café if necessary to obtain access to a City or public utility facility or improvement; and
  - (6) a requirement that the permit holder post a sketch of the permitted area in a public place near the permit holder's and beverage certificate issued by the Texas Alcoholic Beverage Commission.
- (C) The director shall file a copy of the criteria and requirements adopted under this section with the city clerk.

**PART 4.** City Code Section 14-4-4 (*Restrictions on Features of Sidewalk Café*) is amended to read as follows:

**§ 14-4-5 [14-4-4] RESTRICTIONS ON FEATURES OF SIDEWALK CAFE.**

- (A) A sidewalk café operated under this chapter:
  - (1) must have boundaries that are freestanding [may have no more than ten free standing tables, each with a surface area of five feet or less;]  
or
  - ~~(2) may not be enclosed by fixed walls or other permanent structure; and~~  
affixed by a single bolt per corner; and
  - (2) [3] must be open to the air, except that a canopy conforming to requirements established by the department may be constructed over the sidewalk café[-] ; and
  - (3) must maintain at least six feet of unobstructed area on the sidewalk for pedestrian passage; and
  - (4) must not enclose above-ground City public utilities infrastructure or transportation infrastructure without authorization of the director.
- (B) A sidewalk café affixed by more than a single bolt per corner [operated with eleven or more free standing tables] must comply with Section 14-11-1 (*Application Required*), Section 14-11-21 (*Additional Application Requirements for Release of Public Easement*), and Article 1, Division 3 (*License for Private Use of Public Property*) of Chapter 14-11 (*Use of Right-of-Way*) instead of this chapter.
- (C) ~~[A sidewalk café associated with a restaurant on Congress Avenue (North) on a block that includes a peninsula may use one peninsula, if:~~
  - ~~(1) the peninsula is located within the span of the restaurant façade, or the peninsula's leading edge is no more than 20 feet from the closest edge of the restaurant façade; and~~
  - ~~(2) the operation of the sidewalk café on a peninsula meets the standards in Subsection (B).]~~
- ~~(D)~~ Any portion of a sidewalk café in which alcoholic beverages are served must be secured by ~~[removable]~~ balustrades, planters, or other appurtenances.

**PART 5.** City Code Section 14-4-5 (*Authorized Applicant*) is amended to read as follows:

**§ ~~14-4-6~~ [14-4-5] AUTHORIZED APPLICANT.**

The owner or tenant ~~[of the fee title to real]~~ of a property ~~[under a public street or a lessor authorized in writing by the owner may apply]~~ being used for a [license to establishment and operate a] restaurant use or food sales use adjacent to where the sidewalk café[-] is to be located may apply for a permit to operate a sidewalk café.

**PART 6.** City Code Section 14-4-6 (*Application Required*) is amended to read as follows:

**§ ~~14-4-7~~ [14-4-6] APPLICATION REQUIRED.**

- (A) An applicant must file an application with the director on a form approved by the director.
- (B) An application under this chapter must include:
  - (1) an application fee as established by separate ordinance;
  - (2) [proof] if the applicant is not the fee title owner of the real property adjacent to the public street where the sidewalk café is to be located, written authorization of the [of] fee title [ownership to] owner of the real property adjacent to [under] the public street [and, if applicable, lessor authorization;] where the sidewalk café is to be located;
  - (3) a schematic design of the area to be permitted or, at the director's request, a certified [preamble and sketch] design completed by [a surveyor] an architect or engineer;
  - (4) information on the type of sidewalk café to be established, including:
    - (a) the number and placement of tables, chairs, and other furnishings; and
    - (b) the name and address of the adjacent business ~~[restaurant]~~ that will serve the sidewalk café;
  - (5) proof of general commercial liability insurance coverage in the amount established by the department to protect the City's interest; and
  - (6) other information required by the department.

**PART 7.** City Code Section 14-4-7 (*Review, Findings, and Determination*) is amended to read as follows:

**§ 14-4-8 ~~[14-4-7]~~ REVIEW, FINDINGS, AND DETERMINATION.**

- (A) The director shall deliver a copy of each application the director receives for comment to:
  - (1) affected City departments, including the City's traffic engineer;
  - (2) the property owners and tenants whose property or businesses are immediately adjacent to the proposed permit ~~[license]~~ area; and
  - (3) affected utility franchise holders.
- (B) Not later than the 30th day after the director receives an application, the director shall make findings of fact as required by Chapter 316 (*Use of Municipal Streets and Sidewalks for Public Conveniences and Amenities or for Private Uses*) of the Texas Transportation Code and Subsection (C) based on a review of the application and any comments received under Subsection (A).
- (C) The director shall notify an applicant that an application is approved if the director finds that the proposed sidewalk café:
  - (1) is not located on, extend onto, or intrude on a portion of a roadway or a sidewalk necessary for pedestrian use;
  - (2) is planned to minimize potential harm or injury to the public or interference to public use of a public street;
  - (3) does not create a hazardous condition or obstruction of vehicular or pedestrian traffic on a public street; and
  - (4) meets the requirements of this chapter and the criteria and requirements established by the department.
- (D) The findings made by the director under this chapter are exclusively for the use and benefit of the City to determine if the department's permit ~~[license]~~ criteria have been met. The applicant may not rely on the director's findings as a certification or guarantee by the City that the findings are correct, complete, or accurate.
- (E) If the director fails to make a determination on an application on or before the 30th day after receipt of the application, the application is denied.

**PART 8.** City Code Section 14-4-8 (*Denial of Application; Reconsideration*) is amended to read as follows:

**§ 14-4-9 [14-4-8] DENIAL OF APPLICATION; RECONSIDERATION.**

- (A) The director shall notify the applicant in writing if the director determines that the proposed sidewalk café does not meet the criteria established by this chapter or the department. The notice shall identify the criteria which were not met.
- (B) Before the 30th day after the date the notice under Subsection (A) is mailed or delivered or the application is denied under Section 14-4-8(E) [14-4-7(E)] (*Review, Findings, and Determination*), the applicant may submit to the director for reconsideration one revised plan for a sidewalk café on the same proposed street. The payment of a new application fee is not required.
- (C) A revised plan that is submitted for reconsideration after the deadline for reconsideration in Subsection (B) must be accompanied by a new application under Section 14-4-7 [14-4-6] (*Application Required*), including the application fee.

**PART 9.** City Code Section 14-4-9 (*License Agreement Execution and Delivery*) is amended to read as follows:

**§ 14-4-10 [14-4-9] PERMIT FEES [LICENSE AGREEMENT EXECUTION AND DELIVERY].**

- (A) A person who operates a sidewalk café shall pay to the director the permit and inspection fees established by separate ordinance. ~~[The director shall prepare and deliver to the applicant a license agreement for a term not to exceed five years on a form approved by the director for an application approved under this chapter. The agreement may include a provision for renewal or extension of the license.]~~
- (B) ~~An applicant must execute and return a license agreement not later than two months after the date the license agreement is delivered to the applicant together with:~~
  - (1) ~~a certificate of insurance demonstrating compliance with the requirement of this chapter;~~
  - (2) ~~the annual fee established by separate ordinance; and~~
  - (3) ~~other information or documentation required by the department.~~
- (C) ~~The city manager may execute a license agreement under this chapter, including a license agreement that an applicant returns after the deadline prescribed by Subsection (B).]~~

**PART 10.** City Code Chapter 14-4 (*Sidewalk Cafés*) is amended to add a new Section 14-4-11 to read:

**§ 14-4-11 PERMIT TERM.**

A permit issued under this division shall be valid for up to five years and shall expire on the anniversary of the date that it was issued.

**PART 11.** City Code Section 14-4-10 (*Assignment or Termination of License*) is amended to read as follows:

**§ 14-4-12 [~~14-4-10~~] ASSIGNMENT OR TERMINATION OF PERMIT [~~LICENSE~~].**

- (A) A permit [~~license agreement~~] is the personal obligation of the permit holder [~~licensee~~] and is not assignable [~~without the City's written consent~~].
- (B) The City may terminate a [~~license agreement~~] permit at any time for any reason [~~on 30 days written notice from the City, or due to a breach of its terms by the licensee~~].

**PART 12.** City Code Chapter 14-4 (*Sidewalk Cafés*) is amended to add a new Section 14-4-13 to read:

**§ 14-4-13 LIABILITY AND INSURANCE.**

- (A) A sidewalk café permit holder must maintain general liability insurance coverage as required by the director continuously during the term of the permit through insurance carriers that are authorized or eligible to do business in the state of Texas.
- (B) A sidewalk café permit holder must execute an agreement with the City stating, among other things, that the permit holder (i) will be responsible for the maintenance of the permit area, (ii) will defend, indemnify, and hold the City harmless against all damages, costs, and expenses resulting from any activity carried on under the terms of the permit, and (iii) will comply with all local, state and federal laws for the establishment and operation of the sidewalk café, including compliance with the Americans with Disabilities Act.

**PART 13.** City Code Section 14-4-11 (*Furnishing Rearrangement*) is amended to read as follows:

**§ 14-4-14 ~~[14-4-11]~~ FURNISHING REARRANGEMENT.**

A permit holder [~~licensee~~] may rearrange or reconfigure approved tables, chairs, and other furnishings in the permit [~~licensed~~] area without obtaining [~~an amendment to the license agreement~~] director approval, if:

- (1) the permit holder [~~licensee~~] promptly provides the department with a sketch of the new placement; and
- (2) the furnishings or their new placement do not:
  - (a) extend outside of the approved [~~licensed~~] area;
  - (b) constitute a danger to the health or safety of a patron or the public; and
  - (c) violate the terms of the permit [~~license agreement~~].

**PART 14.** City Code Section 14-4-12 (*Offenses and Penalty*) is amended to read as follows:

**§ 14-4-15 ~~[14-4-12]~~ OFFENSES AND PENALTY.**

- (A) A person commits an offense if the person establishes, operates, or maintains a sidewalk café without a permit [~~license~~] under this chapter.
- (B) A person may not sell, barter, trade, store, or take orders for merchandise at a sidewalk café in violation of Chapter 14-9 (Traffic or Sidewalk Obstructions), except food or drink to be consumed in the sidewalk café.
- (C) An offense under this chapter is a Class C misdemeanor punishable as prescribed by Section 1-1-99 (Offenses; General Penalties).



**PASSED AND APPROVED**

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**APPROVED:**

**ATTEST**

**Jannette S. Goodall**  
City Clerk