

1 (B) The director shall issue permits in accordance with this chapter. The
2 director may not issue or renew a permit until the applicant has provided
3 proof of insurance as required by Section 14-4-13 (*Liability and Insurance*)
4 and complied with the provisions of this chapter.

5 (C) A permit issued under this chapter is a grant of a privilege and is not a
6 property right.

7 **PART 3.** City Code Chapter 14-4 (*Sidewalk Cafes*) is amended to add a new Section 14-
8 4-4 to read as follows:

9 **§ 14-4-4 SIDEWALK CAFÉ PERMIT AUTHORIZED.**

10 A. The director may issue a permit establishing and maintaining a sidewalk café
11 on a part of a street, in compliance with Chapter 316 (*Use of Municipal*
12 *Streets and Sidewalks for Public Conveniences and Amenities or for Private*
13 *Uses*) of the Texas Transportation Code and this chapter.

14 B. The director shall establish permitting criteria and requirements under this
15 chapter, including:

- 16 (1) those necessary to protect public use of a street or a public utility
17 company;
- 18 (2) required clearances between the sidewalk café and utility lines as
19 prescribed by the Building Code;
- 20 (3) a requirement that the permit holder provide the City with a cash or
21 surety bond sufficient to cover the cost to the City or a public utility to
22 remove the sidewalk café, if necessary;
- 23 (4) a requirement that the permit holder pay the cost to relocate a City or
24 public utility facility or improvement in a public street in connection
25 with the installation of the sidewalk café;
- 26 (5) authorization for the City or a public utility to remove, without
27 liability, part of the sidewalk café if necessary to obtain access to a
28 City or public utility facility or improvement; and
- 29 (6) a requirement that the permit holder post a sketch of the permitted
30 area in a public place near the permit holder's and beverage certificate
31 issued by the Texas Alcoholic Beverage Commission.

32 (C) The director shall file a copy of the criteria and requirements adopted under
33 this section with the city clerk.

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

3 **§ 14-4-5 [14-4-4] RESTRICTIONS ON FEATURES OF SIDEWALK CAFE.**

4 (A) A sidewalk café operated under this chapter:

5 (1) must have boundaries that are freestanding [may have no more than
6 ten free standing tables, each with a surface area of five feet or less;]
7 or

8 [(2) may not be enclosed by fixed walls or other permanent structure; and]
9 affixed by a single bolt per corner; and

10 (2) [(3)] must be open to the air, except that a canopy conforming to
11 requirements established by the department may be constructed over
12 the sidewalk café[-] ; and

13 (3) must maintain at least six feet of unobstructed area on the sidewalk for
14 pedestrian passage; and

15 (4) must not enclose above-ground City public utilities infrastructure or
16 transportation infrastructure without authorization of the director.

17 (B) A sidewalk café affixed by more than a single bolt per corner [operated with
18 eleven or more free standing tables] must comply with Section 14-11-1
19 (Application Required), Section 14-11-21 (Additional Application
20 Requirements for Release of Public Easement), and Article 1, Division 3
21 (License for Private Use of Public Property) of Chapter 14-11 (Use of Right-
22 of-Way) instead of this chapter.

23 (C) [A sidewalk café associated with a restaurant on Congress Avenue (North)
24 on a block that includes a peninsula may use one peninsula, if:

25 (1) the peninsula is located within the span of the restaurant façade, or the
26 peninsula's leading edge is no more than 20 feet from the closest edge
27 of the restaurant façade; and

28 (2) the operation of the sidewalk café on a peninsula meets the standards
29 in Subsection (B).]

30 [(D)] Any portion of a sidewalk café in which alcoholic beverages are served must
31 be secured by [~~removable~~] balustrades, planters, or other appurtenances.

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

1 **§ 14-4-6 [14-4-5] AUTHORIZED APPLICANT.**

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

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

8 **§ 14-4-7 [14-4-6] APPLICATION REQUIRED.**

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

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

32 **§ 14-4-8 [14-4-7] REVIEW, FINDINGS, AND DETERMINATION.**

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

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

32 **§ 14-4-9 [~~14-4-8~~] DENIAL OF APPLICATION; RECONSIDERATION.**

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

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

16 **§ 14-4-10 [~~14-4-9~~] PERMIT FEES [~~LICENSE AGREEMENT EXECUTION AND~~**
17 **~~DELIVERY~~].**

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

1 **PART 10.** City Code Chapter 14-4 (*Sidewalk Cafés*) is amended to add a new Section
2 14-4-11 to read:

3 **§ 14-4-11 PERMIT TERM.**

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

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

8 **§ 14-4-12 [~~14-4-10~~] ASSIGNMENT OR TERMINATION OF PERMIT**
9 **[LICENSE].**

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

15 **PART 12.** City Code Chapter 14-4 (*Sidewalk Cafés*) is amended to add a new Section
16 14-4-13 to read:

17 **§ 14-4-13 LIABILITY AND INSURANCE.**

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

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

32 **§ 14-4-14 [~~14-4-11~~] FURNISHING REARRANGEMENT.**

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

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

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

13 **§ 14-4-15 [~~14-4-12~~] OFFENSES AND PENALTY.**

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

21 **PART 15.** This ordinance takes effect on _____, 2014.

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23 **PASSED AND APPROVED**

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_____, 2014

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Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk

Draft