ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE TITLE 4 (*BUSINESS REGULATION AND PERMIT REQUIREMENTS*) TO ADD CITY CODE CHAPTER 4-21 (*PRIVATE PARKING PATIO*) RELATING TO A PRIVATE PARKING PATIO PROGRAM; CREATING AN OFFENSE; ESTABLISHING A PENALTY; AMENDING CITY CODE CHAPTER 14-4 (*SIDEWALK CAFES*) RELATING TO SIDEWALK CAFES AND SIDEWALK STOREFRONTS; AND AMENDING THE FISCAL YEAR 2021-2022 AUSTIN TRANSPORTATION DEPARTMENT, DEVELOPMENT SERVICES DEPARTMENT AND AUSTIN FIRE DEPARTMENT FEE SCHEDULES (ORDINANCE NO. 20210811-002) TO AMEND THE SIDEWALK CAFÉ FEE NAME TO ADD SIDEWALK STOREFRONT AND ESTABLISH PRIVATE PARKING PATIO APPLICATION, REVIEW, AND INSPECTION FEES.

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

PART 1. Title 4 (*Business Regulation and Permit Requirements*) of the City Code is amended to add a new Chapter 4-21 (*Private Parking Patio*) to read:

CHAPTER 4-21. PRIVATE PARKING PATIO.

ARTICLE 1. GENERAL PROVISIONS.

§ 4-21-1 DEFINITIONS.

In this chapter:

(1) APPEAL TEAM means the inter-departmental team described in Section 4-20-1 (*Definitions*).

(2) COCKTAIL LOUNGE means a business that sells alcoholic beverages for consumption on the premises, including taverns, bars and similar uses other than a restaurant.

(3) DEPARTMENT means the Development Services Department.

(4) DIRECTOR means the director of the Development Services Department.

(5) PRIVATE PARKING PATIO means an outdoor dining area or space used to sell provide goods and services that occurs on a private parking lot that is adjacent to:

(a) retail store,

(b) restaurant,

(c) cocktail lounge; or

(d) a group of retail stores, restaurants, or cocktail lounges that share a private parking lot.

(6) RESTAURANT means a business that prepares and sells food or beverages and may include the sale and on-premise consumption of alcoholic beverages.

(7) RETAIL STORE means a business that sells or rents commonly used goods and merchandise for personal or household use.

(8) SOUND EQUIPMENT means a loud speaker, microphone, public address system, amplification system, turntable, or other similar digital or analog device that amplifies sound.

§4-21-2 CONFLICTS WITH THIS CHAPTER AND CHANGE OF USE AND SITE PLANS.

(A) To the extent a conflict exists, this chapter controls.

(B) The operation of a private parking patio permitted under this chapter is not considered a change of use or a change in development that would require a permit under Section 25-5-1 (*Site Plan Required*) or Section 25-5-2 (*Site Plan Exemption*).

ARTICLE 2. PRIVATE PARKING PATIO PERMIT.

§ 4-21-21 PERMIT REQUIRED.

(A) A person may not operate a private parking patio without a permit issued by the department.

(B) The director is authorized to issue permits in accordance with this chapter.

§ 4-21-22 PRIVATE PARKING PATIO PERMIT AUTHORIZED.

(A) The director is authorized to establish permitting criteria and requirements under this chapter, including:

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(1) required clearances between the private parking patio as prescribed by the Building Code;

(2) hours of operation; and

(3) if applicable, 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.

(B) The director is authorized adopt rules to administer and enforce this chapter.

§ 4-21-23 AUTHORIZED APPLICANT.

The owner or tenant of a property being used as a cocktail lounge, retail store, or restaurant, adjacent to a proposed private parking patio location may apply for a permit to operate a private parking patio.

§ 4-21-24 APPLICATION REQUIRED.

(A) An applicant must file an application on a form approved by the director.

(B) An application under this chapter must include:

(1) application, inspection, and temporary occupancy load adjustment fees set by separate ordinance;

(2) if the applicant is not the fee title owner of the real property that will include the proposed private parking patio, written authorization of the fee title owner of the real property that will include the proposed private parking patio;

(3) a schematic design of the area to be permitted;

(4) information on the type of private parking patio to be established, including:

(a) the number and placement of tables, chairs, and other furnishings; and

(b) hours of operation of the private parking patio; and

(c) the name and address of the adjacent business that will serve the private parking patio;

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(5) a sound impact plan that contains all the elements described in Section 9-2-41(*Sound Impact Plan*); and

(6) other information required by the department.

§ 4-21-25 APPROVAL OR DENIAL OF PERMIT; RECONSIDERATION.

(A) Except as provided in Subsection (B), the director is authorized to issue a private parking patio to a person who submits an application that meets the requirements of this chapter.

(B) The director may not issue a private patio permit if the director determines that:

(1) the proposed private parking patio does not meet the requirements of this chapter; or

(2) the director revoked a private parking patio permit for the same location within the prior 12 months.

(C) If the director denies an application, the director shall notify the applicant in writing. The notice must identify the reason why the application failed to meet the requirements of this chapter.

(D) Within 30 days from the date the notice under Subsection (C) is mailed or delivered, the applicant may submit one revised plan for the private parking patio to the director for reconsideration. The payment of a new application fee is not required.

(E) The applicant must submit a new application under Section 4-21-24 (*Application Required*) if the applicant failed to submit the revised site plan within the time frame established in (D).

§ 4-21-26 PERMIT EXPIRATION; RENEWAL.

(A) A permit issued under this chapter expires one year after the date the permit is issued.

(B) To renew a private parking patio permit, the applicant must submit an application that complies with Section 4-21-24 (*Application Required*) at least five days before the existing permit expires.

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(C) Except as provided in Subsection (D), the director will take final action to approve or deny a permit for renewal no later than five business days after the application is deemed complete.

(D) The director will take final action to approve or deny a permit to renew no later than 10 business days after the application is deemed complete if:

(1) the applicant submits a substantially different application from the active private parking patio permit; or

(2) the applicant submits the renewal application after the private parking patio permit expires.

§ 4-21-27 ASSIGNMENT OF PERMIT.

A permit is the personal obligation of the permit holder and is not assignable.

ARTICLE 3. OPERATION.

§ 4-21-31 RESTRICTIONS ON FEATURES OF A PRIVATE PARKING PATIO.

(A) A private parking patio operated under this chapter shall not:

(1) include permanent structures or tents;

(2) encroach on the sidewalk;

(3) include or impede access to an accessible parking space, as that term is used in Section 25-6-474 (*Parking Facilities for Persons with Disabilities*);

(4) include or impede access to a fire lane; or

(5) enclose above-ground City public utilities infrastructure or transportation infrastructure.

(B) Any portion of a private parking patio in which alcoholic beverages are served must be secured by balustrades, planters, or other appurtenances.

§ 4-21-32 USE OF SOUND EQUIPMENT.

(A) A permit holder is not required to obtain a permit under Chapter 9-2 (*Noise and Amplified Sound*) to use sound equipment at a private parking patio.

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(B) A permit holder may not use sound equipment without an approved sound impact plan.

(C) A permit holder may not use sound equipment:

(1) that causes sound in excess of 70 “A”-weighted decibels; or

(2) after 10:00 pm.

(D) The use of sound equipment must comply with this section and the approved sound impact plan.

(E) If a permit holder fails to comply with an approved sound plan, the director may:

(1) modify the approved sound plan to impose more restrictive conditions on the use of sound equipment; or

(2) revoke the approved sound plan.

(F) Before modifying an approved sound impact plan, the director shall provide a written a notice of intent to modify the approved sound impact plan.

(G) Before revoking an approved sound impact plan, the director shall provide a written notice of revocation to the permit holder. The written notice shall include:

(1) the reason why the sound plan is being revoked; and

(2) the date on which the sound plan is scheduled to be revoked.

(H) If the director revokes an approved sound plan, a permit holder may continue to operate a private parking patio but may not use sound equipment.

§ 4-21-33 ADDITIONAL REGULATIONS.

A permit holder shall:

(1) allow patrons to use the bathroom facilities located within the retail store, restaurant, cocktail lounge; or

(2) provide accessible portable toilets based on the estimate number of patrons that will be utilizing the private parking patio.

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ARTICLE 4. ENFORCEMENT.

§ 4-21-41 OFFENSES AND PENALTY.

(A) A person commits an offense if the person establishes, operates, or maintains a private parking patio without a permit under this chapter.

(B) An offense under this chapter is a Class C misdemeanor punishable as prescribed by Section 1-1-99 (*Offenses; General Penalties*).

§ 4-21-42 REVOCATION OF PRIVATE PARKING PATIO PERMIT.

(A) The director may revoke a permit to operate a private public patio if the director determines:

(1) the permit was issued in error;

(2) the permit holder has not complied with the requirements of this chapter; or

(3) that the continued operation:

(a) creates a traffic hazard or congestion; or

(b) poses a public health or safety risk.

(B) The director must give written notice to the permit holder of the director's intent to revoke the permit a permit issued under this chapter before revoking the permit. The notice must specify a reasonable time for compliance with this chapter. The director may not revoke a permit before the time for the compliance expires.

(C) If the director revokes a permit under Subsection (A), the permit holder may appeal the revocation to the appeal team.

(D) An applicant must deliver an appeal to the director no later than 10 business days after the permit holder is notified that the permit was revoked.

(E) The appeal team must act on the appeal within 10 business days and may uphold or reverse the denial. The appeal team's decision is final.

PART 2. Title 14 (*Use of Streets and Public Property*) of the City Code is amended to rename Chapter 14-4 (*Sidewalk Cafes*) to read as follows:

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CHAPTER 14-4. SIDEWALK CAFES AND SIDEWALK STOREFRONTS.

PART 3. City Code Section 14-4-1 (*Definitions*) is amended to add two new definitions for "Retail Store", "Sidewalk Storefront"; to amend the existing definition for "Sidewalk Café" to read as follows; and to renumber the remaining definitions accordingly:

(4) RETAIL STORE means a business that sells or rents commonly used goods and merchandise for personal or household use.

(5[4]) SIDEWALK CAFÉ means an outdoor dining area that:

(a) is associated with a property that includes [~~being used for~~] a cocktail lounge, restaurant [~~use~~], or a food sales use as defined in Section 25-2-4 (*Commercial Uses Described*);

(b) is located on a sidewalk or parking spot adjacent to and within the span of the façade of the property described in Subsection (a) [~~being used for a restaurant use or food sales use~~]; and

(c) contains seating, tables, chairs, planters or other appurtenances.

(6) SIDEWALK STOREFRONT means an outdoor area that:

(a) is associated with a property being used as a retail store;

(b) is located on a sidewalk or parking spot adjacent to and within the span of the façade of the property being used as a retail store; and

(c) contains appurtenances.

PART 3. Subsection (A) of City Code Section 14-4-3 (*Permit Required*) is amended to read as follows:

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

PART 4. City Code Sections 14-4-4 (*Sidewalk Café Permit Authorized*), 14-4-5 (*Restrictions on Features of Sidewalk Café*), 14-4-6 (*Authorized Applicant*), 14-4-7 (*Application Required*), Section 14-4-9 (*Denial of Application; Reconsideration*), 14-4-10 (*Permit Fees*), City Code 14-4-11 (*Permit Term*); City Code 14-4-12 (*Assignment or Termination of Permit*); City Code 14-4-13 (*Liability and Insurance*); City Code Section 14-4-15 (*Offenses and Penalty*) are amended to read as follows:

§ 14-4-4 [~~SIDEWALK CAFÉ~~] PERMIT AUTHORIZED.

(A) The director may issue a permit establishing and maintaining a sidewalk café or sidewalk storefront [~~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 or sidewalk storefront 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 or sidewalk storefront;

(5) authorization for the City or a public utility to remove, without liability, part of the sidewalk café or sidewalk storefront 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.

§ 14-4-5 RESTRICTIONS ON FEATURES OF SIDEWALK CAFE OR SIDEWALK STOREFRONT.

(A) A sidewalk café or sidewalk storefront operated under this chapter:

(1) must have boundaries that are freestanding and not permanently attached [~~or affixed by a single bolt per corner~~]; and

(2) must be open to the air, except that shade elements that conform [~~a canopy conforming~~] to requirements established by the department [~~may be constructed over the sidewalk cafe~~]; and

(3) except as provided in Subsection (D) 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 that does not [~~affixed by more than a single bolt per corner must~~] comply with Subsection (A)(1) is subject to 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) Any portion of a sidewalk café in which alcoholic beverages are served must be secured by balustrades, planters, or other appurtenances.

(D) The director may require more than six feet of unobstructed area on a sidewalk based on mobility needs.

§ 14-4-6 AUTHORIZED APPLICANT.

(A) The owner or tenant of a property being used for a cocktail lounge, 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.

(B) The owner or tenant of a property being used for a retail use adjacent to where the sidewalk storefront is to be located may apply for a permit to operate a sidewalk storefront.

§ 14-4-7 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) if the applicant is neither the fee title owner nor a tenant of the entire property adjacent to the proposed sidewalk café or sidewalk storefront location, written authorization of the fee title owner of the real property adjacent to the proposed [~~sidewalk café~~] location;

(3) a schematic design of the area to be permitted or, at the director's request, a certified design completed by an architect or engineer;

(4) information on the type of sidewalk café or sidewalk storefront 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 that will serve the sidewalk café [e];

(5) proof of general commercial liability insurance coverage, surety bond, and liquor liability insurance coverage if applicable, in the amount established by the department to protect the City's interest; and

(6) other information required by the department.

§ 14-4-9 DENIAL OF APPLICATION; RECONSIDERATION.

(A) The director shall notify the applicant in writing if the director determines that the proposed sidewalk café or sidewalk storefront 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) (*Review, Findings, and Determination*), the applicant may submit to the director for reconsideration one revised plan for a sidewalk café or sidewalk storefront 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 (*Application Required*), including the application fee.

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§ 14-4-10 PERMIT FEES.

(A) A person who operates a sidewalk café or sidewalk storefront shall pay to the director the permit and inspection fees established by separate ordinance.

§ 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~~].

§ 14-4-12 ASSIGNMENT OR TERMINATION OF PERMIT.

(A) A permit is the personal obligation of the permit holder and is not assignable.

(B) The City may terminate a permit at any time for any reason, including but not limited to, failure of the permit holder to update, the documentation required under Section 14-4-7 (*Application Required*).

§ 14-4-13 LIABILITY AND INSURANCE.

(A) A sidewalk café or sidewalk storefront permit holder must maintain general liability insurance coverage, liquor liability insurance coverage if alcohol is served, and a surety bond [~~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 or sidewalk storefront 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 or sidewalk storefront, including compliance with the Americans with Disabilities Act.

§ 14-4-15 OFFENSES AND PENALTY.

(A) A person commits an offense if the person establishes, operates, or maintains a sidewalk café or sidewalk storefront without a permit under this chapter.

(B) A person may not sell, barter, trade, store, or take orders for merchandise at a sidewalk café or sidewalk storefront in violation of Chapter 14-9 (*Traffic*

or Sidewalk Obstructions), except food or drink to be consumed in the sidewalk café or merchandise purchased from the sidewalk storefront.

(C) An offense under this chapter is a Class C misdemeanor punishable as prescribed by Section 1-1-99 (*Offenses; General Penalties*).

PART 5. Subsection (C) of City Code Section 14-4-8 (*Review, Findings and Determination*) is amended to read as follows:

(C) The director shall notify an applicant that an application is approved if the director finds that the proposed sidewalk café or sidewalk storefront:

(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.

PART 6. Title 14 (*Use of Streets and Public Property*) is amended to replace all references to "Chapter 14-4 (*Sidewalk Cafes*)" with "Chapter 14-4 (*Sidewalk Cafes and Sidewalk Storefront*)".

PART 7. The Fiscal Year 2021-2022 Austin Transportation Department, Development Services Department and Austin Fire Department fee schedules in Exhibit "A" to Ordinance No. 20210811-002 are amended to add new fees related to private parking patios and rename the title of Sidewalk/Street Patio fees:

Austin Transportation Department- Mobility Fund (ATD)

Sidewalk Café/Storefront/Street Patio

Development Services Department (DSD)

Private Parking Patio Permit (DSD) $144

Fire Department (AFD)

Private Parking Patio Review and Inspection (AFD) $255

Private Parking Patio Temporary Occupancy Load Adjustment (AFD) $204

Private Parking Patio Annual Renewal Fee (AFD) $255

PART 8. This ordinance takes effect on _____, 2022.

PASSED AND APPROVED

§
§
_____, 2022 § _____
Steve Adler
Mayor

APPROVED: _____ **ATTEST:** _____
Anne L. Morgan
City Attorney

Myrna Rios
City Clerk

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