

**Sec. 40-10.1. - Sidewalk cafes.**

(a)

*Purpose.* The purpose of this section is to establish procedures and standards by which persons may use certain city rights-of-way for cafe purposes by means of a license issued under the authority of this section.

(b)

*Definitions.* As used in this section, the following terms and phrases shall have the following meanings:

(1)

*Abutting property* shall mean restaurant property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under this section.

(2)

*Application* shall mean that form generally described in subsection (d) which must be completed prior to the issuance of a license hereunder.

(3)

*Canopy* shall mean an awning as defined by the city building code.

(4)

*License* shall mean the written authorization from the traffic engineer granted pursuant to the provisions of this section.

(5)

*Owner* shall include any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole of the land contiguous to the right-of-way on which a sidewalk cafe is to be operated under the authority of this section.

(6)

*Person* shall mean an individual, a group of individuals, an association, a club, a society, a firm, a partnership or a corporation.

(7)

*Public clearance way* shall mean an imaginary three-dimensional shape not less than four and one-half feet and not more than 12 feet high vertically extending in a straight line parallel to the public right-of-way and extending the full and complete width of the property to be used as a sidewalk cafe under the authority of this section.

(8)

*Public street* means the entire width between the boundary lines of every way which is held by the city in fee or by easement or dedication when any part thereof is open to the use of the public for purposes of vehicular travel; provided the term "public street" shall not include any designated state or federal highway or road or any designated county road.

(9)

*Restaurant* shall mean a food service establishment where food is served in individual portions for consumption on the premises as defined by section 20-18 of this Code. This term shall not include an establishment which operates exclusively as a caterer, a commissary, a food processing establishment, a mobile food unit, a retail food store or a temporary food service establishment, all as defined by section 20-18.

(10)

*Roadway* means that portion of a public street which is improved, designed, or ordinarily used for vehicular travel, exclusive of the curb, berm, or shoulder. In the event that a public street includes two or more separate roadways, "roadway" means each such roadway separately.

(11)

*Sidewalk* shall mean that portion of the public street which is between the curblines, or the lateral lines of a roadway, and the adjacent property lines and which is improved and designed for or is ordinarily used for pedestrian travel.

(12)

*Sidewalk cafe* shall mean an outdoor dining area located on a sidewalk and containing removable tables, chairs, planters, or related appurtenances. In no event shall a sidewalk cafe be located on or encroach upon the public clearance way as established by the traffic engineer under the provisions of this section. It shall not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy.

(c)

*License required.* It shall be unlawful for any person to erect, operate or maintain a sidewalk cafe without first obtaining a license to do so as provided in this action.

(d)

*Procedure for issuance of license:*

(1)

The traffic engineer is authorized to issue licenses to persons for sidewalk cafe purposes under the procedures established in this subsection. To obtain a license, a person must pay the applicable fee and file an application on a form prescribed by the traffic engineer. As a part of the application the applicant shall provide:

a.

The name and street address of the applicant.

b.

The name and street address of the owner of the abutting property.

c.

A description of the owner, if other than a natural person, including its legal status (i.e., corporation, partnership, etc.) and a general description of the type(s) of business the owner operates on the abutting property.

d.

Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.

e.

The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.

f.

The name and street address of the operator, manager or other person responsible for the operation of the sidewalk cafe.

g.

The name under which the sidewalk cafe will be operated.

h.

The street address and the city food establishment license number of the sidewalk cafe.

i.

One or both of the following:

1.

A copy of a title policy covering the abutting property and verification by the owner that there has been no change in ownership since the issuance of that policy; or

2.

A certified copy or copies of the most recent deed or deeds conveying all or a portion of the abutting property so that ownership of all of the abutting property is accounted for, and verification by the owner or owners that there has been no change in ownership since the date or dates of that deed or deeds.

j.

A site plan of legible proportions prepared by a registered public surveyor or professional engineer showing:

1. The entirety of the abutting property of the owner;
2. All contiguous, adjacent properties;
3. All existing sidewalk features including but not limited to utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, newsracks, and mailboxes; and
4. Streets for a distance of at least 25 feet on either side of the abutting property.

**k.** Detailed drawings of legible proportions showing the design, dimension and proposed location of all temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed public clearance way and the side and front elevations of the proposed sidewalk cafe. In addition to the above-noted drawings the traffic engineer may require detailed drawings at a scale of one-half inch equals one foot showing the front facade of the abutting property and at least ten feet of the first story facade of adjacent buildings.

**l.** The seating capacity of the proposed sidewalk cafe and the seating capacity of the restaurant which will be associated with the sidewalk cafe, if any.

**m.** A copy or copies of the certificate or certificates of insurance required to be provided under subsection (d)(4).

**n.** Written documentation showing that adequate public water and sewer utilities are available to serve the sidewalk cafe.

If the records of the public works and engineering department include existing and apparently valid property boundary data that address a portion of the relevant information specified in part j. above, or if the traffic engineer otherwise determines that survey data is not required in order to determine property boundaries in compliance with this section, then the traffic engineer shall allow the applicant to provide a simplified site plan that need not be prepared by an engineer or surveyor, provided that the site plan is drawn to scale and includes the sidewalk configuration.

**(2)**

Upon receipt of the application, the traffic engineer shall examine its contents and he shall approve the application if he finds that:

- a.** The application meets the requirements of this section.
- b.** The proposed sidewalk cafe would be in compliance with applicable city ordinances.
- c.** Given the particular characteristics of the sidewalk upon which the sidewalk cafe is to be located, and of the pedestrian and vehicular traffic in the area, the operation of the proposed sidewalk cafe will not unreasonably interfere with pedestrian or vehicular traffic.
- d.** He has determined in writing that:
  1. The improvement or facility will not be located on, extend onto, nor intrude upon any portion of the roadway;

2.

The improvement or facility will not be located on, extend onto, nor intrude upon any portion of the sidewalk which is needed for pedestrian use;

3.

The design and location of the improvement or facility includes all reasonable planning to minimize potential harm or injury to or interference with the public in the use of the public street; and,

4.

The improvement or facility will not create any hazardous condition or obstruction of vehicular or pedestrian travel upon the public street.

Otherwise he shall reject the application. If the application is approved, the traffic engineer shall specifically approve, disapprove or modify the location and dimensions of the public clearance way. If the traffic engineer rejects the application, he shall inform the applicant by notice in writing of his action including the reasons for the action if the application is rejected. Upon rejection of the application a person may modify and refile his application if he so desires or he may, within ten days of the date of the mailing of the notice of rejection, request a hearing before the city planning commission if he believes his license was unreasonably denied. The applicant's request for a hearing should be made in writing to the director of the department of planning and development as secretary of the city planning commission. A hearing shall then be scheduled in a timely manner before the city planning commission.

(3)

A license granted hereunder shall be valid for a period of one year from the date of its issuance. The licensee is responsible for renewing his sidewalk cafe license prior to that anniversary date. If the licensee does not renew his license, he shall remove all tables, chairs and other appurtenances associated with that sidewalk cafe on or before the expiration date of the license.

(4)

The licensee shall maintain insurance in the following types and amounts:

\$1,000,000.00 combined single limit for bodily injury and property damage, each occurrence, and \$2,000,000.00 annual aggregate.

The city shall be an additional insured on each such policy and such policy shall include a provision to the effect that the city will be notified in writing by the insurance company ten days prior to the cancellation of such policy. The licensee shall then have five days to replace that coverage or the licensee's license shall be deemed revoked without further action on the part of the city. The notice provisions of subsection (d)(7) shall not be applicable for revocation of the license for this reason. THE LICENSEE ALSO AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES AGAINST ANY LOSS, LIABILITY OR DAMAGE, INCLUDING EXPENSES AND COSTS FOR BODILY INJURY AND FOR PROPERTY DAMAGE SUSTAINED BY ANY PERSON AS A RESULT OF THE LICENSEE'S OPERATION OF A SIDEWALK CAFE ON PUBLIC PROPERTY.

(5)

A license issued by the traffic engineer shall be subject to the following conditions and may be suspended for failure to comply with them:

a.

The sidewalk shall be kept free of standing water, maintained in good repair and kept free from material defects that may present a hazard to life or property.

b.

No permanent improvement will be installed in or on the sidewalk. All chairs, tables and other appurtenances associated with the sidewalk cafe shall be removable at all times.

c.

A sidewalk cafe license is issued in the licensee's name and can not be assigned, sold, or otherwise transferred.

- d.** A sidewalk cafe license is a license for a temporary and interruptible use of a sidewalk. It does not and shall not be construed to convey any legal or equitable interest whatsoever to any part of the sidewalk or public right-of-way.
- e.** A sidewalk cafe licensed hereunder shall be subject to an inspection by the traffic engineer or his representatives at any time such an inspection is requested. No notice from the traffic engineer prior to such an inspection shall be required.
- f.** The license is granted subject to the availability of utilities and compliance with all other applicable state and city rules and regulations specifically including all food or health-related ordinances of the city.
- g.** The sidewalk cafe may never be enclosed by a permanent wall or other temporary or permanent structure or improvement, except that the boundaries of a sidewalk cafe may be delineated through the use of a temporary barrier such as a balustrade, cordon, or railing. Any such temporary barrier must be easily removed and three feet or less in height above the sidewalk. Under no circumstances shall temporary barriers as authorized hereunder be allowed in the public clearance way as established by the traffic engineer. In addition, a temporary barrier shall not be affixed to the sidewalk or to any permanent structure, except that it may be attached by removable clips or devices approved in advance by the traffic engineer. With the approval of the traffic engineer, a licensee may drill holes in the sidewalk to secure those clips or devices to the sidewalk. Those clips or devices shall enable a temporary barrier to be easily attached, detached and removed without the temporary barrier, clips, or devices causing damage to the sidewalk.
- h.** A licensee may not obstruct ingress or egress to any other building or business. In addition, all facilities or improvements shall comply with clearances required from structures to utility lines as provided in a nationally recognized building code.
- i.** Under no circumstances, shall planters, trees, shrubs, tables, chairs or other such material or appurtenances be allowed in a public clearance way as established by the traffic engineer.
- j.** The licensee shall maintain adequate lighting in and around the public clearance way to ensure that all obstructions may be easily seen. Such lighting shall be of such type and location and shall have such shading as will prevent the source of the light from being seen from any contiguous, adjacent residential property. It shall not cause illumination beyond the boundaries of the property on which it is located so as to be obtrusive to adjacent property owners and shall not cause illumination beyond the boundaries of the property in excess of five-tenths footcandle. The illumination of the street from the sidewalk shall be no brighter than the illumination provided by ornamental street lights nor shall it have an adverse impact on the flow of vehicular traffic. In addition, its design and color shall not be such that it could be mistaken for a traffic signal.
- k.** The licensee shall not obstruct access to hydrants, street lights, telephones, mailboxes, transit stops, or any other public service facility on the sidewalk or street. City facilities or improvements or public utility facilities and improvements within the public streets cannot and will not be relocated by the city or the licensee as the result of the sidewalk cafe operations.
- l.** The licensee shall install and maintain permanent markers in the sidewalk at grade showing the corners of the public clearance way as established by the traffic engineer.

- m.** The licensee shall not install, erect or maintain any signs not permitted by the city sign code (chapter 46 of the City of Houston Building Code).
- n.** The licensee shall be responsible for supervising the conduct of its patrons and employees.
- o.** The licensee shall not serve food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.
- p.** The licensee shall ensure that the information provided as a part of his application remains true and correct at all times.
- q.** The licensee shall not allow the outdoor storage or preparation of food or drink and shall not erect or permit the erection of outdoor waiters' stations.
- r.** Under no circumstances shall the licensee place, erect, or construct any structure or sidewalk cafe appurtenance within two feet of the curbline.
- s.** The licensee shall obtain and maintain in force a certificate of occupancy for the sidewalk cafe and associated premises.
- t.** A sidewalk cafe licensed hereunder may be operated only on the abutting property.

**(6)**

Failure to observe any of the above conditions shall result in up to a one-year suspension of a sidewalk cafe license. Prior to such suspension the traffic engineer shall give ten days' written notice to the licensee of his violation of or his failure to observe a general condition as set out above. If the licensee requests a hearing prior to the expiration of that ten-day notice period, the traffic engineer shall hold a hearing to determine if the license shall be suspended. The licensee may present evidence in his own behalf if he so desires. The traffic engineer's decision in regard to suspension shall be final. If the licensee fails to request such a hearing, the suspension shall become effective upon the expiration of the ten-day notice period. If operations under a license granted under this section are suspended, all tables, chairs and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.

**(7)**

All notices required or permitted under this section shall be in writing and shall be deemed delivered three days after deposit in a United States Postal Service post office or receptacle with proper postage affixed and addressed to the licensee at the street address provided by the licensee (the applicant's name and street address) in his application for a sidewalk cafe license.

**(e)**

*Operations:*

**(1)**

No licensee shall cause, permit or allow the following conditions to exist:

- a.** Preset tables.
- b.** Litter or trash on the sidewalk or street right-of-way.
- c.** Any temporary obstruction in the public clearance way (i.e., ice carts, waiters, chairs, etc.).
- d.** An inadequate number of outdoor trash containers.

(2)

The traffic engineer is authorized to issue a written notice of violation of any of the conditions noted above. In the event that three such notices are issued for violations of the above provisions, within a one-year period, the traffic engineer shall, after notice to the licensee, hold a hearing to determine if the license shall be revoked. The licensee may submit evidence in his own behalf if he so desires. The traffic engineer's decision with regard to revocation shall be deemed final. If a license granted hereunder shall be revoked, all tables, chairs and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.

(3)

In the event that the city health department issues a notice of violation of any of the ordinances of the city to a licensee in connection with the operation or any condition attributable to the licensee's sidewalk cafe, that department shall immediately notify the traffic engineer of the issuance of that notice. Conversely, if the traffic engineer is notified of or becomes aware of any condition or occurrence which may constitute a violation of any food or health-related ordinance, the traffic engineer shall immediately so notify the city health department.

(4)

In addition to the provisions of subsection (e)(1) hereof, a license shall be revocable without liability therefor if the traffic engineer finds that a public necessity or emergency exists requiring an immediate revocation of the license and termination of operation of the sidewalk cafe or in the event of lawful need for the site or for access thereto by the city or any utility company, in which case the city may remove the facilities on the site or order the licensee to do so. The traffic engineer shall provide written notice to the licensee as promptly as possible. This notice shall state the reason or reasons removal is or was required. Public necessity for these purposes shall include changed circumstances causing increased pedestrian or vehicular traffic in the area. Notice under this clause shall constitute an exception to the notice provisions of subsection (d)(7).

(f)

*Fees and bond:*

(1)

The initial fee for a sidewalk cafe license shall be \$150.00.

(2)

The fee for renewal of a sidewalk cafe license shall be \$75.00.

(3)

The licensee shall also provide a cash bond or a bond with the licensee as principal and a corporate bonding company licensed to do business in the state as surety in an amount determined by the traffic engineer to be sufficient to cover the costs of removal of the licensee's facilities by the city or any public utility under any of the provisions of this section, conditioned that the licensee will timely remove its facilities upon request therefor and will reimburse the city or a public utility in the event that the city or a public utility removes the facilities pursuant to this section. Any licensee who received his sidewalk cafe license hereunder on or before the June 1, 1985, shall have 60 days to provide a bond as required hereunder. If such a licensee fails to deliver such a bond to the traffic engineer, his sidewalk cafe license shall terminate upon the expiration of that sixty-day period.

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*(Ord. No. 84-1671, § 2, 10-23-84; Ord. No. 84-1888, § 1, 12-5-84; Ord. No. 85-902, § 1, 6-18-85; Ord. No. 86-916, § 1, 6-17-86; Ord. No. 90-635, §§ 99, 100, 5-23-90; Ord. No. 93-514, § 68, 5-5-93; Ord. No. 03-942, §§ 1, 2, 10-15-03; Ord. No. 07-225, § 5, 2-14-07)*

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