

24436

Approved By
City Council On

SEP 02 2020



Ordinance

Version 2.9 released on 9/5/19

Use for all Ordinances including: TRO, Budget, Zoning, Declarations, Trust Indentures, etc.

CITY COUNCIL USE ONLY

Date Received: _____
Committee Date: 9-2-2020
1st Agenda Date: 9-2-2020

Tracking #: 20-637-1
Committee: UED
Hearing Date: _____
2nd Agenda Date: _____

CITY CLERK USE ONLY

Scanned Date: 09-09-2020
 Posted Item #: 2009.01779

All department items requiring Council approval must be submitted through the Mayor's Office.

Primary Details

Dept. Tracking No.	Board Approval	Other Board Name	City Council Approval <input checked="" type="radio"/> Yes <input type="radio"/> No
Department Mayors Office of Economic Dev	Contact Name Maggie Hoey	Email mhoey@cityoftulsa.org	Phone 918-596-7616
Subject (Description) Amendments to Sidewalk Cafe and Table and Chair Permits in the Right-of-way	Ordinance Type Amending Tulsa Revised Ordinances		
Section	Township	Range	Lot
Block	Address		BA / CT Number
Amending Ord. No. 23920	TRO Title No. 11 e.g. 43	TRO Subtitle e.g. G	Property/Non-Property
Council District	Zoning No.	PUD No.	Planning District

Budget

Funding Source(s)

TOTAL:

Enter the funding source(s) using the appropriate Munis funding format: Org (Allocation Code)-Object-Amount (1001211-531401-\$10.00) or Project Sting-Amount (144104.Abst>Title5413102.6001-4043122-541102-\$30,000.01)

Approvals

Department: _____
 Legal: _____ JMS
 Board: _____
 Mayor: _____ Mayor Pro-Tem
 Other: _____

Date: 8/31/20
 Date: 8/31/2020
 Date: AUG 31 2020
 Date: _____

Policy Statement

Background Information

Amendments to the Sidewalk Cafe and Tables and Chairs permit process administered by the Tulsa Planning Office to support business operations and activation of the public rights-of-way by creating a temporary sidewalk cafe process allowing self-certification, updating language regarding Tulsa Planning Office, updating fencing requirements for sidewalk cafes, and changing insurance requirements to align with other right-of-way use ordinances and City permits.

Provide background information on the requested action.

Summation of the Requested Action

Ordinance amending Title 11, Tulsa Revised Ordinances (TRO), Chapter 15, "Sidewalk Café Permits and Table and Chair Permits in the Right-of-Way"; by permitting temporary Sidewalk Cafes within the Right-of-Way and providing for a self certification process; containing other amendments to Chapter 15; delegating authority to city staff to implement policies and issue permits and to set forth operational requirements.

Summarize the pertinent details of the requested action.

Emergency Clause?

- Yes
- No

Reason for Emergency Clause

The emergency clause will assist businesses in need of expanding operating areas due to limitations enacted as a result of the COVID-19 pandemic by creating a temporary sidewalk cafe process and streamlining the application and review period.

Explain why you are requesting that the City Council approve this action with an emergency clause.

Processing Information for City Clerk's Office

Post Execution Processing

- Mail vendor copy (add'l signature copies attached)
- Must be filed with other governmental entity
- Add'l governmental entity approval(s) required

Additional Routing and Processing Details

(Published in the
Tulsa World,
September 13, 2020.)

ORDINANCE NO. 24436

AN ORDINANCE AMENDING CHAPTER 15 OF TITLE 11, TULSA REVISED ORDINANCES (“TRO”), ENTITLED “SIDEWALK CAFÉ PERMITS AND TABLE AND CHAIR PERMITS IN THE RIGHT-OF-WAY” BY PERMITTING TEMPORARY SIDEWALK CAFES WITHIN THE RIGHT-OF-WAY AND PROVIDING FOR A SELF-CERTIFICATION PROCESS; CONTAINING OTHER AMENDMENTS TO CHAPTER 15; DELEGATING AUTHORITY TO CITY STAFF TO IMPLEMENT POLICIES AND ISSUE PERMITS; SETTING FORTH OPERATIONAL REQUIREMENTS; PROVIDING FOR ADMINISTRATION; ALLOWING APPEALS WHERE APPROPRIATE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF TULSA:

Section 1. ADOPTION AND CODIFICATION. That Chapter 15 of Title 11, Tulsa Revised Ordinances, entitled “Sidewalk Café and Table and Chair Permits in the Right-of-Way” be, and is hereby amended and from the effective date hereof shall recite in its entirety as follows, to-wit:

“CHAPTER 15. SIDEWALK CAFÉ AND TABLE AND CHAIR PERMITS IN THE RIGHT-OF-WAY.

Section 1500. Purpose and Intent of this Chapter.

Section 1501. Delegation of Authority to Grant Licenses for Sidewalk Cafes and Table and Chair Area Seating.

Section 1502. Definitions.

Section 1503. Permit Required.

Section 1504. Permit Application.

Section 1505. Site Plan Requirements.

Section 1506. Operations.

Section 1507. Proof of Insurance and Indemnity.

Section 1508. Permit Administration and Issuance.

Section 1509. Appeal.

Section 1510. Temporary Sidewalk Café.

Section 1500. Purpose and Intent of this Chapter.

It is the purpose and intent of this chapter to protect public safety, to maintain safe and ready availability of City rights-of-way to the general public, and to permit local eating and drinking establishments to provide sidewalk seating for their customers and others, thereby contributing to a vital, walkable, healthy city, while setting policies, articulating safeguards, and streamlining procedures for the issuance of permits by Staff.

Section 1501. Delegation of Authority to Grant Licenses for Sidewalk Cafes and Table and Chair Area Seating.

The City Council hereby delegates to Staff the authority to permit a Sidewalk Café, or Table and Chair Area to be installed, used and maintained within a public right-of-way, as provided in City Charter, Article VIII, Section 13, "Permits", without the need for a prolonged separate license and removal contract with the City, so long as it conforms to policies and safeguards established by this ordinance, and does not unreasonably interfere with the public's use of the public right-of-way. Any license issued pursuant to this ordinance shall be revocable by the City at will.

Section 1502. Definitions.

- A. **ABLE Commission** means the Alcoholic Beverage Laws Enforcement Commission, an agency of the State of Oklahoma.
- B. **Health Department** means the Tulsa Health Department.
- C. **Manual** is a booklet of policies, specifications and requirements, prepared by Staff, which must be complied with before a sidewalk café or table and chair permit can be issued.
- D. **Permit (also known as a license)** is written authorization by the Tulsa Planning Office, or its successor, to a business or individual, to occupy or use portions of the right-of-way for a private purpose; provided such use does not unreasonably interfere with the public use thereof. Permits shall be revocable at the will of the City.
- E. **Right-of-Way (or Rights-of-Way)** means the surface, the airspace above ground, and the area below the surface of any public street, highway, parkway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, adjacent easement, public place or similar property which is open for public use and in which the City of Tulsa now or hereafter holds a property interest or a maintenance responsibility.
- F. **Sidewalk Café** means an open-air seating area located on a sidewalk directly adjacent to a business. A sidewalk café is operated by the adjacent business and allows for food and beverages to be served outside of the establishment through seating that is restricted to patrons of the establishment exclusively. A sidewalk café can be surrounded by a fence or other perimeter to define and separate it from the pedestrian zone as permitted or required by ordinance, state law and the regulations of the ABLE Commission. A Sidewalk Cafe operator that desires to serve alcohol must be in compliance with all ABLE requirements. The sidewalk café and its furnishings are maintained by the establishment.
- G. **Staff:** Personnel of the Tulsa Planning Office and/or City of Tulsa whose duties include reviewing sidewalk café and table and chair permit applications and all required documentation to ensure compliance with the programs.

- H. **Table and Chair (or Table and Chair Area)** means a type of outdoor seating located on the city's right-of-way and permitted by the City of Tulsa. Table and chair area does not offer table service to users, it is not separated by a fence or other perimeter from the pedestrian zone, and the furniture is available for use by the general public. The furniture comprising the table and chair area is maintained by the establishment.
- I. **Temporary Sidewalk Café** means open-air seating located on a sidewalk directly adjacent to a business on a short-term basis. A Temporary Sidewalk Café is operated by the adjacent business and allows for food and beverages to be served outside of the establishment through seating that is restricted to patrons of the establishment exclusively. Temporary sidewalk café permits shall not be issued for more than a 120-day period per applicant. In the event the Mayor declares a civil emergency, the Council may waive or extend the 120-day time limitation only for the duration of the civil emergency declaration.
- J. **Tulsa Planning Office** means department of the Indian Nations Council of Governments (INCOG) which administers the zoning and land-use planning processes for the City of Tulsa and staffs the Tulsa Metropolitan Area Planning Commission and the City of Tulsa Board of Adjustment. The Tulsa Planning Office is located within the offices of INCOG.

Section 1503. Permit required.

No person shall operate or maintain a Sidewalk Café, or Table and Chair Area, without first obtaining a permit from the Tulsa Planning Office, or through the self-certification process for a Temporary Sidewalk Café. Staff shall produce, and shall distribute to permit applicants, a Manual of parameters, terms and conditions which must be satisfied by applicants before a permit may issue. Sidewalk Café Permits and Table and Chair Permits may not be transferred or assigned.

Section 1504. Permit application.

An individual or business seeking a Sidewalk Café Permit or Table and Chair Permit shall submit to the Tulsa Planning Office the following documents, as determined by Staff:

- A. Application form
- B. Responsible party agreement.
- C. Property owner consent.
- D. Site plan (per Section 1505, below), with photographs (3 minimum).
- E. Current certificate of insurance and endorsement.
- F. Authorization from the Health Department (for outdoor food service).
- G. Application fee, as provided in Title 49 Tulsa Revised Ordinances (see Fee Chart in Manual).
- H. Extension of premises drawing to ABLE (if serving alcohol).
- I. Pictures or brochures of proposed furniture.

An individual or business seeking a Temporary Sidewalk Café Permit shall complete a self-certification form and submit items C, E, F, G, and H of Section 1504, as well as at least three (3) photographs of the proposed Temporary Sidewalk Café location, with at least one (1) photograph showing the view from the street directly in front of the proposed location, and one (1) photograph from each side of the proposed Temporary Sidewalk Café location showing the sidewalk view each direction.

Section 1505. Site Plan Requirements.

Each application, with the exception of temporary Sidewalk Cafés, shall be accompanied by a site plan, containing the information below. The purpose of the site plan is to demonstrate compliance with all layout requirements. All standards must be met, for an application to be approved. The site plan must show:

- A. Location of existing street fixtures and utilities (e.g., utility poles, vaults, manholes, parking pay stations, bus shelters, sign posts, tree pits) and their distance from the nearest edge of the proposed area of operation. Contact with OKIE811 or other underground utility location service may be necessary.
- B. Width of the adjacent sidewalk (from face of building to back of curb).
- C. Distance from the proposed area of operation to the nearest intersection. Area must be in compliance with "sight-distance triangle" requirements found in Title 24 TRO, "Nuisances:" Section 103.
- D. Name and location of adjoining streets and alleys.
- E. North arrow and scale.
- F. Proposed location of all associated elements including tables, fencing, umbrellas, planters, chairs and signage, and shall demonstrate that such elements do not impair pedestrian passage.
- G. An unobstructed corner-curb-radius area, unless the Traffic Engineer determines that the area outside of the pedestrian zone is not required to facilitate pedestrian movement.
- H. A pedestrian zone at least five (5) feet wide is required. Staff may require a larger Pedestrian Zone as conditions warrant.
- I. Distances, which shall provide: Five (5) feet from bus stop, handicapped parking, commercial loading zone, parking meter, pay station, traffic sign, utility pole, bike rack, and other street fixture, and curb ramp. Fire hydrants must comply with Title 13 TRO, "Fire Department" Section 202.
- J. Area of operation (shown with dashed line around sidewalk cafe or table and chair area).
- K. Adjacent building façade and door swing (including name labels and dimensions for both).
- L. The clear path of travel from a building exit, which shall be at least three (3) feet wide or the width of the building exit door, whichever is wider. The path of travel from the building exit door to the sidewalk shall be free of obstructions.
- M. ABLE requirements, if applicable (sidewalk café only).

- N. Pictures or brochures of proposed furniture.
- O. Seating platforms are not encouraged. Sidewalk sites that require leveling due to site topography shall be considered on a case-by-case basis, and additional permitting may be required. Any platform must comply with Federal ADA Design Standards.

Section 1506. Operations.

- A. The proposed sidewalk café or table and chair area activity shall not violate the Americans with Disabilities Act.
- B. Amplified sound may not exceed sixty-five (65) decibels within the area of operation. Sound equipment must be installed temporarily within the area of operation and may not encroach into any path of travel.
- C. The permittee shall not locate electrical lines overhead or on the ground surface where the public has access to the public place.
- D. Staff may, as deemed appropriate, condition the sidewalk café permit or table and chair permit to address the:
 - 1. Fencing and/or furniture, which shall be kept in good repair, and in a clean and safe condition.
 - 2. Hours of operation and days of use.
 - 3. Impacts associated with the sidewalk café or table and chair area activity from: Lighting, noise, or the placement of signage, furniture, or equipment.
 - 4. Need for repairs or improvements to the public place in order to accommodate the sidewalk café or table and chair area to ensure access to the use complies with the Americans with Disabilities Act; or
- E. Unless expressly authorized by the Staff, no public place surface shall be broken or disturbed, and no permanent fixture of any kind shall be installed in or on the public place in connection with a sidewalk café or table and chair area.

Section 1507. Proof of Insurance and Indemnity.

The applicant shall provide a certificate of insurance evidencing at least One Million Dollars (\$1,000,000.00) of commercial general liability insurance coverage, per occurrence, while the permit is in effect, including potential claims for bodily injury, death, or disability and property damage which could occur at or be related to either the sidewalk café or table and chair area. The insurance policy shall be issued by an insurance company licensed to do business in the State of Oklahoma. Each policy shall provide by endorsement that thirty (30) days' prior written notice of cancellation shall be delivered by the insurer to the City of Tulsa, except that ten (10) days' prior written notice of cancellation shall be provided by the insurer to the City of Tulsa for nonpayment of premium. All certificates of insurance submitted must be approved by the Tulsa Planning Office. Any deficient certificates of insurance must be corrected as required by the Tulsa Planning Office. If any issue arises as to insurance coverage submitted which cannot be resolved by the Tulsa Planning Office, the matter shall be referred to the Office of the City Attorney for review and further requirements.

The applicant shall agree to indemnify and hold the City of Tulsa, its officials, officers, employees, and agents harmless against any liability, claims, causes of action, judgments, or expenses, including reasonable attorney fees, resulting directly or indirectly from any act or omission of the permittee, its subcontractors, anyone directly or indirectly employed by them, and anyone for whose acts or omissions they may be liable, arising out of the applicant's use or occupancy of the public place.

Section 1508. - Permit Administration and Issuance.

Staff shall review the application and may request correction, clarification or further information. Staff shall visit the site to ensure the layout meets standards. After review is complete, Staff will either:

Approve the application;

Approve the application with modifications. Modifications could include dimensional changes or repair of existing sidewalks in advance of café installation; or

Deny the application.

The Sidewalk Café or Table and Chair Area cannot be installed until all applicable fees have been collected and an approved Sidewalk Café Permit or Table and Chair Permit has been issued, or until a Temporary Sidewalk Café Self-Certification form has been submitted to the Tulsa Planning Office together with all other documentation required by Section 1504 of this Chapter. Businesses applying for a Temporary Sidewalk Café Permit may commence operations on a provisional basis upon submission of a complete self-certification form to the Tulsa Planning Office and all other documentation required by this Chapter or the Manual, including insurance certificate. Upon Staff review and approval of the self-certification form, insurance certificate, photographs of the proposed Temporary Sidewalk Cafe location, payment of required fees, and any other requirements set forth in this Chapter or the Manual, Staff may issue a Temporary Sidewalk Cafe Permit. The applicant shall also submit photographs of the Temporary Sidewalk Cafe location from each side of the Sidewalk Cafe to the Tulsa Planning Office within five (5) calendar days after installation of the same. A Temporary Sidewalk Cafe Permit may be suspended or revoked by the Tulsa Planning Office if a Temporary Sidewalk Cafe is not in compliance with this Chapter or the Manual, and such compliance is not achieved within twenty-four (24) hours after notice of such deficiency is delivered by the Tulsa Planning Office to the operator of the Temporary Sidewalk Cafe. Staff will make a visit to the self-certified Temporary Sidewalk Cafe site to view existing site conditions and can require changes to ensure compliance with program requirements.

A decision will be made no later than thirty (30) days after application submission for a Sidewalk Café and/or Table and Chair Area annual permit. Upon approval, a post-approval inspection will be made by Staff within sixty (60) days after approval. The permit must be kept on-site and made available to be viewed upon request.

A Sidewalk Café Permit or Table and Chair Permit expires if: The business changes ownership; if the permit duration expires; any terms or conditions of the permit are violated, or permit fees

are not paid as required. All permit-related furniture shall be removed from the public right-of-way when the permit expires.

All Sidewalk Café Permits or Table and Chair Permits authorized by this Chapter are of a temporary nature, vest no permanent rights, and are revocable as provided for in Article VIII, Section 13 of the City Charter. Staff may suspend any Sidewalk Café Permit or Table and Chair Permit for transportation mobility or public safety purposes; or to coordinate with: Permitted special events, parade permits or any other permitted activity.

Section 1509. Appeal.

Any aggrieved party (“aggrieved party” being an adjacent business or property owner within three hundred feet of the proposed Sidewalk Café or Table and Chair location, or an applicant whose Sidewalk Café or Table and Chair application was denied and referred to in this subsection as “appellant”) may request a review or reconsideration of a permit decision. A request for reconsideration of a permit decision shall be made to the Tulsa Planning Office, by submitting a reconsideration application in such form as approved by the Tulsa Planning Office within ten (10) calendar days after the date of the original permit decision or the appeal will not be acted upon. The appellant must: (1) identify the Permit application that is requested for reconsideration by the Permit number and the address of the Sidewalk Café or Table and Chair Area as set forth in the permit application; (2) the specific objections to the original decision of the Tulsa Planning Office; and (3) the specific actions being proposed by the applicant/appellant that could change the permit decision. A decision concerning the reconsideration of a permit decision shall be made within fifteen (15) business days by the Director of the Tulsa Planning Office, or their designee, after the application for reconsideration is received. The Director of the Tulsa Planning Office, or their designee, shall either affirm the original permit decision or shall reverse the original permit decision. If the original permit decision is affirmed after reconsideration, the appellant may appeal the permit decision to the City Council by submitting a complete appeal application in such form as is approved by the City of Tulsa to both the Tulsa Planning Office and the Office of the City Clerk. The appeal of reconsideration of a permit decision must be submitted in writing within ten (10) calendar days of the date of the reconsideration decision, or such appeal will not be heard by the City Council. The appellant must: (1) identify the permit application that is the subject of the appeal by the permit number and the address of the Sidewalk Café/Table and Chair area as set forth in the permit application; (2) the specific objections to the original decision of the Tulsa Planning Office; and (3) if applicable, the specific actions being proposed by the applicant/appellant that could change the permit decision. The City Council will schedule the appeal within thirty (30) calendar days after the appeal is received by the City Clerk.

Section 1510. Temporary Sidewalk Café.

Temporary Sidewalk Cafes shall be in strict compliance with the requirements set forth for Temporary Sidewalk Cafes in this Chapter, as well as other requirements or restrictions set forth in the Manual. An Applicant shall prepare and submit a complete Temporary Sidewalk Café self-certification form and shall attest and affirm that the applicant meets all requirements and is responsible for and will adhere to these requirements for the duration of the temporary Sidewalk

Café Permit. Staff will make a visit to the self-certified Temporary Sidewalk Cafe to view existing site conditions and can require changes to ensure compliance with this Chapter and the Manual. A Temporary Sidewalk Café permit may be suspended or revoked by the Tulsa Planning Office if a Temporary Sidewalk Café is not in compliance with this Chapter and the Manual, and such compliance is not achieved within twenty-four (24) hours after notice of such deficiency is delivered to the applicant or permit holder by the Tulsa Planning Office.”

Section 2. REPEAL OF CONFLICTING ORDINANCES. That all other ordinances or parts of ordinances in conflict herewith be and the same are now expressly repealed.

Section 3. SEVERABILITY CLAUSE. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part thereof.

Section 4. EMERGENCY CLAUSE. An emergency is hereby declared to exist for the preservation of the public peace, health, and safety, by reason whereof this ordinance shall take effect immediately from and after its passage, approval and publication.

ADOPTED by the Council: SEP 02 2020
Date


Chair of the Council

ADOPTED as an Emergency Measure: SEP 02 2020


Chair of the Council

OFFICE OF THE MAYOR

Received by the Mayor: _____, at _____.
Date Time

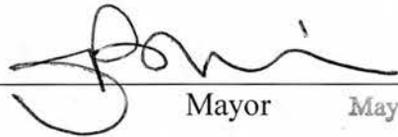
G.T. Bynum, Mayor

By _____
Secretary

SEP 09 2020

APPROVED by the Mayor of the City of Tulsa, Oklahoma: _____,
Date

at _____.
Time



Mayor Mayor Pro Tem



ATTEST:



City Clerk

(seal)

APPROVED:



City Attorney Deputy
OK-JMS