

ORDINANCE 2013-05

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY ADDING A NEW ARTICLE IX TO CHAPTER 16 THEREOF PROVIDING FOR THE ESTABLISHMENT OF STANDARDS FOR THE CREATION OF SIDEWALK CAFÉS IN THE ROSENBERG DOWNTOWN AREA ON PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE OF SERVING FOOD AND BEVERAGES.

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

Section 1. The Code of Ordinances of the City of Rosenberg, Texas, is hereby amended by adding a new Article IX to Chapter 16 thereof, to provide as follows:

**"Sec. 16-378. – Definitions.**

- 1) All definitions of words, terms, and phrases, as set forth in the Texas Alcoholic Beverage Code, are hereby adopted, incorporated and made a part hereof by reference and shall apply to the words and phrases used in this chapter.
- 2) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alcoholic Beverage* shall mean an alcoholic beverage as defined by the Texas Alcoholic Beverage Code.

*Business* shall be defined by the definition found in Chapter 14; Article VII; Sec. 14-136 of the Rosenberg Code of Ordinances.

*Mobile food unit* means a food service establishment, mounted on wheels, designed to be readily movable, and propelled solely by human power.

*Restaurant* shall be defined by the definition found in Chapter 14; Article VII; Sec. 14-136 of the Rosenberg Code of Ordinances.

*Rosenberg Downtown Area* shall be defined as the definition found in Chapter 6; Article XIII; Sec. 6-361 of the Rosenberg Code of Ordinances.

*Sidewalk café* means that portion of the dining operation of a restaurant or business that extends into the sidewalk or pedestrian way pursuant to a permit authorized by the City.

*Sidewalk café elements* means all tables, chairs, umbrellas, partitions and all other physical items associated with the sidewalk café.

**Sec. 16-379. – Responsibilities of City Staff.**

The Building Official shall maintain primary responsibility for receiving and approving applications for permits under this article. If deemed necessary by City staff, other City departments may review the applications for permits. The City's Code Enforcement Officers shall maintain responsibility for ensuring compliance with the rules and regulations related to sidewalk cafés per the terms of this ordinance.

**Sec. 16-380. – Permit Applications.**

- 1) *General.* Notwithstanding any other provisions of this Code to the contrary, sidewalk cafés shall be permitted at such locations and subject to such regulations as are set forth in this article.
- 2) *Permit required.* No restaurant or business may extend its dining operations into a sidewalk or pedestrian way without first obtaining a permit therefor in accordance with the requirements of this article.
- 3) *Application.* Any restaurant or business operator desiring to operate a sidewalk café shall prepare and file an application with the Building Official which shall contain the following information:
  - a) The name, address and telephone number of the restaurant or business tenant.
  - b) The types of food and beverages to be sold or served at the sidewalk café.
  - c) The hours of operation of the restaurant or business and the proposed hours of operation of the sidewalk café. Please note that sidewalk café areas must cease operation by no later than midnight.
  - d) A site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk café and the section to be kept clear for pedestrian use, and depicting the proposed placement of sidewalk café elements within the sidewalk or pedestrian way. The site plan should include measurements of the sidewalk café and pedestrian areas, as well as the proposed means of separating the sidewalk café area from pedestrian pathways. The site plan should include location of existing fire hydrants, trees, utilities and above ground fixtures, doorways, and any sidewalk obstructions within the pedestrian area.
  - e) A detailed list and description of sidewalk café elements to be utilized in the sidewalk café area, including the size and number of tables, the size and number of chairs, any steps, planters, candles and the size and number of umbrellas.

- f) Evidence of insurance and an executed statement of indemnity as required by this ordinance.
- g) A copy of all permits and licenses issued by the State of Texas and/or the City necessary for the operation of the restaurant or business.
- h) A sworn statement describing any violation by the restaurant or business operator of any laws, regulations or ordinances relating to the possession, sale, consumption or transportation of intoxicating beverages or controlled substances during the five (5) years immediately preceding the date of the permit application.
- i) Such additional information as may be requested by the Building Official to determine compliance with this article.
- j) A nonrefundable permit application fee to recover the cost of processing and investigating the application and issuing the permit shall be established by Council and listed in the fee schedule.

**Sec. 16-381. – Permit Requirements, Issuance and Revocation.**

- 1) Sidewalk café permits will only be issued for restaurants or businesses located in the Rosenberg Downtown area on public rights-of-way.
  - a) Possession of open containers of alcoholic beverages shall be permitted only in the designated areas of permitted sidewalk cafés.
- 2) *Issuance of permit.* No permit for the operation of a sidewalk café may be issued unless the application is complete and the following requirements are met:
  - a) A valid food permit or state alcoholic beverage permit issued by TABC is a prerequisite for a sidewalk café permit.
  - b) The sidewalk café must share the same management and same food preparation facilities as the restaurant or business to which it is associated.
  - c) The sidewalk café shall only be on sidewalk right-of-way space that is contiguous with the property of the restaurant or business filing the permit application.
  - d) The placement of sidewalk café elements, as shown on the site plan must leave five (5) feet of unobstructed space (as measured from the street-side edge of the sidewalk to the sidewalk café partition) from the edge of the sidewalk, pedestrian way or obstruction (planter, trash can, etc.) for the passage of pedestrians, or comply with the Americans with Disabilities Act requirements, whichever is greater.

- e) Fire exits or lanes and wheelchair ramps must remain free of obstructions at all times.
  - f) The restaurant or business seeking to operate a sidewalk café must front on and open onto the sidewalk or pedestrian way proposed for such sidewalk café. The placement of sidewalk café elements may not extend beyond the sidewalk or pedestrian way frontage of the associated restaurant or business.
  - g) Sidewalk café areas must be designated and separated from pedestrian pathways by non-permanent dividers.
  - h) The sidewalk café elements used in the sidewalk café shall be of types that are easily removed from the public right-of-way. If the permit is revoked, sidewalk café elements used in the operation of the sidewalk café must be removed within twenty-four (24) hours of notice from the City, and if not so removed, the City shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The City shall not be responsible for damage to sidewalk café elements under any circumstances.
  - i) The operation or furnishing of the sidewalk café shall not involve any permanent alteration to or encroachment upon any sidewalk or pedestrian way. The restaurant or business operator of the sidewalk café shall be responsible for repairing any incidental damage to public improvements resulting from its operation.
  - j) Sidewalk cafés must not interfere with any utilities or other facilities such as telephone poles, fire hydrants, signs, parking meters, mailboxes or benches located on the sidewalk or public right-of-way.
  - k) Sidewalk cafes must not interfere with ingress/egress from buildings or alleys.
  - l) Sidewalk cafes must not interfere with visibility for drivers turning at street corners.
- 3) *Emergency conditions.*
- a) Upon the issuance of a severe storm, hurricane or tornado warning by the City or the county, the Permittee shall forthwith place indoors all tables, chairs and other equipment located on the sidewalk. The issuance of such a warning shall constitute an emergency situation as referenced in this ordinance.
  - b) The City may order the immediate removal or relocation of all, or parts of, a sidewalk café in emergency situations or for safety consideration, without notice. The City shall have the right to remove any and all such items immediately in an emergency situation. The City shall not be responsible for damage to sidewalk café elements under any circumstances.

4) *Standards and requirements.*

- a) Sidewalk cafés must provide for adequate lighting in and around the public clearance way to ensure that all obstructions may be easily seen. The illumination shall not have adverse impact on the flow of vehicular traffic.
    - i. Strobe lights are not permitted.
  - b) There shall be no live entertainment or speakers placed in the permit area unless approved and properly permitted by the City.
    - i. Outdoor music played on permitted speakers must conform with the terms of the City's noise ordinance.
  - c) Tables, chairs, umbrellas, and other sidewalk café elements shall be maintained with a clean appearance and shall be in good repair at all times. All sidewalk café elements must be of a sturdy build and suitable for commercial use.
    - i. Concerns regarding the safety of sidewalk café elements may be referred to the City's code enforcement personnel for investigation.
  - d) No tables, chairs, or any other parts of sidewalk cafes shall be attached, chained or in any manner affixed to any tree, post, sign or other fixture, curb, or sidewalk in or near the permitted area.
  - e) No cooking apparatus shall be allowed in the sidewalk café area.
  - f) Only the sidewalk cafe equipment specifically shown on the approved application shall be allowed in the permit area. No permanent storage of sidewalk cafe equipment shall be allowed in the permit area, in any portion of the public right-of-way or outside the structural confines of the building in which the restaurant or business is located.
- 5) The issuance of a sidewalk café permit is a privilege granted by the City of Rosenberg. The permit is 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.
- 6) *Issuance of permit; denial.* The Building Official shall examine the application and determine whether all of the requirements stated in this article for the issuance of a permit have been satisfied. If all such requirements have been satisfied, then the Building Official shall issue the permit. If the permit is denied, the applicant shall be provided with the reasons therefor in writing, and the permit application fee shall not be refunded.

7) *Permit revocation.* The Building Official may revoke a permit issued pursuant to this article if it is determined that the restaurant or business operator has:

- a) Misrepresented or provided false information in the permit application.
- b) Operated the sidewalk café in a manner not consistent with the details provided in the permit application.
- c) Failure to pay renewal fees.
- d) Violated any provision of this article.
- e) Violated any law, regulation or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances.
- f) Operated the sidewalk café in such manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the sidewalk café area clean and free of refuse at end of each business day or disruption(s) related to alcohol consumption.
- g) Failure to maintain any health, business or other permit or license required by law for the operation of the restaurant or business associated with the sidewalk café.
- h) Failure to maintain the physical integrity of sidewalk café elements.
- i) Operated the sidewalk café in violation of any City, county or state law, ordinance or regulation. Before the revocation of a permit, the Building Official shall notify the permit holder of its intent to revoke the permit and the reasons therefor.

8) *Notice and Appeal.*

The Permittee shall be given notice in writing of the reasons for revocation of the permit. An appeal shall not stay the revocation of a permit.

A Permittee may appeal the revocation of a permit by filing a written request for a hearing with the City Secretary, in person or in writing, within fifteen (15) calendar days following the date of revocation of such permit. If a request for a hearing is received, a hearing before the City Manager or his/her designee, shall be held within fifteen (15) calendar days of the City's receipt of such request. The date, time and location of such hearing will be sent to the Permittee by certified mail, return receipt requested, at the address provided on the application.

If the Permittee fails to appear at the hearing at the time, place and date specified, the City shall present sufficient evidence to establish a *prima facie* case showing that conditions exist at the establishment which are grounds for revocation of the permit.

If the hearing officer finds that grounds do exist for revocation of the permit, he or she shall confirm the revocation. If the hearing officer finds that on the date of the hearing the conditions which were set out in the notice as grounds of revocation of the permit do not exist, he shall order such permit issued or reinstated.

A copy of the findings and order of the hearing officer shall be provided to the Permittee.

- 9) *Reservation of rights.* The City reserves the right to require any sidewalk café established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance or repair of any street, sidewalk, utility, or public building by the City, its agents or employees, or by any other governmental entity or public utility; to allow for use of the street or sidewalk in connection with parades, civic festivals and other events of a temporary nature as permitted by the City; and to remedy a public nuisance or to protect the public health, safety, or welfare.
- 10) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this article shall:
  - a) Be issued for a period of one (1) year. If a restaurant or business operator discontinues the restaurant or business operation or the sidewalk café within the year, no refund of the permit fee shall be made.
  - b) Any restaurant or business holding a valid permit for a particular sidewalk café shall be deemed to have reapplied for permission to use the same space for a succeeding permit term. Restaurant or business operators not wishing to renew their permit term must notify the Building Official in writing prior to the expiration of the permit.
  - c) Restaurant and business owners wishing to extend their sidewalk café permits must submit their current proof of insurance and permit renewal fee to the Building Official by January 31 of each year.
  - d) Restaurant and business owners must apply for a new permit in the event of significant changes to approved sidewalk café elements.
    - i. Damaged elements may be replaced without applying for a new permit so long as the replacement element is similar to the original element and so long as space and safety requirements remain unchanged.
  - e) Permits shall not be transferable or assignable to another restaurant or business.

#### **Sec. 16-382. – Sidewalk Café Rules and Regulations.**

- 1) *Sidewalk Café Hours of Operation:*

- a) Sidewalk café areas shall open no earlier than 7:00 a.m.
  - b) Sidewalk café areas shall close no later than midnight.
- 2) *Sidewalk Café Elements.* The following rules and regulations apply to sidewalk café elements:
- a) All sidewalk café elements must be approved as part of the permit approval process.
  - b) Sidewalk café elements shall be promptly moved inside immediately after the restaurant or business operator discontinues its daily operations.
  - c) Sidewalk café elements should be of quality design, materials and workmanship to both ensure the safety and convenience of users.
  - d) There is to be no commercial advertising on sidewalk café elements (i.e. product brands); the only acceptable advertising is the logo or name for the permitted business.
  - e) Umbrellas and other decorative material shall be fire-retardant, pressure-treated or manufactured with fire-resistant material.
  - f) Sidewalk café elements may include candles, with the following restrictions:
    - i. Candles must be attached to a solid base;
    - ii. Candle flames must be enclosed by a glass covering.
- 3) *Restricted café elements and activities.* The following items and activities are prohibited from sidewalk café space:
- a) Carts, booths, vending machines and other portable and/or temporary structures are prohibited.
  - b) No food or beverage preparation may occur in the sidewalk café area.
  - c) No merchandise (aside from food and beverages) shall be displayed or sold in sidewalk cafés.

**Sec. 16-383. – Right to limit or deny admission or service.**

Within the designated area of a café, the restaurant or business operator holding a permit under this article shall have the right to limit access to only bona fide paying customers of that restaurant or business operator's establishment who are behaving in a lawful manner, and shall have the same right to deny admission or service as the restaurant operator exercises on his own premises. However, no person shall be



denied access or service to the café area on the basis of race, religion, national origin, sex, age, disability or veteran status.

**Sec. 16-384. – Indemnity, Liability and Insurance Requirements.**

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

A comprehensive general liability insurance in the amounts of: \$1,000,000.00 combined single limit for bodily injury and property damage, each occurrence, and \$1,000,000.00 annual aggregate. All insurance required under this agreement shall be written with a company licensed to do business in the State of Texas.

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 (10) days prior to the cancellation of such policy. The Permittee shall then have five (5) days to replace that coverage or the Permittee's permit shall be deemed revoked without further action on the part of the City. The notice provisions of this ordinance shall not be applicable for revocation of the permit for this reason. The Permittee also agrees to indemnify, defend and hold harmless the City, its officers and employees against any claims, loss, liability, lawsuits, or damages, including attorney fees, expenses and costs for bodily injury and for property damage sustained by any person as a result of the Permittee's operation of a sidewalk café on public property.

**Sec. 16-385 – 16-395. – Reserved."**


Section 2. All ordinances or parts inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

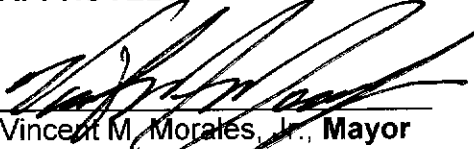
**PASSED AND APPROVED** by a vote of 7 "ayes" in favor and 0 "noes" against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the 15th day of January 2013.

ATTEST

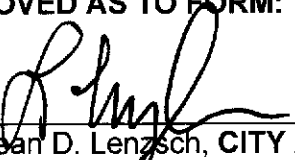


  
Linda Cerrosek, City Secretary

APPROVED:

  
Vincent M. Morales, Jr., Mayor

APPROVED AS TO FORM:

  
Lora Jean D. Lenzsch, CITY ATTORNEY