

AMENDING TITLE 15, CHAPTER 6 OF THE CODE OF ORDINANCES OF THE CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE SO AS TO AMEND, REDESIGNATE, AND REENACT CERTAIN SECTIONS OF THE ORDINANCES GOVERNING SIDEWALK CAFES IN THE DOWNTOWN DEVELOPMENT DISTRICT, AND PROVIDING FOR OTHER RELATED MATTERS.

Section 1. BE IT ORDAINED by the Metropolitan Council of the City of Baton Rouge and Parish of East Baton Rouge that Title 15, Chapter 6 of the Code of Ordinances is hereby amended as follows:

"Sec. 15:325. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) Permit holder means the recipient of a sidewalk cafe permit under the terms and provisions of this chapter.

(2) *Restaurant* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and school cafeterias, which gives or offers for sale food to the public, guests, or employees. A restaurant shall not include an establishment holding a Class A (bar) license from the City-Parish ABC Office.

(3) Sidewalk means that portion of the street between the curblines or the lateral lines of a roadway and the adjacent property lines intended for use by pedestrians.

(4) Sidewalk cafe means portion of a restaurant located on a public sidewalk or mall which functions as an extension of the use of the adjacent public property by a restaurant as approved by the Development Director.

(5) Temporary means that the entire arrangement on the sidewalk can be removed immediately as required for emergencies and pedestrian use.

Sec. 15:326. - Permit required.

Operating a sidewalk cafe on city-parish sidewalks shall be unlawful without a permit from the city-parish. It shall be unlawful for any person to operate a sidewalk cafe on any sidewalk within the city-parish except as provided by this chapter.

Sec. 15:327. - Permit requirements.

Permits shall be issued only to validly licensed restaurants within the territorial limits of the Downtown Development District as defined by R.S. 33:2740.8. Under no circumstances shall a permit be issued to a business licensed to sell alcohol by the city/parish which has been sanctioned by the parish alcohol beverage control board for violation of the wine, beer and liquor ordinance of the parish within the six (6) months prior to the date of application for the permit.

Sec. 15:328. - Authority to issue permit.

The director of the department of development may approve and issue revocable permits for the placement of a sidewalk cafe on the public sidewalk area adjacent to an established restaurant on such terms and conditions as provided in this chapter.

Sec. 15:329. - Application for permit; fee.

Each application for a permit to place a sidewalk cafe in front of a restaurant shall state the name of the applicant, the name and address of the establishment, the area to be occupied by the sidewalk cafe and the hours that the area is to be occupied. A set of drawings showing the location of the sidewalk cafe must accompany the application. Each application must be accompanied by a check or money order in the amount of one hundred fifty (\$150.00) payable to the city-parish to be submitted to the department of development of the city-parish to defray the cost of review and processing of the application.

Sec. 15:330. - Design drawings.

Design drawings and specifications for all elements of the sidewalk cafe equipment and the location of such equipment, or other structures temporary or permanent, proposed for placement upon the public sidewalk shall conform to the minimum city-parish standards as provided for in this Chapter and as prescribed by the director of the department of development. Design drawings and specifications shall be subject to design review and alteration for the protection from damage to the sidewalks, and for protection of the health, safety and welfare of the general public. The director of the department of development shall submit the design plans and specifications to the downtown development district staff for review and approval. Once the design elements are approved by the downtown development district staff, the proposed design shall be attached to the permit.

Sec. 15:331. - Standards and criteria for application review.

The following standards and criteria shall be used in reviewing the application and design drawings required in section 15:330:

(1) Dimensions:

a. Sidewalk cafes should be located in such a manner that a distance of not less than five (5) feet is maintained at all times as a clear and unobstructed pedestrian path. The director of development, in his/her reasonable discretion, and on a case-by-case basis, may approve and allow for a pedestrian path of less than five (5) feet when an applicant/permittee's sidewalk café operation would be significantly impacted and if the proposal meets American with Disabilities Act (ADA) requirements for the purpose of this section, "unobstructed" shall mean that nothing shall exist within the designated clear zone except the sidewalk paving and underground utilities. In areas of congested pedestrian activity, the director of the department of development is authorized to require a wider pedestrian path, as circumstances dictate.

b. A minimum clearance of (1) foot from the café seating boundaries to the edge of curb shall be maintained at all times. A minimum clearance of (2) feet from the café seating boundaries to the edge of curb shall be maintained at all times if the sidewalk café is located adjacent to on street parking or loading zone(s).

c. A clearance of three (3) feet shall be maintained between any element of a sidewalk cafe and a fire hydrant.

d. A clearance of three (3) feet shall be maintained between any element of a sidewalk cafe and a fire department sprinkler/standpipe Siamese connection.

(2) No element of a sidewalk café shall reduce or impede the effectiveness or unobstructed use of a fire escape.

(3) Sidewalk cafes shall be restricted to the sidewalk frontage of the licensed restaurant to which the permit is issued, provided written approval is supplied by the building owner and any affected lessee.

(4) Tables, chairs, umbrellas and any other objects provided with the sidewalk cafe shall be of sufficient quality, design, materials, and workmanship to ensure the safety and convenience of users, and to enhance the visual and aesthetic quality of the urban environment. Design, materials, and colors shall be sympathetic and harmonious with the urban environment, as determined by the reviewing entities provided for in section 15:330.

(5) All material shall be fire retardant, pressure-treated or manufactured of fire resistant material.

(6) No element of a sidewalk cafe shall reduce or impede the effectiveness or unobstructed use of a fire escape.

Sec. 15:332. - Permit fee.

No owner or operator of a business establishment shall occupy any portion of a public sidewalk with tables and chairs for the convenience of customers without first obtaining a permit to do so and paying the fees for such permit in accordance with the provisions of this chapter. The fee for a permit shall be one dollar (\$1.00) per square foot per year. Each permit shall be effective for one year, beginning on January 1 and ending on December 31, and shall be prorated for partial years on a monthly basis. The permit fee shall be paid annually, in advance, by the permit holder of the sidewalk cafe permit granted under this chapter.

Sec. 15:333. - Permit forms, conditions of and restrictions.

The permit shall be issued on a form deemed suitable by the director of the department of development. In addition to naming the permit holder, the location of the sidewalk cafe, and the hours of operation, the form shall contain any other information deemed appropriate by the director. The permit must be prominently displayed for public view by the permit holder. The issuance of permits and the maintenance of tables and chairs in front of restaurants by the permit holder shall be subject to the following conditions and restrictions:

(1) Each permit shall be subject to unilateral revocation by the city-parish at any time.

(2) The permit issued shall be personal to the permit holder only and shall not be transferable in any manner.

(3) The permit shall state that the permit holder, property owner, and proprietor accept the prevailing site conditions with regard to ambience, including loading and passenger zones and/or automobile traffic and its consequential exhaust fumes, noise, and pedestrian generation. Prior to the issuance of a permit, the applicant shall furnish the director of the department of development with a signed statement and the permit holder shall hold harmless the city-parish, its officers, agents and employees and shall defend and indemnify the city-parish, its officers, agents and employees for any claims for damages to property or injury to any person which may be occasioned by any activity carried on under the terms of the permit.

(4) The permit may be suspended by the director of the City-Parish when necessary to clear sidewalk areas for a "community or special event" authorized by a permit issued by the City-Parish. The notification of suspension shall list the date, time, and estimated duration of such closure.

(5) Along parade routes and during special events where crowd control is likely to be necessary, sidewalk cafe hours shall be scheduled and allowed to operate in accordance with crowd control procedures established by the police department. The police department shall have the authority to order the clearing of all tables and chairs from the sidewalk by the permit holder in accordance with crowd control needs.

(6) The police department, fire department or other emergency service personnel representing the city-parish may require the immediate removal or relocation of all or parts of the sidewalk cafe in emergency situations.

(7) The City-Parish may require the temporary removal of sidewalk cafes when street, sidewalk, or utility repairs necessitate such action.

(8) The city-parish and its officers and employees and/or private or public utility companies, their officers and employees shall not be responsible for sidewalk cafe components relocated during emergencies.

(9) The sidewalk cafe shall be confined to the area shown on the drawing submitted by the permit holder. The permit shall be specifically limited to the area shown on the drawing attached to and made a part thereof.

(10) The permit holder shall keep the sidewalk area not occupied by the sidewalk cafe free of obstruction at all times. Elements of the sidewalk café cannot obstruct passage along the sidewalk not permitted as a sidewalk café, or any building passageway. The permit holder shall use positive action to assure the use of the sidewalk in no way interferes with sidewalk users or limits their free and unobstructed passage.

(11) The sidewalk area and the sidewalk cafe shall be in good repair and shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day. The permittee shall also be responsible for cleaning the ground or floor surface on which the sidewalk café is located and the gutter area immediately adjacent to the sidewalk café. Such cleaning shall include, but not be limited to hosing and pressure cleaning. In no event shall any debris from the sidewalk café be swept or hosed into gutters or storm drains. If the area covered by the permit is not maintained in a neat and orderly appearance after 10 days written notice, the city-parish may then take steps necessary to place the property in a neat and clean order and charge the permittee with the reasonable cost of repairs. Such action by the city-parish does not create a continuing obligation on the part of the city-parish to make further repairs or to maintain the property and does not create any liability against the city-parish for any damages to the property if such repairs were completed in good faith. A litter abatement program shall be adopted by each sidewalk cafe. A contact person shall be named to be notified in case of a violation.

(12) A maximum of one A-frame sign shall be permitted per sidewalk café. The locations, size, and materials of the A-frame sign shall be approved by the Downtown Development District prior to the issuance of a sidewalk café permit, and the A-frame sign shall be shown on the sidewalk café site map. A-frame signs shall be restricted to the frontage of the licensed sidewalk café for which the permit is issued. A-frame signs shall comply with the following standards:

a) Shall be no larger than four feet in height and two feet in width;

b) Shall be kept in good condition;

c) Shall be located within ten feet of the sidewalk café's main entrance

d) Backdrop night lighting may be incorporated, but must be integrated within the A-frame sign and shielded to reduce glare

(13) No tables and chairs nor any other parts of the sidewalk cafe shall be attached, chained, or in any manner affixed to any tree, post, sign, or other streetscape fixtures, curb, or sidewalk within or near the permitted area.

(14) The permit covers only the public sidewalk. Tables and chairs on private property are governed by other applicable regulations.

(15) The issuance of a sidewalk cafe permit does not grant or infer vested rights to the use of the sidewalk area by the permit holder nor does it constitute a deed or grant of an easement by the city-parish. The city-parish retains the right to deny the issuance or continuation of a permit for noncompliance with the provisions of this chapter.

(16) No cooking or fire apparatus shall be allowed on the public sidewalk whether or not such area is permitted as a sidewalk café.

(17) Food trays or carts, receptacles for waste and dirty dishes, trays or carts for linen and utensils, and cooking appliances shall not be placed or stored on any portion of the sidewalk area of a public street.

(18) Tables, chairs, umbrellas, and other permissible objects placed within a sidewalk café shall be maintained in a clean appearance and remain in good repair at all times.

(19) The sidewalk area shall not be painted or altered in any way without prior written approval of the director of the department of development.

(20) The city-parish and/or its agents may schedule general cleaning and maintenance operations. If such work is scheduled, the city-parish and/or its agents shall give notification of its scheduled cleaning times, at least two days in advance of such operations, to all sidewalk cafe permit holders. Each permit holder, in the affected area, shall remove all portions of the sidewalk cafe operations so that they do not inhibit the scheduled sidewalk cleaning, repair, and/or maintenance operations.

(21) All property/building ingress and egress where a sidewalk cafe exists must remain unobstructed (including queuing lines) for clear, barrier-free pedestrian passage, consistent with the fire department regulations and ANSI standards for barrier-free access. Queuing space proportional to the seating capacity of the sidewalk cafe shall be provided within the legal boundaries of the property to which the sidewalk cafe is adjacent.

(22) Raised platforms and/or flooring of any kind, in association with a sidewalk cafe, are not permitted to be placed on the sidewalk at any time.

(23) Accessways between the indoor and outdoor dining areas shall remain unobstructed, excepting swinging doors which shall remain operable during the simultaneous hours of operation of the indoor restaurant and outdoor sidewalk cafe.

(24) All costs incurred and associated with the necessary installation, maintenance and repairs of the sidewalk, as required herein, shall be incurred by the permit holder and/or the proprietor of the sidewalk cafe.

(25) All repairs and maintenance to the sidewalk that may become necessary shall be done in a timely manner to protect the health, safety and welfare of the general population using the sidewalk. If such repairs are not done in a timely manner, then the city-parish and/or its agents may perform such necessary repairs or cause them to be performed, and charge the permit holder a penalty fee and the cost of such repairs.

(26) A sidewalk cafe permit holder may serve alcoholic beverages within the sidewalk cafe area if the permit holder has a class "R" permit from the alcohol beverage control office and the sidewalk cafe area has been approved by the Director of the Department of Development and the Director of the Downtown Development District and is clearly defined. If an alcoholic beverage is served to a patron, the patron must be advised that he is not allowed to leave the sidewalk cafe area with the alcoholic beverage, except to go inside the premises.

Sec. 15:334. - Umbrellas, canopies and awnings.

Overhead weather protection devices, such as table umbrellas, canopies or awnings, shall be permitted in conjunction with sidewalk cafes. Such devices shall not extend beyond the boundaries of the sidewalk cafe permit area as established in the permit, as follows:

(1) Weather protection devices shall conform to the design and construction standards set forth in the city-parish building code, and shall be permitted and inspected periodically by the department of development.

(2) Individual table umbrellas supported by the particular table each umbrella protects shall be permitted.

(3) Overhead canopies, fixed or retractable and attached to the building wall but not supported from the ground in any way, shall be permitted and inspected by the department of development.

Sec. 15:335. - Liability and insurance.

(1) There shall be no liability on the city-parish or upon any of its officers, agents or employees of the city or parish for any damage sustained by the permit holder from any cause whatsoever.

(2) Prior to the issuance of a permit, the applicant shall furnish the director of the department of development with a signed statement that the permit holder shall hold harmless the city-parish, and the officers, agents and employees of same and shall defend and indemnify the city-parish, and the officers, agents and employees of same for any claims, including claims brought through or under the applicant by way of subrogation, for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.

(3) Each permit holder shall, at his/her own expense, maintain in full force and effect an insurance policy or policies underwritten by a carrier rated by Best's as A or better and they must be licensed to do business in the state. Such insurance coverage shall afford liability coverage for any and all claims against the permit holder, the adjacent property owner and the city and parish, and the employees or agents of the city and parish, arising out of or in any way connected or associated with the sidewalk cafe or any of its operations, including but not limited to premises, products, personal injuries, and injury to property with limits of no less than one million dollars (\$1,000,000.00) for any one occurrence and if a general aggregate limit is used, it shall not be less than twice the occurrence limit applying to bodily injuries, personal injuries and property damage or a combination of such injuries.

Such policy or policies shall name the city and parish as additional insureds. Permit holders which serve alcoholic beverages will also be required to carry a policy of liquor liability insurance with limits of no less than one million dollars (\$1,000,000.00) for any one occurrence and if a general aggregate limit is used, it shall not be less than twice the occurrence limit. A copy of the certificate of insurance shall be on file with the department of development and maintained current at all times. Such policy or policies shall provide thirty (30) days' notice to the director of the department of development if the policy or policies should be canceled or materially changed. In the event that the required insurance coverage is cancelled, the permit shall be immediately suspended as of the date of such cancellation.

Sec. 15:336. - Denial, revocation or suspension of permit; removal and storage fees; emergencies.

(1) The director of the department of development may deny, revoke, or suspend a permit for any sidewalk cafe authorized in the city-parish if it is found that:

(a) Any necessary business or health permit has been suspended, revoked or cancelled.

(b) The permit holder does not have insurance which is correct and effective in the minimum amount described in section 15:335.

(c) Changing conditions of pedestrian traffic cause congestion necessitating the removal of the sidewalk cafe. Such decisions shall be based upon the findings of the director of the department of development that the minimum pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety, or general welfare of pedestrian traffic.

(d) The permit holder has failed to correct violations of the article or conditions of his permit within three (3) days of receipt of the director of the department of development notice of same delivered in writing to the permit holder.

(e) The permit holder has failed to take positive actions to prohibit violations from reoccurring.

(f) The permit holder has failed to make modifications within three (3) days of receipt of the director of the department of development notice of same delivered in writing to the permit holder.

(g) If there is a documented history of repeated violations, the director of the department of development may revoke the permit.

(2) Permission to encroach upon a portion of a public sidewalk with tables and chairs granted under this chapter shall be subject to the suspension or revocation by the director of the department of development when the permit holder violates any of the restrictions and conditions set forth in this chapter, or any rule or regulation adopted in pursuance of the provisions of this chapter or as provided in section 15:331. Such permission shall be automatically terminated upon the termination or lapse of the insurance stipulated under section 15:335.

(3) All vestiges of such sidewalk cafe may be removed by the City-Parish and a reasonable fee charged for labor, transportation, and storage should the permit holder fail to remove such items within thirty-six (36) hours of the City-Parish's final notice to do so for any reason provided under this section. If the action is taken based on subsection (1)(a), (b), or (c) of this section, the actions shall become effective upon receipt of such notice and the permit holder shall have four hours to remove such items.

(4) Upon suspension or revocation, the director of the department of development shall give notice of such action to the permit holder in writing stating the action which has been taken and the reason therefor. If the action is based on subsection (1)(a), (b), or (c) of this section, the action shall be effective upon giving such notice to the permit holder. Otherwise, such notice shall become effective after ten working days unless appealed to the metropolitan council.

(5) The acceptance of a permit granted to a permit holder by the city-parish constitutes a waiver of any claims that the permit holder has, may have, or will have against the City-Parish for the denial, revocation or suspension of its permit as provided for herein.

(6) Upon denial of the permit under this section, the director of the department of development shall give notice of such action to the applicant in writing stating the action which has been taken and the reason for denial. Upon denial, an applicant may within ten working days file a notice of appeal to the Metropolitan Council with the director of the department of development.

Sec. 15:337. - Penalties.

(1) Any person who violates any of the provisions of this article or regulations promulgated hereunder shall be subject to a fine of not less than \$100.00 nor more than \$500.00 for each offense, and each day such violation continues shall be deemed a separate and distinct offense.

(2) Any Sidewalk Café in operation without a valid Sidewalk Café permit is subject to removal from the public right of way by the director of development or his/her designee.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.