

## **ORDINANCE NO. 2018-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING CHAPTER 114 AND APPENDIX D OF THE CITY'S CODE OF ORDINANCES BY ADOPTING REGULATIONS FOR SIDEWALK CAFES IN PARTS OF DOWNTOWN AND ADOPTING NEW FEES ASSOCIATED WITH THE REGULATION AND USE OF PUBLIC SIDEWALKS FOR SIDEWALK CAFÉ PURPOSES; PROVIDING A SAVINGS CLAUSE AND AN EFFECTIVE DATE.**

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**WHEREAS**, the City of New Braunfels, Texas, allows the use of portions of the public sidewalks in parts of the Downtown area for sidewalk cafes; and

**WHEREAS**, the City Council of the City of New Braunfels, Texas seeks to ensure safe and accessible pedestrian pathways through Downtown; and

**WHEREAS**, the City Council of the City of New Braunfels, Texas seeks to ensure public investments add and maintain value for the citizenry without undue damage by private interests or lack of maintenance associated with private use; and

**WHEREAS**, the City Council of the City of New Braunfels, Texas seeks to provide for reasonable administrative fees in order to recoup the cost of reviewing and administering the use of sidewalk cafes, conducting such processes and services on the public's behalf without unduly relying on taxes; and

**WHEREAS**, the City Council of the City of New Braunfels, Texas seeks to assign a reasonable annual license fee to those using portions of the sidewalk for sidewalk café purposes; and

**WHEREAS**, the New Braunfels Downtown board recommended approval of the proposed regulations and fees at their regular meetings in September 2017 and February 2018; and

**WHEREAS**, New Braunfels' City Council finds that the attached code amendments regulating the use of public sidewalks for sidewalk cafes by private entities is reasonable and prudent in light of the desire to ensure adequate pedestrian access throughout the Downtown area and that the schedule of fees is reasonable and prudent in light of the municipal effort and resources that must be expended to operate a regulatory program and provide certain municipal authorizations, permits, and approvals;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF NEW BRAUNFELS, TEXAS:

**Section 1. Findings of Fact**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact are found to be true and correct and that they are hereby adopted by the City Council and made a part hereof for all purposes. The City Council hereby finds and determines that the rules, regulations, terms, conditions, provisions, and requirements are reasonable and necessary to protect the public health, safety, and quality of life.

**Section 2. Amendment to Chapter 114.**

Chapter 114 of the City of New Braunfels Code of Ordinances is hereby amended by adding Section 114-10, and editing the Reserved sections, as set forth below:

Sec 114-10. – Sidewalk Cafes in the Downtown Area.

(a) **Prohibited obstructions.** It shall be unlawful for any person to erect any fencing, barrier, or other object(s) on the sidewalk for the purpose of creating an outdoor eating and/or drinking area in or upon any street, street right-of-way, avenue, alley or sidewalk or the city's right-of-way between the curb line and the property line of any business, commercial or residential property within the city without first securing a permit approved by the City's Planning and Community Development Department:

(b) **Sidewalk cafes in the Downtown area**

(1) Downtown area defined. The downtown area subject to this section includes both sides of San Antonio Street from the Comal River to Walnut Avenue, Seguin Avenue from Zink Street to Business 35/Elliott Knox Boulevard, Castell Avenue from Business 35/Elliott Knox Boulevard to Mill Street and the entirety of Main Plaza. (See exhibit A following this section).

(2) Sidewalk Café Permits.

- a. Any building occupant or property owner located in the downtown area may apply to the Downtown Development Coordinator to obtain a permit to install and operate a sidewalk café, for a period of one year, on the sidewalk right-of-way in front of the property they own or occupy. At the end of the one-year period, the applicant may apply for an additional one-year period. The Downtown Development Coordinator may approve the permit for an additional year or deny the permit. If the Downtown Development Coordinator determines that the permit should not be approved, the applicant may appeal that decision consistent with subsections 114-5(c)(4)d. and 114-5(c)(4)e. The permit issued under this section shall be personal to the applicant and is not transferrable.
- b. Fees. Application and license fees are as outlined in Appendix D of the Code of Ordinances.

- c. All sidewalk cafes must be located directly in front of, and adjacent to, the business's primary façade. The café area is to begin flush with the building face and cannot extend beyond the business storefront area on either side.
- d. All operations, furniture, and other related obstructions of a sidewalk café must be contained within the approved boundaries of the café at all times. Umbrellas may extend into the clear path of travel only when all parts are above a height of seven feet.
- e. Clear Path of Travel and Clear Visual Zone. The minimum clear path of travel is 6 feet and includes a minimum of 3 feet of concrete sidewalk. The clear path of travel may meander from side to side to avoid obstructions, but must always contain a continuous, passage with a minimum width of 3 feet. This three-foot continuous path is known as the **Clear Visual Zone** and provides pedestrians with a clear indication of the walkway.
  - 1. A minimum of 6 feet clear path of travel is required on all public sidewalks with sidewalk cafes or other obstructions.
  - 2. In areas with paver sections, a 3-foot clear area is required behind the pavers (towards the building face).
  - 3. Under certain conditions, the City Engineer may require a clear path of travel greater than 6 feet or permit a clear path of travel less than six feet.
  - 4. If the sidewalk cafe use causes change in pedestrian travel, appropriate repairs in the immediate area may be required to accommodate the change to assure compliance with ADA.
  - 5. Cords, strings and lights may not be strung over or placed in the pedestrian path of travel but may be allowed over the café.
  - 6. Landscaping: Planters must be contained within the footprint of the approved café or obstruction area.
  - 7. At least one accessible route shall connect accessible buildings, facilities, elements and spaces that are on the same site.
  - 8. No café or obstruction may be placed within 5 feet of intersection ramps.
- f. Design and Materials
  - 1. Barriers. If fences, planter boxes, or other barriers are proposed and are designed to be affixed to the sidewalk, the City Engineer or their designee must review the proposed installation method to ensure the installation will not damage the sidewalk. Core drilling or setting is prohibited. Additionally, barriers shall be constructed of durable materials.
    - a. Fencing must not exceed 42 inches in height and shall be a minimum of 36 inches in height
    - b. Bottom of barriers shall be no more than 27 inches above the sidewalk surface.
    - c. Fencing must be at least 50% open (see-through); solid sheet fencing and canvas inserts are not permitted.
    - d. Fencing must be constructed of metal (aluminum, iron, steel, wrought-iron or similar) with a railing, rope, or other horizontal elements. Posts with pointed tops are not permissible.
    - e. Belt stanchions, buckets and ropes, or any other temporary barriers are not permitted. All posts must be secured to the sidewalk and have a flat base.
  - 2. Planters. Landscape planters may be used as a fencing device in place of or in addition to other barrier designs.

- a. Planters shall not exceed 42 inches in height (not including planted material), and plants may not exceed a height of 8 feet.
  - b. All planters must contain live planted material. Should planted materials die, new plants must be planted or the planter removed.
  - c. No artificial plants, empty planters, or bare dirt, mulch, straw or similar materials are permitted.
- 3. *Furniture and Fixtures.* Tables, chairs, and other appurtenances shall be durable, waterproof, and able to withstand weather elements. All such appurtenances must be maintained to the standards of the original permit for the duration of the life of the sidewalk café.
  - a. All furniture other than tables, chairs, and umbrellas is prohibited. This includes, but is not limited to serving stations, bar counters, shelves, racks, sofas, televisions, and trash receptacles.
  - b. Heaters may be allowed on a case by case basis and subject to the approval of the Fire Marshal and the Downtown Development Coordinator.
  - c. All furniture must be free standing and not secured to the sidewalk, trees, lamp posts, or any other street infrastructure, whether during operating hours of the establishment or when the establishment is closed.
  - d. Furniture must be finished grade wood, metal, or sturdy recycled materials. No breakable plastics, unfinished lumber, or artificial turf is permissible.
  - e. Umbrellas must be contained within the sidewalk café area and when extended shall measure at least 7 feet above the surface of the sidewalk café.
  - f. No advertising, signage, or wording is permitted on umbrellas.
  - g. Any part of an umbrella may not exceed a height of 10 feet above the sidewalk.
  - h. Lights and lighting, other than tabletop lighting fixtures are not permitted.
  - i. Extension cords running to or from the sidewalk area are prohibited.
- f. *Maintenance*
  - a. The applicant shall, at all times, maintain the sidewalk adjacent to the area of sidewalk café or other permitted use free from obstructions and maintain a minimum clearance of 6 feet (3 feet of concrete) on the sidewalk adjacent to the permitted use or cafe. The applicant shall keep the area adjacent to the permitted use free and clear of any tables or other property. The licensee shall be responsible for the prompt removal of trash within the sidewalk café. Trash is not to be disposed of in the permanent trash can in the right of way. All tables are to immediately be bussed upon patrons leaving the area.
  - b. The applicant shall, at all times, maintain the sidewalk adjacent to the permitted sidewalk café area in good repair and in compliance with the Americans with Disabilities Act (ADA). The applicant shall promptly repair any damages to the sidewalk and replace any broken improvements within a reasonable time. All such repairs and replacements shall be subject to the approval of the City and all other necessary boards and commissions. If the applicant does not promptly make such repairs, the City may, but is not required to, make such repairs and replacements and the costs paid or incurred by the City for such repairs and replacements shall be payable in full to the City within three calendar days.
  - c. The applicant shall, at termination of the permit, return the sidewalk premises to the City in as good condition as at the commencement of the term hereof, excepting only usual wear and tear, acts of God, or unavoidable accidents.
  - d. Applicant agrees to hold the City harmless for any theft, damages, or destruction of signs, goods, and/or other property of the applicant both during the term of this permit

and as left on the permitted sidewalk cafe area after the permit expiration date or applicant vacates the subject premises. Any obstructions not removed within seven calendar days of the expiration of the permit may be removed by the City without any further notice or liability.

- e. In the event of removal of the café or any fixtures of the café, the licensee shall be responsible for repairing the sidewalk to a flush condition (subject to approval by the City Engineer and Downtown Development Coordinator).

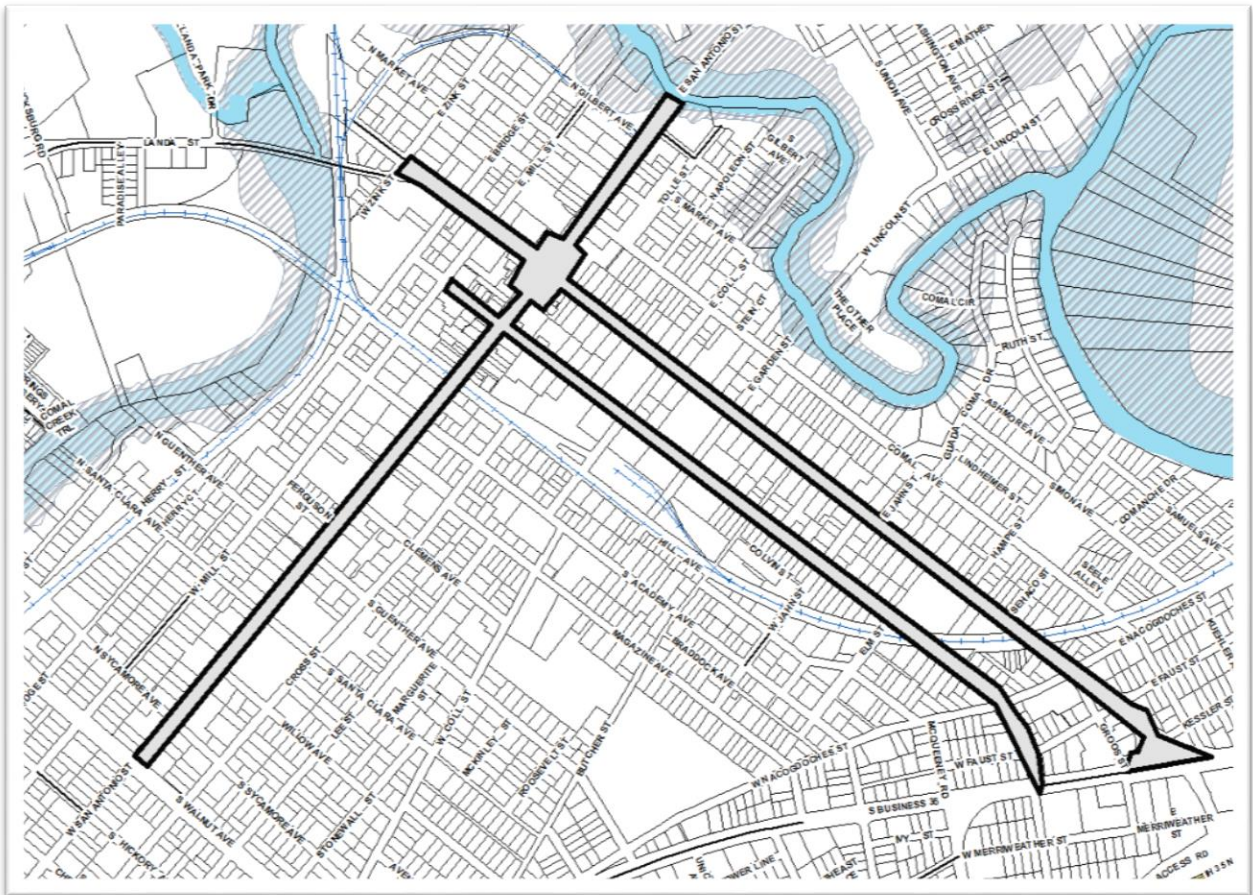
g. *General Rules and Regulations for Sidewalk Café Operation*

- a. All permit holders shall comply with all applicable local, state, and federal rules and regulations.
- b. The applicant shall only be allowed to place items in the permitted obstruction area that are listed on the permit application.
- c. The sidewalk café shall not obstruct any entrance or exit to the business establishment.
- d. As extensions of the business, sidewalk cafés may only operate during the establishment's business hours.
- e. Merchandise, signs, and other moveable items may only be displayed or placed on the sidewalk during the businesses operating hours only.
- f. No advertisements, signs, decorations, or displays shall be placed in, on or about the sidewalk café premises without prior written approval of the City.
- g. Gambling of any nature is not allowed in the sidewalk obstruction area.
- h. The City may conduct an initial inspection to verify that the applicant is in compliance with the permit conditions.
- i. The applicant shall not place televisions, speakers, or amplified music on or in the sidewalk café area. Failure to comply with this section may, at the City's opinion, constitute default of the permit.
- j. The applicant shall not engage in, or allow its employees, agents, invitees, guests or any other person to engage in vending on the sidewalk other than the customary and ordinary restaurant service or display of merchandise regularly and ordinarily associated with the business directly adjacent to the sidewalk encroachment area.
- h. *Fines/Penalties.* The City may issue a fine if any violation and non-compliance of City Code or sidewalk use requirements are found. Fine for the first notice is \$100, second notice is \$150, and the third notice may require the revocation of the permit.
- i. *Insurance.*
  - a. The applicant agrees to hold the City of New Braunfels harmless for any theft, damage, or destruction of property of the applicant both during the term of the permit and as so left on the sidewalk café premises after applicant vacates the premises or the permit expires or is revoked.
  - b. Prior to the commencement of sidewalk use, the applicant will furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Downtown Development Coordinator, which shall be clearly labeled with applicant business name and address in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original Certificate(s) or form must have the agent's original signature, including signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to perform under this agreement until such Certificate(s) and endorsements have

been received and approved by the City's Downtown Development Coordinator. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- c. The City reserves the right to review the insurance requirements of this Article during the effective period of the permit and any extension or renewal thereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. In no instance will the City allow modification where upon the City may incur an increased risk.

#### **Exhibit A.**



Secs. 114-~~40~~<sup>11</sup> – 114-30. - Reserved.

### **Section 3. Amendment to Appendix D**

**Appendix D of the City of New Braunfels Code of Ordinances is hereby amended by adding fees associated with sidewalk café permit applications and licenses as set forth below:**

#### **Section A. Schedule of Development Fees.**

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**MISC.**

<a href="#">Downtown Sidewalk Café application fee</a>	<a href="#">\$100</a>
<a href="#">Downtown Sidewalk Café Annual License fee</a>	<a href="#">Less than 250 square feet: \$250</a> <a href="#">250 to 500 square feet: \$500</a> <a href="#">Greater than 500 square feet: \$750</a>

**Section 4. Severability**

**THAT** it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**Section 5. Repealer**

**THAT** all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect and all Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

**Section 6. Effective Date and Publication.**

**THIS** ordinance shall become adopted and effective on May 14, 2018. This Ordinance must also be **published** in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels.

**PASSED AND APPROVED:** First reading this 23<sup>rd</sup> day of April 2018.

**PASSED AND APPROVED:** Second reading this 14<sup>th</sup> day of May, 2018.

**CITY OF NEW BRAUNFELS**

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**BARRON CASTEEL, Mayor**

**ATTEST:**

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**PATRICK D. ATEN**, City Secretary

**APPROVED AS TO FORM:**

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**VALERIA M. ACEVEDO**, City Attorney