

ORDINANCE NO. 2012-3410

AN ORDINANCE AMENDING CHAPTER 4, "BUSINESS REGULATIONS" BY ADDING SECTION 21 "NORTHGATE OUTDOOR DINING AND ENTERTAINMENT", TO THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That CHAPTER 4, "BUSINESS REGULATIONS" be amended BY ADDING SECTION 21 "NORTHGATE OUTDOOR DINING AND ENTERTAINMENT", to the Code of Ordinances of the City of College Station, Texas, as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than Twenty-Five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 26th day of April, 2012.

APPROVED:

Tracy F. Perry

Mayor

ATTEST:

Sherry Markler
City Secretary

APPROVED:

Adam C. Jones
City Attorney

EXHIBIT "A"

That **CHAPTER 4, "BUSINESS REGULATIONS"** be amended **BY ADDING SECTION 21 "NORTHGATE OUTDOOR DINING AND ENTERTAINMENT"**, be added to the Code of Ordinances of the City of College Station, Texas and is to read as follows:

SECTION 21 NORTHGATE OUTDOOR DINING AND ENTERTAINMENT**A. . DEFINITIONS**

- (1) **Administrator** means the Executive Director Business Services or designee.
- (2) **Application or Permit Application** means the requirements under this section to submit to the City to obtain a permit approval.
- (3) **Establishment** means a business in the Northgate Central Business District that has a Permit or is seeking Permit approval.
- (4) **Non-Peak Period** means the hours between 2:30 AM and 9:00 PM,
 - a. The Non-Peak Period will not apply on the days of Texas A&M University Home Football Games, Graduation, Parents Weekend and City sponsored or co-sponsored events.
- (5) **Non-Permitted Area** means the remainder of the public sidewalk that is not considered to be a Permitted Area as determined by the City. No consumption of alcoholic beverages is permitted in the Non Permitted Area.
- (6) **Peak Period** means the hours between 9:00 PM and 2:30 AM.
- (7) **Permit** means a Northgate Outdoor Dining Permit issued by the City under this section.
- (8) **Permitted Area** means any street level portion of public sidewalks in the Northgate Central Business District, defined by the City, that is in front of and parallel to an establishment, which only tables and chairs are placed on for the sole purpose of patrons consuming food or beverages at the tables, including alcoholic beverages, following authorization from the City by obtaining a Permit under this ordinance.

B. OPERATION

The duration of a Permit issued under this section is for one year. Before the expiration of the Permit, the establishment must resubmit a Permit Application and fee at least sixty (60) days before the expiration of the current Permit.

C. SPECIAL EVENTS

Special events in the Northgate Central Business District involving the sale or consumption of alcohol are not required to obtain a permit pursuant to Chapter 4,

Section 4, of the Code of Ordinances of the City of College Station. A special event providing for alcohol sales and consumption shall have a valid permit or license to sell or serve alcoholic beverages issued by the Texas Alcoholic Beverage Commission.

D. APPLICATION REQUIREMENTS

The Administrator will have thirty (30) days to deny or approve a Permit Application. The Application must be in writing on a form provided by the City and may include the following information:

- (1) Application fee
- (2) Completed Application
- (3) One copy of a site plan including the following information:
 - a. North Arrow
 - b. Site plan with clearly identified measurements
 - c. Name of adjoining street(s)
 - d. Outdoor seating plan (e.g. tables, chairs)
 - e. Dimensions and Area (SF) of proposed improvement
 - f. Width of adjacent sidewalk(s)
 - g. Sidewalk width remaining for clear path of travel
 - h. Location of property lines
 - i. Location of building entrances
- (4) Copy of Texas Alcoholic Beverage Commission license or permit
- (5) Notarized authorization from the property owner of establishment location

E. APPROVAL OF APPLICATION

Applications will be processed in accordance with the following requirements:

- (1) **Pre-application Conference.** Prior to the submission of an application and site plan for a permitted area, applicants are encouraged to schedule and attend an optional pre-application conference in accordance with and for the purposes as set forth in Chapter 12 Unified Development Ordinance, of the College Station Code of Ordinances, for pre-application conferences.
- (2) **Final Action by the Administrator**
 - a. **Approval.** If the proposed site plan is determined to be consistent with all applicable provisions of this section, the Administrator shall approve the site plan.
 - b. **Denial.** If a determination that all such requirements and provisions have not been satisfied, then the application and site plan will be denied and notice of such disapproval shall be given to the applicant in writing.

F. CONDITIONS OF PERMIT

In addition to other requirements in this section, the applicant shall comply with the following conditions:

- (1) **Physical Barrier.** During Peak Periods, a Permitted Area must be equipped with a physical barrier that separates the Permitted Area from the public area or Non-Permitted Area. The physical barrier, tables, and chairs utilized shall be as identified in the City of College Station Design Standards: Northgate in Chapter 12 Unified Development Ordinance, of the College Station Code of Ordinances. In the event that such barrier is removed from the Permitted Area, all damaged or affected public infrastructures must be repaired to a pre-barrier condition by applicant.
- (2) **Surface.** The surface of the Permitted Area may not be altered and must remain standard brick pavers on the exterior layer as specified in the City of College Station Design Standards: Northgate in Chapter 12 Unified Development Ordinance, of the College Station Code of Ordinances. The permitted establishment shall keep the Permitted Area and adjacent sidewalk free of litter, trash, paper, and other waste at all times.
- (3) **Location.** A Permitted Area may be located on College Main, along University Drive, and along the Promenade. At all times, the permitted establishment is responsible for ensuring the sidewalks maintain compliance with the Americans with Disabilities Act Accessibility Guidelines.
 - a. **College Main.** An establishment adjacent to College Main may be permitted to use the balance of space between its façade and a twenty six (26') foot clear zone as determined by the Fire Department during Peak or Non-Peak Periods.
 - b. **University Drive.** An establishment adjacent to University Drive may use the balance of space between its façade and a ten (10') foot clear zone for a Permitted Area during Non-Peak Periods.
 - c. **Promenade.** An establishment adjacent to the Promenade may use the balance of the space between its property line and a minimum thirteen (13') foot clear zone measured between the property line and the edge of the pavilion supports during Non-Peak Periods. This clear zone is in addition to the remainder of the Promenade Pedestrian area.
- (4) **Time and Service.** The Permitted Area may only operate during the permitted establishment's business hours. While not in operation the tables and chairs must be stored within the business establishment and may not be stored in the Permitted Area. Service in the Permitted Area shall be limited to persons seated at tables and chairs.

(5) **Alcohol.** If alcohol is to be present in the permitted area, then the Permitted Area must adhere to Chapter 1, Section 13 of the City's Code of Ordinances and all laws, rules, and regulations identified by the Texas Alcoholic Beverage Commission.

(6) **Display.** The Permit must be placed in a conspicuous place at the entrance of the establishment.

The Permitted Area must have at least two (2) signs in a conspicuous place stating it is "UNLAWFUL TO POSSESS AN OPEN CONTAINER OR PUBLICLY CONSUME AN ALCOHOLIC BEVERAGE OUTSIDE THIS ESTABLISHMENT AND THE PERMITTED AREA".

(7) A Permit may not be assigned or transferred.

G. AMENDED APPLICATION

(1) All outdoor dining must take place according to the approved Permit. Any changes made in the permit must be submitted for approval to the Administrator as an Amended Permit Application. Failure to submit an application for an Amended Permit may result in denial or revocation of any Permit.

(2) The applicant must pay a non-refundable Amended Permit Application fee of \$175.00 when the amended permit application is submitted to the City.

H. APPLICATION FEE

Applicants for Peak Period must pay a non-refundable permit application fee of \$350.00 plus \$2.00 per square feet of Permitted Area when the original permit application is submitted to the City and a non-refundable Permit Application fee of \$175.00 plus \$2.00 per square feet of Permitted Area for an annual renewal. Non-Peak Period only permits shall not be assessed a permit fee.

I. INSURANCE INDEMNIFICATION AND RELEASE

(1) No permit shall be issued under this section until the applicant has filed with the Administrator a Certificate or Certificates of Insurance, indicating that there is in effect public liability insurance covering any damages arising out of the use and operation of any and all devices and facilities operated in connection with the permitted area. A public liability insurance policy shall be issued by a company authorized to do business in the state of Texas. The policy shall be accompanied by a certificate from such company that such policy will be in force and effect during the full duration of the valid permit. Such policy shall be in an amount not less than One Million Dollars (\$1,000,000.00) for the death or injury of one person, and not less than Two Million Dollars (\$2,000,000.00) for death or injury in any one accident. The applicant should have the City named as an additional insured.

- (2) The applicant must indemnify and release the City in connection and use of the Permitted Area before receiving a valid Permit.

J. INSPECTION

Upon receiving a valid permit from the City, the applicant will allow any City Official to inspect the Permitted Area for the purpose of maintaining and assuring the health, safety, and welfare of the City of College Station. Inspections may occur at any time and may be without notice.

K. DENIAL OR REVOCATION OF PERMIT

A Permit issued pursuant to this section may be revoked or denied if:

- (1) The applicant or establishment does not comply with this section, City ordinance, or any other applicable law.
- (2) The application contains a false statement of material fact.
- (3) The Administrator finds the applicant has not met all the requirements established in this section or if the Administrator deems the requested area to be in conflict with any City service, goal, or objective.
- (4) The applicant or any other person responsible for the Permit will be notified of such revocation and shall immediately cease and dismantle operations in the Permitted Area.

L. APPEAL OF PERMIT DENIAL OR REVOCATION

- (1) The notice of denial or revocation of a Permit shall include the procedure for appealing the denial or revocation.
- (2) If a City official denies an application or revokes a permit, the Permit holder or applicant of the Permit which was denied or revoked shall have the right of appeal to the Administrator by submitting an appeal in writing to the Administrator within ten (10) business days of the denial or revocation.
- (3) Pending action on the appeal, a Permit which has been revoked shall be considered revoked and an application, which has been denied, shall be considered denied.
- (4) If a written appeal is not submitted within ten (10) business days of denial or revocation, the application or permit will be considered denied or revoked.

M. OFFENSES

- (1) It shall be unlawful for any person to violate any section of this ordinance.
- (2) It shall be unlawful to sell, possess, or consume alcoholic beverages in a Non Permitted Area.
- (3) It shall be unlawful for a person to use the Permitted Area for purposes not identified in the permit.