



**ORDINANCE NO. 651-2018-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS, ORDERING THE AMENDMENT OF CHAPTER 20 SIGNS TO INCLUDE NEW SECTIONS 20-16 THROUGH 20-20, PROVIDING REGULATIONS FOR THE USE OF PUBLIC SIDEWALK RETAIL DISPLAYS, ADDING A PERMIT FEE TO THE MASTER FEE SCHEDULE, CONFIRMING TEXAS OPEN MEETINGS ACT COMPLIANCE, PROVIDING A SEVERABILITY CLAUSE, PROVIDING A REPEALER CLAUSE, PROVIDING A PUBLICATION CLAUSE, PROVIDING AN EFFECTIVE DATE, AND PROVIDING A CERTIFICATION OF ADOPTION.**

**WHEREAS**, the City of Venus, Texas (“City”), is a Type A general law city operating pursuant to the laws of the State of Texas, by and through its duly elected council members;

**WHEREAS**, the City is authorized and empowered to adopt and enforce ordinances, not inconsistent with state law, that are necessary to protect the welfare and safety of its inhabitants (TEXAS LOCAL GOVERNMENT CODE § 51.012);

**WHEREAS**, the City Council (“Council”) of the City serves as the elected governing body; directly responsible for the promotion and protection of the public health, order and safety of its citizens and inhabitants;

**WHEREAS**, city staff and Council understand businesses have a present need to use sidewalks in the public right-of-way to create displays encouraging retail sales;

**WHEREAS**, city staff and Council also recognize certain areas of town where commercial enterprises (shops, restaurants, stores, etc.) are located need increased pedestrian traffic to support their businesses and sidewalk displays encourage pedestrian traffic to those areas and specifically to those businesses;

**WHEREAS**, city staff and Council appreciate the investment business owners are making into certain areas of the city, redeveloping buildings, constructing new buildings, and creating an overall heightened interest in Venus to consumers and other business owners wishing to come here;

**WHEREAS**, although the City promotes efforts to increase retail and restaurant sales within the City, the existence of these public sidewalk retail displays has come to the attention of city staff in that they sometimes impede the flow of pedestrian traffic and make it difficult for people with disabilities to navigate the sidewalk rights-of-way;

**WHEREAS**, there is a need for regulations and standards for the existence and operation of these public sidewalk retail displays to facilitate a safe environment for all who use the city’s sidewalks;

**WHEREAS**, the establishment of permit conditions, specific location requirements and safety standards for public sidewalk retail displays is necessary to protect and promote the general health, safety, and welfare of the residents and pedestrians of the City;

**WHEREAS**, the Council finds the issuance of a sidewalk retail display permit shall not constitute nor shall it be construed to constitute a vacation or abandonment by the City of its interest in the right-of-way or any easement; and

**WHEREAS**, the ordinances of the City are codified together in the CITY OF VENUS CODE OF ORDINANCES, hosted and managed by Municode.com and the recommended changes shall be incorporated into Chapter 20, adding new sections specifically regulating public sidewalk retail displays, as Sections 20-16 through 20-20 as provided herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS:**

#### **SECTION A. CHAPTER 20 AMENDMENT**

Chapter 20 – Signs, of the CITY OF VENUS CODE OF ORDINANCES is hereby amended to include new Sections 20-16 through 20-20 as follows:

##### **20-16. – Public sidewalk retail displays – permit required.**

It shall be unlawful for any person to install or place any merchandise for display or sale or to post or display signs, advertising or other matter upon any sidewalk or public right-of-way without a permit as provided by Sections 20-16 through 20-20 of this chapter. Each day of a violation of this section shall constitute a separate offense. Receipt of a sidewalk retail display permit shall exempt the permittee from obtaining a "minor easement" from the city for any fixture or structure approved by the permit. A sidewalk retail display permit shall be a license to use the sidewalk and shall not grant nor shall it be construed or considered to grant any person any property right or interest in the sidewalk or right-of-way. Each application for a sidewalk retail display permit shall require the payment of the permit fee as set by the city council and included in the master fee schedule.

##### **20-17. – Public sidewalk retail displays – liability and insurance.**

- (a) By applying for a sidewalk retail display permit, any person owning or operating such use agrees to indemnify, defend, save and hold harmless the city, its officers, agents and employees from any and all claims, liability, lawsuits, damages and causes of action which may rise out of such activity. The owner or operator shall enter into a written agreement with the city to evidence this indemnification. Such agreement must have the written approval of the city attorney prior to operating such use.
- (b) The owner or operator shall acquire and keep in full force and effect, at its own expense, the insurance in the following amounts and types:
  - (1) Commercial general liability in the amount of \$500,000 per occurrence for bodily injury and property damage. The city must

be named as an additional insured on this policy and an endorsement must be issued as part of the policy evidencing compliance with this requirement.

- (2) Workers' compensation and employers' liability as required by the State of Texas.
- (3) All policies must be issued by companies authorized to do business in the State of Texas.
- (4) The city shall receive at least thirty (30) days written notice prior to any cancellation, non-renewal or material change in the coverage provided.
- (5) Any person operating a sidewalk retail display shall provide, and must have approved by the city administrator, an original certificate of insurance as evidence that the above requirements have been met prior to the initiation of the sidewalk retail display. Failure to comply with all these requirements shall cause a suspension or revocation of all sidewalk retail display activities.
- (6) The insurance policy shall be in effect from October 1 until September 30 of the following calendar year.

**20-18. – Public sidewalk retail displays – standards and criteria for application review.**

The following standards and criteria shall be applied in reviewing an application:

- (a) Sidewalk retail display shall be a permitted accessory use to a retail business.
- (b) Sidewalk retail display shall be related to the principal use of the abutting property.
- (c) Sidewalk retail display is prohibited at any time the use of the abutting building is not open for business and is prohibited between the hours of 11 p.m. and 7 a.m.
- (d) No sidewalk retail display shall obstruct pedestrian or vehicular traffic or be in a visibility triangle.
- (e) Sidewalk retail display shall be located in a manner that promotes efficient and direct pedestrian movement.
- (f) A minimum of one (1) unobstructed pedestrian path at least six (6) feet wide shall be maintained, at all times. A wider pedestrian path may be required in areas of congested pedestrian activity.
- (g) Unobstructed passage shall be provided to building entrances including at least a two (2) foot clearance on each side of any entrance, fire hydrants, or other fixture located within the display area;

- (h) A minimum setback of at least six (6) feet from the curb line shall be provided to maintain adequate space for pedestrian access to motor vehicles;
- (i) Display may be up to three (3) feet deep from building.
- (j) Furniture and equipment shall not be anchored to the sidewalk in the right-of-way nor shall they be attached or affixed to any tree, post, sign or other structure;
- (k) A sidewalk retail display area shall not exceed one-hundred (100) square feet for all outdoor displays areas; and
- (l) Merchandise and display fixtures shall not exceed five (5) feet in height when abutting the building and four (4) feet when not abutting the building.
- (m) All accessible routes must be maintained in accordance with the most recent adopted Texas Accessibility Standards (TAS) promulgated by the Texas Department of Licensing and Regulation.

**20-19. – Public sidewalk retail displays – conditions of sidewalk retail display permit.**

Sidewalk retail display permits shall be subject to the following conditions:

- (a) The city may require the temporary removal of sidewalk retail displays by the permittee when street, sidewalk, or utility repairs necessitate such action or when it is necessary to clear sidewalks for a permit issued by the city. The permittee shall not be entitled to any refund for such removal. The city shall not be responsible for any costs associated with the removal or the return and installation of any sidewalk retail display.
- (b) The city may cause the immediate removal or relocation of all or any part of the sidewalk retail display in emergency situations. The city, its officers, agents and employees shall not be responsible for any damages or loss of sidewalk retail displays relocated during emergency situations and shall not be responsible for any costs associated with the removal or the return and installation of any sidewalk retail displays.
- (c) The sidewalk retail display shall be maintained in a neat and orderly appearance at all times and shall be cleared of all debris on a periodic basis during the day and at the close of each business day.
- (d) The permittee is responsible for repair of any damage to the sidewalk caused by the sidewalk retail display.
- (e) The city may revoke and require a new application for a sidewalk retail display permit for non-compliance with Sections 20-17 or 20-18 of this chapter, change in business ownership, change in display configuration, or the age of the permit.

**20-20. – Public sidewalk retail displays – exemptions.**

- (a) Retail ice machines otherwise in compliance with Sections 20-16 through 20-20 are exempt from the Section 20-18 (c) prohibition.
- (b) Newspaper stands otherwise in compliance with Sections 20-16 through 20-20 are exempt from the Section 20-18 (c) prohibition.

#### **SECTION B. MASTER FEE SCHEDULE AMENDMENT**

The master fee schedule shall be amended to include a forty-dollar (\$40) permit fee for sidewalk retail display permit applications. Each application shall require payment of said fee. Any changes to this fee may be made at any time by a majority vote of the city council. The city council finds this fee to be necessary to recover the administrative costs associated with the administration of the permitting processes associated with this ordinance.

#### **SECTION C. OPEN MEETINGS COMPLIANCE**

That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the TEXAS OPEN MEETINGS ACT, TEXAS GOVERNMENT CODE, Chapter 551.

#### **SECTION D. SEVERABILITY**

Should any section, clause, subsection, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and/or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and/or phrases be declared unconstitutional or invalid.

#### **SECTION E. REPEALER**

All ordinances or parts of ordinances not consistent or conflicting with the provisions of this ordinance are hereby repealed; provided that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this ordinance. Any cause of action accruing prior to the passage of this ordinance shall continue as if this ordinance was not passed or any other ordinance had not been repealed.

#### **SECTION F. PUBLICATION**

The City Secretary is hereby directed, if required by law, to post or publish in the official newspaper of the city, the caption, publication clause and effective date clause of this ordinance in one issue of the official newspaper of the City, provided that the official newspaper is a weekly paper, in accordance with Section 52.011 of the TEXAS LOCAL GOVERNMENT CODE. The City Secretary is also hereby directed to incorporate the provisions of this ordinance into the CITY OF VENUS CODE OF ORDINANCES by submitting it to [www.municode.com](http://www.municode.com) for incorporation and online publication.

#### **SECTION G. EFFECTIVE DATE**

This ordinance shall become effective from and after its passage.

SECTION H. CERTIFICATION OF ADOPTION

APPROVED: MAYOR JAMES L. BURGESS


PASSED: MONDAY, MAY 14, 2018



ORDINANCE BECOMES EFFECTIVE: MONDAY, MAY 14, 2018

I, the undersigned, City Secretary do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the City of Venus City Council at a regular meeting duly convened on Monday, May 14, 2018.

ATTEST:



RANA GAMEL, CITY SECRETARY

APPROVED AS TO FORM:



CASS CALLAWAY, CITY ATTORNEY

