

ORDINANCE NO. 371

AN ORDINANCE OF THE CITY OF BEE CAVE AMENDING CHAPTER 16 (STREET, SIDEWALKS AND OTHER PUBLIC WAYS AND PLACES); BY REPEALING ARTICLE 16.02 (USE OF CITY HALL AND OTHER CITY FACILITY) IN ITS ENTIRETY AND REPLACING IT WITH ARTICLE 16.02 (PUBLIC USE OF CITY'S "OLD BEE CAVE SCHOOL HOUSE") OF THE CITY OF BEE CAVE CODE OF ORDINANCES TO PROVIDE STANDARDS FOR RESERVING AND USE OF CERTAIN CITY FACILITY; AND PROVIDING FOR A PENALTY; FINDINGS OF FACT; A SAVINGS CLAUSE, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Bee Cave ("City") is the owner of various properties; and,

WHEREAS, it is not the intention of the City Council to create the status of a public forum as defined by case law interpreting the First Amendment of the Federal Constitution on all City owned property; and,

WHEREAS, this Ordinance will ensure the protection of the condition of City owned property and to allow for the equal opportunity of all who wish to use the property; and,

WHEREAS, fees must be adopted to reimburse the City for use of the property and any expenses incurred in the management and janitorial services after use of City property; and

WHEREAS, the City Council finds that the repeal and adoption of the amendments proposed herein are necessary for the protection of the City and its property.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEE CAVE, TEXAS:

Section 1. Findings of Fact. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Bee Cave and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Repeal and Replacement. Chapter 16 - Article 16.02 (Use of City Hall and Other City Facility), is hereby amended by repealing and replacing it in its entirety with new Article 16.02 (Public Use of City's "Old Bee Cave School House") to read as described below.

ARTICLE 16.02 PUBLIC USE OF CITY'S "OLD BEE CAVE SCHOOL HOUSE"

Sec. 16.02.001 Purpose

The purpose of this policy is to serve as a guideline for the management and scheduling of the City's "Old Bee Cave School House" (hereinafter the facility) and to balance the requirements necessary to conduct public business with the needs of citizen and community-based access and use of the facility.

Sec. 16.02.002 Priority of use

Use of the Old Bee Cave School House owned by the city shall be for the primary purpose of conducting official public business on behalf of the city. Meetings of the city council, city committees, city-appointed boards and commissions, and city departments shall take precedence over other community uses of this facility.

Sec. 16.02.003 Approval process

(a) Approval authority. The city manager, or designee, may approve requests from members of the public to use the facility for prescheduled events as described in Section 16.02.007.

(b) Review. The city manager, or designee, will review and approve or deny the use request based upon criteria including, but not limited to, the following:

(1) The purpose is not-for-profit and coincides with the uses described in Section 16.02.007;

(2) The facility is not intended to be used for commercial purposes or the promotion or sale of products;

(3) The event will not cause a detrimental impact to the city staff and available resources, or the physical capacity of the facility to host the event, including, but not limited to:

(A) The availability of city staff to accommodate requests for reservations during nonbusiness hours.

(B) The parking capacity and the potential impact on the facility, or on other city owned facility, or on other requested or planned events.

(C) The number of planned participants and the traffic impact upon the location.

(D) Other scheduled events at adjacent city facility or locations.

(c) Appeal of designee's decision. If the event does not meet the stipulated criteria or the application is not approved, the requestor may, in writing and within three (3) business days after the date of the decision (if the decision was made by a designee of the city manager), petition the city manager for review and approval or denial. The city manager's decision shall be final.

Sec. 16.02.004 Reservations and scheduling

(a) Reservation procedure. Reservations are on a first-come, first-served basis and may be made in person or by phone, and must be confirmed with the submission of a completed reservation application. Reservation applications shall be submitted to the city manager, or designee, office for review. All reservations must be made between the hours of 8 a.m. and 5 p.m. Monday through Friday, exclusive of holidays. Requests for community uses of the facility must be received within at least ten (10) business days, but no more than thirty (30) calendar days, prior to the requested time. Requests for local scout troop use of the Old Bee Cave Schoolhouse facility located at 13333-A Highway 71 West must be received within ten (10) business days, but not more than 180 calendar days prior to the requested time.

(b) Damage deposit and rental fee. All reservations shall require a damage deposit and rental fee which must be paid in full upon approval of the application. Failure to tender the required damage deposit and rental fee shall result in the cancellation of the reservation.

(c) Damage Deposit Refunds. Will be issued after the event if the facility is cleaned and left in the same or better condition as it was prior to the event, as determined at the sole discretion of the city manager or designee.

(d) Rental time periods. All rental time periods must be in consecutive hours. No permittee will be allowed to split a rental into multiple time periods for the purpose of decorating or any other purpose. No overnight functions will be allowed, and all functions must conclude by 9 pm.

(e) Notice of cancellation. The city requires written notice of any cancellations at least seventy-two (72) hours prior to the scheduled event. Failure to comply will be grounds for the city's denial of the privilege of reserving the facility in the future and will result in the forfeiture of any deposit.

(f) Requests for multiple dates. In order to maximize the availability of the facility for community use, consideration of requests for multiple dates will be denied. No single activity or group shall be permitted to monopolize the facility. Groups may only use the facility one day each week with a 4 hour maximum.

Local Scout troops may reserve the Schoolhouse facility and schedule meetings up to six (6) months in advance. Scout troops may only use the Schoolhouse facility one day per week with a 2 hour maximum time limit.

(g) Reservation overrides. The city shall have the authority to schedule priority functions that may necessitate the removal of community use activities previously scheduled. If such change is required, the city manager shall notify the contact person identified on the submitted request form as soon as possible. If the city cancels an event, the city shall give a full refund of the reservations and damage deposit to the permittee. Overriding previously scheduled events shall not subject the city to any liability whatsoever.

(h) Blackout dates. The facility will not be available for reservation on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Good Friday, Memorial Day, Independence Day,

Labor Day, Thanksgiving and the day after Thanksgiving, Christmas Eve and Christmas Day or such other dates that the city may designate. If the holiday falls on a Saturday or Sunday, the facility may not be available the Friday prior or the Monday after the holiday in accordance with the city's holiday schedule.

Sec. 16.02.005 Use regulations

(a) Required staff support. Business hours for the city are from 8 a.m. to 5 p.m., Monday through Friday, excluding city holidays. For reservation requests approved for events to be held during business hours, the city manager will designate a city staff member to assist the individual and/or organization during the reservation period.

(b) Access during nonbusiness hours. A member of the city staff may be required to be present for community uses of the facility during nonbusiness hours. If city staff presence is required during a reserved community use, the individual and/or organization submitting the meeting request must pay the cost for the city staff to be present during the event. Two-hour minimum compensation for city staff is required, payable at the applicable overtime rate. Approval of requests for events that are to occur during nonbusiness hours is also subject to the availability of a police officer to be present at that time. Four-hour minimum compensation for a police officer is required, payable at the applicable overtime rate.

(c) Catering and food service. Any caterer hired by the permittee must be licensed by the county health department and must have a current city food service permit.

(1) The permittee and guests may bring food and beverages for the event. The permittee and attendees may not prepare or cook food in the facility.

(2) There is no grease trap in the facility. Therefore, anyone serving any product resulting in grease residue or production will be required to remove that grease from the facility at the end of the event. Any grease spills must be completely cleaned up at the end of the event, or the permittee or caterer must pay for any such cleanup.

(3) The permittee must furnish its own cleaning supplies, such as extra garbage bags. The city may furnish a vacuum cleaner, mop and broom for the permittee's use.

(d) Restrictions. The following restrictions shall apply to reservations in the facility:

(1) Decorations. Decorations may not be taped, nailed, tacked, screwed, or otherwise physically attached to any walls, furniture, ceilings or floors in city-owned facility. Confetti and/or glitter are prohibited. No fog machines, rice, sand or sawdust are permitted on the premises.

(2) Tobacco use and alcoholic beverages. The facility and city-owned property is tobacco and alcohol-free.

(3) Firearms or explosive devices. No firearms or explosive devices are allowed in the facility or on city-owned property.

(e) Objectionable conduct.

(1) Any person whose conduct is disorderly or disruptive may be subject to removal from the premises. Examples of disorderly or disruptive conduct include, but are not limited to, the following:

- (A) Intoxication or any liquor violations (minor consumption, minor possession, etc.).
- (B) Use of abusive, indecent, profane, or vulgar language.
- (C) Making offensive gestures or displays.
- (D) Abusing or threatening another person in an obviously offensive manner.
- (E) Making unreasonably loud noise.
- (F) Fighting with another person.
- (G) Vandalism.

If the city's authorized representative, security personnel, or any peace officer deems any such conduct inappropriate, the person engaged in such conduct will be subject to removal from the premises. If the city's authorized representative, security personnel, or any peace officer deems it necessary, the event at which such conduct has occurred may be terminated.

(2) The permittee of the event at which any such ejection occurs shall hold harmless, indemnify and defend the city and its officers, agents, and employees against any claim related to such termination and ejection.

(3) Any of the above conduct may result in loss of the permittee's deposit.

(f) General information.

(1) By agreeing to this policy, the permittee hereby agrees to indemnify, save, and hold harmless the city and its officers, employees, agents, and licensees against any and all liability, damage, loss, claims, causes of action, expenses or demands (collectively "costs") of any nature whatsoever, on account of personal injury (including, without limitation, workers' compensation and death claims), or property loss or damage of any kind whatsoever, which arises or is claimed to arise out of or is claimed to be in any manner connected with construction, installation, existence, operation, use, maintenance, repair, restoration, or removal of the city-owned facility

pursuant to this policy. The permittee must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel satisfactory to the city attorney, and pay all other costs and expenses of any kind arising from any of the aforesaid claims, demands or causes of action. The permittee must notify the city manager, or designee immediately in the event of any injury to any persons or damage to any property.

(2) Animals of any kind are not permitted in facility with the exception of assist dogs trained and in service to a physically impaired or challenged person, except in conjunction with an approved exhibit, display or performance legitimately requiring use of animals.

(3) The city shall assume no responsibility for any property placed on or in its facility and/or grounds and is released from any all liability for loss, injury, or damage to persons or property that may be sustained by the use or occupancy of facility.

(4) The city is not responsible for any personal property left on the premises. All property of the permittee needs to be removed by the end of the reservation period. Any property remaining on the facility's premises is deemed abandoned by the permittee and will be disposed of.

(5) The permittee assumes all responsibility for all damages to facility, property, furniture, and/or equipment provided by the city to the permittee, as determined at the sole discretion of the city manager's office or designee. Damage incurred during an event will result in the loss of all or part of the permittee's reservation and damage deposit, and could result in additional charges depending on amount of damage. The amount deducted or charged will be equal to the cost to the city to repair the damage. Damage may jeopardize the permittee's ability to reserve any of the city's facility in the future. The permittee must notify the city manager or designated representative on duty immediately if the reserved facility was damaged prior to the permittee's entry. Failure to do so shall result in the presumption that any damage found at the end of the reservation period resulted from the permittee's use of facility.

(6) All groups or individuals using facility shall comply with all laws, including federal, state and local laws. These laws shall include all city ordinances and all regulations of the city and its departments which may in any way affect the reservation or use of the facility.

(7) The use of open flames, flammable liquid, or material under high pressure is prohibited.

(8) The permittee shall not operate, manage or conduct any activities or events or operate the facility in a manner that would discriminate against any person on the basis of race, age, religion, disability, national origin, gender or residence or that would otherwise violate title VI of the Civil Rights Act of 1964. The permittee will not conduct any activities or events or operate the facility in a manner that would

cause the city to be in violation of any federal, state, or local law or ordinance, or to be in violation of any deed restrictions, covenants or easements in effect for the facility.

(9) No groups or individuals may schedule or hold an event having larger attendance than the established occupancy limit of the facility.

(10) All facility equipment must be set up and taken down by authorized city staff. No equipment shall be removed from the facility at any time.

(11) Any person entering the facility improperly attired may be required to leave by staff.

(12) No portion of the sidewalk, entries, plaza walkway, passages, doors, aisles, vestibules, or other ways of access to the public utilities on facility premises are permitted to be obstructed, nor can any windows, ventilators or lighting fixtures be obscured.

(13) No permittee may solicit or collect donations at the facility without prior approval of the city.

(14) Unless expressly stated to the contrary in these policies, a violation of these policies shall result in the forfeiture of any deposit or fee paid for the facility reservation and jeopardize the permittee's ability to reserve the facility in the future. Furthermore, nothing contained in these policies shall be construed to limit the city's remedies to recover damages for violations of the policy.

(15) The city may enter the facility without giving notice and without incurring any obligation to the permittee and remove any alterations in or additions or improvements, installations of any equipment, or placement of signs on the facility. Such removal will occur only if the city manager or designee deems it necessary:

(A) In order to exercise the city's rights or duties with respect to the facility;

(B) To protect persons or property; or

(C) For the public health or safety with respect to the facility.

Sec. 16.02.006 Fees and deposit

(a) Rental fees. The basic rental includes the facility space, set-up/take-down of tables and chairs, electric power, lights, heating, air conditioning, water, tables, chairs, and custodial services. City shall not be liable to permittee for failure to provide any of these due to circumstances beyond the control of the city.

(1) Old Bee Cave School House: \$50.00 per hour.

(2) After-hours use of facility: (Refer to Sec. 16.02.005)

Local Scout troops will not be required to pay rental fees.

(b) Damage deposit.

The following damage deposits are to be assessed for community use of the facility. Upon approval of a reservation, the applicable fees are to be remitted to the city manager, or designees. The fees will be returned to the permittee no later than 30 days from the conclusion of the reservation period following staff review of the facility if the city determines that the permittee left the facility in as good or better condition than the condition of the facility immediately prior to the event for which the permittee reserved it. The city reserves the right to keep the fees if it determines that the facility was not left in good condition, or that damages beyond normal wear and tear exist.

(A) Meetings/events–no food and drinks: \$250.00.

(B) Meetings/events–food and drinks: \$350.00.

Local Scout troops will not be required to pay a deposit, however, any damages that occur during troop reservations may result in loss of future reserved use.

(c) Responsibility for damages. Individuals or groups making reservations are responsible for any damage to the facility during the reservation period. The city reserves the right to assess additional charges for damages as warranted, and individuals and/or groups are subject to applicable criminal and/or civil penalties as a result of damaging the facility. The costs to repair or replace damaged items and other charges in excess of the damage deposit are due fifteen (15) days after the event. Payments received after the fifteen (15) days will be assessed a late fee of \$10.00 per day. Failure to comply will be grounds for the city's denial of the privilege of reserving facility in the future.

Sec. 16.02.007 Facility events

(a) Old Bee Cave School House. This facility can accommodate 7 tables which will comfortably seat 50 people. Without tables, the occupancy for this facility is 75. A small kitchen area is also available for set up of food and beverages. Events are limited to:

(1) Scout troop meetings.

(2) City HOA meetings.

(3) City civic groups.

(b) Private parties. Reservations for this facility will not be allowed for private parties, including but not limited to wedding receptions, birthday parties, etc.

Section 3. Savings Clause. The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

Section 4. Severability. If any provision, section, sentence, clause or phrase of this Ordinance or application of the same to any person or set of circumstances is for reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Bee Cave in adopting, and the Mayor in approving this Ordinance, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

Section 5. Repealer. The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinance or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

Section 6. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

Section 7. Notice and Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED this _____ day of _____, 2017.

APPROVED:

Caroline Murphy, Mayor

ATTEST:

Kaylynn Holloway, City Secretary

[SEAL]

APPROVED AS TO FORM:

Patty L. Akers, City Attorney