

CHAPTER 122: OUTDOOR CAFES

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§ 122.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"ADMINISTRATOR." The City of Bardstown is authorized to enforce this section.

"DESIGN GUIDELINES." A set of standards defining the parameters to be followed for placement, location, and permitting of outdoor cafes within the Bardstown Historic District.

"ENCROACHMENT." Tables, umbrellas, chairs, decorations and objects directly related to the business of food and refreshment service on the public right-of-way, sidewalk or common area on public property. Encroachments may not be attached, affixed or chained to the permitted area or to any object therein.

"OUTDOOR CAFÉ." The placing, locating or permitting of the placing or locating of chairs, tables or other dining equipment, or offering service to patrons, on the right-of-way, such as sidewalks, adjacent to a business licensed to operate as an eating establishment where food and other refreshments are served.

"PERMITTEE." The recipient of an encroachment permit under the terms and provisions of this chapter. The permittee must be located within the boundaries of the Bardstown Historical District to be eligible.

"SIDEWALK." The portion of the public right-of-way between the curb lines of a roadway and the adjacent property lines, intended for the use of pedestrians.

(Ord. B2007-12, passed 6-5-07)

§ 122.02 PERMIT REQUIRED.

(A) It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the business of operating an outdoor café on city property unless he or she shall hold a permit issued under the terms of this chapter, except during "special community events" recognized by the city, a list of which shall be maintained in the office of the Administrator.

(B) Permits shall be issued only to businesses properly licensed by the city, which wish to provide service to its patrons or to locate tables and chairs or other objects directly related to their business of food and refreshment service on the public property immediately adjacent to their businesses. No outdoor café permit shall be issued to any business that sells alcoholic beverages unless that business establishes that at least 50% of its gross revenue is derived from the sale of food.

(Ord. B2007-12, passed 6-5-07) Penalty, see § 122.99

§ 122.03 APPLICATION AND FEES.

(A) Application for a permit shall be made at the Bardstown City Hall in a form deemed appropriate by the Administrator. The application shall include, but not be limited to, the following information:

(1) Name, home and business addresses and telephone number of the applicant, and the name and address of the owner, if other than the applicant, of the business;

(2) In the event the applicant or owner is not a resident of the county, the name, home address and telephone number of a designated person whom the city may notify or contact at any time concerning the applicant's encroachment;

(3) A copy of a valid City of Bardstown business license to operate a business establishment adjacent to the public property which is the subject of the application;

(4) Proof of current liability insurance, issued by an insurance company licensed to do business in the Commonwealth, insuring the licensee and the city against all claims or liability for damage to property or for bodily injury including death, arising from the result, direct or indirect, of the use of public property, pursuant to the outdoor café permit. (The insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the stated expiration date without 30 days' advance written notice to the city by the insurer. The policy shall provide coverage in the minimum amount of \$1,000,000 provided that the City of Bardstown may require a higher minimum coverage at its reasonable discretion.);

(5) (a) The applicant must obtain a certificate of appropriateness (COA) from the Bardstown Historical Review Board and Bardstown City Council to ensure compliance with adopted Outdoor Café Design Guidelines and other applicable sign and zoning regulations. Applicants must contact the Joint City-County Planning Commission to determine specific COA requirements;

(b) This certificate will require a diagram of the proposed permitted area showing the locations and dimensions of the area, all proposed encroachments and all publicly-owned benches, tables and other objects within the area; and

(6) Proof of any required ABC license(s), Health Department permits or other permits for the business involved.

(B) Notifications and fees.

(1) Within 30 days after the application is filed, the applicant shall be notified of the issuance or denial of the permit. Upon issuance of the permit, the applicant shall be required to pay to the city an annual fee in the amount of \$75 (pro-rated to \$37.50 for three months or less).

(2) The fee shall be independent of or in addition to any other license tax or fee imposed by the city.

(C) Any person who shall operate an outdoor café upon public property, within the definitions in this chapter, without an outdoor café permit shall be subject to the penalties hereinafter set forth herein. (Ord. B2007-12, passed 6-5-07) Penalty, see § 122.99

#### § 122.04 PROHIBITED CONDUCT.

(A) No permittee shall:

(1) Place any encroachment on any portion of the public property other than within the permitted area;

(2) Block or resist any public passageway to less than four feet of unrestricted width or block the ingress/egress to any building. In areas of congested pedestrian activity, the Administrator is authorized to require a wider pedestrian path, as circumstance dictates. No items shall be placed so as to block any driveway or crosswalk;

(3) Sublicense the encroachment area;

(4) Place anything around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier unless otherwise required by the State Department of Alcoholic Beverage Control;

(5) Use tables, chairs, umbrellas or any other objects of a type, composition or size or in a placement not authorized by the Administrator or which are unsafe, in disrepair or unsightly;

(6) Place tables, chairs, umbrellas, signs or other objects in the permitted area not in compliance with the adopted Design Guidelines and not approved by the Bardstown Historical Review Board and Bardstown City Council through the COA process;

(7) Use umbrellas or other decorative material which is not fire retardant, pressure treated or manufactured of fire resistant material;

(8) Fail to secure permission of the landlord where a building has multiple occupants;

(9) Operate without the insurance coverage specified;

(10) Fail to promptly pick up, remove and dispose of all trash or refuse within the permitted area or failure to take reasonable measures to prevent the deposit of any substance upon the surface of the permitted area which stains, discolors or alters the texture of the area surface;

(11) Store, park or leave any items overnight on any street or sidewalk, except for authorized encroachments which may be kept in the permitted area only at the permittee's risk; and/or

(12) Store, park or leave any vehicle, truck or trailer within the permitted area.

(B) The outdoor café permit is a temporary license that may be denied, suspended or revoked for any conduct that is contrary to the provisions of this section, or for use of the permitted area in a manner as to create a public nuisance, or constitute a danger to the public's health, safety or welfare.

(Ord. B2007-12, passed 6-5-07) Penalty, see § 122.99

#### § 122.05 FORMS AND CONDITIONS.

(A) The permit shall be issued on a form deemed suitable by the Administrator.

(B) In addition to naming the permittee and any other information deemed appropriate by the Administrator, the permit shall contain the following conditions:

(1) Each permit shall be effective for one fiscal year from July 1 through June 30 (pro-rated to \$37.50 for three months or less) and subject to annual renewal, unless revoked or suspended prior to expiration. No fees will be refunded for revocations or periods of suspension.

(2) The permit issued shall be personal to the permittee only and shall not be transferable.

(3) The permit may be suspended by the Administrator when necessary to clear the public property for public safety or for a "community or special event," as referred to above.

(4) The Administrator may require the temporary removal of items within the encroachment area when street, sidewalk, common areas or utility repairs necessitate the action.

(5) The permit shall be specifically limited to the area shown on the diagram attached to and made part of the permit.

(6) All signage must be approved by the Bardstown Historical Review Board and Bardstown City Council through the COA process and comply with the city's zoning and sign ordinances.

(C) No outdoor seating authorized herein shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of an alcoholic beverage control license for any establishment; however, outdoor seating areas may be included in the calculation for off-street parking requirements as set forth in the zoning regulations, or be used as the basis for computing required off-street parking.

(D) The issuance of a permit does not grant any property rights or infer vested rights to use of the area by the permittee. The city retains the right to deny the issuance of a permit or the renewal of a permit for any reason.

(E) Glass containers.

(1) The city retains the right to suspend the privilege of using glass containers within the encroachment area during festivals and events and when street areas close. The privilege of using glass containers will be revoked if an incident jeopardizes the health, safety and welfare of customers or of the general public.

(2) Repeated offenses may result in revocation of the outdoor café permit.

(F) The serving and consumption of alcoholic beverages will be as limited by laws of the City of Bardstown and State Department of Alcoholic Beverage Control.

(G) Customers must be seated in order to be served.  
(Ord. B2007-12, passed 6-5-07)

§ 122.06 DENIAL, REVOCATION OR SUSPENSION.

(A) The Administrator or its designee may deny, revoke or suspend an outdoor café permit at any time if it is found that:

(1) Any necessary business or health license or permit has been suspended, revoked or canceled;

(2) The permittee does not maintain insurance in force, as required by § 122.03 (A) (4);

(3) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of the encroachment (the decision shall be based upon findings by the Administrator that the pedestrian or emergency vehicle path is insufficient under existing circumstances and represents a danger to the health, safety or general welfare of pedestrians or vehicular traffic);

(4) The permittee has failed to correct violations of this chapter or conditions of his or her permit upon receipt of the Administrator's notice of same delivered in writing to the permittee or his or her designee;

(5) The permittee has failed to take remedial actions to prohibit violations from reoccurring;

(6) The permittee has failed to make modifications upon receipt of the Administrator's notice of requirement of such; and

(7) All encroachments may be removed by the Department of Public Works and/or Administrator and a reasonable fee charged for labor, transportation and storage should the permittee fail to remove the items within 36 hours after receipt of the Administrator's notice to do so. If the Administrator's action is predicated on violation of divisions (A) (2) and (3) above, the period for voluntary removal by the permittee shall be four hours.

(B) Upon denial or revocation, the Administrator shall give notice of the action to the applicant or the permittee in writing stating the action that has been taken and the reason therefor. The action shall be effective upon giving the notice to the applicant or permittee.

(C) The applicant or permittee shall have the right to appeal the decision of the Administrator to the City of Bardstowm within five working days from receipt of notice. An appeal does not stay the denial or revocation of the encroachment permit. A hearing shall be held by the city or its designee within 30 days. The city shall thereafter notify the permittee or applicant of its determination in writing.

(Ord. B2007-12, passed 6-5-07)

§ 122.99 PENALTY.

Any person violating any provision of this chapter or any condition or provision of a permit issued thereunder shall be fined not less than \$20 nor more than \$500 for each offense. Each day of continuance of any violation shall be a separate offense.  
(Ord. B2007-12, passed 6-5-07)