



**CITY OF FRANKFORT**  
**Planning and Building Codes Department**  
**P.O. Box 697**  
**Frankfort, Kentucky 40602**  
**Phone: (502) 875-8500 Fax: (502) 875-3579**  
**www.frankfort.ky.gov**

**APPLICATION FOR TEMPORARY ENCROACHMENT PERMIT**

**Date:** \_\_\_\_\_ (Please be advised permit shall expire April 30)

**Requested by: Name:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Business Name:** \_\_\_\_\_

**Owner information:** **Name:** \_\_\_\_\_

(if different than applicant) **Address:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Required Supplemental Information:**

1. Copy of City of Frankfort Business License.
2. Proof of current liability insurance for both the licensee and the City of Frankfort, for a minimum amount of one million dollars (see Ordinance 29, 2000 series, section 3.a.4 for more specific information).
3. Diagram of the permitted area, showing locations and dimensions of the layout, all proposed encroachments and all publicly owned benches, tables, or other existing objects within the area.
4. Proof of ABC license(s) if serving alcohol, health permits, or other permits for the business involved.
5. \$50 fee, payable to the City of Frankfort.

**Owner/Applicant attests that they have read and understand the requirements contained herein and will comply with all regulations and requirements prior to locating objects within the public right of way.**

\_\_\_\_\_  
 Applicant Signature Date

**STAFF PERSONNEL ONLY**

Zoning District: \_\_\_\_\_  
 Documentation completed and in accordance with Ordinance 29, 2000 Series? Yes [ ] No [ ]  
 Requested Location and Application is hereby: Approved [ ] Denied [ ]  
 Comments:

Signature \_\_\_\_\_ Date \_\_\_\_\_

ORDINANCE NO. 29, 2000 SERIES

AN ORDINANCE AMENDING ORDINANCE NO. 10, 1999 SERIES,  
PROVIDING FOR AND REGULATING OUTDOOR CAFÉ PERMITS ON PUBLIC SIDEWALKS AND THE ST. CLAIR MALL

BE IT ORDAINED BY THE CITY OF FRANKFORT, KENTUCKY,

That Ordinance No. 10, 1999 Series, is hereby amended and readopted to read as follows:

**SECTION ONE. Definitions:**

For the purpose of this ordinance, the following words shall have the meanings respectively ascribed in this section.

- (1) *Administrator*: The Director of Planning and Building Codes or his designee authorized to enforce this section.
- (2) *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.
- (3) *Outdoor café*: The placing, locating, or permitting of the placing or locating of chairs, tables or other dining or cooking equipment, or offering service to patrons, on the right-of-way, such as sidewalks or upon the St. Clair Mall, adjacent to a business licensed to operate as an eating establishment where food and other refreshments are served.
- (4) *Permittee*: The recipient of an encroachment permit under the terms and provisions of this ordinance.
- (5) *Sidewalk*: That 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.

**SECTION TWO. 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 unless he shall hold a permit issued under the provisions of this ordinance; 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 of Frankfort 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; provided however, that no outdoor café permit shall be issued to any business which sells alcoholic beverages unless that business establishes that at least 60 percent of its gross revenue is derived from the sale of food, and provided further that there shall be no service or consumption of alcoholic beverages within the permitted area prior to five o'clock p.m. local prevailing time, except during said "community or special events" during which alcoholic beverages are being legally served on public property in the vicinity by other licensees prior to said time of day.

**SECTION THREE. Permit application**

- (a) Application for a permit shall be made at the Department of Planning and Building Codes in a form deemed appropriate by the Administrator. Such application shall include, but not be limited to, the following information:
  - (1) Name, home and business addresses, and telephone numbers 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 Franklin County, the name, home address, and telephone number of a designated person whom the City of Frankfort may notify or contact at any time concerning the applicant's encroachment.
  - (3) A copy of a valid Frankfort 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 of Kentucky, insuring the licensee and the City of Frankfort against all claims or liability for damage to property or for bodily injury, including death, arising as a result, direct or indirect, of the use of public property pursuant to the outdoor café permit. Such insurance shall name the City of Frankfort as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the stated expiration date without thirty (30) days' advance written notice to the City of Frankfort by the insurer. The policy shall provide coverage in a minimum amount of one million dollars (\$1,000,000.00), provided that the City's Risk Manager may require a higher minimum coverage in his reasonable discretion.
  - (5) A diagram of the proposed permitted area showing the locations and dimensions of the area, all proposed encroachments and all publicly owned benches, tables or other objects within the area.
  - (6) Proof of any required ABC license(s), health permits or other permits for the business involved.
- (b) Within a reasonable time after such 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 fifty dollars (\$50.00).

Such fee shall be independent of and 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 definition of this ordinance without an outdoor café permit shall be subject to the penalties hereinafter set forth in Section 7.

**SECTION FOUR. Prohibited conduct.**

- (a) No permittee shall:

- (1) Place any encroachment on any portion of public property other than within the permitted area.
  - (2) Block or restrict any public passageway to less than four (4) feet of unrestricted width or block the ingress/egress to any building. On the St. Clair Mall such encroachment shall be limited to 20 feet from the front property line of the business. In areas of congested pedestrian activity, the Administrator is authorized to require a wider pedestrian path, as circumstances dictate. No items shall be placed so as to block any driveway, crosswalk, or bus stop.
  - (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 Kentucky 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) Use umbrellas or other decorative material which is not fire retardant, pressure treated, or manufactured of fire resistant material;
  - (7) Fail to secure permission of the landlord where a building has multiple occupants;
  - (8) Operate without the insurance coverage specified;
  - (9) Sound or permit the sounding of any device on the public property or operate any loudspeaker, public address system, radio, sound amplifier, or similar device which produces noise louder than that of ordinary conversation, except during special community events;
  - (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;
  - (12) Store, park, or leave any vehicle, truck, or trailer within the permitted area.
- (b) The encroachment permit is a temporary license which may be denied, suspended, or revoked for any conduct which is contrary to the provisions of this section or for use of the permitted area in such a manner as to create a public nuisance, or constitute a danger to the public's health, safety, or welfare.

#### **SECTION FIVE. Form and conditions of permits.**

The permit shall be issued on a form deemed suitable by the Administrator. 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 (1) year, from May 1 to April 30, 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 such action.
- (5) The permit shall be specifically limited to the area shown on the diagram attached to and made part of the permit.
- (6) Any signage must comply with Article 13 of the zoning ordinance.
- (7) 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, or be used as the basis for computing required off-street parking.
- (8) The issuance of a permit does not grant any property right or infer vested rights to use of the area by the permittee. The City of Frankfort retains the right to deny the issuance of a permit or the renewal of a permit for any reason.
- (9) The City of Frankfort retains the right to suspend the privilege of using glass containers within the encroachment area during festivals and events and when streets are closed. The privilege of using of glass containers will be revoked if an incident jeopardizes the health, safety, and welfare of customers or of the general public. Repeated offenses may result in revocation of the encroachment permit.
- (10) The serving and consumption of alcoholic beverages will be as limited by the Kentucky Department of Alcoholic Beverage Control.

#### **SECTION SIX**

Denial, revocation or suspension of permit; removal and storage fees; emergencies.

- (a) The Administrator or his 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 section 3 (a), (4) above.

- (3) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of the encroachment. Such 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 ordinance or conditions of his permit upon receipt of the Administrator's notice of same delivered in writing to the permittee or his 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.
- (b) All encroachments may be removed by the Department of Public Works, and a reasonable fee charged for labor, transportation, and storage should the permittee fail to remove said items within thirty-six (36) hours after receipt of the Administrator's notice to do so; provided however, that if the Administrator's action is predicated on violation of subsection (a)(2) or (3) of this section, the period for voluntary removal by the permittee shall be four (4) hours.
- (c) Upon denial or revocation, the Administrator shall give notice of such action to the applicant or the permittee in writing stating the action which has been taken and the reason therefor. The action shall be effective upon giving such notice to the applicant or permittee.
- (d) The applicant or permittee shall have the right to appeal the decision of the Administrator to the Frankfort City Manager within five (5) 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 Frankfort City Manager or his designee within a reasonable time. The Frankfort City Manager shall thereafter notify the permittee or applicant of his determination in writing.

**SECTION SEVEN. Penalty.**

Any person violating any provision of this ordinance or any condition or provision of a permit issued thereunder shall be fined not less than twenty dollars (\$20.00) nor more than five hundred dollars (\$500.00) for each such offense, and each day's continuance of such violation shall be a separate offense.

First reading on the 25 day of September, 2000.

Final adoption on the 9 day of October, 2000.

S/William I. May, Jr.  
T/Mayor

Attest:

S/Shirley Brown  
T/City Clerk

SUMMARY: This ordinance provides for and regulates outdoor café permits on public sidewalks and the St. Clair Mall and provides a penalty of not less than twenty dollars (\$20.00) nor more than five hundred dollars (\$500.00) for violation, and each day's continuance of any such violation shall be a separate offense.

S/A. J. Higgs, Jr.  
T/City Solicitor

AGENT AFFIDAVIT

SPECIAL POWER OF ATTORNEY

KNOWN ALL MEN BY THESE PRESENTS, THAT I, \_\_\_\_\_ am presently the owner and/or leaseholder at \_\_\_\_\_ and desiring to execute a Special Power of Attorney, have made, constituted and appointed, and by these presents do make, constitute and appoint \_\_\_\_\_ whose address is \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, my Attorney-in-Fact to act as follows, GIVING AND GRANTING unto said attorney full power to act as my agent in any and all matters pertaining to \_\_\_\_\_.

FURTHER, I do authorize the aforesaid Attorney-in-Fact to perform all necessary acts in the execution of the aforesaid authorization with the same validity as I could effect if personally present. Any act or thing lawfully done hereunder by the said attorney shall be binding on myself and my heirs, legal and personal representative, and assigns.

PROVIDED, however, that any and all transactions conducted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by the said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "Attorney-in-Fact".

\_\_\_\_\_  
Signed name of owner

\_\_\_\_\_  
Printed name of owner

Witnessed by:

\_\_\_\_\_  
Signed name

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signed name

\_\_\_\_\_  
Printed name

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me, the undersigned Notary Public in and for said County and State, appeared \_\_\_\_\_ identification, who is personally known to me or who produced \_\_\_\_\_ and who did not take an oath, and who is known to me to be the individual described by said name who executed the foregoing instrument, and acknowledged and declared that the said individual executed the same for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signed name

\_\_\_\_\_  
Printed name

My Commission Expires: \_\_\_\_\_