

CHAPTER 3. - OUTDOOR CAFES

Sec. 8-301. - Intent and definitions.

- (1) *Intent.* This chapter shall apply to the establishment, operation and maintenance of all outdoor cafes within the City of Franklin. The purpose of this chapter is to promote the general economic development and atmosphere of the city for the benefit of all businesses and citizens located there, and no right of individuals or individual businesses are created therein, and to create an aesthetic ambience which will attract tourists to Franklin. Further, this chapter is designed to allow cafe tables to be placed adjacent to a restaurant, allowing pedestrians to stroll by while customers dine undisturbed for so long as they shall not impede the efficiency or safety of the pedestrian path. The chapter shall not permit single or multiple tables or displays by organizations, establishments or businesses for vending goods, for distributing information or for displaying goods as these activities encourage people to stop, loiter, overcrowd the sidewalk or obtain correct change, all of which potentially impedes the efficiency or safety of the pedestrian path, and conflicts with the city's style and ambience which the city seeks to preserve in Franklin. The city administrator shall have broad discretion to grant, modify, suspend or revoke permits pursuant to this chapter in the interests of improving the public health, safety, and welfare.
- (2) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings given them in this section, except where the context clearly indicates a different meaning:
 - (a) *Design requirements* means the standards adopted with this chapter that guide design and materials in sidewalk dining areas.
 - (b) *Sidewalk dining area or encroachment* means the placement of furniture, items or people seated for the purpose of eating or drinking upon on the public right-of-way, sidewalk or common area on public property.
 - (c) *Furniture* means tables, umbrellas, chairs, benches or other objects used for the purpose of seating or of supporting the dining business.
 - (d) *Outdoor cafe* means that portion of the public right-of-way kept, used, maintained and held out to the public as a place for sidewalk dining, where food, beverages or other refreshments are served for consumption on the premises. Includes the placing, locating, or permitting of the placing or locating of furniture within designated areas on the right-of-way, such as sidewalks, adjacent to a business licensed to operate as an eating and/or refreshment establishment.
 - (e) *Permittee* means the recipient of a sidewalk dining permit under this chapter.
 - (f) *Removable barrier or barrier* means a physical separator that can easily be lifted and moved immediately without the assistance of tools.
 - (g) *Sidewalk* means that area of public right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property lines reserved for pedestrian traffic, not including street crossings.

(Ord. No. 2004-60, 8- -2004)

Sec. 8-302. - Prohibited conduct.

Except as provided elsewhere in this Code, no merchant, vendor, business or property owner shall:

- (1) Place any furniture on any portion of the public property other than as allowed in this chapter and by the terms and conditions of a sidewalk dining permit.
 - (a) Permits shall allow placement of furniture in a single row parallel to, beside and directly in front of the permittee's existing place of business.

- (b) In no event shall such items be placed in the landscaped areas or extend beyond the bounds of the permittee's business or the borders approved by the building and neighborhood services department director. For the purposes of this chapter, the "bounds of the permittee's business" means that furniture must be located alongside, but not beyond, the corners or ends of the permitted establishment's outside walls. This prohibition shall create a zone that keeps sidewalk and street corners clear for pedestrian travel.
 - (c) The sidewalk dining area shall not be designated by any type of physical barrier; however, the sidewalk dining area's border may be marked by the owner with materials approved by the streets director and design approved by the building and neighborhood services department administrator. Any such marking used shall be removable and non-permanent.
- (2) Block or restrict a paved portion of the passageway to less than forty-eight (48) inches in width or block the ingress/egress to any building. Also, no items shall be placed so as to block any doorway, driveway, crosswalk, or counter service window. Distance shall be measured along the paved portion of the passageway at the narrowest point between the outer edge of the sidewalk dining area border and the nearest immovable object on the sidewalk or to the front of the curb, or to the point where the sidewalk pavement ends, whichever is closer.
 - (3) Arrange the cafe furniture so as to impede the efficiency of or pose a hazard to the pedestrian path or street corners. Any part of the furniture extending beyond the border of the sidewalk dining area shall violate this section. In areas of congested pedestrian activity, the building and neighborhood services department director is authorized to require a wider pedestrian path for the protection and welfare of the public.
 - (4) Place or allow single or multiple tables or displays by organizations, establishments or businesses for vending goods, for distributing information or for displaying goods in the permitted sidewalk dining area as these activities encourage people to stop, loiter, overcrowd the sidewalk or obtain correct change, all of which potentially impedes the efficiency of the pedestrian path, and conflicts with the city's style and ambience which the city seeks to preserve, unless sidewalk sale, special event or other appropriate permits have been granted pursuant to this Code.
 - (5) Sublicense the sidewalk dining area separately to nonoccupants of the premises.
 - (6) Place objects around the perimeter of an area occupied by furniture that would have the effect of forming a physical or visual barrier.
 - (7) Use cafe furniture and any other objects of such quality, design, materials, and workmanship that are not approved or otherwise authorized by the building and neighborhood services director, including but not limited to the following:
 - (a) Umbrellas or other decorative materials that are not fire retardant, pressure treated, properly secured to withstand strong winds or manufactured of fire resistant material.
 - (b) Umbrellas, chairs or tables with advertising, signage or other writing on them.
 - (c) Furniture made of plastic.
 - (8) Fail to secure permission of the landlord where a building has multiple occupants.
 - (9) Vend or display without the insurance coverage required in this chapter.
 - (10) Sound or permit the sounding of any device on the public property which produces a loud noise or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device in violation of the city's noise ordinances. The city reserves the right to decrease noise levels of businesses if they interfere with public activities.
 - (11) Fail to pick up, remove and dispose daily all trash or refuse left by the business on the public right-of-way. Also, the permittee's trash receptacles and bussing equipment shall not be permitted to remain in the sidewalk dining area, but shall be stored indoors. Trash or refuse found within or emanating from the sidewalk dining area shall not be put in city sidewalk trash receptacles, but shall be placed in the business establishment's receptacles.

- (12) Fail to remove daily from the public right-of-way all grease, stains, food spots, liquid residues, etc. caused by the operation of the outdoor cafe.
- (13) Store, park, or leave any vehicle, truck, or trailer within the sidewalk dining area.
- (14) Use the sidewalk dining area to place, display, or sell nonfood merchandise to the patrons of the establishment or to the general public.
- (15) Use the sidewalk dining area to stock or store furniture or other items not in use.

(Ord. No. 2004-60, 8- -2004; Ord. No. 2005-51, 6- -2005; Memo of 12-3-2013)

Sec. 8-303. - Sidewalk dining permit required.

- (1) The sidewalk dining permit is a temporary encroachment license which may be denied, suspended or revoked for any conduct which is contrary to this section or for conduct of the business in such a manner as to create a public nuisance or constitute a danger to the operator's or public's health, safety, or welfare. This chapter creates no property right, title or interest, and the decision of the city administrator shall be final.
- (2) It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the business of running an outdoor cafe or place outdoor cafe items upon the sidewalks or public property in the city unless a currently valid permit is issued and maintained under the terms of this chapter.
- (3) A permit shall be issued only to a validly licensed business that wishes to provide cafe furniture on the public property directly adjacent to the business for an outdoor cafe to be used by the general public.

(Ord. No. 2004-60, 8- -2004)

Sec. 8-304. - Application for sidewalk dining permit.

- (1) A permit shall be issued only to a validly licensed business that wishes to provide cafe furniture on the public property directly adjacent to the business for an outdoor cafe to be used by the general public.
 - (a) The name, home and business address, and telephone number of the applicant, and the name and address of the owner, if other than the applicant, of the business.
 - (b) The name, home address and telephone number of a responsible person whom the city may notify or contact at any time concerning the applicant's permit.
 - (c) A copy of a valid business license to operate a business establishment adjacent to the public property, which is the subject of the application.
 - (d) A statement of how the sidewalk dining area will be supervised and maintained.
 - (e) Proof of current liability insurance, issued by an insurance company licensed to do business in the state, protecting the licensee and the city from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the sidewalk dining permit. The policy shall be renewed by the zoning administration for verification that the insurance adequately protects the city and meets the intent of this section. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advanced written notice to the city. The policy shall be a minimum as specified in appendix A, comprehensive fees and penalties, or higher, if deemed necessary by the risk management director.

- (f) Two copies and an original sketch to scale of the proposed location showing the layout and dimensions of the existing public area and adjacent private property.
 - (g) Proof of any required beer permit or Tennessee Alcoholic Beverage Commission ("TABC") license, health permits or other state permits for the business involved.
 - (h) Photographs, drawings, or manufacturer's brochures fully describing the appearance of all proposed cafe furniture or other objects related to the business.
 - (i) Not later than 15 days after the filing of a complete application for a sidewalk dining permit, the applicant shall be notified by the building and neighborhood services department administration office of the decision on the issuance or denial of the permit.
- (2) An initial annual sidewalk dining permit fee shall be due and payable as specified in appendix A, comprehensive fees and penalties. This fee is in addition to the business license required for operation within the city and is for the sole purpose of recouping costs associated with enforcement of this chapter. The sidewalk dining permit may be renewed annually so long as the applicant is in compliance with the requirements of this chapter. For sidewalk dining permit renewal applications where no changes, additions or deletions are made to the original application, the sidewalk dining permit renewal fee shall be as specified in appendix A, comprehensive fees and penalties.
- (3) Application for a sidewalk dining permit shall be made at the building and neighborhood services department within 48 hours of written notice for failure to obtain a permit. Where the same owner, occupant, or person responsible has been given notice for the same violation at the same location within the previous 180 days, such requirements of written notice may be waived and legal proceedings commenced immediately.

(Ord. No. 2004-60, 8- -2004; Ord. No. 2009-14, §§ XVI, XVII, 4-14-2009; Memo of 12-3-2013)

Sec. 8-305. - Form and conditions of sidewalk dining permit.

- (1) The sidewalk dining permit required by this chapter shall be issued on a form prepared and deemed suitable by the city administrator. In addition to naming the permittee and, the sidewalk dining permit shall contain the following conditions:
- (a) Each permit shall be effective for one year, from January 1 to December 31, subject to annual renewal, unless revoked or suspended prior to expiration. No fees will be refunded.
 - (b) The permit issued shall be personal to the permittee, only, and shall not be transferable in any manner.
 - (c) The permit may be suspended by the building and neighborhood services department director when necessary to clear the public property for public safety or for a community or special event authorized by a permit issued by the city.
 - (d) The building and neighborhood services department director may require the temporary removal of items within the sidewalk dining area when street, sidewalk, common areas or utility repairs necessitate such action.
 - (e) The permit shall be specifically limited to the area shown on the site plan attached to and made part of the permit.
 - (f) The sidewalk dining area covered by the permit shall be maintained in a neat and orderly appearance at all times, and the area shall be cleared of all debris on a periodic basis during the day and again at the close of each business day.
 - (g) No advertising is allowed in the sidewalk dining area except for the posting of menu items or prices on approved equipment or objects.
 - (h) No furniture or any other parts of the business shall be attached, chained, or in any manner affixed to any tree, post, sign, other fixture, curb or sidewalk within or near the permitted area.

- (i) The issuance of a permit is temporary, revocable and does not grant or imply any vested property 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.
- (j) Cafe furniture and any other objects provided shall be maintained with a clean and attractive appearance and shall be kept safe and in good repair at all times.
- (k) The city retains the right to suspend the privilege of using glass containers within the sidewalk dining area during major festivals and special events and when streets are closed. The use of glass containers will be revoked if an incident jeopardizes the health, safety and welfare of customers or the general public. Any violation of state or local laws will also result in a revocation of this privilege. Repeated offenses may result in revocation or denial of the sidewalk dining permit.

(Ord. No. 2004-60, 8- -2004; Memo of 12-3-2013)

Sec. 8-306. - Denial, revocation or suspension of sidewalk dining permit; removal and storage fees; emergencies.

- (1) Under this chapter, the building and neighborhood services department director may deny, revoke, or suspend a permit at any time for any business authorized in the city if it is found that:
 - (a) Any necessary business or health permit has been suspended, revoked or canceled.
 - (b) The permittee does not have insurance in force that is correct and effective in the minimum amount described herein.
 - (c) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of the sidewalk dining. Such decision shall be based upon findings of the building and neighborhood services department director that the minimum 48-inch pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety, or general welfare of pedestrians or vehicular traffic.
 - (d) The permittee has failed to correct violations of this chapter or conditions of his permit upon receipt of the building and neighborhood services department director's notice of violations delivered in writing to the permittee.
 - (e) The permittee has failed to take positive actions to prohibit violations from recurring.
 - (f) The permittee has failed to make modifications upon receipt of the building and neighborhood services department director's notice of modifications delivered in writing to the permittee.
- (2) Cafe furniture and other vestiges of the business may be removed by the streets department, and a reasonable fee shall be charged for labor, transportation, and storage if the permittee fails to remove the items within 36 hours of receipt of the building and neighborhood services department director's final notice to do so for any reason provided for under this chapter. If the action is taken based on subsection (1)(a), (b) or (c), of this section, the action shall become effective upon the receipt of such notice, and the permittee shall have four hours to remove the items.
- (3) Upon denial or revocation, the building and neighborhood services department director shall give notice of such action to the applicant or the permittee in writing stating the action that has been taken and the reason thereof. The action shall be effective upon giving such notice to the permittee.
- (4) The permittee shall have the right to appeal the decision of the building and neighborhood services department director to the city administrator within five working days from receipt of notice. An appeal does not stay the denial or revocation of the sidewalk dining permit. The hearing shall be held within two working days from the date of notice of the request. The permittee or applicant may be represented by an attorney and may present witnesses, affidavits and any relevant documentary evidence. Formal rules of evidence shall not apply. The city administrator or his designee shall notify the permittee or applicant of the determination in writing.

(Ord. No. 2004-60, 8- -2004; Memo of 12-3-2013)

Sec. 8-307. - Indemnity.

As part of the permitting process set forth herein, any person or entity receiving a permit set forth herein shall execute an indemnity agreement indemnifying and releasing the City of Franklin, its agents, employees and elected officials from any and all liability against any and all claims, actions and suits of any type whatsoever.

(Ord. No. 2004-60, 8- -2004)

Sec. 8-308. - Handicap accessibility code.

Any person or entity receiving a permit hereunder agrees to fully comply with all requirements of the handicap accessibility code as required in title 12, chapter 11 of this Code, as may be amended from time to time.

(Ord. No. 2004-60, 8- -2004)

Sec. 8-309. - Liability.

The city shall not be liable to any permittee or any license holder for any damage, loss, inconvenience, business interruption, demolition, loss of business, loss of property or any other loss as a result of any public safety emergency vehicle responding to an emergency call that must encroach upon the public right-of-way of the City of Franklin.

(Ord. No. 2004-60, 8- -2004)

Sec. 8-310. - Conflict with other code sections.

Where provisions of this chapter conflict with of chapters 1 and 2 of this title or those provisions found in titles 11 or 16, the provisions of this chapter shall prevail.

(Ord. No. 2004-60, 8- -2004)

Sec. 8-311. - Penalty.

Any person violating any provision of this chapter shall be subject to a fee as specified in appendix A, comprehensive fees and penalties. Each day any violation of this section shall continue shall constitute a separate offense.

(Ord. No. 2004-60, 8- -2004; Ord. No. 2009-14, § XVIII, 4-14-2009)

OWNER AFFIDAVIT
City of Franklin, Tennessee

We/I _____
(Please print Name/Names in Full)

being duly sworn, depose and say(s) that (I am)/(we are) the owner(s) of the property described as:

(Property Parcel/Tax ID Number)

and located at:

(Street Address)

am fully aware of the request for development approval in the City of Franklin, Tennessee. Furthermore, (I)/ (we) hereby appoint

(Please print Name/Names in Full)

to act as my/our authorized agent on my/our behalf on all matters pertaining to the processing and obtaining the application with the exception of legal documents for recording purposes.

Signature

Property Owner Mailing Address

City, State & Zip

Subscribed and sworn to before me this

_____ day of _____, 20_____.

Notary Public

My Commission Expires: _____

