
Sec. 12-11-7. License to use right-of-way.

(a) *Application.*

- (1) An application for license to use right-of-way must be submitted to the planning services department at least 30 days prior to the regularly scheduled meeting of the planning board.
- (2) The application shall be scheduled for hearing only upon determination that the application complies with all applicable submission requirements.
- (3) No application shall be considered complete until all of the following have been submitted:
 - a. The application shall be submitted on a form provided by the board secretary.
 - b. Each application shall be accompanied by the following information and such other information as may be reasonably requested to support the application.
 1. Accurate site plan drawn to scale;
 2. Reason for license to use request.
- (4) The applicant shall be required to pay an application fee according to the current schedule of fees established by the city council for the particular category of application. This fee shall be nonrefundable irrespective of the final disposition of the application.
- (5) Any party may appear in person, by agent, or by attorney.
- (6) Any application may be withdrawn prior to action of the planning board or city council at the discretion of the applicant initiating the request upon written notice to the board secretary.

(b) *Planning board review and recommendation.* The request will be distributed to the appropriate city departments and public agencies for review and comment. Said departments shall submit written recommendations of approval, disapproval or suggested revisions, and reasons therefor, to the planning services department. The planning board shall review the license to use right-of-way request and make a recommendation to the city council.

- (1) *Public notice for license to use right-of-way.* The city shall notify addresses within a 300-foot radius, as identified by the current county tax roll maps, of the right-of-way proposed to be licensed with a public notice by post card at least five days prior to the board meeting. The public notice shall state the date, time and place of the board meeting.

(c) *City council review and action.* The planning board recommendation shall be forwarded to the city council for review and action.

- (1) *Notice.* The city shall notify addresses within a 300-foot radius, as identified by the current county tax roll maps, of the right-of-way proposed to be licensed with a public notice by post card at least five days prior to the council meeting. The public notice shall state the date, time and place of the council meeting.
- (2) *Action.* The city council shall approve, approve with modifications, or deny the license to use right-of-way request. If the request is approved by city council, a license to use agreement will be drawn, at which time the license becomes effective upon execution by the applicant and the city and payment by the applicant of any required fee.

(d) *Approval of outdoor seating areas.* Outdoor seating areas shall be approved by the city via an annual permit, and must comply with the following outdoor seating area standards and regulations:

- (1) *Outdoor seating area standards and regulations for the city.* The issuance of an outdoor seating area permit is a privilege granted by the city. The city requires compliance with all rules and regulations

outlined or referenced in this set of standards as well as respect for the community in which the establishment is located. The city will monitor and enforce the proper operation of outdoor seating areas and is empowered to issue citations for ordinance or rule and regulation violations.

- a. An outdoor seating area permit is valid from the date of issuance for one year.
- b. Outdoor seating areas shall not operate earlier or later than the hours of operation of the licensed establishment.
- c. All establishments offering an outdoor seating area and their employees shall be subject to and comply with all applicable requirements and standards for a retail food establishment.
 1. Patrons must wear shoes and shirts at all times.
 2. All outdoor seating areas must have an opening for ingress and egress at all times.
 3. All outdoor seating areas must adhere to the size, design, and any other specifications approved by the city at all times. Strict adherence to required design standards as set forth herein is mandatory.
 4. Strict adherence to hours of operation, approved layout of all components of the outdoor seating area, clear space for pedestrians and required landscaping is mandatory.
- d. Where the city has installed a permanent structure such as a parking meter, planter, light pole or other device, the permittee of the outdoor seating area shall make accommodation for the required clearance for pedestrian passage. All establishments granted a license to use permit, shall remain in compliance with approved design standards. Permittees of outdoor seating areas shall be mindful of the rights of pedestrians traveling past their outdoor seating area at all times during the operation of the outdoor seating area. Complaints regarding outdoor seating areas will be investigated by the city, and violations of the ordinance or the rules and regulations promulgated will result in citations being issued to the permittee and/or revocation of permittee's outdoor seating area permit. Permittee shall be required to fully abide by all federal, state, and local laws, rules and regulations applicable to the operation of an outdoor seating area in the city.
- e. All areas within and surrounding the outdoor seating area must be maintained in a clean, neat and sanitary condition and shall be policed routinely by permittee to ensure removal of all wrappings, litter, debris, spills, and food therefrom. Permittee shall be responsible for sanitary cleaning of the sidewalk between pressure washing scheduled by the city or its designated agent.
- f. Establishments permitted to have outdoor seating areas offering amplified and/or live music must control and limit the ambient noise in conformance with the city noise ordinance. Any projection of music within or upon any part of the license-to-use area shall be done in such a way as to direct the sound transmission towards the face and interior of the permittee's building and away from the street and adjoining businesses.
- g. All tables, chairs, plants, planters, and any other items of the outdoor seating area, hereinafter defined as outdoor seating area elements, shall be approved as part of the permit approval process as set forth in the ordinance regulating outdoor seating areas.
- h. The approved outdoor seating area plan shall be displayed inside the establishment in a prominent and conspicuous location clearly visible to permittee, his or her employees and all of the public so that the approved location of outdoor seating area elements is evident. Permittee and his or her employees are responsible for immediately returning outdoor seating area elements to their approved locations if they are moved by patrons or become otherwise dislocated.

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- i. A portion of the annual outdoor seating area permit fee will be used to periodically pressure wash, steam clean, or sanitary clean the sidewalk areas used for outdoor seating and adjacent rights-of-way. The city or its designated agent may contract for such services, but such service in no way exempts the permittee from maintaining the cleanliness and upkeep of the sidewalk. The permittee will be expected to cooperate with periodic appropriate washing and cleaning by removing outdoor seating area elements with notice for cleaning.
 - j. The city will inspect all outdoor seating areas after permits have been issued, and also enforce outdoor seating area permit standards. Any violations of the provisions of these rules and regulations, or any deviation from approved plans or willful omissions of the application may result in citations being issued to the operator and/or revocation of permittee's outdoor seating area permit.
 - k. Any permittee or his or her employees, agents or contractors who violate or resist enforcement of any provision of the outdoor seating area ordinance and/or these rules and regulations may be subject to immediate permit revocation by the city. Any expenses incurred for restoration or repair of the public right-of-way to its original condition, reasonable wear and tear excepted, shall be the responsibility of the permittee.
 - l. The outdoor seating area permit may be terminated by the city without cause and for any reason by giving 90 days prior written notice to permittee. In the event that the permittee receives notice from the city of termination of the outdoor seating area permit, the city shall not be liable for any claim from permittee, its legal representatives, successors or assigns arising out of the termination. The permittee may also terminate the outdoor seating area permit by giving written notice of its intention to do so to the city, removing any outdoor seating area elements, and restoring the sidewalk to its original condition, reasonable wear and tear excepted. When the city has acknowledged in writing its satisfaction therewith, this permit shall be terminated, and the city and permittee shall have no further obligation arising hereunder.
 - m. Permittee shall be required to maintain a current city business license.
- (2) *Design standards outdoor seating areas.* In order to remain consistent with the city's objective of developing attractive outdoor dining spaces, including the furniture, objects, structures and décor associated therewith, in as much that applicants desiring to use public space for semiprivate use are enhancing the private interests of their enterprise as well that of the city, the following design standards shall apply to establishments seeking permission to erect outdoor seating areas throughout the city:
- a. *Space and clearances.*
 - 1. The area designated for the outdoor seating area shall be considered an extension of the permittee's establishment; therefore, the location of the outdoor seating area must be directly in front of the permittee's establishment.
 - 2. An outdoor seating area is required to maintain a clear unimpeded pedestrian path of six feet minimum at all times that is free from any permanent or semi-permanent structure or other impediment. In areas of higher pedestrian traffic or other activity, or in conditions that suggest the need for additional clearance, a clear pedestrian path greater than six feet may be required. This area shall also be free of any obstructions such as trees, parking meters, utility poles and the like in order to allow adequate pedestrian movement.
 - 3. Outdoor seating areas shall not interfere with any utilities or other facilities such as telephone poles, fire hydrants, signs, parking meters, mailboxes, or benches located on the sidewalk or public right-of-way.

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4. The outdoor seating area shall maintain clear distances for maneuvering around entrances or exits. The outdoor dining area shall be accessible to disabled patrons and employees, and buildings adjacent to these areas shall maintain building egress as defined by the state and federal accessibility standards.
 5. When an outdoor seating area is located at a street corner or adjacent to an alley or driveway, visual clear-zone requirements shall be maintained and specified through the permit review process. This requirement may be modified at the discretion of the city in locations where unusual circumstances exist and where public safety could be jeopardized.
- b. *Furniture, objects, structures and décor.*
1. Tables, chairs, umbrellas, awnings, barriers and any other object associated with an outdoor seating area ("outdoor seating area elements") shall be of quality design, materials and workmanship both to ensure the safety and convenience of users and to enhance the visual and aesthetic quality of the urban environment. All outdoor seating area elements shall be reviewed by the city and as a part of the outdoor seating area permitting process. In reviewing outdoor seating area elements, the city shall consider the character and appropriateness of design, including, but not limited to, scale, texture, materials, color and the relation of the outdoor seating area elements to the adjacent establishments, to features of structures in the immediate surroundings, as well as to the streetscape and adjacent neighborhoods, if applicable.
 2. Tables and chairs for sidewalk dining shall be placed in the area designated for sidewalk dining only. Appropriate density of tables and chairs is to be reviewed by the city and may be affected by specific conditions of the location. Table sizes should be kept to a minimum so as not to cause crowding, a disturbance or a nuisance.
 3. Permanent structures in outdoor seating areas are not permitted. All furniture, umbrellas or other outdoor seating area elements shall not be attached permanently to the sidewalk or public right-of-way. The permittee shall be responsible for the restoration of the sidewalk or public right-of-way if any damage is caused as a result of the issuance of the outdoor seating area permit.
- c. *Overhead structures.*
1. Umbrellas and any type of temporary overhead structure may be utilized if approved by the city as part of the outdoor seating area permitting process. The use of overhead structures over the outdoor dining areas and removable umbrellas may be permitted provided they do not interfere with street trees. No portion of the umbrella shall be less than six feet above the sidewalk. Umbrellas and any type of overhead structure shall be designed to be secure during windy conditions and shall be weather resistant.
 2. Awnings, either permanent or temporary, may be utilized if approved by the city and the appropriate review board, if applicable, through a separate license to use the right-of-way approval process. Awnings shall have no support posts located within the public right-of-way, and no portion of an awning shall be less than eight feet above the sidewalk. A building permit must be obtained prior to the installation of an awning and is subject to all applicable sections of this Code.
- d. *Signage.* Aside from properly permitted sandwich boards, signs at an outdoor seating area shall be prohibited. This prohibition includes, but is not limited to, banners, writing, or signs as part of the furniture or on umbrellas, pamphlets, podiums, or any other outdoor seating area element containing a sign or advertisement.

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- e. *Lighting.* Lighting for outdoor seating areas may be utilized if approved by the city as a part of the outdoor seating area permitting process. Any such lighting shall complement the existing building and outdoor seating area design and shall not cause a glare to passing pedestrians or vehicles. Temporary electrical wires shall not be permitted to access the outdoor seating area. Possible lighting sources include tabletop candles or low wattage battery operated fixtures. Additional lighting may be attached to the permittee's establishment provided permittee obtains all necessary approvals for such lighting from the city and any applicable review boards.
 - f. *Outdoor heaters.* Outdoor heaters may be utilized upon the approval by the city as a part of the outdoor seating area permitting process.
 - g. *Vending machines, carts prohibited.* No vending machines, carts, or objects for the sale of goods shall be permitted in an outdoor seating area.
 - h. *Service and use.*
 - 1. All services provided to patrons of an outdoor seating area and all patron activity (i.e., sitting, dining, waiting, etc.) shall occur within the designated outdoor seating area, and shall not impinge on the required clear distance for pedestrian passage at any time.
 - 2. No alcoholic beverages may be stored or mixed in the outdoor seating area. Equipment necessary for the dispensing of any other items should be reported as part of the operation of the outdoor seating area and is subject to review.
 - 3. The permittee must provide supervision of the outdoor seating area to ensure the conduct of patrons and operations of the area are in compliance with this section at all times.
 - i. *Insurance required.*
 - 1. Each permittee of an outdoor seating area permit shall furnish a certificate of insurance evidencing commercial general liability insurance with limits of not less than \$1,000,000.00 in the aggregate combined single limit, for bodily injury, personal injury and property damage liability. The insurance shall provide for 30 days prior written notice to be given to the city if coverage is substantially changed, canceled, or nonrenewed. The city will give permittee at least 90 days prior written notice of any increase in the required limits of liability. The permittee will agree to have in force, by the end of such 90-day period, the newly required limits of liability.
 - 2. The city shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operation of an outdoor seating area; and the permittee shall indemnify, defend and hold the city harmless from any loss that results directly or indirectly from the permit issuance or the operation of the outdoor seating area.
 - 3. Each permittee shall maintain the insurance coverage required under this section during the permit period. The certificate of insurance shall be presented to the city prior to the issuance of a permit under this section. Failure of the permittee to maintain the insurance required by this section shall result in the revocation of the outdoor seating area permit.
 - 4. In order to receive a permit for an outdoor seating area on a public right-of-way, the applicant must demonstrate that the provisions of these guidelines will be met. Documentation demonstrating that the provisions of this guideline will be complied with must accompany the application in order to receive a permit. An outdoor seating area permit will not be issued to a permittee until after the city has conducted a site inspection of the approved outdoor seating area and all outdoor seating area elements placed therein to ensure that the outdoor seating area and all outdoor seating area elements are in

compliance with the approved permit and that the permittee is in compliance with all other requirements of the permit.

- j. *Indemnification.* Permittee shall indemnify and hold harmless the city from any and all liability, claims, demands, damages, expenses, fees, fines, penalties, expenses (including attorney's fees and costs), suits, proceedings, actions or causes of action, of every kind and nature whatsoever, arising out of or occurring in connection with the occupancy and/or use of the permitted area by permittee, its successors, assigns, officers, employees, servants, agents, contractors, or invitees, of whatsoever description, or resulting from any breach, default, non-performance, or violation of any of permittee's obligations. The permittee shall at his or her own expense defend any and all actions, suits, or proceedings that may be brought against the city or in which the city may be impleaded with others in any such action or proceeding arising out of the use or occupancy of the outdoor seating area. This subsection shall survive the termination of this permit.
 - k. *Transferability.* A permit to allow an outdoor seating area is not transferable from one owner or ownership group to another due to a sale or transfer of the property or business. Each new ownership entity shall be required to apply for a permit to allow outdoor seating as set forth in the ordinances of the city and its standards and regulations for outdoor seating.
 - l. *Application.* Applications for a permit to have outdoor seating shall be made jointly by the property owner and the business owner for the respective property that is seeking an extension of its business premises.
- (e) *Approval of minor encroachments.* Minor encroachments into the right-of-way may be approved administratively if the conditions of this section are met. Minor encroachments allowed under this section include, but are not limited to, awnings, driveways, and out-swinging doors.
- (1) *Design standards and regulations.* The request shall be reviewed to ensure the minor encroachment does not pose any safety concerns, that a six-foot wide pedestrian path is maintained, and that the minor encroachment does not interfere with any utilities or facilities within the right-of-way.
 - a. For out-swinging doors, the permittee must demonstrate a physical barrier has been provided to prevent the door from swinging into anyone within the public right-of-way.
 - b. Awnings that project over the right-of-way but do not require support columns in the right-of-way may be considered a minor encroachment.
 - c. The building official or city engineer will determine the boundaries of the minor encroachment area.
 - d. Failure to maintain the minor encroachment area may result in citations being issued.
 - (2) *Insurance required.* Each permittee of a minor encroachment area permit shall furnish a certificate of insurance evidencing commercial general liability insurance with limits of not less than \$1,000,000.00 in the aggregate combined single limit, for bodily injury, personal injury and property damage liability. The insurance shall provide for 30 days prior written notice to be given to the city if coverage is substantially changed, canceled, or nonrenewed. The city will give permittee at least 90 days prior written notice of any increase in the required limits of liability. The permittee will agree to have in force, by the end of such 90-day period, the newly required limits of liability. The city shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operation of a minor encroachment area; and the permittee shall indemnify, defend and hold the city harmless from any loss that results directly or indirectly from the permit issuance or the operation of the minor encroachment area. Each permittee shall maintain the insurance coverage required under this section during the permit period. The certificate of insurance shall be presented to the city prior to the issuance of a permit under this section. Failure of the permittee to maintain the

insurance required by this section shall result in the revocation of the minor encroachment area permit.

- (3) *Transferability.* A permit for a minor encroachment area is transferable from one owner or ownership group to another due to a sale or transfer of the property or business so long as the new owner provides the city a new proof of insurance for the minor encroachment area.
- (4) *Indemnification.* Permittee shall indemnify and hold harmless the city from any and all liability, claims, demands, damages, expenses, fees, fines, penalties, expenses (including attorney's fees and costs), suits, proceedings, actions or causes of action, of every kind and nature whatsoever, arising out of or occurring in connection with the occupancy and/or use of the permitted area by permittee, its successors, assigns, officers, employees, servants, agents, contractors, or invitees, of whatsoever description, or resulting from any breach, default, non-performance, or violation of any of permittee's obligations. The permittee shall at his or her own expense defend any and all actions, suits, or proceedings that may be brought against the city or in which the city may be impleaded with others in any such action or proceeding arising out of the use or occupancy of the minor encroachment area. This subsection shall survive the termination of this permit.
- (5) *Application.* Applications for minor encroachments shall be made jointly by the property owner and the business owner for the respective property that is seeking an extension of its business premises.

Minor encroachments shall be reviewed by the building official or his or her designee prior to the issuance of building permits. For minor driveway encroachments, the city engineer or his or her designee shall review the request prior to the issuance of a permit.

If the request is denied or if it is determined that the encroachment is major and therefore administrative approval is not allowed, the permittee may either withdraw the request or may submit a request for a license-to-use pursuant to subsections (a) through (c) of this section.

(Code 1986, § 12-12-7; Ord. No. 15-00, § 9, 3-23-2000; Ord. No. 12-09, § 3, 4-9-2009; Ord. No. 16-10, § 226, 9-9-2010; Ord. No. 26-12, § 1, 12-13-2012; Ord. No. 06-14, § 1, 2-27-2014; Ord. No. 23-20, 7-16-2020)