

ORDINANCE NO. _____ - 2021

AN ORDINANCE AMENDING SECTIONS 17-29 THROUGH 17-29.5 OF THE CODE OF ORDINANCES, RELATED TO PERMITS FOR OUTDOOR CAFES, AS FOLLOWS: AMENDING SECTION 17-29 OF THE CODE TO DEFINE “ON-STREET PARKING” AND TO INCLUDE THE TERM IN THE DEFINITION OF “OUTDOOR CAFE”; AMENDING SECTION 17-29.1 OF THE CODE TO CREATE A PERMIT FOR THE USE OF ON-STREET PARKING AS PART OF AN OUTDOOR CAFE AND TO REQUIRE ANY FURNISHINGS OR OBJECTS USED BY THE PERMITTEE TO BE REMOVABLE FROM, AND CANNOT DAMAGE, ON-STREET PARKING LOCATIONS; AMENDING SECTION 17-29.2 OF THE CODE TO REQUIRE A SCALED DRAWING OR PLAN FOR ALL APPLICANTS AND PROOF OF APPROVAL BY THE LEXINGTON AND FAYETTE COUNTY PARKING AUTHORITY TO USE ON-STREET PARKING AS PART OF A BUSINESS’ OUTDOOR CAFE, TO CLARIFY THAT THE ADMINISTRATOR MAY REQUEST REVIEW OF APPLICATIONS FROM DIVISIONS IT DEEMS NECESSARY, AND TO AMEND THE FEE STRUCTURE FOR OUTDOOR CAFE PERMITS TO INCLUDE THE SEPARATE PERMIT FOR USE OF ON-STREET PARKING AS PART OF A BUSINESS’ OUTDOOR CAFE; AMENDING SECTION 17-29.3 OF THE CODE TO INCLUDE, AS PROHIBITED CONDUCT, FAILING TO KEEPING WATER INLETS CLEARED OF DEBRIS, TRASH, AND REFUSE, FAILING TO ERECT CRASHWORTHY BARRIERS IF UTILIZING ON-STREET PARKING, AND FAILING TO PAY ANY FEES REQUIRED BY THE LEXINGTON AND FAYETTE COUNTY PARKING AUTHORITY; AMENDING SECTION 17-29.4 OF THE CODE TO CHANGE REFERENCE FROM THE “LEXINGTON-FAYETTE URBAN COUNTY SPECIAL EVENTS COMMISSION” TO THE “URBAN COUNTY GOVERNMENT” IN RELATION TO THE AUTHORIZATION OF COMMUNITY OR SPECIAL EVENTS FOR WHICH THE ADMINISTRATOR MAY SUSPEND OR MODIFY THE TERMS OF EXISTING OUTDOOR CAFE PERMITS TO ACCOMMODATE THE EVENTS, AND TO REQUIRE THE APPROVED OUTDOOR CAFE PLAN BE POSTED OR VISIBLY DISPLAYED ON THE PREMISES; CREATING SECTION 17-29.45 OF THE CODE TO ALLOW THE ADMINISTRATOR TO PROMULGATE REGULATIONS NOT INCONSISTENT WITH SECTIONS 17-29 THROUGH 17-29.5 OF THE CODE; AMENDING SECTION 17-29.5 OF THE CODE TO INCLUDE FAILURE TO PAY FEES REQUIRED BY THE LEXINGTON AND FAYETTE COUNTY PARKING AUTHORITY FOR THE USE OF ON-STREET PARKING, FAILURE TO ERECT CRASHWORTHY BARRIERS WHEN USING ON-STREET PARKING AS PART OF A BUSINESS’ OUTDOOR CAFE, AND FAILURE TO ABIDE BY THE REGULATIONS PROMULGATED BY THE ADMINISTRATOR AS REASONS FOR DENIAL, REVOCATION, SUSPENSION, MODIFICATION, OR CONDITIONAL APPROVAL OF AN OUTDOOR CAFE PERMIT, AND TO CLARIFY WHEN FURNISHINGS AND VESTIGES OF BUSINESSES MAY BE REMOVED BY THE URBAN COUNTY GOVERNMENT UPON REVOCATION OF A PERMIT; AND AMENDING SECTIONS 17-29 THROUGH 17-29.5 TO INCLUDE GENDER NEUTRAL REFERENCES THROUGHOUT, AND TO PROVIDE THE CURRENT NAME FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND PUBLIC WORKS.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 17-29 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Sec. 17-29. Definitions.

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

- (1) *Administrator:* The director of the division of building inspection or their designee authorized to enforce this section.
- (2) *Clear zone:* That portion of the public right-of-way that is intended for pedestrian traffic along the sidewalk. The minimum width and location of the clear zone shall be determined by the administrator, however in all instances it must be a minimum of four (4) feet in width and otherwise compliant with the Americans with Disabilities Act. In areas of congested pedestrian activity, a wider minimum portion of the sidewalk may be required. The location of the clear zone shall be consistent for the entire block, and, in most instances, it shall be required to be located immediately adjacent to the facade of the permitted establishment. The clear zone must be free from any items, obstacles, or barriers, at all times, so as to allow clear movement for pedestrians along the public right-of-way.
- (3) *On-street parking:* That portion of the public right-of-way that is intended for vehicular parking along roadways with speed limits of twenty-five (25) miles per hour or less.
- (4) *Encroachment:* Furnishings, which include, tables, umbrellas, chairs, and other objects directly related to the business of food and/or refreshment service on the public right-of-way, sidewalk or common area on public property.
- (5) *Outdoor cafe:* The placing, locating, or permitting of the placing or locating of furnishings on the right-of-way, such as sidewalks and on-street parking, or public property, adjacent to a business licensed to operate as an establishment where food and/or other refreshments are served within the B-1, B-2, B-2A and B-2B zones. Eating and entertainment establishments located within such zones are generally qualified to apply for an outdoor cafe permit.
- (6) *Permittee:* The recipient of an encroachment permit under the terms and provisions of this article.
- (7) *Permitted area:* The area in which the encroachment of the outdoor cafe into or onto the public right-of-way is lawfully permitted pursuant to the encroachment permit.
- (8) *Sidewalk:* That portion of the public right-of-way intended for the use of pedestrians extending up to twenty-five (25) feet in front of the facade of the permitted establishment.

Section 2 – That Section 17-29.1 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Sec. 17-29.1. Permit; required.

- (a) 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 any items upon the sidewalks, on-street parking locations, or public property in the urban county unless they shall hold a currently valid permit issued under the terms of this article.
- (b) A permit is intended to allow:
 - (1) an establishment to encroach into the sidewalk area located immediately in front of that establishment and up to twenty-five (25) feet in either direction with appropriate permission and approval as provided herein; and/or
 - (2) an establishment to encroach into up to two (2) on-street parking spaces located immediately in front of that establishment with appropriate permission and approval as provided herein. A permittee shall not be allowed to encroach upon or otherwise

interfere with on-street handicapped or disabled parking locations.

- (c) A permit does not authorize the permittee to conduct activities within the permitted area not directly related to the operation of an outdoor cafe. Unless authorized or directed by the urban county government, the furnishings and other objects must not be moved around or removed during the hours of operation of the outdoor cafe such that activities inconsistent with the operation of the outdoor cafe can take place.
- (d) Permits shall be issued on annual basis effective January 1, and only to validly licensed businesses that wish to provide furnishings or other objects directly related to their business of food and/or refreshment service on the public property adjacent to their businesses for use by the general public. If an establishment is not located on the ground floor of a building, or if it intends to encroach beyond the area immediately in front of its establishment it must provide written consent from the owners of the other building(s) and the ground floor tenant(s) in order to apply for the permit.
- (e) Although a permit is valid for a calendar year, a permittee is not required to utilize the permitted area for that entire period. The permittee may be required by the administrator to remove some or all objects from the permitted area and return the area to public use during the times of year within which the outdoor cafe is not regularly operating.
- (f) A permitted area which is contiguously located to a premises licensed to sell alcoholic beverages shall be considered as part of that licensed premises for the purpose of the sale and consumption of alcoholic beverages. All alcoholic beverages within the permitted area must have been obtained from that ABC licensee.
- (g) Nothing in this article shall be construed to permit conduct prohibited by any other statute, ordinance or regulation, or to prohibit the enforcement thereof. If applicable, the permittee must also obtain any necessary approvals from the state and local alcohol beverage control authorities, the Courthouse Area Design Review Board, the Historical Preservation Commission, and other boards or approval authorities that have a regulatory interest in the property.
- (h) Any furnishings or other objects utilized by the permittee must be removable and must not damage the sidewalk, on-street parking location, or other public property. Any necessary permits and approvals must be obtained in the event the permittee wishes to affix any object to the sidewalk, on-street parking location, or public property.
- (i) A means of clearly identifying the permitted area for enforcement and safety purposes to the satisfaction of the administrator must be provided by the permittee, whether through barriers, markings, or other like methods. This shall include the use of approved barriers to protect patrons from motor vehicles if the permittee is utilizing on-street parking as part of its outdoor cafe.
- (j) In the event that a business is operating an outdoor cafe without a permit the urban county government may, in addition to any other enforcement remedy that it may have available, remove any and all furnishings and other vestiges of said business upon providing written notice to the business. The written notice shall provide the business with at least twenty-four (24) hours to comply, absent emergency circumstances. It shall not be necessary to issue an additional notice of violation prior to the urban county government's removal of said encroaching items should the operation of the outdoor cafe re-commence after initial compliance with the notice by the business and a failure of the business to obtain a permit. The business shall be required to reimburse the urban county government for all reasonable costs associated with the removal and storage of the items prior to their return by the urban county government.

Section 3 – That Section 17-29.2 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Sec. 17-29.2. Permit application.

- (a) Application for a permit shall be made at the division of building inspection 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 address, and telephone number of the applicant, and the name and address of the owner, if other than the applicant, of the business.
 - (2) Name, home address, and telephone number of a responsible person whom the urban county government may notify or contact at any time concerning the applicant's permitted area or encroachment permit.
 - (3) A copy of a valid 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, protecting the licensee and the urban county government from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the encroachment permit and the permitted area. Such insurance shall name the urban county government as an additional insured and shall provide that the policy shall not terminate or be cancelled prior to the expiration date without thirty (30) days' advance written notice to the urban county government. The policy shall be a minimum of one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000) aggregate, or higher if deemed necessary by the division of risk management.
 - (5) A scaled drawing or plan of the proposed location showing the layout and dimensions of the existing public and adjacent private property and showing the clear zone; the proposed location of all furnishings and other objects within the permitted area; a depiction of the café seating delineators; a written operations and maintenance plan for the cafe seating; and the written consent of adjacent property owners and tenants if otherwise required. This plan will be kept on file with the permitting office.
 - (6) Proof of any required ABC license(s), health permits or other permits for the business involved.
 - (7) Proof of approval by the Lexington and Fayette County Parking Authority, if requesting to use on-street parking.
 - (8) A listing fully describing the proposed furnishings and other objects directly related to the business.
 - (9) Any other information or documentation required in order to comply with state or local alcoholic beverage control laws or regulations.
- (b) The administrator may request review of submitted applications by those divisions it deems necessary to carry out the requirements of this article.
- (c) The administrator may issue the permit with any necessary conditions, require that the application be amended or modified, or deny it. The administrator shall determine the maximum number of persons lawfully allowed within the permitted area based upon the final approved permit plan in accordance with the provisions of the Kentucky Building Code. Not

later than fifteen (15) days after the filing of a completed application for a temporary encroachment permit, the applicant shall be notified in writing by the administrator of the decision on the issuance or denial of the permit.

- (d) Each permittee shall also be required to submit an application for renewal of its permit on an annual basis prior to December 1 on a form deemed appropriate by the administrator. Any information that has changed from the previous year's application must be provided in the renewal application.
- (e) Application for a permit shall be made at the division of building inspection within forty-eight (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 one hundred eighty (180) days, such requirements of written notice may be waived and legal proceedings commenced immediately.
- (f) Prior to the issuance of a permit utilizing the sidewalk or a permit utilizing on-street parking, an annual fee shall be due and payable to the administrator in the amount of one hundred dollars (\$100.00). To obtain a permit for both, payment of an annual fee in the amount of one hundred and fifty dollars (\$150.00) shall be required. This fee is in addition to any business license for operation in Fayette County or other required fees.

Section 4 – That Section 17-29.3 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Sec. 17-29.3. Prohibited conduct.

- (a) No merchant, vendor, business or property owner shall:
 - (1) Place any items for sale or other equipment, or furnishings on any portion of the public property other than the permitted area. In no event shall such items be placed in the landscaped areas or extend beyond the sidewalk or on-street parking locations authorized as provided herein;
 - (2) Block or restrict the clear zone or block the ingress/egress to any building. Also, no items shall be placed so as to block any driveway, crosswalk, bus stop, or counter service window or in a manner that conflicts with the Americans with Disabilities Act;
 - (3) Sublicense the permitted area separately to non-occupants of the premises;
 - (4) Except for a barrier as required by this article, place objects around or in the permitted area, such as walls, which would have the effect of forming a visual barrier;
 - (5) Use of any furnishings or other objects which are not authorized by the administrator and any other necessary approval entity;
 - (6) Use umbrellas or other decorative material which is not fire retardant, pressure treated, or manufactured of fire resistive material;
 - (7) Fail to secure permission of the landlord where a building has multiple occupants;
 - (8) Operate without the insurance coverage specified;
 - (9) Allow or permit any activity within the permitted area that violates any noise or sound ordinance adopted by the urban county government, including sections 14-70 through 14-80 of the Code;
 - (10) Fail to pick up, remove and dispose of all trash or refuse left by the business on the public right-of-way;

- (11) Fail to keep storm water inlets cleared of debris, trash, or refuse, if utilizing on-street parking as part of its outdoor cafe;
 - (12) Store, park, or leave any items overnight on any street or sidewalk except for furnishings which may be kept in the permitted area at the permittee's risk;
 - (13) Store, park, or leave any vehicle, truck, or trailer within the permitted area;
 - (14) Conduct activities within the permitted area which are not directly related to the operation of an outdoor cafe;
 - (15) Move or remove the furnishings or other objects located within the permitted area so that other activities or events can take place within that area without prior authorization;
 - (16) Allow a number of persons within the permitted area in excess of that approved by the administrator or the Kentucky Building Code;
 - (17) Fail to erect crashworthy barriers to protect patrons from motor vehicles, if utilizing on-street parking as part of its outdoor cafe;
 - (18) Fail to pay any fees required by Lexington and Fayette County Parking Authority for the use of on-street parking locations, which shall be in addition to any permit fees required herein.
- (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 the 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. No property right is created by this article and the decision of the commissioner of the department of environmental quality and public works shall be final.

Section 5 – That Section 17-29.4 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Sec. 17-29.4. Form and conditions of permits.

All permits 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 January 1 to December 31, 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 in any manner.
- (3) The urban county government may suspend the permit or modify its terms as to the size or location of the permitted area, the approved plan, or activities taking place within the permitted area when necessary to clear the public property for public safety or for a "community or special event" authorized by the urban county government. Unless there is an emergency circumstance any such suspension or modification shall be communicated to the permittee by either the administrator or the urban county government's director of special events a reasonable time in advance of the need for the suspension or modification.
- (4) The administrator may require the temporary removal of items within the permitted 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 "exhibit" attached to and made part of the permit and shall indicate the maximum number of persons lawfully allowed within the permitted area.
- (6) The permitted area 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. The clear zone must at all times be free from any items, obstacles, or barriers so as to allow clear movement for pedestrians along the right-of-way, and must comply with the requirements of the Americans with Disabilities Act.
- (7) No advertising, except for signs which comply with sign regulations in Article 17 of the zoning ordinance.
- (8) No furnishings, objects nor any other parts of the business shall be attached, chained, or in any manner affixed to any tree, post, sign, or other fixtures, curb, or sidewalk within or near the permitted area. No additional outdoor seating authorized herein shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of an ABC license for any establishment; or, be used as the basis for computing required off-street parking.
- (9) The issuance of a permit does not grant or infer vested rights to use of the area by the permittee. The urban county government retains the right to deny the issuance of a permit or the renewal of a permit for any reason.
- (10) Furnishings and any other objects provided shall be maintained and shall be kept safe and in good repair at all times.
- (11) The urban county government retains the right to suspend the privilege of using glass containers within the permitted area during festivals and 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 encroachment permit.
- (12) The serving and consumption of alcoholic beverages within the permitted area will be limited to those customers clearly located within the permitted area.
- (13) The outdoor cafe permit and approved plan shall be posted or visibly displayed on the premises.

Section 6 – That Section 17-29.45 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows:

Sec. 17-29.45. Promulgation of regulations

The administrator shall promulgate regulations, not inconsistent with Sec. 17-29 – Sec. 17-29.5, which may be necessary to carry out and effectuate the provisions of this article. The administrator shall post these regulations online and within the division, and shall provide a copy of the regulations to prospective permittees.

Section 7 – That Section 17-29.5 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Sec. 17-29.5. Denial, revocation or suspension of permit; removal and storage fees; emergencies.

- (a) The administrator or designee may deny, revoke, suspend, modify, or condition a permit at any time for any business authorized in the urban county if it is found that:

- (1) Any necessary business or health permit has been suspended, revoked, or cancelled.
 - (2) The permittee does not have insurance in force which is correct and effective in the minimum amount described in section 17-29.2(a)(4).
 - (3) The permittee has failed to pay any fees required by Lexington and Fayette County Parking Authority for the use of on-street parking locations.
 - (4) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of part or all of the permitted area. Such decision shall be based upon findings of the administrator that a legitimate health, safety, or general welfare purpose exists.
 - (5) The permittee has failed to erect barriers to the satisfaction of the administrator in order to protect patrons from motor vehicles, if utilizing on-street parking as part of its outdoor cafe.
 - (6) The permittee has failed to abide by the regulations promulgated by the division of building inspection;
 - (7) The permittee has failed to correct violations of this article or conditions of their permit upon receipt of the administrator's notice of same delivered in writing to the permittee.
 - (8) The permittee has failed to take positive actions to prohibit violations from reoccurring.
 - (9) The permittee has failed to make modifications upon receipt of the administrator's notice of same delivered in writing to the permittee.
- (b) 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 thereof. The action shall be effective upon giving such notice to permittees.
- (c) Furnishings and other vestiges of said business may be removed by the urban county government, and a reasonable fee charged for labor, transportation, and storage, should the permittee fail to remove said items within thirty-six (36) hours of receipt of the administrator's final notice to do so for any reason provided for under this article. If the action is taken based on subsection (a)(1),(2), (3), (4), (5), or (6) of this section, the action shall become effective upon the receipt of such notice and the permittee shall have four (4) hours to remove said items.
- (d) In the event a permittee is noticed for three (3) or more violations based upon subsection (a)(7) of this section within any thirty-day period, the permit shall automatically be revoked, and, in addition to any other enforcement remedy available to the urban county government, the business shall be subject to having any encroaching vestiges of an outdoor cafe removed pursuant to section 17-29.5(c) without any further notice.
- (e) The permittee shall have the right to appeal the decision of the administrator to the commissioner of the department of environmental quality and public works within five (5) working days from receipt of notice. An appeal does not stay the denial or revocation of the encroachment permit. The hearing shall be held by the commissioner or their designee within ten (10) working days from the date of notice of 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 commissioner of the department of environmental quality and public works shall notify the permittee or applicant of the determination in writing.

- (f) Any person violating any provision of sections 17-29 through 17-29.5 or any condition or provision of a permit issued thereunder shall be fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00), and each day's continuance of any such violation shall be a separate offense.

Section 8 – That this Ordinance shall become effective upon passage of Council for the 2022 permit year.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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