

ORDINANCE NO. 2012-05-02

AN ORDINANCE OF THE CITY OF BELLEVUE, CAMPBELL COUNTY, KENTUCKY, REGULATING THE PLACEMENT OF TABLES, CHAIRS AND OUTDOOR FURNISHINGS FOR THE PURPOSE OF OUTDOOR DINING ON THE PUBLIC SIDEWALKS.

WHEREAS, consistent with the goals and objectives of the city's Comprehensive Plan relating to commercial uses and services, the City of Bellevue desires to enhance the city's multiple commercial districts, to strengthen the economic viability of the city's commercial districts, to encourage residents and others to use local businesses and support their growth, and to advance the city's overall economic development goals, by permitting outdoor dining on public sidewalks.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF BELLEVUE, CAMPBELL COUNTY, KENTUCKY, AS FOLLOWS:

SECTION I: DEFINITIONS

1. **Applicant.** The person, organization, proprietorship, partnership, corporation or other similar entity that submits a request for a Sidewalk Dining License.
2. **Sidewalk Dining License.** A permit and license issued by the City, through the City Administrative Officer or his designee, which authorizes the Licensee to place tables, chairs, and outdoor furnishings on a Public Sidewalk for the purpose of serving food or drink to customers.
3. **Sidewalk Dining Area.** The area on a Public sidewalk defined by a site plan and Sidewalk Dining License approved by the City which shows the number and type of tables, chairs and outdoor furnishings and their location.
4. **Licensee.** Applicant that has been issued an Outdoor Dining Permit.
5. **Public Sidewalk.** Land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for, dedicated to and improved for the general public for pedestrian walkway purposes which is directly adjacent to a licensed business establishment of a Licensee.
6. **Seatings.** Tables, seating, or other dining appurtenances placed on any Public Sidewalk pursuant to a Sidewalk Dining License.

SECTION II: PERMIT REQUIRED.

(A) (1) No person or business entity shall place Seatings on any public sidewalk or in the public right of way or on the Public Sidewalk unless that person first has obtained a Sidewalk Dining License from the City Administrative Officer or his designee (collectively, "Administrative Officer"). The Administrative Officer shall only issue a Permit upon finding that each requirement and standard set out herein is satisfied.

SECTION III: PERMITTING REQUIREMENTS AND APPLICATION REVIEW.

(A) **Application.** No Sidewalk Dining License shall be issued unless the Applicant provides the following information and documents:

(1) The name of the Applicant, including the type of organization, e.g. proprietorship, partnership, corporation, limited liability company, business address and the person responsible for compliance with this ordinance;

(2) Property address and owner;

(3) A map or diagram drawn to scale depicting the number, type and dimensions of the Seatings. The map shall illustrate the width of the sidewalk and specifically identify where the tables and seating or benches will be located for the purposes of any Sidewalk Dining License;

(4) Written certification that the Applicant is the owner of the real property abutting the Public Sidewalk or, if a tenant, then written certification from the landlord of ownership and written evidence of the landlord's consent and knowledge of the license application.

(5) A written release and indemnification by the Applicant in favor of the City releasing and indemnifying the City from any personal injury and property damage liability that might result from use of the Public Sidewalk; and releasing the City from any liability for damage to the Seatings thereafter placed on the Public Sidewalk.

(6) A certificate and proof of liability insurance evidencing coverage limits of not less than \$100,000 for general liability and naming the City as an additional insured party for injuries and damages occurring on the Public Sidewalk;

(7) A written Certification that the Applicant will provide adequate trash receptacles outdoors for the Seating and certification that the Applicant will empty these receptacles at reasonable time intervals to ensure that the receptacles do not overflow with trash and debris onto the Public Sidewalk;

(8) Certification that the Applicant will clean the Public Sidewalk on which the Seating is placed, including sidewalks and abutting curbs and gutters, of all litter and debris each night after outdoor service is finished;

(9) Certification that the Applicant is in compliance and pledges to remain in compliance with all requirements of the City of Bellevue Code of Ordinances Chapter 112 and all related State alcoholic beverage laws and regulations.

(10) Any other information required by the Administrative Officer or his designee to properly administer and fulfill the intent of this ordinance.

(B) **Application Review.** In addition to providing the items listed in (A) above, all Applicants shall satisfy the following requirements at all times before any Permit may be issued or remain valid:

(1) All application items must be valid, complete and acceptable as determined by the Administrative Officer.

(2) The proposed Seating location must be located in an area that does not unreasonably impede pedestrian passage on the Public Sidewalk. Applicant's diagram or map shall be reviewed by the City Engineer who must determine that the proposed Seatings will not unreasonably restrict the Public Sidewalk or pose a risk to the safety of the public. The City Engineer is authorized to promulgate written regulations that define appropriate Seating and right of way clearance requirements.

(3) The proposed Seating location must be located only in designated Commercial Zones with uses permitting outdoor dining and Restaurant uses in T5 and T5.5 zones as defined by Bellevue's Zoning Ordinance and map.

(4) The proposed Seating must not pose any danger to the public health, safety or pose a nuisance to abutting property owners and otherwise comply with all applicable laws and regulations.

(5) An Applicant must have a valid occupational license and otherwise be in compliance with all state and local laws and regulations.

(6) Applicant must offer proof of insurance coverage acceptable to the City as determined by the Administrative Officer.

(7) Applicant must not have any outstanding building code or zoning code citations and must be in compliance with all ordinances and state law.

(8) All historic preservation restrictions must be satisfied and shall be considered applicable to the outdoor furnishings and Seatings.

(9) Any other requirements required by the Administrative Officer or his designee to ensure that the Public Sidewalk remains passable and safe for the public.

SECTION IV Permit Standards, Restrictions, Maintenance and Prohibitions.

(A) **Standards, Restrictions, Maintenance and Prohibitions.** All Licensees shall at all times satisfy the following standards, restrictions and shall not violate the following prohibitions:

(1) Seatings shall be placed as depicted in the diagram or map submitted with the Application and proved with the License.

(2) At a minimum, a four-foot pedestrian way shall be kept clear through the designated Sidewalk Dining Area at all times ("Pedestrian Easement"). No obstructions of any kind shall be placed in the Pedestrian Easement.

(3) Food or drink shall only be served to customers who are seated in the licensed Sidewalk Dining Area.

(4) All chairs shall accompany tables.

(5) No alcoholic beverages shall be sold, served, permitted to be consumed, or suffered on the Public Sidewalk outside the Sidewalk Dining Area.

(6) No alcoholic beverages shall be served except unless otherwise authorized by a valid liquor license. Any portion of the Public Sidewalk included within Sidewalk Dining License issued pursuant to this ordinance may be included as part of the "License Premises" for purposes of any liquor license unless otherwise prohibited by law.

(7) Seatings shall be of a design, size and scale appropriate to the character of the neighborhood in which the Seatings are to be located.

(8) Sidewalk Dining Licenses may only be permitted in locations on the Public Sidewalks that are deemed appropriate by the City Administrator.

(9) All Applicants and Licensee shall be and remain current on his/her/its obligations to the city, including taxes, loans, liens, and unremediated violations of the city, building or nuisance codes.

(10) No outdoor alcohol service shall be permitted between 2:00 a.m. and 6:00 a.m. of any day or between 2:00 a.m. and 11:00 a.m. on Sunday.

(11) Licensee shall ensure that no part of the Sidewalk or curb is damaged by his/her/its Seating, including prevention of stains on sidewalks and curbs caused by the seating. Licensee shall refrain from using any harsh or damaging chemicals to clean any stamped concrete sidewalks or surfaces upon which tables or seating is placed. Licensee further agrees that any damage caused to a right-of-way, Public Sidewalk or curb by the Licensee's Seatings will be repaired or repair costs reimbursed by the Licensee.

(12) Licensee shall maintain the Public Sidewalk included in or adjacent to the Sidewalk Dining Area during the winter months (November to February), including cleaning the paved surface, and shall ensure that the Seating is removed from the sidewalk during these months when not in use or when the business is not open to the public; and

(13) A Licensee shall maintain the Sidewalk Dining Area in orderly fashion, including requiring that all persons within the Sidewalk Dining Area behave in an orderly fashion and not generate excessive noise.

(14) Licensee shall prevent unreasonable levels of noise from emanating from the Sidewalk Dining Area where the noise is of such intensity or duration that it disturbs the quiet, peace or repose of individuals in the vicinity.

(15) Outside speakers shall not be permitted in the Sidewalk Dining Area.

(16) Umbrellas used in conjunction with the Sidewalk Dining Area shall not contain advertisement of any type.

(17) Food cooking shall not occur within the Sidewalk Dining Area or on the Public Sidewalk.

(18) The number of tables and chairs shall not exceed the number designated in the Sidewalk Dining License.

(19) Outdoor dining, in conjunction with a Sidewalk Dining License shall only be permitted until 11:00 p.m. daily Sunday through Thursday evenings; and permitted until 12:00 a.m. Friday and Saturday evenings.

(20) The Sidewalk Dining Area shall only be used from March 1 through November 31. During the period between December 1 and the last day of February, all outdoor furnishings and Seatings must be removed from the Public Sidewalk.

(21) A License shall not be issued for more than one calendar year and the fee associated with the License shall not be prorated.

(22) Licensee shall maintain the Public Sidewalk and Sidewalk Dining Area, adjoining curb and the adjoining gutter and any storm drain in clean, safe and orderly condition at all times, regardless of the source of any damage or litter.

(23) Seatings may not be stored in, and shall be from, the Sidewalk Dining Area during when the Licensee's adjoining business establishment is closed to the public.

SECTION IV, Cost, Duration, Effective Date and License Attributes

(A) **Fee.** The cost of the license shall be \$20 per two-top table and \$40 per four-top table annually for Seatings placed in the Sidewalk Dining Area. Payment shall be made at the office of the Administrative Officer or his designee. The fee shall not be prorated.

(B) **Duration.** The License shall not be issued for more than a single calendar year.

(C) **Effective Date.** Upon issuance of a Sidewalk Dining License by the city and payment of the annual license fee by the Licensee, the Licensee is permitted to place Seatings on the Public Sidewalks in the designated Sidewalk Dining Area on a continuous basis from March 1 until November 31.

(D) **Fixed Seatings.** The Sidewalk Dining License shall state the maximum number of permissible Seatings and define Sidewalk Dining Area where they are permitted to be set up.

(E) **No Assignment.** Any License issued by the City to allow for a Sidewalk Dining Area on the Public Sidewalks shall not be assigned or transferred to third party without the prior written consent of the Administrative Officer.

(F). **Revocable License.** A License may be revoked by the city upon seven (7) days' written notice upon a finding by the Administrator Officer that the Licensee has violated any terms of this ordinance, has failed to abide by the terms or conditions set forth in the License, or upon a finding by the Administrative Officer that the licensee has violated other city ordinances or state or federal law. A Sidewalk Dining License may also be revoked by the Administrator Officer if the licensed establishment has two or more convictions for violating the city's noise control ordinance or Criminal Nuisance Ordinance within a 12-month period, or the Licensee or an employee of the establishment has been convicted of serving alcohol to a minor.

If a Sidewalk Dining License is revoked, the Licensee shall be eligible to reapply for a License after a one year has passed from the date of the License revocation.

If an emergency exists, as determined by the Administrative Officer or any public safety officer, and it is found to be necessary to preserve public safety or preserve public travel on the adjoining roadway or Public Sidewalk, the Administrative Officer may summarily suspend the Sidewalk Dining License and require that the Sidewalk Dining Area be cleared for 72 hours duration before having to issue any subsequent written notice or findings otherwise required by this section.

The licensee may appeal any revocation or suspension to City Council of Bellevue within seven days of the notice of revocation. Licensee shall not be entitled to any compensation, damages or rebate for revoked or suspended licenses even if the License is subsequently reinstated by the City Council of Bellevue after appeal. If a former licensee fails to appeal a license revocation within the time frame set forth herein, such decision shall not be subject to further review.

SECTION V, PENALTY.

A person who violates any provision of this Ordinance shall be guilty of a violation and be fined not less than \$50 nor more than \$250. Each violation and each day shall constitute a separate offense.

SECTION VI

All ordinances or parts thereof, in conflict with the provisions of this ordinance are to the extent of such conflict, hereby repealed.

SECTION VII.

The provisions of this Ordinance are severable. If any provision, section, paragraph, or part be held by any court to be invalid, such decision shall not affect or impair the validity of the remainder of the Ordinance.

SECTION VIII

This Ordinance shall be in full force and effect from and after its passage, approval, and publication as required by law.

SECTION IX – SEVERABILITY

If any portion of this ordinance, or its application to any person or circumstances, is held invalid, the validity of the ordinance as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

If any one or more sections, subsections, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

SECTION X - EFFECTIVE DATE

This Ordinance shall take effect upon its passage, approval and publication. This Ordinance may be published in summary.

CITY OF BELLEVUE, KENTUCKY

By Edward M Riehl
Edward Riehl, Mayor

ATTEST:

Mary H. Scott
Mary H. Scott, City Clerk

1st Reading: 5/9/12

2nd Reading: 6/13/12

Publication: 6/21/12

