

Recommended By: Public Improvement Committee
and Transportation Committee

Submitted By: The City Attorney

ORDINANCE NO. 22-7

AN ORDINANCE TO AMEND TITLE 4, “MUNICIPAL SERVICES”, CHAPTER 5, “STREETS AND SIDEWALKS”, ARTICLE K, “ESTABLISHMENT, OPERATION, MAINTENANCE OF OUTDOOR CAFÉS”, OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM TO FURTHER PROVIDE FOR PERMITS FOR OUTDOOR CAFÉ AND OTHER BUSINESS OPERATIONS IN THE PUBLIC RIGHT OF WAY.

SECTION 1. BE IT ORDAINED by the Council of the City of Birmingham that Title 4, “Municipal Services”, Chapter 5, “Streets and Sidewalks”, Article K, “Establishment, Operation, Maintenance of Outdoor Cafés”, of the General Code of the City of Birmingham to further provide for permits for outdoor café and other business operations in the public right of way and to read as follows:

“ARTICLE K. PUBLIC SPACE PERMITS FOR OUTDOOR BUSINESS OPERATIONS

“Sec. 4-5-191. Applicability of article.

“The provisions of this article shall apply to the establishment, operation, and maintenance of outdoor business operations in the public right-of-way.

“Sec. 4-5-192. Definitions.

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

“*Adjacent to or connected with the main premises* means adjoining the building where the main business activity takes place, including the required space for pedestrian traffic on a public right of way.

“*Alabama Alcoholic Beverage Control Board (ABC Board)* means a state agency comprised of three members who are appointed by the governor and is vested with the authority to carry out the provisions of Code of Ala. 1975, Title 28, and to promulgate rules and regulations on behalf of the state.

“*City clerk* means the clerk of the City of Birmingham.

“Director of Planning, Engineering, and Permits means the Director of the Department of Planning, Engineering, and Permits or his or her designee.

“Director of Transportation means the Director of the Department of Transportation of the City of Birmingham or his or her designee.

“Health officer means the county health officer.

“Outdoor business operations (or outdoor business) refers to outdoor cafés and outdoor retail.

“Outdoor café means exterior facilities adjacent to and a part of establishments selling food and drink that require the use of some city-owned property for operation, are temporary in nature and open to the elements except for optional awnings and/or temporary low walls or fences. The term “outdoor café” includes only those facilities which, if they hold a state liquor license also operate as a restaurant within the meaning and definition of the state alcoholic beverage control board.

“On-street parking space means the area delineated by striping and signage on the edge of the street where cars are allowed to park. Where on-street parking is allowed but individual spaces have not been delineated, the Director of Transportation may identify an area of no more than eight (8) feet by twenty-two (22) feet that may be used for the purposes of this ordinance, provided that use of the area will not create traffic or safety hazards.

“Outdoor retail means exterior facilities adjacent to and a part of establishments selling goods that require the use of some city-owned property for operation, are temporary in nature and open to the elements.

“Permit means written authorization issued by the Director of Transportation pursuant to this article permitting the operation of an outdoor business operation.

“Public Space Permit means the permit that is issued for the operation of an outdoor business operation or outdoor business.

“Shared Space Permit means the temporary permit enabling businesses to use public outdoor space to promote social distancing for safer operations during the COVID-19 pandemic in 2020 and 2021.

“Sidewalk means the area of public right-of-way reserved for pedestrian traffic, not including street crossings.

“Sec. 4-5-193. Permit—Required.

“(a) It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the running of an outdoor business upon the sidewalks or in the public right-of-way in the city unless he or she shall hold a currently valid permit issued under the terms of this article; and no permit shall be issued hereunder unless the applicant can demonstrate that a minimum of five feet of unobstructed, paved space shall be available for pedestrian traffic

around or through such outdoor businesses. Outdoor business operations must be adjacent to or connected with the main premises of the food preparation establishment or retail establishment; provided further, that no food or drinks served at outdoor cafés shall be prepared outside.

“(b) It shall be unlawful for any person operating an outdoor café to sell or serve any alcoholic beverages in the café without having been approved by resolution of the city council for the sale or service of alcoholic beverages. Any outdoor café which sells or serves alcoholic beverages shall, in compliance with the state alcoholic beverage control board (ABC board) rules and regulations, ensure the outdoor dining area is clearly defined and can be controlled.

“(c) Application for a Public Space Permit shall be made to the Director of Transportation and shall be signed by the applicant himself or herself, if an individual; by a duly authorized partner, if a partnership; and by a duly authorized officer or agent, if a corporation. Such application shall be sworn to by each of its signers before a notary public or other officer authorized by law to administer oaths and shall include the following information:

(1) Name, residence, address, email address, and telephone number of each individual owner, partner, or, if a domestic corporation, the names of the directors and chief executive officer of such corporation, or, if a foreign corporation, the name of the managing officer of such corporation for the state and the date on which such foreign corporation became legally qualified to do business in the state.

(2) The trade or corporate name under which the applicant does business or proposes to do business.

(3) The location and description of each place where the applicant intends to establish or operate an outdoor café or other outdoor business operation.

(4) The name and address of the person holding title to the property ~~on which~~ where the applicant intends to establish or operate an outdoor café and, if the applicant is a lessee of such property, a copy of the lease evidencing that fact.

(5) A site plan of the public space proposed for use, drawn to scale. The plan may be hand-drawn or digitally created and must show:

a. The number of tables, chairs, umbrellas or other furnishings and/or fixtures desired for this area and a rendering of the positions of tables relative to entrances, exits and the sidewalk, including the location of any doors leading from any abutting buildings to the proposed outdoor business operation. Specification sheets for all furniture and fixtures must be submitted for approval.

b. The space proposed for use under the permit, including sidewalk and/or parking spaces, clearly labeled and showing:

- i. How many feet along the curb is proposed for use;
- ii. The number of metered parking spaces proposed for use, if any;
- iii. The number of feet and location of unobstructed space for free passage of pedestrian traffic around or through the outdoor café; and

c. For outdoor cafés, the demarcation of the serving areas; service of alcoholic beverages must comply with the ABC Board’s rules and regulations for patios and outdoor cafés;

d. The location of the place where any food or drink is intended to be prepared.

e. The location of all fire hydrants, parking meters, utility poles, sign poles, trees, tree pits, benches, handicapped ramps, street furniture and any other permanent sidewalk fixtures.

f. The type and location of any existing or proposed outdoor lighting and fixtures.

g. A proposed use plan, including hours of operations and description of business activities that will be occurring with the public space.

h. The location and type of any proposed traffic barriers; barriers must fit within, and not extend over any parking space demarcation line or more than eight (8) feet from the curbline, if no parking demarcation is on the pavement.

i. Such further information as the Director of Transportation may deem necessary to evaluate the operation for which application is being made.

(6) A statement declaring whether any alcoholic beverages are intended to be served and whether the applicant currently holds a valid alcoholic beverage license.

(7) Receipt from the Department of Finance for payment of the appropriate fees, as follows:

Annual Permits:

Initial Application Fee (nonrefundable).....	\$100.00
Initial Permit Fee (one year)	\$400.00
Annual Permit Renewal Fee	\$400.00
Permit Renewal Late Fee	\$50.00

Initial Permit for 6 Months or Less (Includes January 1 through June 30, 2022):

Application Fee (nonrefundable).....	\$100.00
Permit Fee	\$200.00

“(d) Permit renewal.

(1) An application for annual renewal in the form prescribed by the Director of Transportation shall be submitted no later than June 1 of the year in which the permit shall expire and shall

include payment of the appropriate fees. Applications received after the permit expires (July 1) shall include payment of the Permit Renewal Late Fee.

(2) If a permittee fails to apply for renewal within ninety (90) days after the expiration of the permit, all operations in the Public Space Permit shall cease and all installations or furnishings in the public right of way shall be removed. Requests to resume operations require a new initial permit application and review.

“Sec. 4-5-194. Same—Investigation and issuance or denial of permit.

“(a) The Director of Transportation shall consider whether the proposed location is suitable for outdoor business operations.

“(b) The Director of Transportation shall investigate the facts set out in the application to determine whether the requirements of this article and all other applicable laws and ordinances relating to the application have been met and approve or disapprove of the permit within 30 days of the date of receiving the complete application. An application is deemed complete when all required information has been submitted and the applicable fees paid.

“(c) All outdoor business operations shall comply with the Public Space Permit Design Guide on file with the Director of Transportation and the City Clerk’s Office. The Guide is hereby incorporated by reference but may be reviewed and modified by the Director of Transportation and the Director of Planning, Engineering, and Permits from time to time. Any such modification must comply with this article.

“(d) Applications for Public Space Permits in historic or commercial revitalization districts shall be reviewed by the Director of Planning, Engineering, and Permits for compliance with any specific design standards in those districts. Denial of a permit in historic or commercial revitalization districts for noncompliance with the specific design standards may be appealed to the City’s Design Review Committee.

“(e) All Public Space Permit Design Guide standards shall ensure that the permitted area does not impede pedestrian or vehicular traffic. They shall further provide standards that promote adequate space for the permitted activity to prevent crowding and clutter; are appropriate to the activity and location to maintain inviting public spaces and blend with the buildings, streetscape, and activities of the area; and that promote cleanliness and sanitation in the permitted areas and adjoining public rights of way.

“(f) Denial of an application for any reason other than as provided in subsection (d) above or that the plan will not allow the required unobstructed space for pedestrian travel or otherwise encroaches into or obstructs pedestrian or vehicular traffic may be appealed to the city council by filing a request with the city clerk within ten (10) days of the denial. The appeal shall be placed on the next available city council agenda following receipt of the request for appeal.

“Sec. 4-5-195. Same—Transferability; limited by location; display.

“(a) Public Space Permits are not transferable. Any change or transfer of ownership of a business for which a Public Space Permit has been or shall be granted under this chapter shall terminate such permit and shall require a new application and a new permit in conformance with all the requirements of this article.

“(b) No outdoor business shall be operated under any name other than that set forth in the permit granted under this article.

“(c) Notwithstanding any other provision of this section, a business holding Public Space Permit that has a change of ownership or name may continue to operate under the prior permit for up to sixty (60) days while a new application is submitted and reviewed. Application for the new permit shall be made within thirty (30) days of the change or transfer of ownership of the business. Payment of the application fee and appropriate permit fee as provided in Sec. 4-5-193(c)(7), herein, is required. If no application is made within sixty (60) days of the change or transfer of ownership, the operations in the previously permitted area must cease and all installations and furnishings must be removed. Requests to resume operations require a new initial permit application and review.

“(d) A permit issued under this article shall not authorize the grantee to conduct or allow the operation of an outdoor business except as described in the Director of Transportation’s approval document and shall be valid only for that area and in the manner described in such document. The permit shall state whether the applicant has been issued an alcoholic beverage license in accordance with state law. Such permit shall be constantly and conspicuously displayed on the licensed premises.

“Sec. 4-5-196. Inspection.

“Every outdoor business for which a permit is issued under this article and all records relating to its maintenance and operation as such shall be open to inspection by the health officer or designated representative and the city or its designated representative at any time.

“Sec. 4-5-197. Indemnity.

“No permit required by this article shall be granted to any person to operate an outdoor ~~safe~~ business until such person shall have first filed with the Director of Transportation a statement agreeing to indemnify and hold harmless the city, its agents, representatives or employees, from any and all claims, damages, judgments, costs or expenses, including attorneys' fees, which they may incur or be required to pay because of any personal injury, including death, or property damage suffered by any person as a result of or related in any way to the operation and maintenance of the outdoor business for which the permit is issued, even though such personal injury or property damage results from negligence on the part of the city, its agents, representatives or employees, or which otherwise might be imputed to any of them.

“Sec. 4-5-198. Liability insurance required.

“(a) No permit required by this article shall be granted to any person to operate an outdoor business until such person shall have first filed with the city clerk a comprehensive general liability insurance policy issued to such person by a public liability insurance company authorized to do business in the

state, affording the coverage set forth below in the amounts specified herein or a certificate of insurance with an endorsement naming the city as an additional insured. Such insurance policy shall afford coverage for the city, its agents, representatives and employees, as additional insureds with respect to the operation and maintenance of the outdoor café in the following amounts:

- (1) Bodily injury: \$100,000.00 each person and \$300,000.00 each accident.
- (2) Property damage: \$100,000.00 each person and \$300,000.00 each accident.

“(b) The insurance coverage required by this section shall at all times be maintained for the full amount. The policy of insurance required by this section shall be first provided to the Director of Transportation for verification and approval. A certificate of insurance or endorsement approved by the Director of Transportation shall be filed with the city clerk. The insurance or endorsement shall contain a clause obligating the company issuing the same to give not less than 30 days' written notice to the city clerk before cancellation thereof. Notice of cancellation shall not relieve the company issuing such policy of liability for any injury of claim arising before the cancellation becomes effective. The cancellation of any such policy shall have the effect of suspending the permit of such person to operate the outdoor business covered thereby until a new policy complying with the provisions of this section is filed with the city clerk.

“(c) Every insurance policy required hereunder shall contain a provision for continuing liability to the full amount thereof, notwithstanding any recovery thereon, that the liability of the insurer shall not be affected by the insolvency or the bankruptcy of the insured, and that until the policy is canceled the insurance company will not be relieved from liability on account of nonpayment of premium, or any act or omission by the named insured. Such policy of insurance shall be further conditioned for the payment of any and all judgments, up to the limits of such policy, recovered against any person other than the owner, the owner's agent or employee who may operate the outdoor business with the consent or acquiescence of the owner.

“Sec. 4-5-199. Revocation or suspension of permit.

“(a) Any permit issued under this article shall be subject to revocation or suspension by the Director of Transportation for failure of a permittee to comply with this article, or for any violation of any applicable provision of this article or of any regulation promulgated hereunder, or when, in the opinion of the Director of Transportation, the public necessity, convenience or good renders such revocation advisable, upon not less than ten days' written notice to the permittee and after a public hearing thereon before the council.

“(b) Whenever any permit has been revoked the applicant shall cease operation of the outdoor business operations and no refund or any unearned portion thereof shall be made. It shall be unlawful for any person to operate the outdoor business after the effective date of the suspension or revocation of the applicable permit.

“(c) If the Public Space Permit is revoked due to noncompliance with the provisions of this article, no new application for the same business and the same space shall be submitted within thirty (30) days of the revocation by the council and no new permit for that same business and space shall be issued within ninety (90) days of the revocation.

“Sec. 4-5-200.

“(a) All outdoor cafés and other outdoor business operations, including operations under a Shared Space Permit, shall apply for the license required herein.

“(b) Any outdoor café or other outdoor business operation legally operating as of the effective date of this ordinance, including extended Share Space Permits, shall be required to apply for a Public Space Permit as provided herein above, but such facility shall be allowed to continue in operation during the time necessary to prepare, file and review such permit application but not later than February 15, 2022.

“(c) Any outdoor café or other outdoor business operation without a current valid permit shall cease operations immediately and shall not resume operations until a valid permit is issued.

“(d) Any outdoor café operating under a prior permit or right of way use agreement, but not in compliance with the requirements of this ordinance, including, but not limited to, providing a minimum of five (5) feet of unobstructed, paved space for pedestrian traffic around or through such outdoor café, shall be required to comply with the provisions of this article. Such existing outdoor cafés operating that fail to comply with this article shall cease operation within thirty (30) days of the effective date of this ordinance.

“Sec. 4-5-201.

“Grant of a Public Space Permit as provided in this article shall not authorize the following activities:

“(a) Outdoor performances or use of amplified sound

“(b) Display and retail sale of alcoholic beverages for off-premises consumption

“(c) Loud or raucous noise

“(d) Any other activity that creates a public nuisance, impedes pedestrian or vehicular traffic, or otherwise causes a hazard.”

SECTION 2. This ordinance shall be effective upon publication as required by law.

SECTION 3. If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by declaration of any court of competent jurisdiction, such declaration shall not affect the validity of the remaining portions of this ordinance.

Adopted by the Council January 18, 2022 and Approved by the Mayor January 21, 2022



A CERTIFIED COPY
Lee Frazier, City Clerk
Birmingham, Al
Lee Frazier