

**CITY OF DAYTON, KENTUCKY
ORDINANCE NO. 2022#12**

**AN ORDINANCE AUTHORIZING PLACEMENT OF
TABLES AND SEATING ON PUBLIC SIDEWALKS AND
RIGHTS-OF-WAY IN THE CITY OF DAYTON,
KENTUCKY, AND ESTABLISHING A LICENSING
PROCESS AND RULES AND REGULATIONS FOR SUCH
USE.**

**NOW, THEREFORE BE IT ORDAINED BY THE CITY OF DAYTON,
CAMPBELL COUNTY, KENTUCKY, AS FOLLOWS:**

WHEREAS, restaurants and taverns in the Central Business District (“CBD”) of the City of Dayton (“City”) have requested permission to place tables and chairs on public sidewalks and rights-of-way in the City to serve food and drink to customers at these tables outside of their premises; and

WHEREAS, the City regulates sidewalks and rights-of-way within the City, including within the CBD; and

WHEREAS, the City wishes to accommodate these businesses while at the same time ensuring that sidewalks and rights-of-way remain safe for their customers as well as the public at large who may travel on these sidewalks or who live near these establishments.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY OF DAYTON, CAMPBELL
COUNTY, KENTUCKY AS FOLLOWS:**

Section I

A new section of the Dayton Code of Ordinances is created as Title XI, Business Regulations, Chapter 126, as follows:

TABLE AND SEATING PLACEMENT

§ 126.01 LICENSE REQUIRED.

(A) No person or entity shall place tables, chairs, or other seating for tables (collectively “seating”) on the public rights-of-way, including public sidewalks and streets, unless that person first has obtained a license for these tables and seating from the City Administrator, or his or her designee (“City Administrator”). A license must be obtained for all tables and seating placed on public sidewalks or streets (“the licensed premises”) and this license shall be automatically renewed on an annual basis upon the payment of the annual fee as set forth in Section 126.04 below. The licensee must follow the rules and regulations outlined in this ordinance and the City Administrator is authorized to promulgate other written regulations for this purpose in the future.

(B) Licenses for tables and seating shall only be issued for commercial properties located in the Central Business District (“CBD”).

(C) Licenses for tables and seating shall only be issued for tables and seating that are of a design, size and scale appropriate to the character of the neighborhood in which the tables are to be located. Picnic benches are not permitted. The City Administrator shall be empowered to enforce this provision, using the Historic Design Guidelines or other guidelines promulgated for this purpose.

(D) Licenses for tables and seating may only be permitted in locations on public sidewalks and rights-of-way that are deemed appropriate by the City Administrator, who may refuse to grant a license that he or she believes may be injurious to the health, safety and well-being of the pedestrians and the general public, is noncompliant with the Americans with Disabilities Act, blocks or inhibits vehicle sightlines, or creates a public nuisance. No license shall be issued to an applicant who is not current its obligations to the City, including any delinquency on taxes or loans and/or outstanding violations of building, property, or nuisance codes or other ordinances.

§ 126.02 APPLICATION PROCESS.

(A) A business that wishes to place tables and seating on public sidewalks or rights-of-way shall apply to the City and this application must include the following information:

(1) The name, address, phone number, and email address of the applicant, including identifying the type of organization that is applying, e.g., sole proprietorship, partnership, corporation, limited liability company, and the person within that organization who is the contact person and who is responsible for compliance with the terms of this ordinance.

(2) The number of tables and chairs and their specific location on the public sidewalk or right-of-way, including a map or diagram depicting where tables and seating will be located on the right-of-way. The map also shall illustrate the existing width of the public right-of-way, where the tables and seating will be located in the right-of-way, and how much space will remain on the right-of-way after the tables and chairs are placed there.

(3) Photos or images of the tables and chairs that the applicant intends to place on the public sidewalks or rights-of way.

(4) An certification by the applicant that it will comply with the following provisions:

(a) Applicant will release and indemnify the city from personal injury and property damage liability resulting from the use of the tables and seating on public sidewalks or rights-of-way;

(b) Applicant will provide adequate trash receptacles outdoors for the tables and seating and will empty these receptacles at reasonable time intervals to ensure that the receptacles do not overflow with trash and debris;

(c) Applicant will clean the right-of-way on which tables and seating are placed, including sidewalks and abutting curbs and gutters, of all litter and debris each night after outdoor service is finished;

(d) Applicant will end outdoor service at 11 p.m. each night;

(e) All outdoor music on public rights-of-way, whether live or amplified by outdoor speakers, will cease at 10 p.m. This provision preempts city ordinances that may allow outdoor music to be played until a later time, except for special events and festivals approved by the City; and

(f) Applicant is the owner of the property abutting the sidewalk, or if a lessee of the property, has written permission of the owner of the property to use the public right-of-way for this purpose.

§ 126.03 LICENSE RULES AND REGULATIONS.

(A) Licensee shall not serve alcoholic beverages or allow patrons to consume alcoholic beverages on public sidewalks or other rights-of-way outside of their restaurant, tavern, or event facility business unless it has obtained a license for tables and chairs from the City and those areas are included in the "ABC licensed premises" under which the applicant has obtained a liquor license from the City Alcoholic Beverage Control Administrator and the State Department of Alcoholic Beverage Control, or as otherwise allowed by law. The table-and-seating-placement license issued by the City may be used by licensee to extend its ABC licensed premises into outside area set forth in licensee's application and map.

(B) Licensee must maintain the licensed premises in orderly fashion, including requiring that all persons within the licensed premises behave in an orderly fashion and not generate excessive noise. This requirement will be strictly enforced.

(C) Licensee shall ensure that no part of the city's right-of-way, including sidewalks and curbs, are damaged by outdoor tables and seating. The licensee further agrees that any damage caused to the City's rights-of-way by the placement of tables or seating will be repaired by licensee or licensee will reimburse the City for any cost of any repairs.

(D) Upon payment of the annual license fee and issuance of a license the City, licensee may place tables and seating on the public sidewalks on a continuous basis from March 1 until October 31. Tables and seating may not be placed on public sidewalks from November 1 until February 28/29. Licensee shall maintain the right-of-way used for outdoor dining during the winter months (November through February) ("winter months"), including cleaning the paved surface and ensure that all tables and seating are removed from the public sidewalks and rights-of-way during winter months.

(E) Upon issuance of a license by the City, the licensee shall:

- (1) Place tables and seating only in the areas specifically designated in the license ("licensed area");
- (2) Maintain comprehensive general liability insurance, at its sole expense, to protect against all claims for personal injury, death, or property damage occurring upon, in or about the licensed area resulting from the use of occupancy thereof, with a minimum of \$50,000 in coverage and limits acceptable to the city for the entire term of the license agreement and any extension thereof. The city shall be named in this policy as an additional insured entity in this insurance policy.
- (3) Maintain three feet of pedestrian access through the licensed area ("pedestrian easement"), which shall be shown on the map submitted in its application. Licensee shall not place or allow tables or seating to be placed in the pedestrian easement.
- (4) Provide service or allow consumption of food and/or beverages to only individuals seated in the licensed area. Tables and chairs may be moved together to allow patrons to sit together so long as the pedestrian easement in the licensed area is maintained. This requirement will be strictly enforced.

§ 126.04 COST OF LICENSE; ASSIGNMENT; REVOCATION

(A) The cost of the license shall be \$10 per chair (i.e., \$20 per two-top table and \$40 per four-top table) annually for chairs and tables placed on public sidewalks or rights-of-way. Payment shall be made to the City Clerk by Feb. 15 of each year.

(B) Any license issued for placement of tables and seating on the public sidewalks shall not be assigned or transferred to third party without the prior written consent of the City Administrator.

(C) The City may revoke a license upon seven days' written notice upon a finding by the City Administrator that the licensee has violated any terms of this ordinance, has failed to abide by the terms or conditions set forth in the application and license, or upon a finding the licensee has violated city ordinances or state or federal law. The City Administrator also may revoke a license if the business has received two citations for violating the city's noise control 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 license is revoked, the licensee shall not be eligible to reapply for a license until one year has passed from the date of the license revocation. The licensee may appeal a license revocation to the Dayton City Council within seven days after notice of the revocation. If an appeal of the license revocation is not made within this time frame, the decision to revoke the license shall not be subject to further review.

§ 96.999 PENALTY.

Any violation of any provision of this chapter is classified as a civil offense pursuant to the authority of KRS 65.8808. The Dayton Code Enforcement Board shall have power to issue remedial orders and impose civil fines to enforce this chapter. Enforcement of this chapter shall be made in accordance with the procedures outlined in the Code Enforcement Board guidelines located in Chapter 38 of the Dayton Code of Ordinances, including the penalties provision set forth §38.15.


Section II

This ordinance shall be in full force and effect from and after its adoption, approval, and publication as is required by law.

PASSED by City Council of the City of Dayton, Campbell County, Kentucky assembled in regular session.

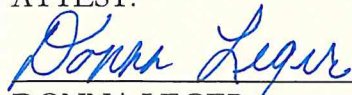
First Reading: April 19, 2022

Second Reading: MAY 3, 2022



MAYOR BEN BAKER

ATTEST:



DONNA LEGER
CITY CLERK/TREASURER