

TYPE B SIDEWALK LEASE AGREEMENT REQUIREMENT CHECKLIST

- Approval Process Flowchart
- Application Checklist
- Sidewalk Lease Agreement Regulations
- License Agreement



SIDEWALK LEASE APPROVAL PROCESS

Sidewalk lease agreements are approved by the Town Center Development Coordinator

- **Type A Sidewalk Lease Agreement** - for businesses that hold a valid Texas Alcoholic Beverage Code (TABC) Permit.
- **Type B Sidewalk Lease Agreement** - for businesses that hold a valid food service establishment permit.

For an outline of the typical steps involved in each of these approval processes see the chart below.

STEP 1 ↓	Pre-Application Meeting with Staff - Meeting provides an opportunity for one-on-one feedback and technical guidance in completing the application.
STEP 2 ↓	Sidewalk Lease Agreement Submittal – A complete application must be submitted to the Planning Department (Guy Giersch, Historic Preservation Officer – 972-547-7416 or ggiersch@mckinneytexas.org). See checklist for sidewalk lease agreement submittal requirements.
STEP 3 ↓	Staff Review - Staff reviews the application for completeness and for compliance with ordinance requirements. Any issues with the application submitted will be communicated to the applicant via phone / email.
STEP 4 ↓	Applicant Submits Revisions - The applicant will then be responsible for revising and resubmitting the plans. Step 3 and Step 4 will repeat until all issues are resolved.
STEP 5 ↓	Sidewalk Lease Agreement Approved by Staff
FINAL STEP	Completed Sidewalk Lease Agreement is filed with the City Secretary, and a copy is sent to the applicant. The agreement is good for one year.
NOTE	Renewal of Sidewalk Lease Agreement - Same process as above. Agreement must be renewed at the end of one year (from date of initial approval).

Contact Guy Giersch for more information at (972) 547-7416 or ggiersch@McKinneyTexas.org

APPLICATION CHECKLIST

Application / Renewal Fee: \$10.00

Fence Installation Permit Fee: \$20.00 (Not required for renewals)

Payment: CASH, CHECK, OR CREDIT CARD

- Signed Type B Sidewalk Revocable License Agreement with the following required attachments:
 - Site plan of proposed seating drawn to scale with measurements listed. The plan is to indicate any planters, wait stations, distance to curb, etc.
 - Copy of liability insurance (See Section 9 of the Revocable License Agreement)
 - Copy of Food Service Permit

- Approved Letter of Suitability for the wrought iron fence and gate.

SIDEWALK LEASE AGREEMENT REGULATIONS

Sec. 122-181. Sidewalk Use and Fence Permits. (Type B)

(a) Type B Sidewalk Use and Fence Permits. Type B Sidewalk Use and Fence Permits shall be issued in accordance with all of the following requirements:

1. The holder of a valid food service establishment permit pursuant to Section 46-2(c) of the Code of Ordinances of the City of McKinney, Texas for which the primary function of the business is the sale and consumption of food must apply for and receive a Type B Sidewalk Use and Fence Permit pursuant to the process established by the City Secretary;
2. The permit applicant must be the owner or lessor of a food service establishment located within the Type B Sidewalk Use and Fence Permit Zone;
3. For purposes of this section, the zone in which a Type B Sidewalk Use Permit may be applied for and granted is hereby set forth in Figure 6 below.



Figure 6

4. Barriers shall be erected to enclose the sidewalk use permit area and must receive a written determination of suitability from the City of McKinney Town Center Development Coordinator prior to installation. Said barriers may include but not be limited to, fencing that reaches a height of 36 inches, or benches or other barriers that reach a minimum of 20 inches in height and a maximum of 42 inches in height. Living plant screens shall not be an acceptable barrier material;
5. The sidewalk use and fence permit area must maintain a minimum five-foot (5') wide free and clear pedestrian path between the face of the barrier and the back of the curb unless otherwise approved, on a case-by-case basis, by the Town Center Development Coordinator or as specifically described in Figure 7 below.

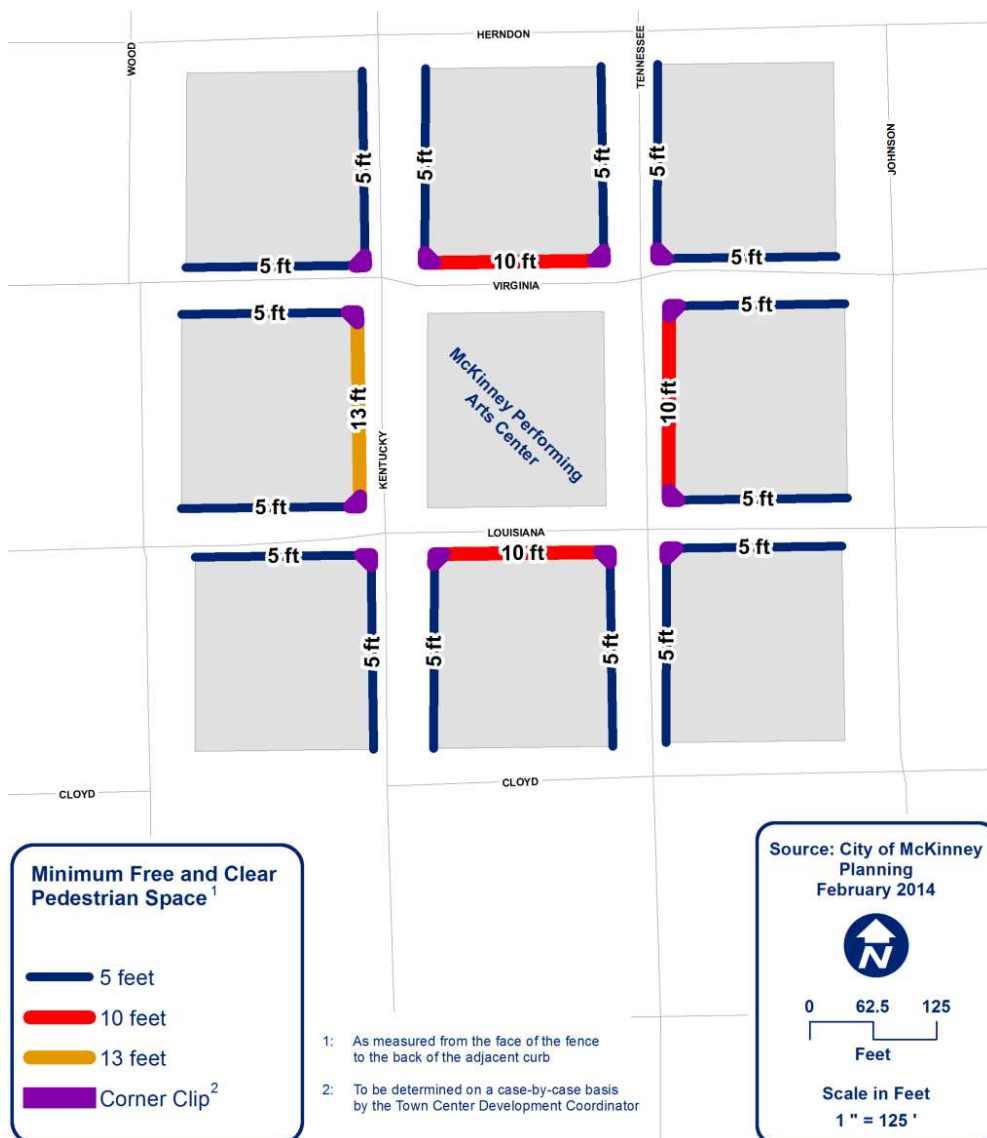


Figure 7

6. Signage must be posted indicating that alcoholic beverages are not allowed within the sidewalk use and fence area;
7. The sidewalk use and fence permit area shall be monitored by an employee to ensure that no alcoholic beverages are brought into the sidewalk use and fence permit area;
8. The city secretary may revoke a sidewalk use and fence permit at any time. A person/business aggrieved by the revocation of a sidewalk use permit may appeal the revocation to the city manager, whose decision shall be final; and
9. A sidewalk use and fence permit shall expire on the date specified in the executed sidewalk lease agreement, but may be renewed without the necessity of complying with the application process set forth in subsection b(1) of this section if the permit holder has not plead guilty or no contest to and/or has not been convicted of any alleged violation of this ordinance.”

REVOCABLE LICENSE AGREEMENT
FOR
TYPE B SIDEWALK USE

THIS LICENSE AGREEMENT (this "Agreement"), is made as of the ____ day of _____, 20__, by and between the **CITY OF MCKINNEY, TEXAS** (the "City") and _____, a Texas Corporation ("Licensee"), witnesseth that:

WHEREAS, Licensee is the owner of certain real property ("Premises") located within the Type B Sidewalk Use and Fence Permit Zone in McKinney, Collin County, Texas, as more particularly described on **Exhibit "A"** attached hereto and incorporated by reference herein;

WHEREAS, the City is the owner of public right-of-way which is used as a sidewalk (the "Sidewalk") for pedestrian usage which is adjacent to the _____ boundary of Premises;

WHEREAS, Licensee has requested permission to install certain temporary improvements ("Improvements") onto a portion of the Sidewalk located adjacent to the front entrance of the Premises to allow for outdoor seating and food sales (the "Services") (collectively referred to as "Licensee's Use") on a portion of the Sidewalk in compliance with Section 122-181 of the City's Code of Ordinances; and

WHEREAS, this License Agreement allows Licensee the right to use a portion of the Sidewalk ("License Area") for the purpose of erecting such Improvements as necessary to comply with Section 122-181 for the provision of the Services; and

WHEREAS, the City agrees to thereafter allow Licensee to use the License Area and such License Area shall be considered as a part of Licensee's Premises; provided Licensee agrees to hold the City harmless with respect to any damage to, or necessary modification of the Sidewalk and/or the License Area and to indemnify the City from and against any and all claims or causes of action arising out of or related to Licensee's Use of the Sidewalk and/or License Area and to maintain and keep the Sidewalk and/or License Area in good repair.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and the mutual covenants herein contained, and for other valuable and good consideration in hand paid by Licensee to the City, the sufficiency and receipt of which are hereby expressly acknowledged and confirmed, the parties hereby agree as follows:

Section 1. Installation and Maintenance of Services; Permitted Encroachment. The City does hereby agree that Licensee may install Improvements as necessary to comply with Section 122-181 of the City's Code and maintain such Improvement at Licensee's sole cost and expense, subject to the terms of Section 3 below. In connection with the foregoing, the City specifically consents to the Licensee's Use of the License Area. Such License Area shall be depicted with actual measurements, must be to scale and must show all Improvements to be located within the License

Area as shown on **Exhibit “B.”** The limitations on Improvements that may be located within the License Area are set forth in **Exhibit “C.”** In no event shall any Improvements extend on the Sidewalk beyond the License Area.

Section 2. Conditions of License.

A. City grants this non-exclusive license to Licensee for Licensee’s Use of the License Area effective _____ until _____. This License may be renewed for additional one (1) year terms upon written request by Licensee and acceptance by the City. Any request for renewal must be received no later than thirty (30) days prior to termination of this License, or any renewal term. In no event shall this License be renewed if Licensee has violated any provision of this License or Section 122-181 of the City Code. The License is non-transferable. It is the express intention of the City that this License is not exclusive and does not give any rights to Licensee to exclude the public from any portion of the public right-of-way, except in compliance with section 122-181 of the City’s Code. In consideration of said License, Licensee agrees with City as follows:

1. Licensee shall pay to City the sum of Ten and No/100 Dollars (\$10.00) as rent for the License Area, payable in advance at the office of the Finance Director.
2. Licensee shall pay (in addition to the above-described rents) all water, electrical, security and other costs associated with the use and maintenance of the License Area during the time for which this License is granted.
3. Licensee has examined and knows the condition of the License Area and has received it in good order and repair, and will keep the License Area in good repair during the term of this License at Licensee’s own expense. Upon termination of this License, Licensee will yield up the License Area to the City in good condition and repair.

B. Licensee expressly understands and agrees that this Type B Sidewalk Use License Agreement does not authorize or allow for the sale and/or consumption of alcoholic beverages in and about the License Area.

C. Licensee shall provide a signed copy of an approval letter from the City of McKinney Town Center Development Coordinator indicating issuance of a Letter of Suitability for all proposed Improvements (including the enclosure fence as required in Section 122-181 of the City Code). The approval letter shall be attached to this Agreement as **Exhibit “D.”**

Section 3. City Ordinances. Licensee expressly acknowledges that by entering into this Agreement, Licensee, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any exhibits as waiving any of the requirements of the City’s Zoning Ordinance or Subdivision Ordinance or any other ordinance of the City, as applicable. Licensee shall strictly conform to all provisions of the City’s Code of Ordinances and Licensee shall obtain all such permits as may be required to place the Improvements in the License area of the Sidewalk.

Section 4. Hold Harmless; Relocation. Licensee agrees to hold the City harmless from and against (a) any financial responsibility for Licensee’s Use of the Sidewalk and/or License Area, if the City determines, in its sole discretion, that Licensee’s Use will unreasonably obstruct any necessary use of the Sidewalk, and (b) any damage to the Sidewalk. The City will provide Licensee ten (10) days written notice of the need to modify Licensee’s Use of the Sidewalk, including the License Area. Licensee shall have five (5) days from the date it is provided such written notice to modify Licensee’s Use of the Sidewalk and/or License Area in order to allow unimpeded use of the Sidewalk.

Section 5. Maintenance and Repair of the Sidewalk. Licensee understands that the Sidewalk was not designed and constructed for the type of usage that will take place during Licensee’s Use of the License Area. Licensee hereby agrees at all times to maintain and keep the License Area clean, in good repair and condition and to replace or repair the Sidewalk to its current condition, or better, upon the termination of this Agreement by either party. The City will provide Licensee ten (10) days written notice of the need to clean, maintain, repair or replace the Sidewalk. Licensee shall have five (5) days from the date it is provided such written notice to clean, maintain, repair or replace the Sidewalk.

Section 6. Indemnification. Licensee hereby assumes all liability and responsibility for and agrees to fully indemnify, hold harmless and defend the City and its officers, agents, servants and employees from and against all claims, suits, judgments, demands, damages, losses and expenses, including but not limited to attorney’s fees, for injury to or death of a person or damage to property, arising out of or in connection with, directly or indirectly, Licensee’s Use of the License Area and/or the Sidewalk that forms the basis of this License specifically including but not limited to the construction, maintenance and use of the Improvements in or on the Sidewalk as well as the maintenance, repair and use of the Sidewalk in conjunction with the Services. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Section 7. Notices. All notices or requests required or authorized hereunder shall be in writing and shall be deemed effective upon receipt (or refusal thereof) when (i) delivered in person, (ii) sent by U.S. Postal Service, postage prepaid, as overnight mail or certified mail, return receipt requested, (iii) delivered by a nationally recognized delivery service for same-day or overnight delivery, or (iv) transmitted by facsimile (with proof of confirmed transmission) to the respective parties hereto as follows:

To Licensee:	Contact information

To the City:	City Manager
	222 N. Tennessee
	P.O. Box 517
	McKinney, Texas 75070

Section 8. Termination.

A. Either party (the "Terminating Party") may terminate this Agreement with or without cause by giving thirty (30) days notice. The parties shall retain all rights and remedies available at law, subject to the terms of this Agreement.

B. In the event Licensee fails to comply with any material provision of this Agreement, including but not limited to, maintaining a food service establishment permit, or compliance with the requirements of Section 122-181 of the City Code, as amended, the City may terminate this contract with ten (10) days notice. A copy of Licensee's food service establishment permit is attached hereto as **Exhibit "E."**

Section 9. Insurance.

A. Licensee shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the City of McKinney. Licensee shall furnish to the City of McKinney certificates of insurance executed by the insurer or its authorized agent stating coverage's, limits, expiration dates and compliance with all applicable required provisions upon the execution of this Agreement. A copy of the insurance meeting the foregoing requirements is attached hereto as **Exhibit "F"**. Certificates shall reference the special event and be addressed as follows:

City of McKinney
C/o Ebix BPO
PO Box 257
Portland, MI 48875

1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
- B. With reference to the foregoing required insurance, the Licensee shall endorse applicable insurance policies as follows:
1. The City of McKinney, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
 2. All insurance policies shall be endorsed to the effect that City of McKinney will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or material change of the policies.
- C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent. Such insurance shall

be primary and non-contributory regardless of any other insurance that may be applicable to any loss in question and in a form appropriate to cover Licensee Use of the Sidewalk.

Section 10. Binding Effect. The benefits and burdens of this Agreement shall benefit and bind Licensee and the City and their respective successors, successors-in-title, legal representatives and assigns as provided herein.

Section 11. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, there and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected hereby, and the other terms and provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law..

Section 12. Waiver. The failure of the City or Licensee to exercise any right given hereunder or to insist upon strict compliance with any term, condition or agreement specified herein, shall not constitute a waiver of either party's right to exercise such right or to demand strict compliance with any such term, condition or agreement under this Agreement.

Section 13. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Texas. Venue shall be exclusive in Collin County, Texas.

Section 14. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MCKINNEY

By: _____

TOM MUEHLENBECK
Interim City Manager

Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

LICENSEE

By: _____

Name: _____

Title: _____

Date Signed: _____

PREPARED IN THE OFFICES OF:
BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

Exhibit "A"
Location Map of Property
(to be provided by Licensee)

Exhibit "B"
Scale Drawing of License Area
(to be provided by Licensee)

Exhibit "C"

The following limitations shall hereby apply to the proposed License Area and adjacent Sidewalk:

- No signage shall be allowed.
- Menus, if posted, shall be posted in a menu stand located within the License Area.
- Lights and lighting, other than tabletop lighting fixtures, shall not be allowed.
- The display of goods and merchandise shall not be allowed within the License Area.
- No outdoor music shall be allowed on the Sidewalk or within the License Area. It is possible to apply for a Special Events Permit for occasional live music.
- Umbrellas, if used, shall be folded and secured after closing hours. Umbrellas shall never interfere with pedestrian traffic or vehicular line-of-site. Umbrella coverings are to be made of canvas or other high-quality material. Plastic or vinyl shall not be allowed.
- Licensee shall not place trash cans on the Sidewalk or within the License Area. Trash shall be promptly removed from the License Area and disposed of within the Premises. Licensee shall not use the permanent public trash cans within the public right-of-way. All tables are to be bused immediately upon patron(s) leaving the License Area.
- Extension cords running from within the Premises out to the Sidewalk or License Area shall not be allowed.
- Tables and chairs should reflect the character of the restaurant and shall be constructed of heavyweight, high-quality materials such as metal or wood. Lightweight materials such as plastic and vinyl which may be blown astray by moderate winds shall not be allowed.
- At the end of each working day, Licensee shall clean the Sidewalk for the width of the Premises (including the License Area). Licensee may not wash or leave debris in the street. The Sidewalk and License Area are to be left clean and neat.
- In the event a fence is removed, Licensee shall cover the post-anchoring sleeves with caps (subject to approval by the City Engineer and the Director of Planning) which shall be designed to fit flush with the Sidewalk pavers.
- No pets except service pets shall be allowed in the License Area.
- No heating devices shall be allowed in the License Area.

Exhibit "D"
Copy of Approved Letter of Suitability
(to be provided by Licensee)

Exhibit "E"
Copy of Food Service Establishment Permit
(to be provided by Licensee)

Exhibit "F"
Copy of Insurance Certificates
(to be provided by Licensee)