



CITY OF MARION

194 N. Main Street • P.O. Drawer 700 • Marion, NC 28752

Planning & Development Department

SIDEWALK ENCROACHMENT APPLICATION

(PLEASE TYPE OR PRINT IN INK)

All applications must be deemed complete prior to issuance of a permit.

Business Owner Name: _____ **Phone No.** _____

Business Owner Address: _____

Business Name: _____

Business Address: _____

Property Owner Name: _____ **Phone No.** _____

Property Owner Address: _____

Business Hours of Operation: _____ **Sidewalk Hours of Operation:** _____

Total Number of Sidewalk Tables: _____ **Total Number of Sidewalk Chairs:** _____

Total area to be occupied for sidewalk use: Total Length (ft.): _____ **Total Width (ft.):** _____

The following supporting information must accompany the application before it will be processed:

1. A drawing or site plan clearly delineating the defined area of sidewalk or pedestrian way to be used for private sidewalk use, and the section to be kept clear for pedestrian and fire lane use, and depicting the proposed placement of tables, chairs, barricades, umbrellas, trash receptacles, and other furnishings on the sidewalk or pedestrian way;
2. Detailed description and/or picture(s) showing the type of barricade, material(s), and installation to be installed on the sidewalk and/or within the public right-of-way;
3. Documentation of comprehensive general liability and products and completed operations coverage in the amount of \$1,000,000 (one million), insuring against personal injury, wrongful death and property damage and including the City as an additional party insured and insuring the City against any liability resulting from the use of the sidewalk and/or public right-of way. Such insurance policy shall provide that the policy shall not terminate or be canceled prior to the expiration date without thirty (30) days' advance written notice to the City;
4. Copies of all permits and licenses showing all required approvals by the County Health Department and/or other regulatory agencies, if applicable including copy of all applicable State ABC permits pertaining to the location for which a sidewalk or public right-of-way is proposed for private use; and

5. Execution of a statement on the permit application wherein the applicant holds harmless and indemnifies the City from any claims or causes of action arising out of or related to the permitted activity, including, but not limited to, compliance with the Americans with Disabilities Act, the North Carolina State Building Code and all other health and safety laws and regulations.

I CERTIFY THAT ALL OF THE INFORMATION PRESENTED IN AND WITH THIS APPLICATION IS TO THE BEST OF MY KNOWLEDGE, IS TRUE, COMPLETE AND ACCURATE. I UNDERSTAND THAT I AM THE ONLY PERSON AUTHORIZED TO OPERATE A SIDEWALK CAFE AND SHALL NOT SUBLET SUCH APPROVED SITE TO ANY OTHER PERSON OR ENTITY.

SIGNATURE OF APPLICANT

DATE

REQUIREMENTS FOR SIDEWALK ENCROACHMENT WITHIN THE CITY OF MARION

Use Requirements

- (a) A five-foot-wide unobstructed contiguous walkway within the public sidewalk area shall be maintained for use by pedestrians, and handicapped accessibility shall be provided as required by law. The private use or activity shall not impede pedestrian or vehicle traffic.
- (b) The use of a sidewalk must be associated with an operating business such that it is under the same management and operations. This includes a restaurant or similar business providing food and/or beverage that shares the same food preparation facilities, restroom facilities, and other customer convenience facilities as the restaurant. The sidewalk cafe must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.
- (c) The operation of a sidewalk cafe must be clearly incidental to the associated restaurant business. The number of tables and chairs and the seating capacity allowed for the sidewalk cafe shall be set in the permit approval by the City Manager or his/her designee. At no time may the number of tables and chairs in the sidewalk cafe exceed the number approved in the sidewalk cafe permit.
- (d) The placement of tables, chairs and other furnishings as shown in the drawing submitted with the site plan must be done in such a manner that at least five (5) feet of unobstructed space remains on the sidewalk or pedestrian way for the passage of pedestrians. No fire exits or lanes may be blocked and such must remain clear at all times. The pedestrian passage may not be used for the display of merchandise or for portable signs otherwise authorized pursuant to the City of Marion UDO Chapter Six, Article Two Sign Standards.
- (e) The premises of the sidewalk cafe must be clearly defined at all times during the hours of business operation, using a means of separation between the sidewalk and the premises of the sidewalk cafe, as review and approved by the City of Marion Planning and Development Department.
- (f) The restaurant seeking to operate the sidewalk cafe must front on and open onto the sidewalk proposed for the sidewalk cafe, or be situated below sidewalk level with direct access to the sidewalk by means of an open-air stairwell. The placement of tables, chairs, and other furnishings may not extend beyond the sidewalk or pedestrian way property frontage of the associated restaurant.
- (g) All outdoor dining furniture, including tables, chairs, umbrellas and planters, shall be movable and suitable for outdoor use. Umbrellas must be secured with a minimum base weight of not less than 60 pounds. At any time outdoor dining furniture is in disrepair, the restaurant operator shall repair or replace the furniture within 14 days after notice is provided by the City.

- (h) Except as elsewhere permitted by the Code, the operation or furnishing of the sidewalk cafe shall involve no permanent alteration to or encroachment upon any street, sidewalk, or pedestrian way or to the exterior of the associated restaurant, unless approval is given by the City Manager or his or her designee.
- (i) Amplified sound equipment shall not be permitted within the area of the sidewalk cafe.
- (j) At all times the permittee must comply with all other local, state or federal laws, ordinances and regulations, including but not limited to health, safety and welfare rules, laws and regulations and the City of Marion Noise Ordinance.

I, _____, do solemnly swear (or affirm) that I have read and will adhere to the above stated regulations, and further that I have not violated any law, regulation or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the three years preceding the date of the application. I further understand that failure to comply with the above stated regulations or by falsifying information in this statement or any other document required to make private use of public property may result in the revocation of all City-issued permits.

SIGNATURE OF APPLICANT

DATE

**STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
RELEASE AND AGREEMENT**

THIS RELEASE is executed and entered into this the _____ day of _____, 20_____.

By _____ (hereinafter referred to as "undersigned").

1. It is further acknowledged by the undersigned that use of streets, sidewalks, and other public places located within the municipal limits of the City of Marion is subject to regulation by the City.
2. It is further acknowledged that Section 15-134(a)(4) of Marion City Code prohibits the placing of any items on the public sidewalk unless the merchant wishing to do so first provides the City Manager with a signed notarized statement accepting total and complete responsibility for any accidents or other problems relating to the items placed street, sidewalk, or other public place.
3. Description of specific item(s) and number of items to be placed on the street, sidewalk, and/or other public place:

4. Undersigned hereby agrees to indemnify the City and to hold the City harmless from any and all claims, damages, or liability to any person whatsoever, (including attorney fees, costs of court and any other expenses) which may arise from or in any way related to, the placement of the items described above on the sidewalk. Should any such claim be made against the City, the undersigned agrees to assume the cost of defending such claim, and to reimburse the City for any expenses it incurs in the defense such claim. Undersigned agrees to maintain sufficient liability insurance coverage to enable it to comply with the provisions of this Release and Agreement and name the City of Marion as additionally insured under the policy.

Undersigned maintains liability insurance on the business in question with: _____, and agrees to forward a copy of this Release and Agreement to its Insurer.

5. Undersigned stipulates that, by the promises and representations contained herein, it has induced the City to allow it to place the items referred to above on the public street, sidewalk, or other public place. Undersigned acknowledges that such permission may at any time be immediately withdrawn if undersigned is found to be in violation of any part of the Marion City Code, or if, in the sole discretion of the City, the items placed in or upon the public way, or the activities associated with them, are considered an unreasonable hazard or violation of law. Undersigned hereby releases the City from any and all liability either associated with the City's exercise of its discretion in making such determination, or in any other way arising from the placement or presence of the items referred to above in or upon a public way, or from any activities associated in any way with such items.

Name (Print) _____ Signature _____ Date: _____

Effective on the date and year first above written.

**STATE OF NORTH CAROLINA
COUNTY OF McDOWELL**

I, _____ a Notary Public, certify that
_____ personally came before me this day and acknowledged the
due execution of the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal,
this the _____ day of _____, 20_____.

Notary Public

My Commission Expires: _____