

**DEPARTMENT OF PUBLIC WORKS AND ASSETS  
RULES AND REGULATIONS  
GOVERNING OBJECTS TO BE PLACED TEMPORARILY  
IN THE RIGHT OF WAY**

**Section 1 – GENERAL RULES AND REGULATIONS**

A. Pursuant to LMCO 97.070(E), the Director of Public Works and Assets hereby establishes reasonable, time, place, and manner regulations governing the placement of objects on the right-of-way on a **temporary** basis.

B. DEFINITIONS.

1. "Object" shall mean any item to be placed in the right of way on a temporary basis. "Object" does not include:

- a) any permanent object authorized as street furniture under LMCO 97.070(A)(3);
- b) objects temporarily erected or placed by authorized public agencies for public safety and/or public welfare purposes;
- c) signs governed by the Land Development Code or LMCO Chapter 155;
- d) any object authorized by a permit issued by Codes and Regulations for a building permit, a special event, or a vendor permit;
- e) any object authorized by Public Works and Assets for utility work within a right-of-way; or
- f) any object authorized by the Director of Parks and Recreation within a park or parkway.

C. Louisville Metro Government, its boards, agencies, commissions or departments, with the permission of the Department of Public Works and Assets, may place objects in the right of way on a temporary basis for no greater than 30 consecutive days within a Metro fiscal year.

D. All other person(s) or entity requesting to place an object on the right-of-way on a temporary basis shall make a written request to the Director of Public Works and Assets, or a designee.

**Section 2 - APPLICATION FOR PERMIT**

A. The applicant shall submit to Public Works and Assets a signed application in writing with a certificate of insurance, approved in form and amount by Risk Management, showing Louisville Metro as an additional insured covering any liability arising out of the placement, maintenance or existence of the object on the right-of-way. The application submitted must include the following:

1. The name, address, telephone number and, if applicable, electronic mail address of the applicant.
2. A site plan showing the exact street location where the object is to be placed, including a scale drawing or site plan for each object and its placement relative to existing buildings, curbs and other fixtures and appurtenances in the surrounding public rights-of-way for a minimum of twenty-five (25) feet in any direction. The requested location shall be examined by Public Works and Assets to ensure an object can be safely placed without injury to the sidewalk or other items within the right-of-way at that location, and that the placement thereof shall not impede pedestrian traffic, or cause congestion thereof.
  - a. The site plan must indicate a minimum of 4 feet in width for pedestrian traffic in a continuous path and must be a minimum of 2.5 feet from the curb. Additional footage may be required in the Central Business District and other high traffic pedestrian areas.
3. Whether the applicant would prefer to receive notice from Public Works and Assets and orders issued by Public Works and Assets by regular mail or electronic mail; and
4. Whether any noise, music or other sound will be emitted by the object and the maximum decibel level the object can reach;
5. Signature of the applicant;
6. The required permit fee;
7. The information supplied pursuant to subsection (1) of this section shall be used for all notices, correspondence or communications from Public Works and Assets.
8. A statement that the object can be placed in the right-of-way without damage to the right-of-way and that the object is stable on its own and not subject to being tipped over without mechanical assistance.
9. If the adjacent property owner is not the applicant then the applicant must obtain written permission from the adjacent property owner or state what efforts were used to obtain the permission and the reasons why written permission could not be obtained.
10. The object cannot be affixed to the right-of-way.
11. If the object is to be located over a vault below the sidewalk then a determination is required by a Professional Engineer that the sidewalk is structurally able to support the object and any equipment required to place it.

**Section 3 - REVIEW OF AN APPLICATION BY  
PUBLIC WORKS AND ASSETS**

A. Public Works and Assets will make a field inspection of the requested location to see if the object can be placed safely, would still allow for safe use of the right-of-way by pedestrians and others, and would meet all the requirements stated herein.

B. No permit shall be issued unless:

1. The applicant has filed a written statement whereby the applicant agrees to indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the applicant's (or applicant's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials; and employees acting within the scope of their employment. This Hold Harmless and indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.
2. The applicant has paid a nonrefundable permit fee of one-hundred dollars (\$100.00) for each object. The applicant is not in arrears as to any fees or charges regarding the placement of objects in the right-of-way on a temporary business.
3. If the selected site location is on a state road, then the applicant must first obtain review and written approval from the Kentucky Transportation Cabinet, Department of Highways before submitting an application to Public Works and Assets.
4. If the object is to be located in a Historical District or Overlay District, then the prior approval of that district is required for placement of the object.
5. Each applicant shall provide to the Director of Public Works and Assets a current certificate of insurance, naming Metro as an additional insure party of a commercial general liability policy with a minimum limit of total coverage in the amount of one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability. The insurance shall be written with a company that has an A.M. Best Rating of B+ VI or greater. The applicant shall maintain the insurance described by this section so long as the applicant uses or maintain an object in the public rights-of-way, and the failure to do so shall be a violation of this ordinance.

6. All requirements of the application under Section 2 above have been met.
7. The Director of Public Works and Assets or designee has determined:
  - a. Whether the object is stable or endangers public safety or property, or interferes with or impedes the flow of pedestrian or vehicular traffic;
  - b. Whether the placement of the object impedes or interferes with the reasonable use of a display window or display space;
  - c. Whether the design, size, shape, materials and color scheme of the object comport with and enhance the quality and character of the streetscape, including nearby development and existing land uses; and
  - d. Whether an object can be placed and secured within the right-of-way without any injury to the sidewalk or other items within the right-of-way.
  - e. Whether the object and its placement meets all American with Disabilities Act guidelines.

C. No more than one hundred (100) permits for the placement of objects in the right-of-way on a temporary basis shall be issued by Metro Government within a fiscal year and the permits shall be issued on a first come, first serve basis.

D. The administrative fee for each permit is one-hundred dollars (\$100.00).

E. Permits shall be valid for 30 consecutive days within a Metro fiscal year and are specific to the application and its contents and are not transferable for a different object, location, or time for placement.

#### **Section 4 – MAINTENANCE AND REMOVAL**

- A. Each object shall:
  1. bear a weather proof label which contains the permit number and the name, address and telephone number of the applicant. Such label shall be conspicuous in size and color, and placed in such a location so as to be readily visible; and
  2. be maintained by the applicant in a reasonably clean condition and shall be free of dirt and grease, rust and corrosion in visible metal areas, graffiti, discolored or bare surfaces, chipped, faded, cracked and peeling paint, cracked, dented or broken components, pasted bills and other debris.
- B. No object shall be treated as abandoned for 60 days after the expiration of

the 30-day permit period. However, after the expiration of the 30-day permit period, Public Works shall remove the object, and store said object for up to 60 days. Fees for storage shall be \$25 per day, or the actual cost of storage if a private storage facility is used. The permittee shall bear any and all expenses and costs incurred by Metro for the removal and storage of the object, including collection costs. After the expiration of the aforementioned 60 day period, above, Public Works shall dispose of said object as it sees fit, and any and all costs incurred in the disposal thereof shall be borne by the permittee, including collection costs, if necessary.

C. The applicant shall repair any damage to the right-of-way caused by the installation or the maintenance of the object. On removal of an object the applicant must completely restore the right-of-way to its original condition.

D. The applicant must inform Public Works and Assets in writing of the removal of the object so that Public Works and Assets may inspect the location to confirm the restoration of the right-of-way to its original condition.

E. Failure to place the object in accordance with an approved permit may result in the revocation of a permit.

### **Section 5 – Permit Approval, Denial and Appeal**

A. Within ten (10) working days after the request for a permit is filed with Public Works, **Permits Section**, shall complete its investigation and issue to the applicant either the permit, or a written notice of denial. The notice shall be sent by the method selected in Section 2 above. A petition for a permit may be denied only for the reason that:

1. The petition for the permit contains incorrect or incomplete information;  
or
2. The placement of the object on the public rights-of-way, as requested in the petition, does not comply with this regulation.

B. If Public Works denies a permit, it shall issue written notice stating the specific reasons for the denial, and what specific actions, if any, would be necessary for the permit to be issued.

C. If a permit is denied an applicant may file an appeal to the Director of Public Works or his designee, but in no circumstances shall the person(s) who participated in the denial be involved in the appeal review process.

D. If an application for a permit is denied, an appeal shall be filed within twenty (20) business days following the issuance of the written denial, unless the parties mutually agree to an extension of this time period. The appeal shall be in writing and state all the reasons why the applicant believes the permit denial was incorrect. The Director of Public Works or a designee of the Director shall render the decision in writing within fifteen (15) business days after the appeal is received by Public Works; a copy of the decision shall be delivered to the

applicant using the method selected in Section 2, above, and a copy shall be kept on file by the Director of Public Works.

E. The decision of the Director may be appealed to a court of competent jurisdiction within thirty (30) days following the date the decision was issued which will provide the parties an opportunity for a prompt hearing and prompt decision by a judicial officer. Failure to file an appeal within the time period provided by this subsection shall constitute a waiver of the right to appeal.

Approved this 28<sup>th</sup> day of September, 2009.

A handwritten signature in black ink that reads "Ted A. Pullen". The signature is written in a cursive style with a horizontal line underneath it.

Ted Pullen, Director  
Public Works and Assets

Reference: LMCO 97.070