

Application for Temporary Outdoor Seating in Public Right-of-Way

City of Goshen, Indiana

Name of Business:	Business Phone Number:
Applicant Name:	Applicant Phone Number: (required for after-hours contact)
Address:	
Installation Date: (On or After April 1 st)	Removal Date: (On or Before October 30 th)

PERMIT APPLICANT _____
Signature Date

LIABILITY INSURANCE REQUIREMENTS: \$1M General Liability Insurance ☐ Yes ☐ No

APPLICATION FEE: The fee for each Outdoor Seating Right-of-Way application shall be \$20.00. Please make check payable to: "CITY OF GOSHEN"
Date Paid _____ ☐ Cash ☐ Check # _____

City of Goshen "Approval of Permit"

_____ City Engineer	_____ Date	_____ Gina Leichty, Mayor	_____ Date
_____ Michael Landis, Board Member	_____ Date	_____ Mary Nichols, Board Member	_____ Date
_____ Barb Swartley, Board Member	_____ Date	_____ Orv Myers, Board Member	_____ Date

Application Checklist

- ☐ Complete the application form
- ☐ Attach a scaled drawing showing the design of the installation with dimensions
- ☐ Include signed letters of support from adjacent property owners, if applicable
- ☐ Provide pictures or drawings that illustrate the materials to be used in the installation
- ☐ Provide a brief description of operations including if alcohol sales will occur and hours of operation
- ☐ Supply certificate of liability insurance
- ☐ If vehicular traffic will be impacted by construction, include an installation and removal plan showing traffic maintenance accommodations
- ☐ Create and provide a maintenance checklist

Application Requirements

Establishments in the Downtown Business District serving food and/or beverages as the primary offering, or banquet facilities and rentable space permitted to allow catering services at the facility may request approval from the City of Goshen to place additional temporary seating outside of the facility in the portion of the public right-of-way directly adjacent to the property. For the purposes of this document, the Downtown Business District is defined as the area being along or between 2nd Street and 5th Street while also being along or between Pike Street and Madison Street. The portion of the public right-of-way directly adjacent to the neighboring properties may also be utilized upon written consent of the that property owner as long as all utilized portions of the right-of-way are contiguous. All approved installations and placement of private effects within the public right-of-way must be temporary and will only be allowed from April 1st to October 30th, at which time, the outdoor seating within the right-of-way privilege expires and the right-of-way must be returned to its original condition. Applications must be submitted on a yearly basis and all requests to the City of Goshen will require the following criteria be met prior to approval:

- All seating must allow access to public utilities, waste collection receptacles, hydrants, alleys, manhole covers, ADA parking spaces, and driveways; and must adhere to all standard codes, rules and guidelines for such establishments, including those set forth by the Indiana Alcohol and Tobacco Commission, if applicable.
- At a minimum, a 5-foot walkway must be maintained free of all obstructions on either:
 1. A portion of the sidewalk with a cross slope of 2.0% or less, or
 2. The most level 5-foot wide section of walkway as determined by the Engineering Department.
- If table service is to be offered, separation must be provided between seating and walkway through placement of a vertical barrier with a minimum height of 36 inches. The barrier must be free-floating, not damage the sidewalk surface, and not cause a trip hazard within the defined walkway.

- All necessary electrical connections must be encased in a cord safety cover.

Temporary walkways and seating areas constructed in adjacent parking spaces must be approved by the Board of Public Works and Safety, will be approved subject to parking demand, and will require the following criteria be met:

- All temporary walkways and seating areas must be on constructed surfaces that are a minimum of four inches high along the travel lane of the adjacent roadway, covered in slip-resistant material, and have a minimum load-bearing weight of 100 lbs./sq. ft.
- All temporary walkway and seating construction must allow the existing drainage patterns to be maintained and must provide a clear area adjacent to the curb in the roadway to allow runoff to flow. The required opening shall be no less than 12 inches in width and have a height of two inches or the height of the adjacent curb, whichever is greater.
- Constructed walkways must meet all guidance set forth in the U.S. Access Board's Proposed Rights-of-Way Accessibility Guidelines and provide a minimum walkway width of five feet.
- All temporary walkways and seating areas must be separated from the adjacent roadway with a vertical barrier that is a minimum of 36-inches high. The vertical barrier must be rigid, fastened securely to the constructed surface, and have no passable gaps greater than 6-inches. The vertical barrier, or delineators/bollards with reflective tape placed in addition to the barrier, must be placed between 18 and 36 inches away from the lane line of the adjacent travel lane and must be easily visible to the traveling motorist on said facility.
- A 3-foot clear area must be provided as a buffer between any construction and the closest parking space or driveway and the installation cannot obstruct vehicle sight lines as determined by the Engineering Department.
- Where requested by the City, additional separation and or protection may be required on the upstream end (end at risk of vehicle impact) of the construction. These determinations will be based on vehicle speed and a driver expectancy* in the adjacent roadway.

***Driver expectancy** refers to a driver's readiness to respond to hazards that are expected to be in a particular type of roadway corridor. If a hazard is atypical to the corridor than it is considered to be outside the expectancy of the driver.

Operation and Maintenance

Applicants are solely responsible for the maintenance and upkeep of their installations. This includes all duties and costs related to keeping the installation clean and in good condition. Areas should be cleaned each day of operation and any damage repaired promptly. Proper maintenance is a condition of the permission to install, and failure to conduct proper maintenance will result in the loss of permissions. The following list should be used as a minimum maintenance checklist:

- Wipe down table and chairs
- Clean up rubbish within and around the area
- Sweep in and around the area
- Remove debris against the outside edge of the barrier and along curb to help maintain free flow of runoff
- Water and maintain installed plantings

The City reserves the right to remove the installation if emergency or utility work needs to be conducted. The applicant will be responsible for all costs associated with the disassembly and removal of the installation.

Terms and Conditions

By applying for the Outdoor Seating in Public Right-of-Way of the Downtown Business District, Applicant agrees and shall comply with all terms and conditions included in this application and any related permit issued by the City of Goshen ("City"), which terms and conditions are detailed herein. Applicant acknowledges and agrees that the City may, in its sole discretion, deny or reject any application site that presents safety or traffic circulation concerns. Further, the City may, in its sole discretion, limit, reduce, or revoke any permit issued that presents safety or traffic circulation concerns.

- A. General Terms and Conditions.** Applicant acknowledges that this and any permit issued are revocable, at the sole discretion of the City, and temporary. As a result, any permit issued by the City shall be a revocable, temporary license permitting the applicant to operate an outdoor seating area for a limited period of time. Any permit issued creates no other property interest than a revocable license. This or any permit issued does not create a private right to occupy the public right-of-way or diminish the Mayor's, or his or her designee, authority to oversee and manage the use of the public right-of-way in the City's best interest. This revocable right-of-way privilege for outdoor seating is subject to modification or revocation at the City's sole discretion. For installations with impacts to parking spaces or vehicular alleyways, Applicant agrees and acknowledges that the City's Engineering Department will review the application and approve or deny the application for submission to the Board of Public Works and Safety and that the City's Board of Public Works and Safety will review the application and grant, grant with conditions, or deny the application. Applicant agrees and acknowledges that for all other installations the City's Engineering Department will review the application and grant, grant with conditions, or deny the application. Applicant agrees and acknowledges

that the Board of Public Works and Safety or the City's Engineering Department must approve the permit prior to the start of work. Applicant agrees and acknowledges that the City has the authority to condition or revoke approvals deemed to have been improvidently granted or inappropriate in light of new information or changed circumstances. In addition, the City may impose conditions on new or existing approvals in order to promote the public health, safety, and welfare and to mitigate adverse impacts that have arisen or may arise in connection with a new or expanded outdoor seating area approved under this program. Anyone who wishes to challenge the approval or denial may seek reconsideration by the City Engineer by submitting the appeal to the approval or denial via email to the City's Engineering Department. This shall be the exclusive means of appealing any approvals granted or revoked under the program. The City Engineer shall have the sole discretion to approve or reject a challenge, but such determination shall consider application requirements, program guidelines, and public health, safety, and welfare needs.

B. Operating Terms and Conditions. Applicants by applying for an Outdoor Seating Permit agree to comply with the following operating conditions:

1. Applicant shall comply with and enforce customer compliance with state and local requirements for restaurant and bar operation
2. Applicant shall be responsible for properly cleaning and disinfecting all dining tables and chairs as needed or required by local health requirements
3. Applicant shall have adequate on-site hand sanitizing and hand-washing stations available to employees and customers
4. Applicant shall be responsible for coordinating any issues or permissions required from neighboring operators affected by its proposed site
5. Applicant shall comply with all required liquor laws and be responsible for coordinating compliance with applicable local and state authorities
6. Applicant shall not store or prepare food within the City's right-of-way

C. Standard Terms and Conditions: Outdoor Seating in Public Right-of-Way of the Downtown Business District. Each applicant receiving permission to establish outdoor seating area in the right-of-way ("Permittee") agrees and shall abide by the following standard terms and conditions:

1. **COVID-19 Health Requirements and Other Standard Conditions.** The Permittee shall comply and further shall cause its employees, agents, guests, invitees, and contactors to comply with all federal, state and local statutes, rules, and orders addressing public health and social distancing, including any orders issued by the Elkhart County Health Department ("Public Health") and/or the City of Goshen ("City") that might apply to outdoor seating areas in the right-of-way. This shall include requirements governing social distancing, face covering, and other requirements for restaurants from the State of Indiana. In the event of a conflict between Public Health and state guidance, Permittee shall comply with whichever is more protective of the public health as determined by the City. In addition, the Permittee shall comply and further shall cause its employees, agents, guests, invitees, and contractors to comply with these terms and conditions and any other rules or regulations established by the City that might apply to outdoor seating areas in the right-of-way, which the City may modify or supplement from time to time in order to protect and promote the public health, safety, and welfare.
2. **Expenses.** All expenses associated with Permittee's establishment and operation of outdoor seating in the right-of-way shall be borne by Permittee. The City shall not be responsible for any costs associated with the Permittee's establishment and operation of outdoor seating in the right-of-way.
3. **Establishment of Outdoor Seating Area.** In establishing outdoor seating in the right-of-way, Permittee shall not modify, alter, or demolish existing curbs, sidewalks, streets or other encroachments within or near the right-of-way or attach furniture or other fixtures using fasteners, adhesives, or other invasive means, unless specifically approved by the City as part of the City's approval of Permittee's plans. Permittee acknowledges and agrees to have the installation inspected by the Engineering Department prior to use.
4. **Maintenance of Outdoor Seating Area.** Following the Permittee's establishment and operation of outdoor seating in the right-of-way, Permittee shall maintain the area in good, clean and safe condition and repair and in accordance with applicable City rules and regulations. If the City determines that the outdoor seating area poses a hazardous condition, has caused damage to City property, or is otherwise not being properly maintained, the City may require Permittee to immediately take such action as is necessary to rectify the situation to the City's satisfaction. If Permittee fails to correct the identified hazardous condition, improper maintenance, damage, or other problem caused by the outdoor seating area, the City may do so; whereupon Permittee shall pay all costs incurred by the City, together with interest thereon from the date that the City pays or incurs such costs at a reasonable rate of interest determined by the City, within thirty (30) days after the City's written demand.
5. **City's Right to Enter upon Occupied Right-of-Way.** Permittee acknowledges that the City and its authorized agents have unlimited right to enter upon the right-of-way at any time for any purpose, including without limitation to inspect the right-of-way and permitted encroachments; provided, however, the City shall have no duty to inspect.
6. **Rights of Utility Companies.** All rights herein granted to Permittee establish and operate outdoor seating area in the right-of-way are subject and subordinate to the rights of any and all utility companies that may now or hereafter have utility lines and/or other utility installations within the right-of-way.

Permittee shall not alter, relocate, or otherwise interfere with such utility lines and installations and shall not do anything that will impair such utility companies' right to enter upon the right-of-way from time to time for all purposes associated with the operation, maintenance, repair, replacement or removal of such utility lines and installations. Permittee shall ensure that such utility companies have continued access to the subject area, 24 hours per day, 7 days per week, 52 weeks per year.

7. **Insurance.** During the period in which this revocable privilege is in effect, Permittee shall maintain a policy of General Liability insurance with respect to the right-of-way and the outdoor seating area in an amount not less than One Million Dollars per occurrence, combined single limit, naming the City as an additional insured. Permittee shall furnish to the City a certificate of insurance evidencing such insurance prior to commencing construction of Permittee's permitted encroachments, unless otherwise authorized by the City.
8. **Waiver of Claims for Damage.** The City shall have no responsibility or liability for loss or damage to any person or property including the permitted encroachments or theft of any permitted encroachments or any items of personal property that may at any time be on the right-of-way, including without limitation damage caused by the general public, trespassers, graffiti, thrown objects, wind, hail fire, or other casualty, no matter how such damage is caused. As a material inducement to the City to grant this outdoor seating privilege, Permittee hereby waives, as against the City and its elected officials, officers, employees, agents, guests, invitees, and contractors, all claims and liability, and on behalf of Permittee's insurers, rights of subrogation, with respect to property damaged or destroyed by fire or other casualty or any other cause, no matter how caused.
9. **Indemnification.** Permittee shall indemnify, defend, and save the City, its elected officials, officers, employees, agents, and contractors harmless from and against any and all losses, damages, settlements, costs, charges professional fees, and other expenses and liabilities of every kind and character (including without limitation attorney fees) arising out of or related to any and all claims, liens, demands, obligations, actions, proceedings, or causes or action of every kind and character in connection with Permittee's establishment and operation of outdoor seating area in the right-of-way, use of the right-of-way, or violation of the provisions set forth in this outdoor seating privilege, including without limitation any of the foregoing that may arise or be claimed with respect to any death, personal injury, or loss of or damage to property on or about the right-of-way. Permittee shall assume the defense (with counsel acceptable to the City) and settlement of any and all such suits or other legal proceedings brought against the City and shall pay all judgements entered in such suits or other legal proceedings. The assumption of liability and indemnity obligations of Permittee under this outdoor seating privilege shall survive the termination of this outdoor seating privilege with respect to matters arising prior thereto.
10. **Compliance with all Applicable Laws.** Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.
11. **Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the permitted encroachments.
12. **Accessibility.** Permission for outdoor seating in the right-of-way shall be conditioned on maintenance of accessible conditions along the sidewalk adjacent to the outdoor at least 60-inches in width at all points adjacent to the outdoor seating area, which area shall be permitted to be narrowed due to existing sidewalk fixtures (e.g., light posts, fire hydrants, and other fixtures) but in no case shall be narrower than 48-inches for a length of more than 2-feet.
13. **City's Right to Revoke.** The City shall have the right to revoke or alter, at its sole discretion, this outdoor seating privilege, upon providing written notice to Permittee. Within 14-days, unless otherwise agreed to by the City, Permittee shall remove the permitted encroachment and restore the right-of-way to a condition that is acceptable to the City.
14. **Obligation to Remove Permitted Encroachment.** If Permittee fails to timely remove the permitted encroachment and restore the right-of-way as required under this outdoor seating privilege, the City may do so at Permittee's expense. All obligations of Permittee hereunder that have accrued but have not been fully performed as of the effective date of the termination of this outdoor seating privilege shall survive such termination until fully performed.
15. **Transfer of Permittee's Property.** This outdoor seating privilege is personal to Permittee, shall not inure to the benefit of Permittee's successors-in-interest with respect to Permittee's property, and shall not be recorded in the public records. Permittee shall provide the City thirty (30) days' prior written notice of its intent to close on the sale or transfer of Permittee's property. Upon Permittee's sale or transfer of Permittee's property, this outdoor seating privilege shall automatically terminate. Prior to the closing on any such sale or transfer, unless the City has granted, and the purchaser or transferee has accepted, an outdoor seating privilege for the permitted encroachments and restore the right-of-way to a condition that is acceptable to the City.