

City of Muncie Department of Public Works  
5790 W Kilgore Ave. Muncie, IN 47304  
T:765-747-4878 F:765-747-4794

**APPLICATION FOR PERMIT TO ENCROACH ON PUBLIC RIGHT-OF-WAY**

**Application Date:** \_\_\_\_\_

**Applicant's Name:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Location of Use:** \_\_\_\_\_

**Type of Encroachment (detailed):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Expected Duration of Encroachment:** \_\_\_\_\_

If proposed encroachment is fencing, you are required to attach drawings and specifications with detailed measurements.

**Indemnity Agreement:**

In consideration of the issuance of a Permit to Encroach as requested by the undersigned applicant, the undersigned agrees to indemnify, defend and hold harmless the City of Muncie, Indiana, it's officials, agents and employees from any liability due to loss, damage or injuries or other casualties of any kind, to the person or property of anyone on or off the right-of-way arising out of, or resulting from the issuance of the permit or the work or activity connected therewith, or from the work or activity undertaken thereunder, whether due in whole or in part of the negligent acts or omissions of the City, it's officials, agents, or employees, or the applicant, it's agents, contractors or employees or other persons engaged in the performance of the work or activity, or the joint negligence of any of them.

**Signature of applicant:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print Name and Title:** \_\_\_\_\_

## **City of Muncie Board of Public Works and Safety Policy on Private Encroachment of Public Right-of-Way**

WHEREAS, the City of Muncie Board of Public Works and Safety, pursuant to the Indiana Code § 36-9-6 and City of Muncie Code or Ordinances § 96.46, is authorized to regulate activities within the public right-of-way and establish specifications for activity within the public right-of-way; and

WHEREAS, City of Muncie Code of Ordinances § 96.43 (B) (3) prohibits the construction of a fence within a right-of-way and issue a permit to encroach for the purpose of creating outdoor seating for restaurants and taverns, when such can be accomplished in accordance with federal, state and local laws and regulations; and

THEREFORE, it is hereby resolved by the Board of Public Works and Safety to create the following rules and regulations regarding the issuance of a permit to encroach into public right-of-ways for the construction of fencing associated with outdoor seating at restaurants and taverns:

**Section 1:** Any person desiring to construct or maintain fencing on a sidewalk located within the public right-of-way for the purpose of creating outdoor seating shall file an application for a Permit to Encroach with the City of Muncie Department of Public Works. The application shall be on a form prescribed by the City of Muncie Department of Public Works and shall include the following information:

- i: Name, address and telephone number of applicant;
- ii: The nature and location of the proposed encroachment;
- iii: Plans and drawings of the proposed encroachment with precise measurements; and
- iv: A signed agreement agreeing to indemnify the city for any liability related to the encroachment.

**Section 2:** The City of Muncie Department of Public Works shall review the application and plan prior to submitting the application to the Board of Public Works shall review the application and plan prior to submitting the application to the Board of Public Works and Safety for approval. A permit shall be issued only if the encroachment will be constructed in a manner that does not cause a violation of federal, state and local laws and

regulations and does not unduly impair the public transportation of people or goods. A determination as to the nature of any impairment of public transportation of people and goods shall be determined by the Board of Public Works and Safety in its discretion.

**Section 3:** A permit shall be valid and enforceable for a period of one (1) year commencing on the date of approval. Upon the expiration of the permit, an applicant shall file for an application for renewal with the City of Muncie Department of Public Works. If there is no proposed change in size and scope of the encroachment, the Department of Public Works shall issue a renewal permit without the necessity of approval by the Board of Public Works and Safety.

**Section 4:** Any encroachment approved pursuant to these rules and regulations shall be limited to the frontage of the applicant's property. All fencing constructed pursuant to permit to encroach shall be maintained in good repair at the sole cost of the applicant/permittee.

Adopted by the City of Muncie, Indiana Board of Public Works and Safety this 12<sup>th</sup> day of August 2011.

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Ted Baker, President

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Lola Mauer, Vice-President

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Linda Gregory, Secretary

ATTEST: \_\_\_\_\_

Linda Hayes, Recording Secretary

## PERMIT TO ENCROACH

Name of Business/Individual: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_ Date of Expiration: \_\_\_\_\_

Location: \_\_\_\_\_

This Permit to Encroach is issued by the City of Muncie Board of Public Works and Safety and the Department of Public Works for the sole purpose of permitting the construction of fencing on a sidewalk within the public right-of-way to create outdoor seating. The Board of Public Works and Safety has determined that the private use of public right-of-way under these circumstances is beneficial to both parties. This Permit to Encroach is issued subject to the following terms and conditions.

1. The encroachment permitted by the issuance of this Permit shall be construction in accordance with plans and specification included in the application.
2. The encroachment and the public right-of-way adjacent thereto shall be maintained in good repair and condition.
3. The City reserve the right to terminate the Permit upon thirty (30) days written notice and order the removal of the encroachment in the event the maintenance and repair conditions are not satisfied or if a public need for the use of the improved area exists.
4. The issuance of this Permit shall not be construed as satisfaction of any other applicable federal, state or local laws or regulations governing outdoor seating or the construction of the encroachment.

Issued By: \_\_\_\_\_  
Brian Stephens-Hotopp, Superintendent of Public Works

Accepted by: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

