



# City of Leavenworth

## RIGHT-OF-WAY SPECIAL USE PERMIT APPLICATION\* RESTAURANT SEATING

This application must be filled out legibly, in blue or black ink, either hand printed or typewritten

### APPLICANT\*

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ M.I. \_\_\_\_\_

Business Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### PHYSICAL ADDRESS OF LOCATION

Address: \_\_\_\_\_

### CONTACT PERSON

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

\*Proposals for placement of items within City right-of-way shall be made by those businesses, owners, or lessees of property which is located directly adjacent to, and in line with, the proposed area of use. For businesses which are not located at street-grade (upstairs or downstairs), which do not have street frontage directly adjacent to their business, and/or which propose the use of right-of-way which is not directly adjacent to their business, the City may require consent of the property owner(s) and business owner(s) adjacent to the proposed area of use.

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**Include all of the following information and applicable drawings with your application<sup>†</sup>.** Applications that do not include all the required information and drawings will not be accepted as complete and may be returned to the applicant, delaying the permit process.

Provide two copies of each of the following. All drawing(s) must be on paper capable of being folded for storage in an 8 1/2" x 14" file, and become the property of the City of Leavenworth.

- A site plan, drawn to scale, showing the entire sidewalk area adjacent to the building, from building edge to curb edge, with the area of use and all permanent sidewalk fixtures (such as garbage receptacles, light posts and street signage), clearly delineated. All items proposed to be placed within the right-of-way by the applicant shall be depicted on a site plan (proposed placement). Such site plan shall include measurements in feet/inches.
- Details such as accurate drawings, specifications, or photographs shall be provided with sufficient information to demonstrate the appearance of items proposed for placement in the right-of-way and to demonstrate compliance with the requirements stated (see applicable Requirement handout as provided by the City).
- The applicant shall provide a narrative disclosing the intended use of the right-of-way demonstrating how placement of proposed fixtures benefits the public (for placement of benches and planters) or the business use

\* This application shall be subject to all additions to and changes in the laws, regulations and ordinances applicable to the proposed development until a determination of completeness has been made pursuant to LMC Chapter 21.07.

<sup>†</sup> The City may request additional information in order to review any Special Use Permit application.

(placement of restaurant seating). Such narrative shall also propose dates / length time of placement of such fixtures within the right-of-way.



# Placement of Private Fixtures for Restaurant Seating in City Right-of-Way

## Requirements

Any and all tables, chairs, fencing, benches, planter boxes, and other street furniture, fixtures, and accessories (“fixtures”) which may be proposed for use within City right-of-way shall be approved for use by the City and a Special Use Permit shall be obtained. Applications for Special Use Permits which do not show compliance with the requirements herein, or which are determined by the City to pose a threat to public health and safety, which do not protect the public good, or which do not conform with or enhance the overall character of the city, will be denied at the sole discretion of the City Administrator.

The City may place conditions of approval upon permits as necessary to ensure compliance with any federal, State, or local law or policy, including but not limited to the following:

1. Privately owned fixtures such as tables, chairs, and temporary fencing used for restaurant seating may be proposed for placement seasonally from April to October, and may be allowed at the City’s discretion but shall be maintained by the permittee. Such placement does not constitute “permanent” installation. Private fixtures may be required to be removed from the right-of-way at the close of restaurant hours, during festival and event weekends, or at other times at the discretion of the City for any reason. Primarily of concern are impacts from loitering which could create nuisance impacts to the neighborhood, lack of upkeep and maintenance, litter and debris, and right of way obstruction.
2. Repair and maintenance of private fixtures placed within right-of-way is the sole responsibility of the Permittee, and shall not be maintained by the City. If abandoned or in disrepair (as determined by the City), the City may remove such fixtures at the property owner’s expense. The Permittee, at Permittee’s sole expense, shall maintain the private fixtures, and the area surrounding such fixtures, in a good and sanitary condition and good state of repair. This shall include, but not be limited to, a minimum of daily cleaning of litter, debris, graffiti, or other obstructions. The Permittee shall repair damaged, stained, or discolored sidewalk caused by the placement or use of such fixtures (such as damage caused by the use of cleaning solvents, grease, or damage from fixtures being moved over the sidewalk) at the sole expense of the Permittee and at the discretion of the City.
3. Any and all fixtures shall conform with the intent of the Old World Bavarian Architectural Theme (wrought iron, wood, etc.) and the Downtown Master Plan. The City may refer elements to the Design Review Board for review and approval.
4. Any Special Use Permit shall be subject to termination by the City for any reason, including but not limited to, any determination by the City that the use of the sidewalk causes any undue noise disturbance, littering, or limits reasonable use of sidewalks because of the gathering of crowds which obstructs use of the sidewalk.
5. Disruption of pedestrian mobility shall not be permitted. Placement of private fixtures within the sidewalk or right-of-way shall not obstruct any entrances to buildings, pathways, parking, and/or barrier free accessible areas. A minimum of five feet of unobstructed clear space shall remain on sidewalks. This space shall be located in a way which creates a continuous path in order to ensure unrestricted egress by pedestrians at all times and ensures compliance with the requirements of the International Building Code.
6. Restaurant seating shall be located directly adjacent to a building wall. Tables shall be limited to a width which allows the ease in movement of chairs as guests are sitting, standing, and dining. Tables shall be arranged and maintained in a manner so that a minimum of one table is handicapped accessible.
7. Fencing, as necessary or proposed, shall be designed and installed in a manner which ensures an unobstructed clear space at the fence opening which is equal to the width of the door to the front of the business.
8. Private fixtures to be placed within the right-of-way shall not be secured with bolt mechanisms or other permanent attachments, and no modification of the right-of-way for bolting, anchoring, or other support shall be permitted. Such fixtures must be portable unless secured by the City.
9. The City shall not be liable for any theft, loss, damage, or injury to, or caused by, placement of privately owned fixtures within the right of way.
10. The granting of a Special Use Permit does not imply, warrant, or guarantee any vested status in regards to the use of the right-of-way, or future issuance of such Permit.

11. Advertising of any kind is not permitted upon the fixtures, including but not limited to commemorative or information plaques. Any fixture or item may display the manufacturer's label or identification not to exceed an area of three (3) inches by five (5) inches. Only one such logo or brand shall be visible on the item or fixture.
12. Only signage as approved by the City shall be allowed. Table/menu signs shall be limited to an area of six-inches by six-inches. All signage, including mounting methods or method of display (for example table-top holders), shall be submitted to the City as part of the permit application.
13. Decorations of any kind, such as lighting or other decorations applied to fencing, tables, or chairs, shall not be allowed without City approval as part of the permit.
14. The Permittee, at Permittee's sole expense, shall provide and keep in force with companies acceptable to the City, public liability insurance for the benefit of the City and Permittee jointly which policies shall insure against liability for bodily injury and property damage in the amount of not less than One Million Dollars (\$1,000,000) in respect to injuries to or death of more than one person in any occurrence, and in the amount of not less than One Million Dollars (\$1,000,000) per occurrence in respect to damage to property such limits to be for any greater amounts as may be reasonably indicated by circumstances from time to time existing at the sole discretion of the City.
15. Fees for use of City right-of-way are applicable. Calculation of fees will be determined by the City, pursuant to the current fee schedule and applicable excise tax, at the time of permit issuance.
16. Restroom facilities, in sufficient number as determined by the City, shall be located within the building in order to support the use. Upgrade of the capacity for restrooms may be required. The applicant shall provide sufficient information regarding the existing restaurant area and number of restrooms available on-site as part of the permit application.
17. Alcohol shall only be allowed to be served within a fenced seating area with approval from the Washington State Liquor Control Board and the City of Leavenworth. Compliance with the Washington State Liquor Control Board shall be maintained at all times. If the Permittee is found to be noncompliant with the Washington State Liquor Control Board, the permit shall be subject to suspension and/or revocation. A directional sign which states "Alcohol shall not be permitted beyond this point" shall be displayed at the egress/ingress areas within the seating area in accordance with applicable State, federal, and local laws. Such signs must be compliant with the Old World Bavarian-Alpine theme and LMC 14.10.050 (D) and 14.10.080.
18. Any existing decorative elements on the building exterior which are required for compliance with LMC 14.08 (Old World Bavarian Architectural Theme code), shall be maintained. At no time shall any elements of the building design be changed in order to accommodate the use without receiving approval of the Leavenworth Design Review Board. Such decorative elements include, but are not limited to, decorative fascia, murals, and flower boxes.
19. The Permittee shall operate the business in a manner which does not violate the provisions of Leavenworth Municipal Code Chapter 9.33 at all times, and shall not create noise disturbance. "Noise disturbance" means any sound which annoys, disturbs, or perturbs reasonable persons with normal sensitivities, or any sound which unreasonably injures or endangers the comfort, repose, health, hearing, peace, or safety of persons or animals.

## **YOU SHOULD KNOW!**

**Sidewalks, while located within City right-of-way, are required to be maintained by the adjacent property owner.**

The following key Leavenworth Municipal Code sections pertain to business and building owners' responsibility to maintain sidewalks.

### **Abutting property liable for costs.**

All property having a frontage upon the sides or margin of any street is abutting property and such property shall be chargeable, for all costs of maintenance, repairs or renewal of any form of sidewalk improvement between the street margin and the roadway lying in front of and adjacent to such property, and the term "sidewalk" shall be taken to include any and all structures or forms of street improvement included in the space between the street margin and the roadway (LMC 12.16.050).

### **Responsibility of owner.**

Whenever any street, lane, square, place or alley in the city has been improved by the construction of a sidewalk, the burden and expense of maintenance, repair and renewal of such sidewalk or sidewalks shall devolve upon the properties directly abutting upon that side of such street along which such sidewalk has been constructed (LMC 12.16.010).

### **Alteration of improvements on public property.**

It shall be unlawful to add any color, texture or ornamentation or otherwise alter the customary and standard ingredients for construction of concrete curbs, gutters and sidewalks or other improvements on public property in the city without the approval of the public works director and, without the approval of the design review board if the project is subject to the design review board jurisdiction. In the event of any violation of this section, the city may remove said violating improvements and bill the adjacent property owner. In the event the costs of such removal are not paid within 30 days, the city may file a lien against the adjacent real property and foreclose the lien in accordance with the lien foreclosure statutes of the state of Washington (LMC 12.12.040).

### **Owner responsibility (to remove snow and ice) in commercial districts.**

Every owner of real estate located within the general commercial district, central commercial district and tourist commercial district in the city shall, during the winter season, and during the time snow continues on the ground, clear the sidewalk or sidewalks adjoining each real property from snow and ice, and shall keep the same free from snow and ice during the day. During the process of such removal, if snow or ice is placed on the adjacent street, it shall not be done in such a manner as to obstruct or block the same or interfere with the travel thereon or in such a manner that would prevent proper drainage of the street. Any person failing to comply with this chapter shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$250.00 or by imprisonment not to exceed 30 days or by both such fine and imprisonment (LMC 12.20).

### **Snow or ice accumulation over public right-of-way prohibited.**

It is unlawful for any property owner to allow snow or ice to hang from or accumulate on any portion of the building or structure located over public right-of-way in the city (8.56.020).