

CHAPTER 908
**SIDEWALK DINING, AND NON-PERMANENT AMENITIES INSTALLED WITHIN
PUBLIC RIGHT-OF-WAY**

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908.01 RULES AND REGULATIONS.

Any company, corporation, persons or individuals wishing to use or occupy public sidewalk or other real property within the public right-of-way for those purposes including, but not limited to, sidewalk seating and/or dining, placement of removable railing or other barricades in conjunction with said seating and/or dining, installation of removable awnings in conjunction with said seating and/or dining, installation of bike racks, flower boxes, movable planters, benches, placement of temporary signage, and any other uses authorized in these rules and regulations must apply for and obtain written consent from the City of Gahanna. Such consent shall be given in the form of a lease for use that is commercial in nature, which shall be approved by City Council, and shall be executed by the Mayor or a permit for use that is considered to be a private amenity in nature, which shall be approved and executed by the Director of Public Service or designee. Issuance of a Chapter 908 Lease/Permit will not relieve the applicant from the responsibility to obtain any permit required by the City for the actual installation of said non-permanent amenities.

908.02 GENERAL PROVISIONS.

(a) Authority. Chapter 908 of the Codified Ordinances of the City of Gahanna regulates placement of non-permanent amenities in, and the limited use and occupation of, public sidewalk or other real property within the public right-of-way, and authorizes leases, subsequent to City Council approval and execution by the Mayor and/or permits executed by the Director of Public Service or designee to grant permission for such uses.

(b) When Required. Any company, corporation, persons or individuals wishing to use or occupy public sidewalk or other real property within the public right-of-way for those purposes including but not limited to sidewalk seating and/or dining, placement of removable railing or other barricades in conjunction with said seating and/or dining, installation of removable awnings in conjunction with said seating and/or dining, installation of bike racks, flower boxes, movable planters, benches, placement of

temporary signage, must apply for and obtain written consent from the City of Gahanna. Nothing in these rules and regulations shall relieve the applicant from the responsibility to obtain any other permits required by Gahanna City Code, specifically Chapters 11 and 13, before proceeding with the installation of the proposed amenities.

(c) Application. Applications for right-of-way lease permits shall be made through the Department of Public Service. All requests shall be on forms approved by the Department. No use of public sidewalk or other real property within public right-of-way for the above referenced purposes shall be allowed prior to City execution of a lease agreement or issuance of a permit.

(d) Review and Approval. Each application shall be reviewed by the appropriate Departments and Divisions within the City which may include but are not limited to the Development Department, the Public Service Department, the Public Safety Department, and/or Planning Commission to determine that a) the public health, property, safety and welfare of the City will not be negatively impacted upon the granting of a lease or the issuance of a permit; and b) that the granting of the requested lease or permit will be consistent with the policy of the City as set forth in Section 908.01.

(e) Liability. The applicant shall acknowledge acceptance of the premises in "as is" condition with absolutely no warranties, implied or expressed, by the City as to the condition or suitability of the premises for the intended use. The granting of a lease or execution of an agreement does not relieve the applicant from any liability for any damage that might occur to the public sidewalk or other real property within the public right-of-way as a result of their use or occupancy of said premises. Additionally the individuals obtaining the lease or permit shall forever indemnify and hold harmless the City and all of its agents, employees and representatives from and against all claims, damages, losses, suits and actions, including attorney's fees, arising or resulting from the use of the premises by them, their agents, representatives, employees, patrons, customers, business invitees and guests or any other person or persons who may use said premises. Further they shall obtain and maintain liability insurance in the amount of \$1,500,000.00 and shall name the City as an additional insured on said policy. A copy of the Certificate of Insurance shall be provided to the City and shall become a part of any lease or permit issued by or on behalf of the city.

908.03 FORM OF APPLICATION.

(a) Sidewalk Dining and Ancillary Uses: The request for a lease must be submitted in writing and must contain the following information:

1. Name of applicant or agent making the lease request
2. Address of the applicant or agent
3. Phone number of applicant or agent
4. Name and phone number of a 24-hour emergency contact if not the same as the applicant
5. Name of business

6. Site location; include property address and County Auditor Parcel number
7. Certificate of Appropriateness from Planning Commission if required by the Planning and Zoning Administrator.
8. Written explanation of proposed use of site (food service, food & liquor service, outdoor seating only, etc.)
9. Proposed hours of operation
10. Plans as required by Section 908.04

908.04 PLANS.

(a) Sidewalk Dining and Ancillary Uses: The written request for a lease shall be accompanied by a detailed description of the proposed use of the right-of-way and a sketch of the premises including, but not limited to the following information:

1. Width of the sidewalk from back of curb to the face of the building
2. Description of all items within the area from back of curb to back of utility strip (include signs, parking meters, trees, news boxes, etc. in the utility strip)
3. Total length and width of area desired
4. Distance to nearest cross walk
5. Distance to nearest intersection
6. Type, size and method of installation of fencing if desired
7. Type, size and method of installation of awning if desired
8. Location of all existing parking meters, bus stops, traffic signs, traffic signals, light poles, fire hydrants, trees, planters, newspaper boxes, mail boxes, bike racks, advertising benches, trash receptacles, doorways, driveways, pedestrian ramps and all other decorative items within the public right-of-way

908.05 RESTORATION.

At such time as any right-of-way lease agreement or permit is terminated, regardless of which party initiates the termination, any facilities installed within those premises occupied pursuant to Chapter 908 shall be removed and the premises shall be restored as nearly

as possible to the pre-occupied condition by the party having the lease or permit with the City.

908.06 EMERGENCY REPAIRS.

When any public agency, or any private utility company or corporation must make emergency repairs to any utilities located in, over, across, under or through the occupied premises, the lessee shall immediately upon notification of such need, remove or cause to be removed any facilities located within the occupied premises. Upon completion of any emergency repairs those facilities removed to allow such repairs may be reinstalled by the party having a lease or a permit with the city. Failure by the lessee or permit holder to immediately remove facilities when notified of the need to do so may result in the City removing said facilities with the cost of such removal being assessed to the lessee or permit holder. Additionally such failure may result in the termination of the lease or permit.

908.07 INSPECTIONS.

The City shall have the right to inspect the occupied premises at any time without serving advanced notice of such inspection.

908.08 FEES.

Sidewalk dining and ancillary uses: For uses deemed by the City to be ***private amenities*** to the public right-of-way including but not limited to flower boxes, planters, bike racks and benches a one-time fee of \$25.00 per application will be required. For uses deemed by the City to be ***commercial*** in nature including but not limited to sidewalk dining or kiosks, an initial fee of \$100.00, due at the time the original application is submitted and a fee of \$25.00 for any subsequent annual renewal will be required. Any material change in the scope or purpose for which the original lease was issued will require a \$100.00 fee to process the modification.

908.09 REVOCATION/TERMINATION NOTIFICATION AND REMOVAL.

(a) **Revocation/Termination:** The City reserves the right to revoke or terminate any right of-way lease or permit granted pursuant to Chapter 908 in the event a) the party having the lease or permit violates any material provision of said chapter; b) the City determines the occupied premises are necessary for any public purpose inconsistent with or antagonistic to the purpose for which said lease or permit was granted; c) a material change in the public use of the right-of-way occurs.

(b) **Notification:** Notification of the requirement to remove facilities installed pursuant to a lease or permit shall take the form of a written notice to the lessee or permit holder sent overnight delivery or regular certified mail.

(c) **Removal:** If such lease or permit is revoked or terminated for any reason other than an emergency, those facilities installed pursuant to Chapter 908 shall be removed and restored per 908.05 at the sole expense of the lessee or permit holder within 15 days of receipt of a written notice to remove. Failure to remove such facilities

shall result in the City removing and restoring the facilities with the cost of such removal being assessed to the lessee or permit holder.

908.99 PENALTY.

Whoever violates any provision of Chapter 908 shall be deemed guilty of a misdemeanor of the third degree, or imprisoned for not more than sixty (60) days or both. Any such violation shall constitute a separate offense on each successive day continued.

No. _____

City of Gahanna Department of Public Service Sidewalk Use Permit Application

For uses by a private entity deemed by the City to be ***non-permanent amenities*** to the public right-of-way including but not limited to flowerboxes, planters, bike racks and benches a one-time fee of \$25.00 per application will be required.

Document Must Be Filled Out Completely

Business Name _____ **Phone #** _____

Business Address _____ **Parcel #** _____

Contact Person _____ 24/Hr Emergency Phone #_____

Contact E-Mail Address:

Contact Person Address

Please indicate the legal name that the City should use in the issuing the permit if approved:

Proposed use of sidewalk

The City requires a 72 inch (6 foot) pedestrian walkway in a straight line unless otherwise approved, as specifically defined Pedestrian Accessible Route (PAR) walkway must be maintained per the Americans with Disabilities Act Architectural Guidelines (ADAAG). For details refer to web site www.access-board.gov Chapters 306.3.4 thru 308.1.

Property Owner Signature _____ *Date* _____

Approval: Director of Public Service _____ Date _____

No. _____

City of Gahanna Department of Public Service Sidewalk Dining Lease Application

Document Must Be Filled Out Completely

Business Name _____ Phone # _____

Business Address _____ Parcel # _____

Contact Person _____ 24/Hr Emergency Phone # _____

Contact E-Mail Address _____

Contact Person Address _____

Please indicate the legal name that the City should use in the Lease Agreement if approved:

Proposed use of
sidewalk _____

The City requires a 72 inch (6 foot) pedestrian walkway in a straight line unless otherwise approved, as specifically defined Pedestrian Accessible Route (PAR) walkway must be maintained per the Americans with Disabilities Act Architectural Guidelines (ADAAG). For details refer to web site www.access-board.gov Chapters 306.3.4 thru 308.1.

Hours of operation _____ to _____ Will alcohol be served? Yes / No

Awning(s): Yes / No If yes, how many _____ Umbrella(s): Yes / No If yes, how many _____

Existing outdoor seating on adjacent property? Yes/ No If yes, business
name(s) _____

A scaled, detailed drawing is required showing the area requested to be leased. This drawing must contain the following:

- Right-of-Way/Property lines in relation to the proposed Lease area.
- Width of sidewalk from face of building to back of curb.
- Total length and width of proposed site and lease area.
- Distance to nearest crosswalk and/or intersection.
- Type and size of fencing, if required and method of installation.
- Type, size and method of installation of awning if desired.
- Location of all existing parking meters, bus stops, traffic signs, utility poles, fire hydrants, trees, planters, newspaper boxes, mail boxes, phone booths, bike racks, advertising benches, trash receptacles, doorways, driveways, pedestrian ramps and any/all other decorative items within the public right-of-way.

Property Owner's Signature _____ Date _____

For Office Use Only:	Administrative [<input type="checkbox"/>]	Planning Commission [<input type="checkbox"/>]
Planning and Zoning Administrator	Date _____	
Approval: Director of Public Service	Date _____	

SIDEWALK DINING LEASE

WHEREAS, the City of Gahanna (hereinafter "City") is vitally concerned with the use of the various Rights-of-Way in the City as such Rights-of-Way are a valuable and limited resource which must be utilized to promote the public health, safety and welfare including the economic development of the City; and

WHEREAS, Chapter 908 of the Codified Ordinances of the City provides for the regulation of such limited use or occupation of public sidewalk and other real property within the public right-of-way; and

WHEREAS, _____ (hereinafter "Lessee") seeks to install, operate and maintain sidewalk dining adjacent to _____ (hereinafter "Premises");

NOW THEREFORE, in consideration of the mutual covenants and benefits stated herein the City of Gahanna hereby grants this Lease to the Lessee subject to the following terms, fees and conditions:

TERM, FEES AND CONDITIONS

This Lease shall be valid from the date of its full execution herein until December 31, _____. Issuance of this Lease is conditioned upon receipt of a \$100.00 application fee. This Lease may be renewed for successive one (1) year terms commencing January 1st and ending December 31st of each following year upon written notification to the City at the address given below of the Lessee's intent to renew and the City's receipt of a \$25.00 renewal fee.

GENERAL PROVISIONS

- **Use of Premises:** The Premises shall be used for sidewalk dining and installation of non-commercial private amenities for the use and enjoyment of patrons, customers and guests of Lessee's establishment immediately adjacent thereto, and for no other purposes. Upon Lessee's compliance with all applicable liquor regulations, alcoholic beverages may be served to such patrons, customers, business invitees and guests of the Lessee. Lessee shall be allowed to restrict the use of the Premises to such patrons, customers, business invitees and guests.
- **Non Interference With Right-of-Way:** Lessee shall not erect or permit obstructions, of a temporary or permanent nature to be located on the non-permitted portion of the sidewalk/right-of-way. Lessee shall restrain and prevent its employees, patrons, customers business invitees, and guests from blocking, obstructing or hindering the flow of pedestrian traffic upon the non-permitted portion of the sidewalk/right-of-way.
- **Maintenance of Trash:** Lessee shall keep the Premises clean and free of debris, including any adjacent sidewalk/right-of-way indirectly affected by Lessee's use of the subject Premises.
- **Alterations or Improvements:** Lessee shall be allowed to make those non-permanent alterations or improvements to the Premises as are necessary to conform to applicable liquor regulations. Lessee must apply for and receive approval for all building, zoning and any other

permits required before installation of non-permanent alterations or improvements within the subject premises can occur

- **Warranties:** Lessee hereby acknowledges acceptance of the subject Premises in "As is" condition with absolutely no warranties, implied or expressed, by City as to its condition or suitability for the Lessee's intended use.
- **Compliance With Laws:** Lessee shall comply with all City rules, regulations, ordinances, and the Gahanna City Code, as well as any and all State laws, applicable to the Lessee's intended use of the subject Premises.
- **Assignment:** This Lease is not transferable without the prior express written approval of the City. The City shall not unduly withhold approval after receipt of a written request from the Lessee.
- **Indemnification and Insurance:** The Lessee shall, as a condition of the issuance of this Lease, indemnify, protect and hold harmless the City from any claim, loss or damage arising in any way from Lessee's occupation or use of the Premises including but not limited to the operation and maintenance of Lessee's facilities, and from any negligent or wrongful act or omission excluding, however, claims arising from the City's sole negligence or willful misconduct. In addition the Lessee agrees to keep in force an insurance policy in accordance with the requirement stated in Chapter 908 of the Gahanna City Codes.
- **Termination:** Either party shall have the right to terminate this Lease fifteen (15) days after written notice of such termination has been given to the other party. The City also shall have the right to revoke this Lease in the event of a breech by the Lessee under Section 908.09 of Chapter 908 of Gahanna City Codes.
- **Notification:** All notices issued under this Lease must be in writing and shall be deemed validly given if sent by overnight delivery or regular certified mail, return receipt requested, effective the third day following the date the notice is postmarked. Notices should be addressed as follows:

City of Gahanna
Director of Public Service
200 S. Hamilton Road
Gahanna, OH 43230

Lease Agreement as authorized by ORD - _____

Certificate of Appropriateness No. - _____

Approved as to form this _____ day of _____, 2012, _____
(City Attorney)

Lessee: _____ date _____

Approved: _____ date _____
(Mayor)