

**Outdoor Sidewalk Cafe
Standards and Conditions**

Approved on July 24, 2006 by the
Whiting Board of Public Works and Safety

Section 1. Standards and Conditions

- A. These *Standards and Conditions* are intended to establish the necessary criteria with which an “*Outdoor Sidewalk Cafe*” must comply in order to be eligible for consideration and to be able to exist in the City of Whiting, Lake County, Indiana.
- B. These *Standards and Conditions* shall apply to food establishments and eating or drinking places including restaurants, delicatessens, taverns or similar establishments which serve food and/or beverages to the general public for personal consumption in or on outdoor facilities known as “*Outdoor Sidewalk Cafes*” located along the herein designated “*119th Street Outdoor Cafe District*”.

Section 2. General Goals and Purposes

- A. These *Standards and Conditions* as established by the Whiting Board of Public Works and Safety are designed to encourage “*Outdoor Sidewalk Cafes*” in the designated area known as the “*119th Street Outdoor Cafe District*”; to discourage “*Outdoor Sidewalk Cafes*” in locations where they are inappropriate; to promote and protect the public health, safety, general welfare; and to preserve the historical integrity and compatibility of Whiting’s 119th Street Downtown Business District.
- B. These general goals include among others the following specific purposes:
 - 1. To ensure adequate space for pedestrians on the sidewalk or other public open-space areas adjacent to “*Outdoor Sidewalk Cafes*”;
 - 2. To promote “*Outdoor Sidewalk Cafes*” as visual amenities which relate to and are complementary to Whiting’s 119th Street Downtown Business District and its streetscape;
 - 3. To preserve and enhance the character of the Whiting’s 119th Street Downtown Business District;
 - 4. To establish standards and conditions for the establishment of “*Outdoor Sidewalk Cafes*” that are effective, efficient and enforceable; and,
 - 5. To promote the most desirable use of the public sidewalk or a public open-space area thus conserving the value of land and buildings and thereby protecting the City of Whiting’s investment in its 119th Street Downtown Business District.

Section 3. Definitions

For the purpose of these *Standards and Conditions*, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and not merely directory.

“*Applicant*” shall be any owner or lessee of property located along the “*119th Street Outdoor Cafe District*” who on that property manages a food establishment or eating or drinking place that submits a written letter to the Whiting Board of Public Works and Safety stating the intention of establishing an “*Outdoor Sidewalk Cafe*”.

“*Excess Sidewalk or Excess Open-Space Area* ” shall be defined as the remaining area or sidewalk or open-space after five (5’) feet of clear unobstructed sidewalk or open-space is made available to pedestrians for free passage.

Revised 10/18/11

“*Large Obstructions*” shall be defined as permanent streetscape amenities or designated areas along Whiting’s 119th Street Downtown Business District including bus stop areas, bus stop shelters, United States postal boxes, information boards or any other object or streetscape amenity which is more than nine (9) square feet in area.

“*Permittee*” shall be any applicant who has been granted permission to establish an “*Outdoor Sidewalk Cafe*” by the Whiting Board of Public Works and Safety per these *Standards and Conditions*.

“*Obstructions*” shall be defined as those amenities associated with an “*Outdoor Sidewalk Cafe*” that impede or delay free pedestrian passage along a public sidewalk or public open-space and shall include but are not limited to chairs, umbrellas, tables, railings, planters and signage.

An “*Outdoor Sidewalk Cafe*” shall be any portion of food establishment or eating or drinking place located on a public sidewalk or public open-space that provides waiter or waitress service and is unenclosed whereas the area designated as an “*Outdoor Sidewalk Cafe*” is not used for any other purpose than food and beverage consumption. An “*Outdoor Sidewalk Cafe*” shall be open to the sky with the exception that it may have a retractable awning or umbrella and may contain furniture including tables, chairs, railings, planters, etc. which are “readily removable”.

“*Readily Removable*” shall be any such furniture that is *not* leaded, cemented, nailed, bolted, power riveted, screwed in or affixed even in a temporary manner to the public sidewalk or an public open-space area.

The “*119th Street Outdoor Cafe District*” shall be designated and delineated as the public sidewalk and any City of Whiting owned property located along the north side of 119th Street from Atchison Avenue on the west to Oliver Street on the east and along the south side of 119th Street from Atchison Avenue on the west to Schrage Avenue on the east. The “*119th Street Outdoor Cafe District*” as described above is graphically shown on the attached hereto “Attachment A” and by this reference incorporated herein.

Section 4. Authority

The Whiting Board of Public Works and Safety of the City of Whiting, Lake County, Indiana shall have the authority to grant written permission on written requests submitted by food establishments or eating or drinking places located along the “*119th Street Outdoor Cafe District*” to establish or install, maintain, or conduct business in or on “*Outdoor Sidewalk Cafes*”.

Section 5. Written Approval Required

- A. No person or persons shall establish, install, maintain, or conduct business in or on an “*Outdoor Sidewalk Cafe*” in the public right-of-way, public sidewalk, or on a public open-space without written approval there for from the Whiting Board of Public Works and Safety.
- B. The Whiting Board of Public Works and Safety may issue a written approval to any applicant requesting an “*Outdoor Sidewalk Cafe*”, in the form of a written request, that conforms to the purposes, intent, and provisions of these *Standards and Conditions*.
- C. If an applicant is issued a written approval by the Whiting Board of Public Works and Safety to establish, install, and maintain an “*Outdoor Sidewalk Cafe*”, the permittee shall display and promulgate said written approval in an area for the general public to view.

Section 6. Written Approval Revocation

- A. Any written approval issued by the Whiting Board of Public Works and Safety to establish an “*Outdoor Sidewalk Cafe*” may be revoked without notice by the Board at any time for any

material misrepresentation, for failure to observe any *Standard or Conditions* regarding “*Outdoor Sidewalk Cafes*”, or for the lack of proper maintenance of the “*Outdoor Sidewalk Cafe*” which could be dangerous to the general public or inimical to the public welfare or morals.

- B. The City of Whiting shall have the right and power, acting through the City of Whiting Board of Public Works and Safety Manager, the Whiting Street Commissioner, and/or a representative of the Whiting Police Department, to prohibit the operation of an “*Outdoor Sidewalk Cafe*” at any time because of anticipated or actual problems or conflicts in the use of the public right-of-way sidewalk or a public open-space area.
- C. Such problems and conflicts may arise from, but are not limited to , scheduled festivals and similar events, parades or marches, repairs to the street or sidewalk, or from demonstrations or emergencies occurring on, in, adjacent to, or near an “*Outdoor Sidewalk Cafe*”.
- D. To the extent possible, the permittee shall be given prior written notice of any time period during which the operation of the “*Outdoor Sidewalk Cafe*” will be prohibited by the City of Whiting due to a specific problem or conflict; however, any failure to give prior written notice shall not affect the right and power of the City of Whiting to prohibit the operation of any “*Outdoor Sidewalk Cafe*” at any particular time.

Section 7. 119th Street Outdoor Cafe District Designation

The Whiting Board of Public Works and Safety may grant and approve “*Outdoor Sidewalk Cafes*” to only those food establishments or eating or drinking places located in the designated “*119th Street Outdoor Cafe District*” as hereto attached.

Section 8. Outdoor Sidewalk Cafe General Restrictions

“*Outdoor Sidewalk Cafe*” approval may be issued by the Whiting Board of Public Works and Safety to applicants in the designated “*119th Street Outdoor Cafe District*” subject to, but not limited to, the following general restrictions designed to control the design, materials, installation and maintenance of “*Outdoor Sidewalk Cafes*” such that:

1. An applicant make a formal written request to the Whiting Board of Public Works and Safety to establish, install and maintain an “*Outdoor Sidewalk Cafe*”;
2. An applicant submit to the Whiting Board of Public Works and Safety describing all plans to situate the proposed “*Outdoor Sidewalk Cafe*”, describing its furniture; and discussing how the applicant proposes to conduct business if said “*Outdoor Sidewalk Cafe*” is approved;
3. The operation of the proposed “*Outdoor Sidewalk Cafe*” shall not be conducted in such a way as to become a public nuisance; and that the operation of the proposed “*Outdoor Sidewalk Cafe*” not interfere with vehicular or pedestrian traffic or circulation on any adjoining streets, alleys, sidewalks or public open-space areas;
4. The proposed “*Outdoor Sidewalk Cafe*” shall be made available to patrons of the permittee only and that pass through window service shall be prohibited;
5. The “*Outdoor Sidewalk Cafe*” be unenclosed and shall be open to the sky with the exception that it may be covered by a readily removable retractable awning or with a readily removable canvas or cloth covered table umbrella;
6. The “*Outdoor Sidewalk Cafe*” be kept in a neat and orderly fashion and appearance and shall be kept free from refuse and debris; and,
7. As the applicant, approval to establish, install, maintain, and conduct business in or on an “*Outdoor Sidewalk Cafe*”, the Whiting Board of Public Works and Safety may prescribe *Standards and Conditions* by which business in or on an “*Outdoor Sidewalk Cafe*” shall be conducted such that any violation or deviation from said *Standards and Conditions* may be deemed as grounds for written approval revocation at any time.

Section 9. Outdoor Sidewalk Cafe Area Limitations

Revised 10/18/11

- A. The area of an “*Outdoor Sidewalk Cafe*” shall be limited to the excess sidewalk area located directly in front of or to excess open-space area located adjacent to a food establishment or eating or drinking place.
- B. No “*Outdoor Sidewalk Cafe*” shall encroach or extend beyond the sidewalk frontage, located directly in front of the individual food establishment or eating or drinking place, extended to the curb line.
- C. No “*Outdoor Sidewalk Cafe*” or associated furniture, including table umbrellas shall be situated closer than two (2’) feet from the face of the curb line of any street or encroach upon said two (2’) foot curblines restriction so as to prohibit the free movement of vehicular traffic.
- D. No “*Outdoor Sidewalk Cafe*” shall encroach upon the designated clear path.

Section 10. Outdoor Sidewalk Cafe Clear Path

- A. There shall be provided a minimum of five (5’) feet of clear path or clear area free of all obstructions in order to allow adequate pedestrian movement along the 119th Street Downtown Business District’s “*119th Street Outdoor Cafe District*”.
- B. The minimum height clearance clear path shall be six (6’) feet six (6”) inches measured from the sidewalk perpendicular to any “*Outdoor Sidewalk Cafe*” furniture in order to allow adequate pedestrian movement along the 119th Street Downtown Business District’s “*119th Street Outdoor Cafe District*”.
- C. All “*Outdoor Sidewalk Cafes*” shall be a minimum of five (5’) feet from any large obstacle as defined in order to allow adequate pedestrian movement along the 119th Street Downtown Business District’s “*119th Street Outdoor Cafe District*”.
- D. All “*Outdoor Sidewalk Cafes*” shall be a minimum of five (5’) feet from any street intersection or crosswalk in order to allow adequate pedestrian movement along the 119th Street Downtown Business District’s “*119th Street Outdoor Cafe District*”.
- E. The permittee shall be responsible for preserving the five (5’) foot clear passage area at all times.
- F. The permittee shall take such action as is necessary to prevent patron and/or employees from encroaching beyond the five (5’) foot clear path area at all times.

Section 11. Alcoholic Beverages Provision

The sale, service or consumption of any alcoholic beverage or alcoholic beverages on or in an “*Outdoor Sidewalk Cafe*” by any permittee, permittee’s agent, permittee’s employee, or consumer is prohibited unless the Permittee has a valid license from the Indiana Alcohol and Tobacco Commission.

Section 12. Outdoor Sidewalk Cafe Furniture

- A. All proposed “*Outdoor Sidewalk Cafe*” furniture must be approved by the Whiting Board of Public Works and Safety prior to the Board issuing written approval to an applicant for an “*Outdoor Sidewalk Cafe*” in order to insure the integrity and to preserve the character and compatibility of the 119th Street Downtown Business District.
- B. All outdoor dining furniture, including tables, chairs umbrellas, railing and planters, shall be readily removable.
- C. Outdoor heaters or fans are prohibited.

Section 13. Outdoor Sidewalk Cafe Table Umbrella Restrictions

Table umbrellas shall be permitted as “*Outdoor Sidewalk Cafe*” furniture under the following conditions that:

- a. All table umbrellas shall be properly supported, retractable, and made of a non-combustible frame, covered with flame-proof canvas or cloth only.
- b. No table umbrella shall exceed seven (7’) feet in diameter;

- c. No table umbrella shall obstruct the clear vision of any street sign or traffic regulatory sign;
- d. No table umbrella shall contain or display any type sign or signage except on the fringe or valance;
- e. No table umbrella or table umbrella part lower than six (6') feet six (6") inches measured perpendicular from the sidewalk surface except for the fringe or valance shall encroach into excess sidewalk or open-space area right-of-way clear path;
- f. The valance or fringe of a table umbrella shall not exceed six (6") inches; and,
- g. All table umbrellas must be properly secured with a base of not less than 60 pounds minimum.

Section 14. Planters or Railings

- A. All planters or railings utilized as part of the “*Outdoor Sidewalk Cafe*” for decoration or delineation of the “*Outdoor Sidewalk Cafe*” area shall be self-supporting.
- B. In order to maintain maximum visual access, the height of the planter or railing including vegetation therein, shall not be higher than thirty-six (36”) inches.
- C. All planters and railings shall be readily removable and shall be removed from the sidewalk right-of-way or open-space area during those hours when an “*Outdoor Sidewalk Cafe*” is prohibited.

Section 15. Elevation and Surface Coverings Prohibited

- A. “*Outdoor Sidewalk Cafes*” shall be the same elevation as the adjoining sidewalk.
- B. Paint, artificial turf, carpets, platforms or any other surface cover or treatment of any kind are prohibited from being placed upon the area designated as an “*Outdoor Sidewalk Cafe*” at any time.

Section 16. Noise Restrictions

- A. Stereo systems, stereo speakers or audio devices for sound reproduction shall not be operated in or “*Sidewalk Cafes*” are prohibited.
- B. Live musical presentations limited to one (1) musician or vocalist and/or one (1) musical instrument as provided by the permittee shall not be prohibited unless said musical presentation becomes a noise nuisance as documented in complaints to the City of Whiting.

Section 17. Sign Restrictions

Signs, sign boards, menus or advertisements recognizing an “*Outdoor Sidewalk Cafe*” are prohibited except for the name of the establishment on the fringe or valance of a table umbrella or on the valance of any awning.

Section 18. Service Requirements

- A. The outdoor preparation of food and busing or service stations is prohibited.
- B. The presetting of tables with utensils, glasses, napkins, condiments, and the like is prohibited.
- C. All exterior surfaces within the “*Outdoor Sidewalk Cafe*” shall be easily cleanable and shall be kept clean at all times by the permittee, permittee’s agent, or the employees of the permittee.
- D. Trash and/or refuse storage is prohibited within an “*Outdoor Sidewalk Cafes*” or on adjacent sidewalk areas.
- E. The permittee shall be responsible for maintaining the “*Outdoor Sidewalk Cafe*”, including the sidewalk surface and furniture and adjacent areas in a clean and safe condition.
- F. Maintenance of the “*Outdoor Sidewalk Cafe*” shall include:
 - 1. The immediate cleaning and sweeping/brooming of any trash, food, debris, liquid, broken glass or other trash to be placed in trash receptacles, and,

2. The daily water washing of the “*Outdoor Sidewalk Cafe*” area and its adjacent sidewalk or open-space areas.

Section 19. Outdoor Sidewalk Cafe Hours of Operation

“*Outdoor Sidewalk Cafe*” permittees may conduct business in or on “*Outdoor Sidewalk Cafes*” upon excess sidewalk or excess open-space areas between the hours of 10:30AM and 9:30PM.

Section 20. Outdoor Sidewalk Cafe Term of Approval

- A. “*Outdoor Sidewalk Cafe*” permittees may establish “*Outdoor Sidewalk Cafes*” upon excess sidewalk or excess open-space areas between the holidays of Memorial Day and Labor Day of each calendar year.
- B. Whiting Board of Public Works and Safety written approval must be obtained each year.

Section 21. Outdoor Sidewalk Cafe Approval Non-Transferable

Written approval by the Whiting Board of Public Works and Safety to establish, install, maintain and conduct business in or on an “*Outdoor Sidewalk Cafe*” is non-transferable to any other food establishment, eating or drinking place or any other party.

Section 22. Fire Code Compliance

A permitted “*Outdoor Sidewalk Cafe*” is required to comply at all times with all requirements of the Uniform Fire Code and other related fire ordinances to the satisfaction of the Whiting Fire Chief or his designee.

Section 23. Outdoor Sidewalk Cafe Limitation

No more than one “*Outdoor Sidewalk Cafe*” written approval shall be issued by the Whiting Board of Public Works and Safety for each food establishment located along the 119th Street Downtown District’s “*119th Street Outdoor Cafe District*”.

Section 24. Insurance Coverage Required

- A. Written approval shall not be issued by the Whiting Board of Public Works and Safety hereunder, unless an applicant meets the following insurance coverage criteria:
 1. Posts or has on file with the Whiting Board of Public Works and Safety a *Policy of Insurance* in a form acceptable to the Whiting City Attorney so conditioned as to insure the City of Whiting, its officers and employees against:
 - a. Any loss, cost, expense, injury, damage, or liability incurred by reason of personal injury or property damage sustained by any person or persons caused by or resulting from or which may be claimed to have been caused by or to have resulted from the installation, operation, and/or maintenance of any “*Outdoor Sidewalk Cafe*” or apparatus installed in a manner required by these *Standards and Conditions* or by rule, regulation or order of the Whiting Board of Public Works and Safety or from any dangerous or defective condition or nuisance created thereby or resulting from the actions Whiting Board of Public Works and Safety;
 2. Post a *Policy of Insurance* so conditioned as to assure the ability of the applicant to respond to damages in any action brought for personal injury or property damage sustained by any person, based upon any ground mentioned above; and,
 3. Post a *Policy of Insurance* with the limit of liability of not less than \$1,000,000.

Section 25. Federal, State, County, and Local Law and Ordinance Compliance

At all times, the permittee must comply with all other local ordinances and state or federal laws and regulations, including but not limited to health rules, laws and regulations.

Section 26. Outdoor Sidewalk Cafe Approval Exceptions and Waivers

- A. Exceptions to these *Standards and Conditions* will be granted by the Whiting Board of Public Works and Safety during planned and organized festival events and sidewalk sales on 119th Street which have the support of the Whiting/ Robertsdale Chamber of Commerce, Inc.
- B. In such cases, the Whiting/ Robertsdale Chamber of Commerce, Inc. shall submit a written letter to the Whiting Board of Public Works and Safety requesting that:
 - 1. These *Standards and Conditions* be waived;
 - 2. The purpose of the waiver; and,
 - 3. The time frame including the times of the scheduled sidewalk sale or the festival.
- C. However, if a waiver to these *Standards and Conditions* is granted by the Whiting Board of Public Works and Safety, no individual along the 119th Street Business District shall be allowed to obstruct a clear path passage of a minimum of five (5') feet during any scheduled sidewalk sale or festival occurring on 119th Street.

Section 27. Letter of Outdoor Sidewalk Cafe Compliance

Upon issuance of written approval by the Whiting Board of Public Works and Safety, the permittee must submit to the Board a signed Letter of Compliance stating that the permittee agrees to comply with the *Standards and Conditions* for “*Outdoor Sidewalk Cafes*” as set forth and approved by the Whiting Board of Public Works and Safety.