

TOWN OF JONESBOROUGH
OUTDOOR USE AREA PERMIT POLICY
TOWN RIGHT-OF-WAY: DOWNTOWN

(August 2011)

General The Town of Jonesborough recognizes the benefit and desirability of allowing residents and visitors certain accommodations involving outdoor activities on town right-of-way in the downtown historic district. The availability of outdoor seating at restaurants, or the presence of musical performance groups on sidewalks or other Town right-of-ways can be very beneficial in increasing socialization and quality of life, or enhancing business success and economic development. Said benefits, however, cannot be achieved at the expense of proper pedestrian mobility along Jonesborough's sidewalks, ADA accessibility, and any safety concerns. The following policy establishes the guidelines in which a Jonesborough business or organization may utilize a portion of town right-of-way to enhance business activity and quality of life:

Use Permit Required: A business, organization or other such entity will be required to obtain an Outdoor Use Permit to utilize a portion of town sidewalks or right-of-ways on an on-going basis to carry out a business or other such other activity along Main Street that requires the regular use of town property. Permits must be approved by the Board of Mayor and Aldermen.

Permit Not Required: Activities that are protected under the First Amendment, or that are short in duration and determined to not create a significant liability risk to the Town of Jonesborough are exempt from this permit process. Activities approved through the Special Event Permit process or sponsored by the Town of Jonesborough are exempt from this permit process unless on-premise consumption of alcohol is requested.

Examples of Permitted Activities: The following activities must apply for an Outdoor Use Permit before the activity is implemented:

- (1) Use of dining tables and chairs that are located within the town sidewalk or right-of-way area that are present on a regular basis, or that are used in association with a special event of 24 hours or less on which on-premises alcohol consumption is requested.
- (2) Placement of landscaping features including benches, larger planter structures or containers that are intended to be present for an extended period and not placed or provided by the Town.
- (3) Use of portable signage that takes up an area of more than 6 square feet on the sidewalk or right-of-way or that is placed in a location that may create safety concerns.

Note: Outdoor Use Permit approval does not negate any sign approval requirements of the Historic Zoning Commission.

- (4) Installation of fencing, roping, or dividers of some type that limits normal sidewalk use or right-of-way access.
- (5) Placement of any equipment, furnishing or structure or device that is present regularly on a town sidewalk or right-of-way that could limit pedestrian access in the public way or create a potential safety hazard.

Permit Requirements: The following information must be submitted as part of the permit application, except that a request for a permit for a special event/special occasion of 24 hours or less does not have to provide dimensions and photos of furniture and equipment or a Certificate of Appropriateness from the Historic Zoning Commission.

- (1) Name of Owner, mailing address, contact numbers, business name and outdoor use address.
- (2) Description of activity including time of intended usage or schedule.
- (3) Dimensions and photos/drawings of equipment, structures, or furnishings to be placed on sidewalk or right-of-way.
- (4) A schematic of permit boundary area with accurate dimensions of layout including distance from curb, location of signs, light poles, refuse barrels, planters, building walls, entrance steps, proposed location of equipment furnishings and similar information.
- (5) Certificate of Appropriateness or similar document indicating the approval of the Historic Zoning Commission, if applicable, for the equipment, furnishings, structures, etc. to be used in the Outdoor Use Area.
- (6) Hold Harmless Agreement: The owner/permit applicant must sign a hold harmless agreement releasing the Town of Jonesborough from any liability for accidents, injuries, sickness or illness or other such problems resulting from the intended use or placement of equipment, furnishings or structures, etc. in the area permitted.
- (7) Proof of Liability Insurance: The owner/permit applicant must provide proof of liability insurance in an amount no less than the Town's maximum exposure as determined by the Tennessee Governmental Tort Liability Act, and reviewed by the Town Attorney, with the Town of Jonesborough named as co-insured and under a policy that must be active and valid as long as the permitted activity continues.

Note: It is the owner's/permit holder's responsibility to keep the insurance policy active and in effect with the Town of Jonesborough named as co-insured. The owner/permit holder must notify the Town of Jonesborough immediately if the liability insurance policy is terminated or ended or in threat of being terminated or canceled.

Permit Conditions: The following conditions apply when Outdoor Use Permits are issued:

- (1) The installation of equipment, furnishings, structures, etc. must be done with no or at least acceptable damage to the sidewalk or right-of-way. Installation methods must be approved by the Building Inspector or the Director of Streets prior to implementation.
- (2) Equipment, furnishings or structures installed or placed as a result of an Outdoor Use Permit must be installed in a manner that allows them to be removed in a reasonably short period of time.
- (3) While it is the intention to allow the permit holder to use the approved area in the permit to enhance the quality of life and business on an on-going basis without negatively impacting normal pedestrian flow, the Town retains the right to require a temporary deactivation of the Outdoor Use Permit and the removal of associated equipment, furnishings, structures, etc. for special events or activities in which the area within the permit is needed for the safe or smooth operation of the event or activity.
- (4) Installation and removal of equipment, furnishings, structures, etc. shall be at the sole expense of the permit holder and not the Town of Jonesborough.
- (5) Repairs to sidewalk materials or right-of-way areas that are within the permitted boundary on town property shall be the responsibility of the permit holder, unless agreed to in writing in advance by the Town of Jonesborough.
- (6) It will be the responsibility of the permit holder to keep the permitted Outdoor Use Area clean and free of trash, paper, food, cigarettes, and other such refuse. It will also be the responsibility of the permit holder to collect and properly dispose of any refuse that may be blown or washed from the Outdoor Use Area into other public or private ways.
- (7.) It shall be the responsibility of the Permit Holder to keep all equipment, furnishings, and structures, etc. placed with the Outdoor Use Area in good and safe conditions, properly painted or finished and in good working order.

Note: The Town of Jonesborough reserves the right to notify the Permit Holder of the need to immediately repair or remove such equipment, furnishings, structures, etc. that are determined to be in disrepair or unsafe. The Town of Jonesborough also reserves the right to remove any equipment, furnishings, structures, etc. that are in disrepair or unsafe when there has been no corrective action response from the Permit Holder within a reasonable period of time.

- (8) Any plant material placed in Town planters or barrels associated with the permitted Outdoor Use Area or planted in what is intended to be a more permanent (non-temporary) landscape design, must be approved in advance by the Tree and Townscape Board. While it is understood that the Permit Holder will be given the general authority to landscape the area within the permit boundary, landscape materials not approved by the Tree and

Townscape Board must be potted or containerized and moveable. Also the Tree and Townscape Board reserves the right to require the removal of any non-approved plant material or landscape feature within the permit boundary that the Board feels is inappropriate for the streetscape of Jonesborough.

Note: The Town of Jonesborough reserves the right to remove any plant material or landscape structures in which the Tree and Townscape Board has required to be repaired or removed from the Outdoor Use Area when there has been no corrective action response from the permit holder within a reasonable period of time.

- (9) Any serving of food or beverage for on-site consumption within the permitted Outdoor Use Area must meet all applicable regulations of the Tennessee Department of Health.
- (10) Unless specifically exempted from the Permit approval, restaurants or establishments with current and valid permits from the Tennessee Alcoholic Beverage Commission allowing the on-premise sale and consumption of alcoholic beverages, and possibly an associated permit from the Town of Jonesborough to sell and consume beer on-premise may extend their approved sale of said beverages in the permitted Outdoor Use Area under the following conditions:
 - (a) The Outdoor Use Area is clearly identified with railings, or other such form of designation that is removable, if necessary, and provides customers with a clear outline of the outdoor eating area.
 - (b) Business staff/servers are trained in their responsibility to communicate the regulations requiring consumption on-premise in the specified area.
 - (c) There will be no outdoor advertising of the sale of alcoholic beverages.
 - (d) The sale and consumption of alcoholic beverages in the permitted Outdoor Use Area must meet/comply with any requirements established by the Tennessee Alcoholic Beverage Commission, and with Jonesborough's Alcoholic Beverage and Beer Ordinances.
- (11) Outdoor Use Permits will only be issued when the Outdoor Use Area layout requested allows the continued use of sidewalks or right-of-way walkways by pedestrians and in a manner that meets ADA Guidelines.
- (12) It is the responsibility of the Permit Holder to effectively carryout such business or activity described in the Permit Application in the Outdoor Use Area boundary approved in the Permit, and in such a manner that does not change the Permitted Use. Any change of the Outdoor Use or in the Use Area boundary approved in the Permit request will immediately void the Permit, and require the resubmittal of an Outdoor Use Permit application. Any extended cessation of the approved activity must be communicated and approved by the Building Inspector to avoid a termination of the Outdoor Use Permit.

- (13) It is the responsibility of the Permit Holder to ensure that its customers or participants do not block or restrict in any way the remaining public pedestrian ways adjoining the Outdoor Use Area.
- (14) The issuance of an Outdoor Use Permit by the Town of Jonesborough in no way negates or diminishes any individual's normal constitutional rights related to public property within the Outdoor Use Area.
- (15) Special Events/Special Occasion: A Special Event/Special Occasion Outdoor Use Area Permit may be issued by the Board of Mayor and Aldermen that allows wine and beer to be sold on public right-of-way on the following conditions:
 - (a) Any regular Special Event Permit required for use of the public area has been obtained from the Board of Mayor and Aldermen.
 - (b) The authorization to serve alcoholic beverages is limited to wine and beer only.
 - (c) A Special Occasion License to sell alcoholic beverages has been obtained prior to the event from the Tennessee Alcoholic Beverage Commission. A Special Event/Special Occasion Outdoor Use Permit can be issued subject to obtaining the ABC license. However, if the ABC permit is not obtained, the Special Event/Special Occasion Outdoor User Permit becomes invalid. Authorization to sell beer for the special event only occurs after the ABC Special Occasion License has been issued, and a Special Occasion Beer Permit is obtained from the Town Recorder.
 - (d) The Special Event/Special Occasion Outdoor Use Permit is good for only twenty-four (24) hours.
 - (e) The sponsoring organization must be non-profit, but also must have a restaurant with an ABC Permit as a co-sponsor. Sponsors may be assisted by other organizations, agencies, commercial establishments, etc.
 - (f) The proceeds (net profits) must go to an organization, event, facility or operation in Jonesborough that the Board of Mayor and Aldermen feels enhances the quality of life of residents.
 - (g) The use of alcoholic beverages is a minor and complimentary component of the activity or event.
 - (h) The location/area in which the Special Event Outdoor Use takes place and which alcoholic beverages are served is clearly defined, separated and contained in a manner in which participants keep on-premise consumption within the designated area.

- (i) Alcoholic beverages are served, and only served by persons with a standard ABC Alcoholic Beverage Server's License.
- (j) There is no history by the sponsor or the co-sponsoring restaurant of holding an event or activity in which a violation of alcoholic beverage regulations has occurred.

Permit Location Specific and Permit Non Transferable: The Outdoor Use Permit is issued specific to a business or Outdoor Use Area location and not transferable. Also, the Outdoor Use Permit cannot be transferred from the Permit Holder to another party without the permit being re-submitted to the Town of Jonesborough for approval.

No Transfer or Conveyance of Ownership or Interest: The Permit Applicant acknowledges that approval of the Outdoor Use Permit request does not at any time transfer, convey, or in any other way assign the Town's ownership or rights associated with ownership of the Outdoor Use Area to the Permit Holder regardless of how long the permitted use has been in effect.

Permit Renewal: The Outdoor Use Permit will be in effect for one year from the date of approval by the Board of Mayor and Aldermen. However, the permit will be automatically renewed for an additional year unless within the last three (3) months of the permit term the Town provides ninety (90) day written notice that the permit will not be renewed.

Termination of Permit: The Town of Jonesborough reserves the right to terminate or cancel the Use Permit upon determination that there are safety or appearance concerns that must be addressed. Said termination or cancelation will normally take place after written notification is given to the owner/permit holder and corrective action has not been taken. A permit, however, can be cancelled at any time for serious safety concerns. The permit will automatically be terminated or cancelled upon the lapse or cancellation of the required liability insurance with the Town being named co-insured. The permit is also subject to termination for a change in use or the Outdoor Use Zone without Town approval, or for ceasing to carry out the approved activity for an extended period of time without approval of the Town.

Statement of Understanding: The owner/permit applicant will sign a Statement of Understanding indicating that they understand the obligations of receiving an Outdoor Use Permit, and will operate under the guidelines approved.

TOWN OF JONESBOROUGH, TENNESSEE

Outdoor Use Permit Application

Hold Harmless and Indemnity Agreement

This agreement made on the ___ day of _____, 20___, in the City of Jonesborough, County of Washington, State of Tennessee.

The parties to the agreement are the undersigned _____
(Name of
Organization or Sponsor), called "indemnitor," and The Town of Jonesborough, Tennessee, called "indemnitee."

Indemnitor has submitted an Outdoor Use Permit Application to indemnitor. This agreement is attached as an exhibit to that application. Approval of that application is expressly conditioned on the execution of this agreement, indemnitee has agreed to review for approval the application for a special event and if approved to allow the indemnitor's outdoor use of public property to take place within the limits of the Town of Jonesborough in consideration of the indemnitee's allowing the event to take place and \$1.00, receipt of which by indemnitor is acknowledged, the parties agree as follows:

Section I

Scope of Indemnity

Indemnitor undertakes to indemnify and to save harmless indemnitee from any liability, loss or damages indemnitee may suffer as a result of claims, demands, costs, or judgments against it arising out of the operation within the limits of the Town of Jonesborough, County of Washington, State of Tennessee, of the outdoor use outlined in the application or the management thereof.

Indemnitor assumes full responsibility for all damages and injury that may result to any person or persons or to adjoining property by reason of the excavation for, and the erection, construction, and maintenance of, any structures put in place for the outdoor use, and agrees and covenants to indemnify Indemnitee against any such claim or claims.

Indemnitor expressly undertakes to indemnify and to save harmless indemnitee from all liability and/or loss or damages for or arising out of the outdoor use outlined in the application, whether it be caused by the negligence of indemnitee, indemnitee's agents or employees, indemnitee's contractors or otherwise.

Section II

Period Covered

The indemnity will extend from the date of this agreement to and including the date the permit expires or is terminated by either party, including and period necessary for the indemnitee to remove any structures erected under the permit.

Section III

Expenses, Attorneys' Fees, and Costs

Should it become necessary for purposes of resisting, adjusting, or compromising any claim(s) or demand(s) arising out of the subject matter with respect to which indemnification is provided by this agreement, or for purposes of enforcing this agreement, for indemnitee to incur any expenses, or become obligated to pay any attorneys' fees or court costs, indemnitor agrees to reimburse indemnitee for such expenses, attorneys' fees, or costs within a reasonable time, in no event to exceed thirty days, after receiving written notice from indemnitee of the incurring of such expenses, attorneys' fees, or costs.

Section IV

Interest

Indemnitor agrees to pay indemnitee interest at the rate of ten percent per annum on any necessary expenses or costs incurred by indemnitee in the enforcement of this indemnity contract, or on any sums indemnitee is obliged to pay with respect to the matters to which indemnity is given in the contract, from the date such expenses or costs are incurred, or such sums are paid.

Section VI

Notice of Claim Against Indemnitee

Indemnitee agrees to give indemnitor ten days' written notice of any claim made against indemnitee on the obligations indemnified against.

Executed on the date first written above.

Signature: _____

Printed Name: _____

STATE OF TENNESSEE
COUNTY OF WASHINGTON

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged executing the foregoing instrument for the purposes therein contained by signing the same.

WITNESS my hand and seal at office in the State and County aforesaid, this, the _____ of _____, 20 _____.

NOTARY PUBLIC

My Commission Expires:
