



## STREET FURNITURE

Applicant's Name: \_\_\_\_\_

Applicant's Address: \_\_\_\_\_

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

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

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

Furniture Type: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

- **To be considered a complete application, an indemnification agreement must be signed and attached along with evidence of insurance that covers the liability assumed in the agreement and a site plan showing furniture placement**

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### OFFICE USE ONLY

Permit Number: \_\_\_\_\_ Valid Until: \_\_\_\_\_

Zoning Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Fee: \$25.00 initial \_\_\_\_\_

\$10.00 annual renewal \_\_\_\_\_

Site plan complying with Section 11-45 (include dimensions)

**AGREEMENT TO RELEASE AND INDEMNIFY CITY:  
Street Furniture**

\_\_\_\_\_  
(Name and address of Establishment)  
\_\_\_\_\_

In consideration of the sum of \$1.00 and for other good and valuable considerations made by the City of Wilmington, receipt of which is hereby acknowledged by \_\_\_\_\_ (hereinafter referred to as "Applicant"), and in consideration of the issuance of the permit herein applied for, Applicant hereby agrees as follows:

To the fullest extent permitted by law, the Applicant shall release, indemnify, keep and save harmless the City, its agents, officials, and employees from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting there from) to all persons, whether agents, officials, or employees of the City or third persons, and to all property proximately caused by, incident to, resulting from, arising out of or occurring in connection with the Applicant's use or occupancy of the City's streets, sidewalks, or pedestrian ways as may be permitted pursuant to this application (or by any person acting for the Applicant or for whom the Applicant is alleged to be in any way responsible), whether such claim is based in whole or in part on contract, tort (including alleged active or passive negligence or participation in the wrong) or upon an alleged breach of any duty or obligation on the part of the City, its agents, officials or employees.

The provisions of this agreement shall include any claims for equitable relief or for damages (compensatory or punitive) against the City, its agents, officials, and employees including alleged injury to the business of any claimant, and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the City, its agents, officials and employees, in

connection with investigating any claim or defending any action, and shall also include reasonable attorney's fees by reason of the assertion of any such claim against the City, its agents officials or employees. The Applicant shall maintain during the life of the permit insurance covering the Applicant's liability assumed under this agreement. The Applicant expressly understands and agrees that any insurance protection required as a condition to this issuance of the permit herein applied for, or otherwise provided by the Applicant shall in no way limit the Applicant's responsibility to release, indemnify, keep and save harmless and defend the City as herein provided.

By executing this release and indemnity, Applicant expressly accepts those portions of the City's streets, sidewalks, or pedestrian ways to be used for the placement of sidewalk furniture in their present condition. Applicant agrees to undertake any repairs to said street or sidewalk that may be necessary for the safe operation of their business. Applicant further agrees that it shall have no claim against the City for failure to repair or maintain those portions of the streets, sidewalks, or pedestrian ways used for the placement of their sidewalk furniture, or for any damages to the same by the City, however caused.

The intention of the Applicant is that this release and indemnity be incorporated into any permit for sidewalk furniture and that this release and indemnity be broadly construed and applied in favor of the City.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Name of Applicant)

By: \_\_\_\_\_  
(Signature)

APPROVED AS TO FORM:

{SEAL}

\_\_\_\_\_  
Melissa Huffman, Assistant City Attorney

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## **Sec. 11-45. Benches, chairs, planters, and other street furniture on sidewalks and plazas.**

- (a) No person, firm, or corporation shall erect, place, or maintain any benches, chairs, planters, structures, tents, or other street furniture on any publicly owned property or rights-of-way without first having obtained a permit from the city. The city manager, or designee, may issue a permit for the placement of benches, chairs, planters, or other street furniture at specified locations along publicly owned rights-of-way on a sidewalk, sidewalk area, shoulder, or plaza provided the following criteria are met:
- (1) The use of benches, chairs, or planters, structures, tents, and other street furniture should be designed to enhance and blend in with the surroundings. Street furniture shall not be permitted if it endangers the public health and safety or prohibits pedestrian passage along the public right-of-way entrance to any establishment.
  - (2) The placement of street furniture may be at the building or at the curb, but must be located in such a manner that a minimum of five (5) feet of unobstructed width (as measured from the street-side edge of the sidewalk or building front) is retained on sidewalks or pedestrian ways with widths of ten (10) or more feet; sidewalks or pedestrian ways less than ten (10) feet wide require a minimum of four (4) feet of unobstructed width. The placement of furniture may not extend beyond the sidewalk or pedestrian way frontage of the associated property or business.
  - (3) No street furniture may be placed in any location whereby the clear, unobstructed space for the passageway of pedestrians is reduced to less than four (4) feet (as measured from the street edge of the sidewalk). Trees, poles, signs, hydrants, trash receptacles, etc., are all considered obstructions. Tree grates shall not be considered obstructions if the owner pays the full cost of installing a tree grate or other acceptable surface approved for complying with the Americans with Disabilities Act as an acceptable surface for pedestrians and wheelchairs and the owner maintains the grate so that it provides a smooth and level surface for passage.
  - (4) Street furniture shall not be anchored and must be easily removed from the public right-of-way.
  - (5) The owner is required to maintain the street furniture and the area surrounding its placement in a clean and safe condition.
- (b) Application for a permit shall be made on forms provided by the city to the planning department. The application shall be accompanied by information showing the type of furniture to be placed and its proposed location. In addition to any other applicable fees, an annual application fee shall be paid per site location for the placement of the street furniture. The amount of such fees shall be set forth in the city fee schedule.
- (c) Permits issued for street furniture pursuant to this section shall be considered separate from permits and requirements for other specific right-of-way usage permits such as sidewalk cafes and sandwich board signs. The city manager, or designee, may limit the number of permits available at each business location.
- (d) Permits issued pursuant to this section may be revoked due to public need of the right-of-way, non-compliance with the provisions of this section, or any other reason deemed sufficient to the city. If, upon revocation, the street furniture is not removed upon twenty-four (24) hours' notice, the city shall have the right to remove and dispose of such street furniture and may assess the property owner for the cost of such removal and disposal.
- (e) The use of the term "street furniture" in this section shall include benches, chairs, planters, structures, tents, and other physical objects placed in the public right-of-way for use by the public, patrons, people interacting with the public, or for the purpose of enhancing the public realm.
- (f) A violation of section 11-45 shall constitute a misdemeanor.

(Ord. of 1-20-98, § 1; Ord. No. O-2021-84, § 1(Exh. 2, § 6), 11-16-21; Ord. No. O-2022-85, § 1, 10-18-22)