

Outdoor Dining Permit and License Agreement
Public Works Department - Engineering Division
Terms And Conditions

[v.2022.06.22.000]

Authority: This Outdoor Dining Permit and License Agreement ("Permit") is issued pursuant to **Section 9.08.035** of the Culver City Municipal Code and **Resolution No. 2009-R078**, adopted by the City Council on September 14, 2009.

Standards: All use of the public right-of-way shall be conducted in accordance with this Permit, the adopted Outdoor Dining Standards and Procedures (on file with City's Engineering Division) and to the satisfaction of the Public Works Director/City Engineer. Permittee shall at all times comply with the adopted Outdoor Dining Standards and Procedures and with this Permit.

Inspection: No more than two (2) business days after completing the installation of any new outdoor dining facilities, the Permittee shall contact the Culver City Public Works/Engineering Permit Counter at (310) 253-5600 to arrange for inspection, final sign-off and approval.

Permit On Site: A copy of this Permit shall be kept at the permitted restaurant location at all times and shall be made available for review upon the request of any City official or enforcement officer.

The Premises: The public right-of-way area covered by this Permit shall be solely limited to the area described in the approved site plan and application (the "Premises"). Permittee shall not use the Premises for any purposes other than those set forth in this Permit.

Pedestrian Clearance: A clear continuous pedestrian path not less than four (4) feet in width shall be required for pedestrian circulation outside of the approved outdoor dining area, provided that the Public Works Director/City Engineer may require more than four (4) feet to protect public safety. As used herein, pedestrian path means a continuous obstruction-free public right-of-way area, paved to City standards, between the boundary of the outdoor dining area and any object, including but not limited to parking meters, street trees, landscaping, streetlights, bus benches, public art, and curb lines.

Level Floor: The floor of the outdoor dining area shall be at the same level as the sidewalk, and no alterations to the sidewalk or coverings on the sidewalk shall be permitted, unless required to provide ADA accessibility to the main entry of the restaurant, or otherwise expressly approved by the Public Works Director/City Engineer.

Trees and Furniture: An outdoor dining area may incorporate street trees or street furniture, provided that the required pedestrian path is maintained outside of the outdoor dining area. Portable gas heaters shall be placed no closer than five feet from any tree, awning, umbrella or any other type of shade structure or as required by the Public Works Director/City Engineer.

Accessibility: The outdoor dining area shall be accessible to the disabled. The buildings adjacent to these dining areas shall maintain building egress as defined by the Uniform Building Code and Title 24 (California Building Standards Code) of the California Code of Regulations.

Adjacent Location: At the discretion of the Public Works Director/City Engineer, and with the written consent of the adjacent business owner and property owner, an outdoor dining area may be located on the sidewalk next to a business that is adjacent to the business that operates the outdoor dining area.

Final Configuration: The outdoor dining location and configuration depicted in Exhibits A, B and C of this Permit are hereby approved.

Permit Fees:

Permittee shall pay the following fees to City for the use of the Premises:

- A. Application Fee
- B. Issuance Fee
- C. Technology Surcharge
- D. If applicable, Culver City Sewer Facility Fees (as determined by resolution of the City Council) and the City of Los Angeles Sewer Facility Fees.
- E. The current annual Outdoor Dining License Fee, as approved by Resolution of the City Council. Prior to City granting this Permit, Permittee shall pay the first year's Outdoor Dining License Fee, prorated for the remaining months of the calendar year. Beginning on January 1st of the following year, Permittee shall remit the entire year's Outdoor Dining License Fee, as determined by resolution of the City Council, either as a lump sum payment or in monthly payments. Monthly payments require the payment of a processing fee, as approved by Resolution of the City Council.

Equipment:

- A. Permittee, at its sole cost and expense, may furnish any physical barriers or other design elements so long as they are consistent with the adopted Outdoor Dining Standards and Procedures and adhere to the physical barriers or design elements depicted in Exhibits A, B & C. The use of any physical barriers or design elements not depicted in Exhibit B require the approval of the City's Engineering Division and may require an amendment to this Permit.
- B. All equipment and furnishings and the cost of their installation shall be provided at the sole expense of the Permittee. All such equipment and furnishings shall be as depicted in Exhibit C, shall be used on the Premises, shall be deemed to be Permittee's personal property and shall be removed immediately by Permittee upon termination of this Permit.
- C. Permittee shall not modify the public sidewalk in any manner without prior approval of the Public Works Director/City Engineer.
- D. Concurrent with removal of Permittee's fixtures and equipment, Permittee, at its own expense, shall return the Premises to their original condition, to the reasonable satisfaction of the Public Works Director/City Engineer.

Utilities: Permittee shall pay all charges for fuel, gas, water, electricity, telephone services, and any other utilities necessary to carry on Permittee's operations. Permittee may apply to City's Building Safety Division to obtain a permit to run electricity to the outdoor dining area. Such permit would be for a lighting plan which abides by the requirements in the adopted Outdoor Dining Standards and Procedures and pertinent City codes.

Food and Beverages:

- A. All food and beverages sold or kept for sale by Permittee shall conform to federal, state, county and municipal food laws, ordinances and regulations in all respects.
- B. No adulterated, misbranded, or impure food or beverage shall be sold or kept for sale by Permittee, and all food or beverage shall be stored and handled with due regard for sanitation. Permittee shall not sell, give away, or serve any food or beverage in the outdoor dining area in any container made from extruded or expanded polystyrene or any other material which, in the opinion of City, will cause undue litter on or around the Premises.
- C. The sale of alcoholic beverages is allowed if in compliance with all applicable federal, state and City statutes, regulations, rules and ordinances including, but not limited to, any noise regulations contained in the Culver City Municipal Code. Applicable licenses and permits include, but may not be limited to, licenses and permits from the State Alcohol Beverage Control Board, Los Angeles County Health Department, the City of Culver City Planning Division, Building Safety Division, and Business License Office.

Sidewalk Maintenance and Sidewalk Maintenance Deposit:

- A. Permittee at its own expense shall keep the Premises in a clean and sanitary condition and upon expiration of this Permit, or upon earlier termination of this Permit, shall return the Premises to the City in substantially the same condition as the Premises were at the time of the issuance of this Permit.
- B. Prior to granting of this Permit, Permittee shall remit a sidewalk maintenance deposit. Said deposit shall be held by the City, without liability for interest, as security for the faithful performance by Permittee of the terms, covenants and conditions of this Permit. The City shall have the right at its option to appropriate and apply the entire sidewalk maintenance deposit or so much thereof as may be necessary to compensate City for any and all repairs to the sidewalk caused by Permittee or due to a violation of this Permit. Should the entire deposit or any portion thereof be appropriated and applied by the City hereunder, upon written demand of City, Permittee shall remit to City sufficient amount in cash to restore said maintenance deposit to the original sum deposited. Failure by Permittee to remit said cash within ten (10) days after receipt of such demand shall constitute a violation of this Permit. The rights and remedies granted to City pursuant to this paragraph are in addition to City's other remedies as provided in this Permit or by law. After termination of this Permit, the deposit will be refunded within thirty (30) days of completion of an inspection of the Premises by City's Public Works Department. This inspection will occur within two (2) weeks of termination of this Permit. However, if after thirty (30) days of the termination of this Permit, or thirty (30) days after Permittee has ceased use of the Premises for outdoor dining purposes, Permittee has not repaired the sidewalk and removed the furniture/fixtures within said Premises, Permittee shall forfeit the sidewalk maintenance deposit.

Garbage and Rubbish: Permittee shall keep the Premises clear of litter, food scraps and soiled dishes and utensils. No boxes, barrels, supplies or rubbish in any form shall be kept, piled or stored on the Premises or surrounding areas unless approved in advance by CITY. Prior to the approval of this Permit, Permittee shall provide proof to the Public Works Director/City Engineer that arrangements with the City's Sanitation Division have been made for the collection of solid waste and recyclable material and that Permittee is in full compliance with Ch. 5.01 (Solid Waste Management) of the Culver City Municipal Code. Permittee, at its sole expense, shall provide approved garbage receptacles at a location determined by the City's Environmental Programs & Operations Manager. Permittee shall also comply with all applicable City recycling programs. Permittee's failure to maintain an account for trash collection in good standing, with the City's Sanitation Division, shall constitute a violation of this Permit.

Alterations and Repairs: Permittee accepts the Premises in the condition they are in at the time of the issuance of this Permit, and City shall not be required to make any alterations, improvements or repairs therein or thereon. Permittee hereby waives any and all rights, if any it may have, to any expressed or implied warranties concerning the condition of Premises. Permittee shall not make any changes or remove any portion of the Premises without first securing the prior consent of the Public Works Director/City Engineer in writing. All such approved changes or removals shall be at the sole expense of Permittee.

Awnings, Umbrellas, Music and Merchandise: Permittee shall be allowed to use awnings or free-standing umbrellas provided they adhere to the adopted Outdoor Dining Standards and Procedures. No merchandise may be stored or displayed in entrances or exits of restaurants and no signs or advertising matter of any kind shall be displayed in the outdoor dining area, except as approved by the City's Planning Manager. Unamplified musical instruments or sound reproduction systems are permitted in outdoor dining areas but shall be maintained at sufficiently low volumes so as not to unduly intrude on neighboring businesses, residents, or users of the public right-of-way beyond the Premises.

Conduct: Permittee shall at all times conduct and operate its business in a quiet and orderly manner, to the satisfaction of the City, so that such operation of the business does not create a public or private nuisance.

Employees and Mechanics' Liens: Permittee shall keep said Premises and every estate, right, title and interest therein, or in or to any part thereof, at all times during the term of this Permit, free and clear of any liens (including, but not limited to any mechanics' liens or liens for labor, services, supplies, equipment, or material incurred by Permittee) and Permittee will at all times fully pay and discharge and wholly protect, defend and hold harmless the City on account of said liens, claims, assertions or the filing thereof.

Ingress and Egress: City reserves the right to enter upon the Premises covered by this Permit at any and all times during the term of this Permit. The City will provide prior notice of such entry unless immediate access is required in the event of an emergency.

Taxes:

- A. Permittee shall exonerate, indemnify, and hold harmless City from and against, and shall defend City from and against, and shall assume full responsibility for, payment of all wages or salaries and all federal, state, and local taxes or contributions imposed or required under the Unemployment Insurance, Social Security, Income Tax laws, Workers' Compensation laws, or other laws with respect to the Permittee's employees engaged in the performance of Permittee's obligations and operations hereunder.
- B. This Permit may create a possessory interest in public property which is subject to taxation. In the event such interest is created, Permittee shall pay any and all taxes levied on such interest.
- C. Permittee shall pay any and all taxes upon personal property and improvements belonging to said Permittee and upon its possessory interests, if any, and Permittee shall pay all sales and other taxes levied against the operation of Permittee's business.

Insurance: Without limiting its obligations pursuant to the Hold Harmless Section of this Permit, the Permittee shall procure and maintain, at Permittee's own cost and expense and for the duration of this Permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Permittee's operations within the City.

- A. Prior to commencing operations pursuant to this Permit, Permittee shall submit duly executed certificates of insurance for the following:
 1. An occurrence-based Comprehensive General Liability ("CGL") policy, at least as broad as ISO Form CG 001, in the minimum amount of two million dollars (\$2,000,000) each occurrence, with not less than two million dollars (\$2,000,000) in annual aggregate coverage. City reserves the right however, to require Permittee to increase the coverage amount of their policy to four million (\$4,000,000) in the aggregate at any time in the future at its sole and absolute discretion. The CGL policy shall meet the following requirements:
 - a. The policy shall provide coverage for personal injury, bodily injury, advertising injury, death, accident and property damage, as those terms are understood in the context of a CGL policy;
 - b. The policy shall provide coverage for owned, hired and non-owned automobile liability;
 - c. The policy shall include coverage for liability undertaken by contract covering, to the maximum extent permitted by law, Permittee's obligation, under the Hold Harmless Section of this Permit, to indemnify the City of Culver City, members of its City Council, boards and commissions, as well as its officers, agents and employees;
 - d. The policy shall not exclude coverage for Completed Operations Hazards or Athletic or Sports Participants; and,
 - e. The City of Culver City, members of its City Council, boards and commissions, officers, agents and its employees will be named as additional insured in an endorsement to the policy, which shall be provided to the City and approved by the City's City Attorney prior to the issuance of this Permit.
 2. Business Automobile Liability Insurance in the minimum amount of one million dollars (\$1,000,000) each occurrence, with not less than two million dollars (\$2,000,000) in annual aggregate coverage.
 3. Workers' Compensation limits as required by the Labor Code of the State of California with Employers' Liability limits of one million dollars (\$1,000,000) per accident.
- B. The City may waive one or more of the coverages listed in this section. This waiver must be express and in writing and will only be made upon a showing by the Permittee that its operations in and with respect to the City are not such as to impose liability within the scope of that particular coverage.
- C. Additional insurance requirements:
 1. All insurance listed in this section shall be issued by companies licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (or the equivalent by any other rating agency) and a rating of A:VII or better in the current Best's Insurance Reports;
 2. Permittee shall provide City with at least thirty (30) days' prior written notice of any modification, reduction or cancellation of any of the policies required in by this section;
 3. Upon 30-days written notice to Permittee, City, in its sole discretion, may increase the scope or dollar amount of coverage required under any of the policies described above, or may require different or additional coverages, including but not limited to increasing the CGL insurance annual aggregate.

Compliance with Laws and Ordinances: Permittee shall conduct its business in accordance with all laws, ordinances, rules and regulations including the adopted Outdoor Dining Standards and Procedures applicable to such business as amended.

Permits and Licenses: Permittee shall be required to obtain any and all permits or licenses that may be required from time to time in connection with the services to be performed under this Permit and the operation of an outdoor dining area for food and beverages.

Prohibition Against Transfer: Permittee shall not assign, sublease, hypothecate, or transfer this Permit or any interest therein directly or indirectly, by operation of laws or otherwise. Any attempt to do so shall be null and void, and any such assignee, sublessee, hypothecatee or transferee shall acquire no right or interest by reason of such attempted assignment, sublease, hypothecation or transfer. A prospective transferee must first apply to the Public Works Director/City Engineer for a new Permit prior to the effective date of any transfer.

Waivers: A waiver by the City of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of that term, covenant or condition, or of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

Holdover: Any holding over by Permittee after the expiration or termination of this Permit, or of any extension or renewal thereof, shall not constitute a renewal or extension of the term hereof.

Hold Harmless:

- A. To the fullest extent permitted by law, Permittee shall indemnify, defend (at Permittee's sole expense, with legal counsel approved by City) and hold harmless the City of Culver City, members of its City Council, boards and commissions, officers, agents, and employees (hereinafter, "INDEMNITEES"), from and against all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to Permittee's possession, occupancy or use of the Premises and/or arising from or in any manner connected to the condition of the Premises and Permittee's business, activities, operations, services or work conducted in, on or about the Premises. This indemnification includes, but is not limited to, tort liability to a third person for bodily injury and property damage.
- B. Permittee further agrees to indemnify, defend and hold harmless INDEMNITEES from and against all loss, damage, costs, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to the furnishing or supplying of any work, services, materials, equipment or supplies by any persons, firms, corporations or other entities in connection with this Permit or Permittee's operations.
- C. Permittee agrees that this obligation to indemnify, defend and hold harmless is intended to constitute a "Type 1" indemnity under California law, and extends to liability and/or claims arising from INDEMNITEES' active or passive negligence. Notwithstanding the foregoing, nothing herein shall be construed to require Permittee to indemnify INDEMNITEES from any claim arising from the sole negligence or willful misconduct of any INDEMNITEE.
- D. The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by City to Permittee of a claim within the scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of Permittee, City or any INDEMNITEE.
- E. Without limiting the generality of the foregoing, Permittee agrees that City shall not be liable for any injury to Permittee's business or any loss of income therefrom, or for damage to the goods, wares, merchandise, improvements or other property of Permittee, Permittee's officers, agents, employees, contractors, invitees or customers, or any other person in, on or about the Premises, or bodily injury or death of Permittee, its officers, agents, employees, contractors, invitees, and customers.

Independent Contractor Status: It is understood and agreed that Permittee, in the performance of this Permit, will be acting in a wholly independent capacity and not as an agent, employee, partner, or joint venturer of the City. This Permit does not create a tenancy of any nature whatsoever between the City and Permittee.

Termination: In the event Permittee fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Permittee shall be deemed in default in the performance of its obligations under this Permit. If such default is a monetary default which is not cured within a period of ten (10) business days after receipt of written notice of default from the City to Permittee, specifying the nature of such default and the steps necessary to cure such default, the City may terminate this Permit forthwith by giving to the Permittee written notice thereof. If such default is a non-monetary default which is not cured within ten (10) business days after written notice of default from City to Permittee, specifying the nature of such default and the steps necessary to cure such default, the Public Works Director/City Engineer may suspend, terminate or revoke this Permit forthwith by giving to the defaulting party written notice thereof. The Public Works Director/City Engineer may extend the period to cure either monetary or non-monetary defaults upon submittal by the Permittee of a thirty (30) day schedule to cure such default.

The City shall have the option at any time of terminating this Permit without cause upon thirty-days' (30-days') written notice.

Permittee shall have the option of terminating this Permit on thirty-days' (30-days') written notice.

Upon any termination, Permittee shall pay to the City any portion of the fees specified in the Permit Fees Section of this Permit which remain unpaid as of the effective date of such termination.

Costs of Litigation: If either party hereto institutes any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Permit, then the prevailing party shall be entitled to receive all costs and expenses and such amount as the court may adjudge to be reasonable attorneys' fees for the costs incurred by the prevailing party in such action or proceeding.

Governing Law: The validity of this Permit and any of its terms or provisions, as well as the rights and duties, shall be interpreted and construed pursuant to the laws of the State of California, and all disputes shall be resolved within Los Angeles County. If any clause, provision or section of the Permit is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof. The parties hereto agree and acknowledge that this Permit shall not be construed in favor of or against either party.

Enforcement: Notice of violation of the outdoor dining design standards or standards of operation shall be made in writing to the Permittee by any Code Enforcement Officer, Public Works Inspector or Building Inspector of the City. A copy of the notice shall be filed with the Public Works Director/City Engineer. The Permittee shall immediately cure the violation upon receipt of notice. If the violation is not cured within ten (10) days after issuance of the notice to the Permittee, the Public Works Director/City Engineer may suspend or revoke this Permit.

Extent of Outdoor Dining Permit and License Agreement: This Permit, including any attachments and all Municipal Code Sections incorporated herein by reference, represents the entire and integrated agreement between City and Permittee and supersedes any and all prior negotiations, representations or agreements, either oral or written.

Authority to Sign: The individual executing this Permit on behalf of Permittee is authorized to execute this agreement on behalf of Permittee.

City Business License and Insurance: Permittee, and any of its contractors or subcontractors that Permittee engages for any or all the related work to be completed pursuant to this Permit shall maintain an active City business license, liability insurance that names the City as an additional insured, workers compensation insurance, and automobile liability coverage in the amounts indicated in the Insurance Section of this Permit.

Permit Duration: Unless terminated as set forth above, this Permit shall remain in full force and effect as long as Permittee continues to pay City any and all applicable fees associated with their use of the outdoor dining area and provides proof of current and valid insurance.

General Construction Conditions

Contractor's License: Applicant performing work in the public right-of-way, including sidewalk occupation, shall have the appropriate valid contractor license issued by the State of California. The required license class shall correspond to the specific type of work being performed, i.e. A-General Engineering, C8-Concrete, C36-Plumbing, C42-Sanitation Systems, etc. Applicant shall present a valid proof of license prior to issuance of any permits. Contractor License classifications can be found here: https://www2.cslb.ca.gov/About_Us/Library/Licensing_Classifications/

Permit on Site: A copy of the permit shall be kept at the jobsite at all times and should be available upon request by City official including any law enforcement officer.

Underground Service Alert (Dig Alert): Permittee must notify the Underground Service Alert (USA) at (800) 422-4133 at least 48 hours in advance of start of work for any undergrounding and excavation work in the public right-of-way. All USA markings shall be removed before the project is finalized.

Emergency: Access to fire hydrant(s) shall be maintained at all times and construction equipment is not allowed to be attached to fire hydrant(s).

NPDES Requirements: Permittee shall comply with all National Pollutant Discharge Elimination System (NPDES) Permit Regulations and Requirements. All drain inlets shall be protected from construction debris.

Sewer Location: Permittee shall be responsible for determining the horizontal and vertical location of mainline sewers.

Clean up of Right-of-Way: Upon completion of work, all brush, timber, scraps and other construction materials and debris shall be entirely removed and the right-of-way left in a condition satisfactory to the City Engineer.

Maintenance and Repair: Permittee shall promptly make any and all repairs to the existing public right-of-way or underground utilities (whether marked or unmarked) that are damaged by the work authorized by this permit. These repair work shall be completed to the satisfaction of the City Engineer.

Storage of Materials: Absolutely no stockpiling of construction materials shall be allowed in the public right-of-way unless otherwise approved and authorized by the City Engineer.

Excavation: All excavations in the public right-of-way shall be backfilled and fully restored within three (3) calendar days unless otherwise authorized by the City Engineer.

Concrete Specification: Unless otherwise specified, all concrete placed for public improvements shall be replaced scoreline to scoreline and achieve a minimum of 4000 PSI compressive strength at 28 days; Roadway Concrete Strength: 4000 PS.

Asphalt Concrete Specifications: Unless otherwise specified, all asphalt concrete placed in the public right-of-way shall be a design mix of "PG-C2-64-10".

Public Works Improvement Plans: All work proposed in the public right-of-way will require a separate construction plan submittal for review, approval; and issuance of permit by the Engineering Division of the Public Works Department. All public right-of-way improvements shall be completed prior to final inspection of the building permit and/or issuance of the certificate of occupancy.

Street Trees: Contractor shall contact the City's Arborist before pruning any street tree, tree roots, or any portion of a street tree to determine the best manner in which to do so without harming the health of the tree.