

## Attachment A

### **Temporary Outdoor Dining, Retail, Café Use of Sidewalks and Parking Lanes**

#### **I. Outdoor Dining, Retail or Café Use**

The following rules and procedures shall apply to Temporary Sidewalk Dining, Retail or Cafe permits on sidewalks and parking lanes:

- A. Application. Any restaurant, retail or café use desiring a Temporary Sidewalk Dining, Retail or Café Permit shall first apply to the Department of Transportation and provide all information deemed necessary by the Transportation Director or his designee. The Transportation Director or his designee is hereby authorized and directed to generate standard application forms and adopt internal procedures for such purpose. Without limiting the foregoing, the Transportation Director or his designee may require a layout sketch or site plan and a minimum of two (2) photographs showing all sidewalk dining, retail or cafe elements (“Improvements”), utilities, sidewalks, and appropriate measurements with the application.
- B. Effect. The following terms and conditions shall apply to any Temporary Sidewalk Dining, Retail, or Cafe Permit issued by the City:
1. The permit is for a permissive use only and the issuing of the permit shall not operate to create or vest any property rights in the permittee.
  2. The City shall have free and complete access to the public right-of-way in which Sidewalk Dining, Retail, or Cafe has been permitted for maintenance and repair of the right-of-way, and the permittee shall hold harmless the City for any damage that may be done by the City during maintenance and repair of the right-of-way.
  3. The permittee shall maintain the sidewalk area in a good and safe condition as long as the Temporary Sidewalk Dining, Retail, or Cafe Permit remains in effect. Permittee understands and acknowledges that, should the permittee, its agents, employees, vendors, or patrons, damage and/or disturb the right-of-way and/or the Sidewalk Dining, Retail, or Cafe Area, the permittee shall be solely responsible for repairing the destroyed/disturbed right-of-way to the City’s satisfaction.
  4. Permittee shall maintain a general liability insurance policy with combined single liability limits for personal injury or death and property damage in the amount of the liability limits set forth in the City’s application. The applicant shall name the City as an additional insured. The permittee agrees to provide proof of such policy to the City upon request.
  5. If alcoholic beverages will be served within the Sidewalk Dining, Retail or Café Area, the permittee shall maintain liquor liability insurance for the area under the same terms and conditions as those applying to general liability insurance.
  6. Permittee shall indemnify, defend, and hold harmless the City against any and all claims or suits for damages or injury arising from permittee’s or the permittee’s agents’, employees’, vendors’, and/or patrons’ use of the right-of-way or the Sidewalk Dining, Retail, or Cafe area or from any activity, work, or act done, permitted, or suffered by permittee in or about the Sidewalk Dining, Retail, or Cafe Area, and shall further indemnify, defend, and hold harmless the City against and from any and all claims or suits arising from any breach or default of any performance of any obligation of

permittee under this Temporary Sidewalk Dining, Retail, or Cafe Permit, and against and from all costs, attorneys' fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

7. Permittee shall not assign the Temporary Sidewalk Dining, Retail, or Cafe Permit without the prior approval of the City.
  8. Any unlawful encroachments existing in the right-of-way shall be subject to removal and the permittee shall be responsible for labor and costs associated with such removal. Any encroachments existing in the public right-of-way shall be removed upon twenty-four (24) hours' notice given by the Department of Transportation of public service when such removal is necessary to repair or improve the right-of-way. If it is necessary to remove any encroachments, including but not limited to Sidewalk Dining Elements or Sidewalk Retail Elements, the permittee shall be responsible for labor and costs associated with removal and reinstallation.
  9. In the event that the City Police, Fire, Public Works, Planning and Building, or Transportation departments determine that the location of an encroachment, including but not limited to Sidewalk Dining Elements or Sidewalk Retail Elements, constitutes an immediate physical danger to life, safety or health, the encroachment may be removed immediately without prior notice. If the City removes an encroachment, a notice of removal shall be sent to the permittee as soon as practicable under the circumstances. Any abandoned encroachment shall be subject to removal. For purposes hereof, 'abandoned' shall mean the vacating of the premises by the permittee for a period of seven (7) consecutive days or more. Any costs incurred to the City in restoring the public right-of-way to the condition that existed prior to the use of the Sidewalk Dining, Retail, or Cafe Area shall be the responsibility of the permittee.
- C. Inspection. The Transportation Director or his designee may perform or cause to be performed a site inspection of the proposed Sidewalk Dining, Retail, or Café Area to verify compliance with the requirements set forth herein prior to issuing a Temporary Sidewalk Dining, Retail, or Cafe Permit. The City's Fire Department, Fire Marshal, Police Department, and Building Inspections Division shall be authorized to inspect and determine whether applicants and permittees comply with and continue to comply with the rules and regulations governing sidewalk dining set forth herein, as may be amended.
- D. Decision. The Transportation Director is hereby authorized, after any necessary consultation with other City departments, to issue Temporary Sidewalk Dining, Retail, or Cafe Permits upon finding that the application meets all relevant standards set forth in this Chapter.
- E. Posting. The Temporary Sidewalk Dining, Retail or Cafe Permit shall be posted on the premises so as to be visible from the public right-of-way during all times that the sidewalk dining, retail, or café use is being conducted within the public right-of-way.
- F. Design and Layout. The following standards shall govern the design and layout for Sidewalk Dining, Retail, or Cafes:
1. The width of the Sidewalk Dining, Retail, or Café Area shall not exceed the width of the frontage of the restaurant's property.
  2. Permittees shall not obstruct a clear pedestrian path of at least six feet (6') at any time; provided, however, in areas of higher pedestrian traffic or activity, or in conditions that suggest the need for additional clearance, the Transportation Director or his designee may require a clear pedestrian path greater than six feet (6'). Any such clearance area must be free of all obstructions such as trees, parking

meters, utility poles, fire hydrants, and similar encroachments in order to allow for adequate pedestrian movement. All services and patron activity provided within the designated public right-of-way shall occur within the designated area and shall not encroach within the minimum clearances for pedestrian passage at any time.

3. The Improvements shall not interfere with any utilities or other facilities such as utility poles, fire hydrants, signs, parking meters, mailboxes, and/or benches within the sidewalk or within the public right-of-way.
4. The Improvements shall not interfere with or obstruct any required clearance for maneuvering around any building, driveway, or other entrances or exits.
5. The Improvements shall not interfere with or obstruct any areas required for accessibility for disabled persons, whether patrons or employees.
6. The Improvements shall not interfere with or obstruct required ingress and/or egress for adjacent buildings set forth in the building code or otherwise.
7. The Improvements may not violate the vision clearance requirements set forth in the Oakland Municipal Code or by City design regulation.
8. Vision clearance will also be required when the Improvements are located adjacent to an alley or driveway; provided, however, the Transportation Director is authorized to modify such requirements when unusual circumstances exist or when public safety may be at issue.
9. No amplified music, whether live or recorded, shall be permitted within Sidewalk Dining, Retail, or Cafe Areas. No speakers, microphones, televisions or other audio or video devices shall be permitted within Sidewalk Dining, Retail, or Cafe areas.
10. No vending machines, carts, or objects for the sale of goods shall be permitted within Sidewalk Dining, Retail, or Café Areas.

I hereby acknowledge the above conditions and attest that I will abide by them during the duration of my use of the public right-of-way.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
(Business Name (Print))

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date