

Town of Corte Madera
Temporary Encroachment Permit for Outdoor Restaurant or Commercial Business use of Town-
Owned Public Right-of-Way or Other Town-Owned Outdoor Property

This Temporary Outdoor Encroachment Permit (“TOE”) is entered into on _____, 2020, between the Town of Corte Madera, a municipal corporation, hereinafter referred to as “Town” and _____, hereinafter referred to as “Permittee” located at _____, cumulatively, (“the Parties”) and is made with reference to the following facts:

RECITALS

A. Permittee operates a business consisting of a dining establishment or other permitted commercial business. Permittee has certified that it is allowed to operate under the State and County regulations applicable at the time this Permit is issued.

B. The Permittee desires to use Town-owned public right of way or other outdoor Town-owned property, including, but not limited to Town parks, for temporary outdoor dining or commercial business purposes and has submitted an Application for such use.

C. Town is agreeable to permitting on a temporary basis said encroachment upon the terms and conditions expressed herein below and in Ordinance 996 which is incorporated herein by reference and the site plan and such other materials as the Town Manager may require to demonstrate compliance with the Ordinance.

D. If the Permittee intends to use parking spaces or sidewalk space that front adjacent property for expanded outdoor dining seating or other permitted commercial business activity, the applicant must obtain written consent from the property owner(s) of the adjacent property agreeing to such use and such consent shall be provided to Town prior to approval of this Permit.

AGREEMENT

1. Term. This TOE permit is valid until the earliest of the following: (a) Expiration of Ordinance No. 996 as that Ordinance may be extended by further ordinance of the Town Council, (b) the date the Permit is terminated in accordance with Section 15, or (c) 10 days after Ordinance No. 996 is rescinded by Resolution of the Town Council.

2. Cost. There shall be no charge to Permittee for the original Term of this Permit. Extensions of Term or other modifications to this agreement shall be by amendment in writing and may require payment of a Fee by Permittee as determined by the Town Council.

3. Deposit. Permittee shall pay a security deposit in the amount of up to \$1,000 as determined by the Town Manager or designee to ensure that the subject property is returned to its prior condition after the permitted use terminates.

4. Improvements. Permittee shall not be allowed to alter the right of way or other Town-owned property, construct or place any structure or other improvement on the right of way or Town-owned property except as specifically provided in Attachment A.

The Parties agree that Permittee shall obtain no right, title, easement or interest in the real property that is the subject of this TOE permit. All personal property of Permittee shall be removed at Permittee's cost from the property no later than 10 days after termination or revocation of the Permit. Failure by Permittee to remove property may result in Town removing such property. Permittee agrees to pay for the costs of such removal within 30 days of Town's invoice for such. Permittee waives claims for damages or loss to property related to Town removal pursuant to this section. Any permanent improvement specifically approved in Attachment A shall become the property of Town at no cost to Town.

5. Insurance

Permittee shall procure and maintain for the duration of the Permit, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of use hereunder by the Permittee, its agents, representatives, employees or sub-permittees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance

Permittee shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location of the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Deductibles or Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers; or the

Permittee shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Town, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Permittee; products and completed operations of the Permittee; premises owned, occupied or used by the Permittee; or automobiles owned, leased, hired or borrowed by the Permittee. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees, agents or volunteers.
2. For any claims related to this project, the Permittee's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, agents or volunteers shall be excess of the Permittee's insurance and shall not contribute with it.
3. Any failure to comply with reporting or provisions of the policies including breaches of warranties shall not affect coverage provided to the Town, its officers, officials, employees, agents or volunteers.
4. The Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail. Return receipt requested, has been given to the Town.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

Permittee shall furnish the Town with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by this insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the Town. All endorsements are to be received and approved by the Town before work commences. As an alternative to the Town's forms, the Permittee's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Subpermittees or Sub-Contractors

Permittee shall include all sub-permittees or sub-contractors as insureds under its policies or shall furnish separate certificates and endorsements for each. All coverages for sub-permittees or sub-contractors shall be subject to all of the requirements stated herein. Permittee shall be

responsible for ensuring all sub-permittees or sub-contractors conform to all of the requirements stated herein and providing proof of such compliance to Town.

The liability insurance shall be maintained for the duration of the public right-of-way encroachment. Failure to maintain liability insurance may result in revocation of the Encroachment Permit.

6. Safety Protocols. It is the Permittee's responsibility to be informed of, and comply with all legal standards and all industry guidance for restaurants and commercial businesses published by the Center for Disease Control (CDC), State of CA Governor's Office and/or Marin County Health Officer.

Permittee operations may not obstruct vehicular or pedestrian circulation or otherwise unnecessarily interfere with the public's normal use and enjoyment of permitted property, as determined by the Town Manager or designee. All Permits are subject to compliance with operational and safety provisions established by the Town Manager or that person's designee, applicable State and County health orders, applicable regulations of the Department of Alcohol and Beverage Control, the Fire Code, all applicable health and safety regulations and in compliance with the Americans Disability Act and State accessibility requirements. Permits will not be issued unless the Town Manager or Designee determines that the business's use of Town property is in compliance with applicable requirement.

7. Enforcement. Any outdoor business not in compliance with the terms and conditions of this TOE permit, including any approved site plans or operations plans, shall be in violation of this Agreement and Municipal Code. Town may take any and all enforcement actions legally available including but not limited to immediate revocation of the permit.

8. Safety Barrier. For seating or other business operations located in a parking space(s), or immediately adjacent to a roadway, a physical barrier must be provided between patrons and vehicles. The barrier must be approved by the Town prior to the area being made available to the public and remain in place while the outdoor area is in use. If Town, in its sole discretion installs such barriers, Permittee will be required to maintain the barriers in place. Permittee shall pay the fee specified in Attachment A for barriers provided by and installed by Town.

9. Outdoor Seating and Area Maintenance. Outdoor seating that conforms to all legal requirements may be placed outside the restaurant as approved in advance by Town. The Permittee is responsible for complying with all legal requirements for operating outdoor dining spaces including but not limited to compliance with the Marin County Health Order, applicable building and fire codes, Americans with Disability Act (ADA) requirements and applicable environmental health regulations. Seating and other business use items may not be placed in Americans with Disabilities Act (ADA) accessible parking spaces loading zones, 30 minute parking spaces (green zone), or other types of parking spaces unless approved by the Town in writing. Seating and other business uses located on a public sidewalk shall maintain a minimum 4 foot wide clear accessible path of travel or greater as needed to comply with federal, state and local laws and health orders

10. Outdoor Seating or other Business Use Layout. The outdoor seating or other business use layout shall be established, and remain consistent with, the approved TOE permit (See

attachment A). At no time shall the entry/exit to any tenant space, nor any public sidewalk, nor any path of travel providing emergency ingress or egress, be blocked by outdoor seating or other business use.

11. Use Regulations. Music (live or amplified), and lighting, is not permitted, unless expressly approved in writing by the Town. Temporary signage of any type is not permitted unless approved in writing by the Town. Consumption of alcoholic beverages is NOT permitted unless approved by Alcoholic Beverage Control (ABC); verification of ABC approval shall be submitted to Town in advance. Hours of operation and non-permanent items (e.g. tables, chairs, umbrellas, canopies) shall be as stated and approved in Attachment A. Permittee shall not be allowed to permanently alter, construct or place any structure or other improvement on the property except as specifically provided in Attachment A.

12. Public Infrastructure. Permanent attachments to public infrastructure including, but not limited to, streets, sidewalks, curbs, trash cans, light poles, traffic signs, trees, bike racks, fire hydrants, etc. are NOT permitted. Damage to public infrastructure as a result of the outdoor seating or other business use may result in revocation of the encroachment permit.

13. Modifications. Any modifications to the outdoor area shall be submitted to Town in advance. Town shall have complete discretion to approve or reject modifications to the public right of way.

14 Other Permits and Approvals. It is the Permittee's responsibility to secure any applicable permits or approvals from other agencies including, but not limited to, Alcoholic Beverage Control (ABC), Marin County Health Department, and/or other public or private landowners.

15 Permit Revocation. The Town Manager or Designee reserves the right to revoke the TOE permit at any time in its sole discretion. Upon revocation, the operation of the outdoor business must cease and any temporary improvements made pursuant to the TOE must be removed within 48 hours, unless the Town Manager or designee determines that the revocation is necessary for the immediate protection of public health and safety, in which case business operations must cease and any temporary improvements made pursuant to the TOE must be removed immediately. If Ordinance No. 996 is terminated by Resolution of the Council prior to its expiration date, Permittee's permit shall be revoked and Permittee shall have 10 days to restore the permitted area to its pre-permit state.

16. Indemnification. The Permittee agrees, at its sole expense, to defend, indemnify, and hold harmless the Town, its public officials, officers, employees, volunteers and assigns, from any liability including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Permittee's negligence, recklessness or willful misconduct in the performance of this Agreement. In addition, Permittee shall reimburse the Town for any expense incurred resulting from Permittee's use of the public right of way or park areas related to this permit. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul this permit or use of the public right of way. Town shall promptly notify the Permittee of any legal proceeding, and shall cooperate fully in the defense. Town may, at its sole discretion, participate in any such legal action, but participation shall not relieve the Permittee of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the

19. Authority of Parties. Each individual executing this agreement in behalf of a corporation or other private entity shall represent and warrant and that he/she is duly authorized to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution shall be provided to Town, along with the executed original of this agreement.

20. Assignment. This agreement may not be assigned without prior approval of Town.

Attachment A

IN WITNESS WHEREOF, the undersigned have executed this agreement the day and year first written above.

PERMITEE

Date: _____

By: _____

TOWN OF CORTE MADERA

Date: _____

By _____

R.J. Suokko, Director of Public Works

ATTACHMENT A – Insert listed items as Appropriate

- Application Including:
- Statement of Intended Use describing proposed area of use, outdoor use, food and beverage service, hours of operation.
- Type of operation (i) use of portion of adjacent public right-of-way (e.g., parking spaces, sidewalks, , and (ii) use of portion of other public spaces (e.g. parks) and (iii) use of parking or sidewalk space fronting adjacent property
- Town Business License
- ABC License (if alcohol is served) and evidence of adequate liquor liability insurance for proposed operations.
- Certificate of Insurance (Town listed as additional insured)
- Written Consent of Adjacent Property Owner/Tenants for use of parking spaces or sidewalk space fronting adjacent property
- Site Plan Diagram (8.5”x11”)
- Photographs (proposed location)
- Receipt or Waiver of Deposit
- Receipt or Waiver of Fee for provision and installation of barriers by Town
 - Other materials as determined by the Town Manager or Designee
 - Statement of Approved Use by Town Manager or Designee if approval differs from Statement of Intended Use