

OPEN AIR TUP: TEMPORARY ENCROACHMENT PERMIT APPLICATION AND AGREEMENT

Business Owner ("Permittee"): _____

Business Name: _____

Business Address: _____

Primary Cell Phone #: _____ Emergency Contact Phone #: _____

Email: _____

Permittee has applied for a Temporary Use Permit through the City of West Covina's ("City") Open Air Program. Permittee's proposed use extends into the City's right-of-way. In consideration for City permitting Permittee to temporarily encroach into City's right-of-way, Permittee acknowledges and agrees as follows:

1. **Incorporation of Application.** The information contained Permittee's Open Air Temporary Use Permit (TUP) Application is incorporated herein by this reference.
2. **Encroachment Area.** The encroachment area permitted by this Agreement is as set forth in the TUP Application.
3. **Term; Termination.** The term of this Agreement shall commence on the date of execution and shall terminate upon the expiration of Permittee's Temporary Use Permit. Notwithstanding the foregoing, City may terminate this Agreement at any time without cause upon fourteen (14) days written notice to Permittee. In the event of any termination of this Agreement, Permittee shall cause all personal property, debris and trash in City's right-of-way to be removed and shall return City's right-of-way to the same or better condition as it existed as of the date of this Agreement within seven (7) days of such termination. In the event Permittee fails to remove personal property, debris and/or trash and/or fails to return the property to the condition it existed in as of the date of this Agreement within said 7-day period, City may cause such items to be removed and/or cause the property to be restored at Permittee's expense, plus administrative overhead costs.
4. **Agreement to Conditions.** Permittee agrees to abide by each requirement and each condition of approval set forth in Permittee's TUP Application.
5. **Consent of Neighboring Building Owner or Tenant.** If Permittee's proposed use is in front of a neighboring tenant space or building, Permittee has obtained the written consent of the owner or tenant to operate outdoor activities. Permittee acknowledges and agrees that it may engage in use of the public space in front of a neighboring tenant space or building only for as long as such consent is granted, and in no event longer than the term set forth herein.
6. **Prohibition Against Fixed Improvements.** Permittee agrees that no fixed improvements are permitted in the City's right-of-way. Permittee grants to City the right to remove or relocate any fixed improvements at Permittee's cost and grants City the right to access Permittee's premises to effect such removal or relocation if deemed necessary by City. Permittee waives any claim or right it may have for inverse condemnation, damages, or loss of income or business resulting from said removal.
7. **Removal, Modification or Relocation of Outdoor Area.** Permittee understands and agrees that City is permitting Permittee to temporarily encroach into the City's right-of-way as part of the Open Air Program. Permittee further understands and agrees that City may require the

temporary or permanent removal of the outdoor space when improvements to the street or sidewalk, or utility repairs, necessitate such action, or the Permittee fails to comply with the criteria set forth in applicable City requirements. Any costs incurred by the City for removal or storage of sidewalk tables, chairs and other equipment shall be the responsibility of the business. The City is not responsible for any damages or loss of equipment removed pursuant to this subsection.

8. **Release of Liability.** For and in consideration of the use of public space as identified in the TUP Application, Permittee hereby freely and voluntarily waives, releases, and discharges the City of West Covina, members of its City Council, boards and commissions, officers, agents, representatives, contractors, employees, and volunteers (collectively, the "City Indemnitees") from any and all claims for liability, judgment, or damage arising from any personal injury, death, loss, or property damage sustained by Permittee, or any of Permittee's agents, representatives, contractors, employees, and volunteers, in connection with Permittee's use of the public space as identified in the TUP Application. Permittee agrees to waive, release, and discharge the City Indemnitees regardless of any negligence or carelessness on the part of any of the City Indemnitees.
9. **Indemnification.** Permittee agrees to accept all responsibility for loss or damage to any person or entity and to indemnify, defend, and hold harmless the City Indemnitees from and against any and all liability, actions, claims, damages, costs, or expenses which may be asserted by any person or entity, arising out of or in connection with Permittee's (including Permittee's agents, representatives, contractors, employees, volunteers and invitees) acts or omissions while engaging in the activities associated with this Agreement, whether or not there is concurrent negligence on the part of any of the City Indemnitees, but excluding liability due to the sole active negligence or sole willful misconduct of the City Indemnitees.
10. **Insurance.** Permittee agrees to obtain and maintain, at Permittee's expense, for the duration of this Agreement the following insurance coverages:
 - a. Commercial General Liability (CGL) insurance with a policy limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.
 - b. Workers' Compensation and Employer's Liability insurance with a policy limit of not less than \$1,000,000 per accident for bodily injury or property damage.

The City of West Covina, its elected and appointed officials, officers, employees, agents and volunteers shall be named as additional insureds on Permittee's CGL Policy. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of West Covina for all work performed by the Permittee, its employees, agents, and subcontractors. Permittee shall further grant to the City of West Covina a waiver of any right of subrogation, which any insurer of Permittee may acquire against the City of West Covina by virtue of payment of any loss. Permittee shall provide the City with proof of the required insurance and waivers of subrogation prior to commencing operations in the outdoor dining space.

11. **Duty to Comply with the Law.** Permittee will comply with all applicable local, State, and Federal laws and regulations at all times during the term of this Agreement, including, but not limited to, the Governor's Stay-at-Home Order, the Los Angeles County Department of Public Health Officer's Safer at Home Order, laws regarding the obstruction of vehicular traffic, the Americans with Disabilities Act, Department of Alcoholic Beverage Control (ABC) regulations and orders relating to the service of alcohol, and Los Angeles County health laws relating to the provision of food services.
12. **Violation of Agreement.** Permittee agrees that any violation of the terms of this Agreement or any local, State, or Federal law, regulation or order shall constitute an imminent threat to the

public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such. Permittee further understands and agrees that any violation of the terms of this Agreement or any local, State, or Federal law, regulation or order may, at City's discretion result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement or the Open Air TUP. In the event of such termination, Permittee shall comply with the requirements set forth herein relating to removal of personal property, debris and trash.

13. **No Vested or Ongoing Rights Conferred.** Permittee understands and agrees that this Agreement and the Open Air TUP confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement and the Open Air TUP are temporary in nature and granted solely to enable businesses to operate in compliance with local, State, and Federal orders and regulations regarding social distancing and COVID-19.
14. **Non-Transferable.** This Agreement is non-transferable. Only the Permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.
15. **Independent Contractor.** It is understood and agreed that Permittee, in the performance of this Agreement, will be acting in a wholly independent capacity and not as agent, employee, partner, or joint venturer of City.
16. **Entire Agreement; Amendments.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations of modifications concerns this instrument shall be of no force and effect. This Agreement may be modified only in a writing executed by the parties or their respective successors and assigns.

THE UNDERSIGNED AGREES THAT THE PROPOSED ACTIVITIES DESCRIBED IN THIS AGREEMENT SHALL BE IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT'S TERMS AND CONDITIONS, THE DIRECTOR OF EMERGENCY SERVICES' ORDER, AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS AND REGULATIONS, INCLUDING BUT NOT LIMITED TO THE GOVERNOR'S STAY AT HOME ORDER AND THE COUNTY DEPARTMENT OF PUBLIC HEALTH'S SAFER AT HOME ORDER.

PERMITTEE

Signature

Date: _____

Name and Title

CITY OF WEST COVINA

Paulina Morales
Economic Development and Housing Manager

Date: _____