

**CITY OF HERMOSA BEACH**  
**RESOLUTION NO. 24-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH  
ESTABLISHING OPERATIONAL AND DESIGN GUIDELINES FOR ON-STREET  
COMMERCIAL ENCROACHMENT AREAS CITYWIDE**

**WHEREAS**, On August 9, 2005, the City Council conducted a public meeting to review the outdoor dining standards and procedures for outdoor dining areas on Pier Avenue adopted in 1997, pursuant to Title 12, Chapter 12.16 of the Municipal Code pertaining to encroachments into the Public Right-of-Way; and

**WHEREAS**, On May 8, 2012, the City Council adopted a resolution amending standards and procedures for the design and operation of outdoor dining areas on Pier Plaza; and

**WHEREAS**, On May 11, 2015 the City Council adopted a resolution further amending the aforementioned standards and procedures for the design and operation of outdoor dining areas on Pier Plaza; and

**WHEREAS**, On October 2021, City Council directed staff to develop permanent versions of the temporary extended outdoor dining programs implemented during the COVID-19 pandemic ; and

**WHEREAS**, On April 25, 2023, City Council approved operational and design guidelines for all off-street and Pier Plaza commercial encroachments citywide; and

**WHEREAS**, City staff has gathered input from the City Council, local businesses and community stakeholders to develop the proposed guidelines for permanent on-street encroachments citywide.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The City Council does hereby declare that the recitals set forth above are true and correct and are incorporated herein by reference.

**SECTION 2.** The City Council hereby adopts the attached Guidelines attached as Exhibit A and incorporate herein.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, phrase or word of this resolution is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

**SECTION 4. Environmental Review.** The proposed project is Categorically Exempt from the California Environmental Quality Act as defined in Section 15300 of the CEQA Guidelines, in accordance with Section **15061**, the 'common sense' exemption, and Section **15301** which addresses minor alterations of existing public facilities, specifically:

**15061(b)(3)** – The project is covered by the common sense exemption that applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**15301(c)** – Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety), and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes.

None of the exceptions to the Categorical Exemption apply, nor would the project result in a significant cumulative impact of successive projects of the same type in the same place over time or have a significant effect on the environment due to unusual circumstances or damage a scenic highway or scenic resources within a state scenic highway. The site is not located on a hazardous waste site and would not cause a substantial adverse change in the significance of a historical resource. These Guidelines, which only apply to revocable encroachments of a temporary nature, will ensure that encroachments for on-street applications are installed and maintained in a way that is protective of public safety and minimize any aesthetic impacts.

**SECTION 5.** The City Clerk shall certify the adoption of this Resolution which shall be effective upon its adoption.

**PASSED, APPROVED** and **ADOPTED** on this 27th day of February, 2024

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Justin Massey

**PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, CA

**ATTEST:**

**APPROVED AS TO FORM:**

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Myra Maravilla  
City Clerk

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Patrick Donegan  
City Attorney

## Exhibit A

### CITY OF HERMOSA BEACH ON-STREET DINING DECK DESIGN AND OPERATIONAL GUIDELINES

**Date of Last Revision: February 2024**

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## **I. INTRODUCTION**

Business owners must obtain an Outdoor Dining Encroachment Permit to operate an On-Street Dining Deck. An on-street dining deck is a place on the public right-of-way where patrons may consume food and beverages provided by an adjacent food service establishment.

The requirements for the On-Street Commercial Outdoor Dining Program are governed by the Hermosa Beach Municipal Code (HBMC) Chapter 12.16.090 and further described in these Guidelines.

Outdoor Dining Encroachment Permits are not transferable, salable, delegable, or assignable. In the event of a transfer of the business, or a change in ownership such that 51% or more of the business is now owned by a different individual or entity, the transferee or new owner shall apply to the Public Works Department for a new Outdoor Dining Encroachment Permit.

These guidelines were developed based on a review of the COVID-19 temporary program and best practices established in other jurisdictions for the creation of safe dining areas within the roadway.

These guidelines are subject to change in the sole discretion of the City as operational/safety standards are issued/developed by the relevant local, state, and federal jurisdictions. Should new standards be developed, the City reserves the right to promulgate additional safety requirements for current permit holders as deemed appropriate by the Public Works Director or designee.

## **II. APPLICATION PROCEDURE**

### **1. APPLICATION SUBMITTAL**

An application form for an Outdoor Dining Encroachment Permit for On-Street Dining Decks may be obtained from the Public Works Department at City Hall.

### **2. REVIEW PROCEDURE**

Applications are submitted directly to the Public Works Department which facilitates review and approvals by other reviewing departments including Building & Safety, Planning, Finance, and Police Department. These reviews will occur concurrently to the greatest extent possible to expedite the review. Additional permits (i.e., electrical, building, etc.) will require additional fees and application procedures.

The length of review is dependent on the completeness of the application submittal and complexity of the proposed elements. The City may require additional information, and submittals, depending on site specific features or the complexity, or uniqueness of the proposed elements. Applicants are responsible for resolving any concerns or issues identified by City staff in the review process. If more than two Site Plan check reviews are required to address issues or concerns, additional fees may apply.

### **3. TERM OF ENCROACHMENT PERMITS**

Approved permits will be valid for one year.

New on street dining operators have up to ninety days after the Outdoor Dining Encroachment Permit is issued to begin construction. Operators must notify Public Works 72 hours in advance of initiating construction activities. If construction does not begin within ninety days of obtaining the Outdoor Dining Encroachment Permit operators shall have to re-apply to the Outdoor Dining Program and pay the required fees unless there is a showing of good cause as to why construction was delayed.

### **4. NO OUTSTANDING VIOLATIONS**

An Outdoor Dining Encroachment Permit will only be issued if there are no outstanding Municipal Code violations, violations of any other City-issued permit or delinquent fees. In reviewing renewal applications, the City Manager or designee must determine that there are no unresolved violations of this chapter (and any related regulations) related to the Commercial Encroachment. If, in the preceding twelve (12) months, there were three (3) violations of this chapter or related regulations as determined by the City Manager or designee, then the City Manager, or designee, shall not issue a Commercial Encroachment permit for a period of one (1) year.

### **5. REQUIRED PRIOR TO ENCROACHMENT PERMIT ISSUANCE:**

#### **A. COVENANT AGREEMENT**

An encroachment permit and covenant agreement signed and notarized by both the business owner and the property owner is required.

#### **B. SECURITY DEPOSIT**

Payment of security deposit of a minimum of \$2,500 is required for every dining deck encroachment permit. The deposit is to be used by the City to remove the dining deck if the deck is abandoned by the business or for non-compliance with safety requirements, or for restoration of the public right-of-way following removal of the deck. The deposit may also be used to cover non-payment of required fees upon termination of the permit and deck removal.

The Public Works Director may require a higher deposit, at his or her discretion, depending on the complexity and size of the dining deck. The deposit must be paid to the City prior to the issuance of the Outdoor Dining Encroachment Permit.

### **C. INSURANCE**

The Applicant, and any other business sharing use of the dining deck, shall obtain Certificate of Insurance and maintain in force during the life of the Outdoor Dining Encroachment Permit comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount, per claim and aggregate, of at least two million dollars (\$2,000,000) per occurrence, and a general aggregate limit of no less than four million dollars (\$4,000,000), covering the applicant's operation on the sidewalk. Such insurance shall name, on a Special Endorsement form, the City, its elected, appointed boards, officers, agents, and employees as additional insureds. A Certificate of Insurance shall contain provisions that prohibit cancellation, modification, or lapse without thirty (30) days prior written notice to the City. Both the Certificate of Insurance and the completed standard Special Endorsement form shall be submitted with the completed application for an Outdoor Dining Encroachment Permit. An updated Certificate of Insurance shall be submitted annually upon renewal.

The Applicant shall obtain and maintain in force during the life of the Outdoor Dining Encroachment Permit, Worker's Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per accident.

Comprehensive general liability policy shall provide coverage for all the Applicant's outdoor operations and facilities whether or not within the encroachment area.

The Applicant shall, defend, indemnify and hold harmless City, its officers, employees and agents from and against all claims, causes of action, liabilities and damages for injuries to persons and property, including reasonable costs of defense and attorney fees, arising from the Applicant's encroachment on City property, including but not limited to the Applicant's negligent or wrongful acts, errors or omissions in the construction, erection, operation and continued maintenance of the encroachment in its location. The Applicant shall promptly pay the amount of any judgment rendered against City, its officers, employees and agents for any such indemnified claims, and reasonable costs and attorney fees incurred by City in the defense of such claims.

### **D. QUARTERLY ENCROACHMENT FEE**

Payment for the first quarter of the Outdoor Dining Encroachment Permit must be paid prior to the issuance of the Outdoor Dining Encroachment Permit. Payments can be made by credit card or check. Subsequent quarterly encroachment fees per square foot will be charged separately.

### **E. COPY OF ABC LICENSE FOR SERVING ALCOHOL ON DINING DECK ENCROACHMENT AREA**

Business owners must secure the appropriate licenses and permits from the State Alcohol Beverage Control Board to serve alcohol in the deck area. A copy of the license shall be provided at time of application submittal or prior to issuance of the Outdoor Dining Encroachment Permit.



## **6. APPROVAL**

The Director of Public Works is authorized to approve an outdoor dining application and to issue an Outdoor Dining Encroachment Permit on behalf of the City. The decision of the Public Works Director is appealable to the City Council on a form approved by the City. Appeals must be submitted no later than fourteen (14) days after any decision of the Public Works Director.

## **7. RENEWAL**

Approved permits will be valid for one year, following which applicants may apply for an annual renewal of an Outdoor Dining Encroachment Permit.

Plans will not be required if no significant changes are proposed; however, staff will at that time review the existing encroachment area for condition and consistency with the approved plans. If major changes are found between the field conditions and the plans on file, a new updated plan will be required.

The renewal application will be due, with fees paid, no later than sixty (60) days prior to the expiration of the existing Outdoor Dining Encroachment Permit. Applicants shall have all encroachment fees paid before applying for a renewal. Should applicants wish to make substantive changes to their dining areas, a new application with new plans and all supporting documentation will be required.

### **III. DESIGN STANDARDS**

#### **1. SIZE AND PLACEMENT**

Encroachments shall only be permitted On-Streets in commercially zoned areas with a speed limit of 25 miles per hour or less.

On-Street dining decks located in public parking areas shall only occupy a maximum of two parallel on-street parking spaces or three, on-street, head-in angled parking spaces. Notwithstanding the previous sentence, for commercial encroachments located entirely in front of the encroaching business' frontage (i.e., no encroachment into frontage of a neighboring property owner or business), a business may occupy a maximum three parallel on-street parking spaces or four head-in on-street parking spaces.

#### **2. PROHIBITED LOCATIONS**

- Blue Curb (ADA Accessible Parking Spaces): Dining decks may not be located in or impede access to a blue accessible parking space.
- Red Curb: Decks are not permitted in red zones.
- Any other area deemed by City staff to be unsafe or detrimental to the public good.

#### **3. SPECIAL LOCATIONAL CONSIDERATIONS**

Decks will require special review if proposed in the following areas:

- Yellow Curb (Commercial Loading), Green Curb (Short-term Parking) or White Curb (Passenger Loading Zone): Property owner may petition City staff to evaluate whether a color curb zone can be relocated on same block to accommodate a proposed dining deck. For passenger loading, if relocation will materially affect disabled access or no suitable replacement location can be identified, the application will be denied.
- Distance to fire hydrant and Driveways Per NFPA 1: 36 inches clear space shall be maintained around the circumference of fire hydrants. The same dimension is applicable to a driveway, depending on site conditions.
- Where the street grade exceeds 5%, additional design requirements and review may be required; and approval will be at the discretion of the Public Works Director. Items to consider in the design are: maintaining the deck surface to be ADA compliant, preventing deck sliding, maximum height of walls, etc.

#### **4. SITE SPECIFIC SAFETY ASSESSMENT**

As part of the application process, the City will conduct a site-specific engineering safety assessment to identify location-specific hazards and recommended mitigation measures to enhance safety for patrons and restaurant employees from roadside hazards and passing bicyclists and pedestrians. Key considerations will include, but are not limited to: unique roadway geometric conditions, proximity to traffic signals or other traffic control devices, sight distance requirements for adjacent roadways, driveways, and crossing locations, and presence of upstream on-street parking.

The result of this assessment may yield additional requirements, or modifications, beyond the minimum standards identified in these guidelines or denial as deemed appropriate by the Director of Public Works.

## **5. OBSTRUCTIONS AND UTILITIES**

Dining decks shall not obstruct any underground or surface utility or stormwater facilities, including, but not limited to, utility poles, gas valves, water valves, manhole covers, air release valves, fire hydrants, sewer laterals, and catch basins. All decks must allow for access to public utilities for maintenance and repairs. At no time should decks be bolted or affixed to the roadway or any other structure. Pouring concrete directly onto the right-of-way for decks is prohibited.

## **6. ENCROACHING ON NEIGHBORING BUSINESS FRONTAGES**

For on-street dining decks that encroach into a neighboring businesses frontage, applicants must demonstrate to the City notification to affected neighboring business and property owners. An on-street dining deck must be located at least partially in front of the business but may extend into another business' frontage with a maximum of one parallel parking space or one head-in angled parking space, whichever is applicable. Applicants are responsible for notification of neighboring businesses and must sign an affidavit verifying that adequate notice was given. The affidavit template will be provided by the City. In the event that more than one business applies for a specific encroachment area, the businesses will get priority for their own frontage. It is the City's discretion to approve, deny or revise any encroachment application.

Sharing of deck space either spatially (i.e., split in half between two businesses) or temporally (i.e., used in the morning by one business and the evening by the other) is allowed. Each entity sharing the space must provide separate proof of insurance, security deposit, and each must sign the encroachment permit application. However, the business must designate a single Outdoor Dining Encroachment Permit representative with the authority to make decisions related to the deck space.

If approved, applicant's authorization for an on-street dining deck will be valid for one year from issuance and will be re-evaluated at the time of renewal.

## **7. DRAINAGE**

Dining decks shall allow for curbside drainage flow. A continuous, unobstructed 12-inch wide by 6-inch high minimum clear space must be provided under the deck along the gutter line for the entire length of the deck; no obstructions of any kind are allowed in this clear space. Should this dimension prove infeasible, an alternate design must be provided by the applicant and approved by Public Works.

A metal screen with 1-inch by 1-inch mesh shall be used at both sides of the deck drainage to prevent trash or debris from entering under deck. The screen shall be easily removable to facilitate cleaning along the flow line as necessary.

## **8. PROPOSED STRUCTURE, COMPONENTS, AND AMENITIES**

The dining deck shall be built with structural integrity to ensure public safety. The

proposed structure and its components are built to support anticipated live loads and wind loads. The dining decks shall be constructed to comply with the minimum Wood Frame Prescriptive Provisions for Residential Construction (2022 California Residential Code)

Existing decks constructed before October 1, 2023, may apply to continue their use without substantial changes. The applicant must ensure that the minimum requirements are met, and that the structural integrity of the existing structures and materials are in good condition. All construction shall comply with the associated checklist, and other safety requirements. In this case, submitted plans must include language stating that "the deck is existing and the materials are in good condition for the intended use and comply with the guidelines." In this case, submitted plans must include the business owners statement certifying the assurance that the existing deck has been constructed to the minimum requirements and structural integrity. Any materials, including water barriers, brackets, lumber, flooring, etc., found to be damaged or not in compliance with the guidelines must be replaced prior to permit issuance.

## **9. TRAFFIC SAFETY ELEMENTS**

- a. A continuous rigid physical barrier is required to separate dining areas in the parking lane from vehicular traffic on all three sides open to the roadway. The underlying structure of the perimeter shall be composed of water-filled barriers. The barriers must be fastened (pinned) together for structural integrity and must satisfy at a minimum, the following requirements:
  - i. Barriers must be NCHRP-350 Accepted, Test Level 2 or MASH TL-2.
  - ii. The barrier must be filled with water per the manufacturer's specifications and shall be maintained filled throughout the duration of the permit.
  - iii. The barriers must be covered with a rigid framing system on all sides so as not to be visible by any patrons or passers-by.
  - iv. Waterfilled barriers shall be offset at a minimum 12 inches from the curb face to allow for the design of a 12-inch-wide opening on the sidewall for drainage.
  - v. Water-filled barriers are not required between the walls of adjacent decks. However, if an adjacent deck is removed, the owner of the remaining deck must install waterfilled barriers to ensure three sides of the dining area are protected; this will require an amendment to the approved site plan.
  - vi. Removable access panels/doors are required along barrier coverings to allow for easy inspection of each waterfilled barrier to ensure that it is filled. Barriers that leak shall be replaced immediately with new water filled barriers.
- b. The exterior perimeter walls for all new, or reconstructed dining areas, shall be offset a minimum of 8-feet from the edge of the adjacent travel lane in accordance with the Caltrans Highway Design Manual (HDM), 7th edition (2022), Topic 302, which references Caltrans Design Information Bulletin No. 79-04, for an 8-foot shoulder that acts as a clear recovery zone.
  - i. Public Works may consider exceptions to this requirement when traffic delineators are used per the attached exhibits.

- ii. Where proposed dining areas are located within the parking lane directly adjacent to the travel lane, and where the required clear recovery zone cannot be provided, approval will also be considered on a case-by-case basis subject to a site-specific engineering assessment and contingent on the Director of Public Works approval. At a minimum, on-street parking will need to be located immediately upstream of the dining area for safety and White flex post delineators shall be installed per attached exhibits.
  - iii. Perimeter walls shall be located a minimum of 2 feet from the end of an adjacent parallel parking stalls, and a minimum of 3 feet for angled or perpendicular parking, or as determined by the Public Works Department.
- c. Retroreflective object markers (Type P and OM1-3) and wheel stops shall be provided per the attached exhibits.

## **10. DECK DESIGN**

All dining decks shall be constructed of approved exterior grade materials that maintain the performance characteristics for exterior use. It is the deck permittee's responsibility to maintain all structural elements in good condition. Proposed materials shall ensure a safe and accessible walking surface. The City will perform periodic safety inspections after the on-street dining decks are open and operational. Any elements of the dining deck that show signs of damage, or cause a safety concern, must be replaced immediately. Loose particles, such as sand or loose stone, are not permitted.

On-Street dining decks must include a platform/deck that is flush with the sidewalk, the platform framing shall be a freestanding structural foundation that rests on the street roadway surface. No features or structural components may be permanently attached to the street roadway, gutter, curb, planting area, or sidewalk.

Decking shall be rated for exterior use and properly secured to the platform. The final flooring layer shall be a slip resistant material.

Weather resistant construction materials that are suitable for outdoor use are required, and all construction shall comply with the California Building Code. The horizontal maximum gap between the deck and the sidewalk, and any decking planks, must be less than one-quarter inch. The maximum vertical differential between the finished deck height and the height of the adjacent curb must be less than one-quarter inch.

## **11. FRAMING SYSTEMS**

Framing systems shall be constructed to comply with the minimum Wood Frame Prescriptive Provisions for Residential Construction (2022 California Residential Code)

Perimeter walls shall be constructed with a rigid framing system and completely cover all sides of the waterfilled barriers.

Perimeter wall frames shall be covered with cladding. The cladding shall be primed and painted on both sides or sealed with a waterproof coating on both sides. Alternative materials are acceptable, provided that they meet the requirements of durability and aesthetics. The applicant must submit alternate materials for approval with the initial plan submittal, to be considered, including photographs and specifications of the alternate materials.

Cladding shall be attached to the frame using screws or bolts (not nails). Screws shall not penetrate the water-filled barriers at any point.

Perimeter walls shall be fastened to the deck platform.

## **12. BOLTING TO ROADWAY**

For decks installed prior to October 1, 2023, that utilized bolting, the applicant is required to remove the bolts and repair the pavement to restore it to its prior condition.

## **13. 42" REQUIREMENT**

The perimeter walls shall have a maximum height of 42 inches when measured from the adjacent street level for proper street traffic line of sight. On a case-by-case basis, the Public Works Director may require a higher perimeter wall measured from the deck surface.

## **14. ELEMENTS HIGHER THAN 42"**

Vertical posts in excess of the 42-inch maximum height are allowed to support lighting, or other approved amenities in these Guidelines. Posts must be integrated into the structure of the framing system and attachment details shall be submitted for approval by Building & Safety. Posts may be placed at the corners of the barrier system and spacing must be a minimum of 8 foot spacing along the outer perimeter. Post heights must be listed on the plans and include the measurement from deck surface. Posts may not exceed 10 feet in height, with the exception of one post that may be provided as a riser for electrical connections over the adjacent sidewalk. Wood posts shall be a minimum size of 4-inches by 4-inches, and their installation shall be integrated into the structure of the frame. Alternative materials will be considered on a case-by-case basis. Framing systems shall be constructed to comply with the minimum Wood Frame Prescriptive Provisions for Residential Construction (2022 California Residential Code)

Posts or any other objects are not allowed to be mounted to the outside of the walls. Existing poles mounted in this fashion must be removed and reinstalled per the above.

## **15. SHADE STRUCTURES AND UMBRELLAS**

No roofs, easy ups, or similar structures are allowed in the dining deck area. Shade sails require a submittal of the manufacturer installation instructions or engineered design to reflect the recommended manner for attachment. Coverings may not be attached to any public or City-owned facilities or equipment. Sails are to be installed above the dining deck at a minimum height of 10 feet, and may extend over the sidewalk; otherwise, shades shall not extend onto any other area outside of the perimeter of the dining deck. All materials must be flame-resistant in accordance with the provisions set forth in California Code of Regulations, Title 19, Section 310. Sails and umbrellas shall not adversely affect visibility of adjacent properties. Attachments to buildings require Building and Safety review.

Umbrellas cannot extend past the perimeter of the deck or obstruct visibility into the deck. For example, they must not be angled or bent in a way that obstructs visibility into the deck. Umbrellas must be placed at least 5 feet away from propane heaters. Umbrellas must be closed and secured at the end of each day.

## **16. PUBLIC VIEW OF THE OCEAN**

All improvements, fences, railings, gates, tables, chairs, umbrellas, furniture or any other items or structures shall be designed and used in a way that protects all ocean views from the public right-of-way. The City Manager or designee shall retain the complete discretion to direct any permittee to curtail the use of any umbrellas, furniture or other items or structures to protect the public view of the ocean.

Clear plexiglass wind screens up to 24-inch in height above the perimeter wall may be proposed as part of the application and shall include calculations for wind loading and details for the method of attachment to the walls. Windscreen requests require Building and Safety review.

## **17. DECK AMENITIES**

Bars, service and cashier stations, and food preparation areas are prohibited; however, applicants may provide small storage area(s) for certain amenities, non-perishable items such as menus, silverware, certain condiments, napkins, and subject to approval by the City and per Department of Public Health guidelines.

## **18. ACCESSIBILITY**

All outdoor dining areas must comply with the Americans with Disabilities Act (ADA). Plans must show the location and dimensions of the ADA designated seating. The business must provide the minimum amount of seating required for ADA, but not less than one (1) accessible table available for wheelchair users. Where tables or counters are provided, at least one of each feature shall be wheelchair accessible. A minimum 4-foot maneuvering clearance is required from the front edge of wheelchair seating area to the table or counter. "Café" tables are not accessible, because the center support column does not allow a wheelchair to roll under the table.

## **19. HEATING**

Propane Heaters (portable) with enclosed flames are allowed. Any proposed propane heaters must be listed on the plan and include manufacturer specifications. It is the applicant's responsibility to ensure that all Propane Heaters are used per the recommendations provided by the manufacturer. Propane Heaters should be periodically inspected for serviceability. Propane tanks cannot be stored inside the deck area and must be stored in an upright fixed position to prevent damage and potential leaks. Propane heaters may not be placed underneath overhead covers, awnings, trellis', inside buildings or tents and they must have 5-foot clearance from any flammable/combustible materials. Propane heaters must maintain 6-foot clearance, both vertically and horizontally, from any street tree. The proposed storage areas for propane tanks must be noted on the plans.

Electric heating may be proposed and will be reviewed for approval on a case-by-case basis. The proposed electric heating must include electrical calculations and a single line diagram prepared and stamped by an electrical engineer.

## **20. ELECTRICAL SERVICE, LIGHTING, WIRES, AND OTHER UTILITY CONNECTIONS**

All proposed electrical specifications must be included on the plans, and all

equipment must be weatherproof and be listed and rated for outdoor use. Decorative lighting may not exceed 40 watts. Overhead electrical service to the decks may be installed using a hard wired (permanent) method or the installation of an outdoor rated extension cord will also be allowed.

Electrical service that is installed using a hard-wired method shall comply with the 2022 California Electrical Code. When using the installation of an outdoor rated extension cord. The cord must be serviced using a weatherproof GFCI protected electrical outlet installed on the exterior of the building at a minimum of 10 feet above the walking surface and properly secured to a guy-wire. Installation of weatherproof electrical boxes at the building shall be installed using listed equipment that is rated for exterior use and installed per the manufacturer's installation requirements. Any electrical work will require Building and Safety review.

One weatherproof GFCI protected electrical outlet installed at a height of 10 feet is allowed at the deck to power string lighting and speakers only. No other electrical outlets are permitted in the deck area.

No other utility lines (e.g., gas, water, etc.) may be connected to dining decks.

## **21. INSPECTIONS**

Prior to operation of any on-street outdoor dining deck, the applicant shall obtain approval of inspections from all applicable agencies, including but not limited to, Public Works Department and Community Development Department.

## **22. BICYCLE PARKING**

Installation of a bike rack(s) adjacent or affixed to the dining deck are strongly encouraged if space is available. A proposed location for a bicycle rack or bicycle corral will be considered and evaluated by Public Works staff before approval. The City of Hermosa Beach will provide and install bike racks, where feasible, unless deck permittee chooses to provide and install their own, in which case the rack design, specifications and installation must be reviewed and inspected by Public Works staff.

Bike racks are to be placed on the downstream side of decks provided the area is safe, they do not obstruct parking, vehicular or pedestrian traffic and must not encroach into the 2-foot offset between the deck and the adjacent parking stall. To request a review of the bike rack location, it must be shown on the site plan when submitting the application for review.

All new requests for Off-Street Commercial Outdoor Dining Encroachment decks that are not preexisting must include a bike rack adjacent to the dining deck.

The area dedicated to a bike rack will be deducted from the cost of the encroachment area square footage.

## **23. AESTHETICS/SIGNS**

The City encourages all deck permittees to decorate their on-street dining decks in a manner that is appealing to the community and patrons. Though the City will have ultimate discretion on all aesthetic elements of the decks, it is highly encouraged to design and implement appealing decorative schemes on the outside walls (those walls facing the street) covering the water-filled barriers. Advertisements are



prohibited and décor must not explicitly promote the business nor its products and services (i.e., no representations of food items).

Additionally, the City will offer monetary grants to any business that repaints, improves or beautifies deck walls in a manner satisfactory to the City. A separate application for this grant is required and must include renderings and descriptions of the proposed improvements. The grant will take the form of a reduction of the permit fee.

Signage, banners, and other advertisements are prohibited on the dining decks except in a permanent, four square-foot sign stating the business name and/or logo. Decks must also display signs of any neighboring business whose frontage is obscured by the deck. These signs must also be no larger than four square feet and must be developed in cooperation with the neighboring business owner. Signs may be located on the outside wall of the deck and must be incorporated into the deck décor in an aesthetically pleasing way. The sign may be painted or incorporated into the wall itself and must be installed flush with deck walls



## **STANDARDS OF OPERATION**

### **1. OPERATING HOURS**

Use of the encroachment area is limited to the hours of operation of the adjacent food establishment, not to exceed 12:30 a.m. Hours of operation must be within the current Conditional Use Permit (CUP) for the business. The more restrictive of the two closing times applies.

However, if in the sole discretion of the City Manager or designee, an earlier closing time is warranted, then the City Manager or designee may condition an encroachment permit to require on an earlier closing time. The allowable hours of operation within the outdoor encroachment area shall be consistent with Hermosa Beach Municipal Code Chapter 12.16.

### **2. SERVICE OF ALCOHOL**

Alcoholic beverages may only be offered, sold, or consumed within the encroachment area pursuant to a valid California Department of Alcohol Beverage Control license for the area. Any other limitation on the business involving the sale or consumption of alcohol shall also apply in the encroachment area. If, in the sole discretion of the Police Chief, the encroachment area has demonstrated a repeated pattern of behavior involving the service or consumption of alcohol that violates this chapter or any other City permit or provision of law, then the City may prohibit the service of alcoholic beverages within the encroachment area.

Establishments serving alcoholic beverages that apply for an Outdoor Dining Encroachment Permit shall meet the additional requirements of the State of California Alcohol Beverage Control Board. Seating arrangements shall provide for adequate space for food and beverage service (i.e., space for plates, glasses, utensils, etc.). Arrangements or furniture designed solely for beverage services are prohibited.

#### **Conditional Use Permits (CUP)**

All applicable existing conditional use permit (CUP) provisions for the adjoining commercial establishment are applicable to and shall be enforced within the encroachment area. Noise and other city requirements shall be strictly enforced as if the encroachment area were an extension of the permittee's place of business. If the encroachment permit requirements conflict with the CUP requirements, the stricter requirements shall prevail.

### **3. UNUSED DECKS**

Any deck that goes unused for 30 days or more may have its application revoked and be required to be removed. If operator is unable to remove the dining deck, the City shall withdraw from the required deposit monies to remove the deck and dispose of the materials.

### **4. PUBLIC USE OF DINING DECKS**

All on-street decks are available for use by the public, outside of normal business operation hours.

### **5. CLEANLINESS**

Restaurant management shall keep the outdoor dining area clear of litter, graffiti, food scraps, and soiled dishes and utensils at all times. Trash receptacles shall be provided in outdoor dining areas used for consuming take-out items. Trash receptacles shall only be provided during operating hours, and removed when the business is closed.

At the end of each business day, establishments are required to clean (sweep or power wash) the area in and around the outdoor dining area and remove the debris to a closed receptacle. No debris shall be swept, washed, or blown into the sidewalk, gutter, or street in conformance with the City's NPDES regulations.

Furniture and materials stored on the dining decks outside of regular business hours must be kept to a minimum. Furniture and materials must be stacked safely and in a manner that minimizes their footprint yet does not exceed five feet in height. Stored materials must also be moved to a corner of the dining deck at the end of each day and securely locked together.

### **6. DRAINAGE**

It will be the responsibility of the applicant to ensure that drainage paths are kept clean and clear of litter and debris, and their parts are replaced as needed to allow for proper functioning drainage operations.

Daily removal of litter and debris from the deck and adjacent area, as well as removal of debris and/or pooled water from the screened deck drainage inlets and underneath the deck, should be performed once per week at a minimum.

Additional drainage channels running under the deck perpendicular to the curb (from street side of deck to curb) are strongly encouraged to help minimize flooding risk and deck damage.

At locations of curb drains no decks are allowed over them without prior engineering assessment and design by a professional engineer.

After rain events, inspection and cleaning of screened drainage inlets and area underneath deck by the business permittee is required.

### **7. HEIGHT REQUIREMENTS**

Any approved hanging, or overhead objects, including umbrellas, must have a minimum vertical clearance of at least 8 feet (or 96 inches), measured from the sidewalk or deck surface level, and cannot exceed 10 feet (including poles, posts, canopies, lighting, signs) from the deck surface; this excludes the electrical connection over the sidewalk detailed in Section 20—Electrical Service.

Clearance under awnings and canopies shall comply with Building Code requirements. Any approved overhead objects must not extend beyond the exterior edge of the deck in any direction.

All other visual obstructions located 42-inches above the deck surface that are not covered in these Guidelines are not permitted.

## **8. TELEVISIONS**

Televisions are prohibited within the encroachment area.

## **9. USE OF BARRIER WALLS**

Loose items on top of the barrier walls are prohibited. Barrier walls may not be used for seating, or food and drink service.

Vertical obstructions located above the top of the perimeter wall, including, but not limited to posts, plants, or other decorations, on top of the barrier wall may be considered for approval provided they are fully secured to the barrier wall, do not extend beyond outer edge of the barrier wall, do not block the visibility of the dining area for safety, block ocean views, nor create a sight line obstruction impacting roadside safety or visibility of traffic control devices.

Plants should be in planters that are integrated into the barrier system design. Plants must be maintained by the permittee.

## **10. MUSIC**

Speakers for producing ambient music on the dining decks must comply with relevant Municipal Codes related to noise and nuisances (HBMC 8.24 and 8.28). Installation of speakers to provide ambient music on the decks will require an amplified sound permit, to be obtained from the Public Works Department (currently \$201). These permits are valid for one year and are revokable at any time should a violation be observed.

## **11. NOISE**

All dining decks shall comply with all Hermosa Beach Municipal Code Guidelines, including the applicable noise ordinances regulating amplified noise.

## **12. LIGHTING**

Lighting within the perimeter of the dining deck may only be illuminated during business hours and should have an automatic control or timer for shut off when daylight is available or during non-business hours. Lighting may not flash, create a glare for drivers, or illuminate neighboring properties or decks.

The use of candles is prohibited.

## **13. HEATING**

No open flames are permitted on the decks. Patio heaters with enclosed flames are allowed. Electric heaters are allowed.

Regulations for Propane Heaters are as follows:

- Liquid Propane Gas (LPG) is flammable and can be readily ignited by a spark. If confined or exposed to fire, propane poses an explosive hazard.
- Only one additional propane tank can be stored on-site. Propane tanks cannot be stored inside or under coverings. They must be stored in an upright fixed position to prevent damage and potential leaks.
- Propane heaters may not be placed underneath overhead covers, awnings, trellis, inside buildings or tents and must have 5-feet clearance from any flammable/combustible materials.
- Propane heaters must maintain 6-feet clearance, both vertically and horizontally, from any street tree.

## **14. SIGNAGE**

No signs or banners of any kind shall be placed, displayed, or erected on barriers with the exception of the business name sign and signs for obstructed businesses, as described elsewhere in these guidelines.

## **15. MAINTENANCE**

All furnishings, decks and barriers shall be maintained free of appendages or conditions that pose a hazard to pedestrians, vehicles, or cyclists, and ensure visually impaired pedestrians can detect the objects safely. No appendage shall extend outside the encroachment area. No persons, including customers, shall place anything within or near the encroachment area that could pose a tripping hazard or interfere with accessibility of vehicles, pedestrians, or cyclists, such as animals tied to signs or utility poles, bicycles, etc.

The permittee is responsible for the continued maintenance of the encroachment area, maintenance of surface materials, graffiti removal, and upkeep of any structural work necessary.

The deck structure, electrical connection and maintenance of the wood and flooring of the encroachment area in general, including artwork and painting, shall be periodically maintained to prevent loose screws, split wood, damaged wires, tripping hazards, and general disrepair of the encroachment area.

Each water barrier must be filled with water per the manufacturer's specifications and shall be maintained filled throughout the duration of the permit. The water filled barricades shall be periodically inspected for water level to ensure there is no water leakage. Inspection by business staff shall be done through the fill opening in the wood cover. Any water barrier that does not hold water must be removed and replaced immediately.

Permittees who fail to maintain a clean, safe, and accessible outdoor dining area may be subject to enforcement, as described below and in the HBMC. If maintenance issues are not resolved, the encroachment permit may be revoked, and the business will be required to remove the dining deck at their own expense.

## **16. PLANTS**

Plants require regular watering and plant maintenance. Stressed or dying plants shall be promptly replaced. Because plant fertilizers contain materials that can stain the pavement, water drainage from any plants onto the adjacent right-of-way shall not be allowed. Potted plants shall have saucers

or other suitable systems to retain seepage. Flowerpots and planters shall be kept in good condition, any damaged pot or planter shall be immediately removed from the encroachment area.

## **17. REPAIR OF DAMAGE**

It is the permittee's responsibility to ensure no damage to the public right of way occurs. The permittee shall be responsible for the restoration of any damage to the public right of way caused by the installation, or use of, the dining deck, immediately upon removal. All repair work shall be completed per City requirements, in coordination with City staff, and with required permits.

## **18. REMOVAL AFTER PERMIT TERMINATION**

Upon termination of the Outdoor Dining Encroachment Permit, the Permittee shall immediately remove the barriers around the outdoor dining area, return the right-of-way to its original condition, and remove all personal property, furnishings, and equipment from the encroachment area. The deposit shall be refunded to the permittee less any offset for repairs or non-payment of fees.

## **19. OTHER GOVERNMENTAL APPROVALS**

These guidelines regulate the design and operation of on-street dining deck encroachment areas. However, they do not provide information on all the government agency requirements for starting a new restaurant or expanding an existing one. Business owners must secure the appropriate licenses and permits from the State Alcohol Beverage Control Board, Los Angeles County Health Department, the City of Hermosa Beach Community Development Department, and the Business License Office.

Encroachment areas shall comply with all applicable building and fire code regulations. Encroachment areas shall also comply with all State and federal laws providing access for the disabled.

## **20. PERMANENCE**

The encroachment area is not a vested right and is a revokable, temporary installation within the Public Right of Way. While durability and quality of materials is desired and recommended, any improvements, fences, railings, gates, tables, wiring, chairs, or other equipment related to the Commercial Encroachment shall be installed in such a way that, within ten (10) days' notice from the City, can be entirely removed and the area be returned to its previous condition prior to the construction of the dining deck.

The City reserves the right to enter upon the encroachment area for purposes of inspection, replacement, repair, or maintenance of public facilities above, on or under the right-of-way. For non-emergency, planned work or repairs to the City or public utility infrastructure, the City will provide the permittee with advance notification at least ten (10) days prior to commencement of work and it will be the responsibility of the permittee to remove the encroachment at their cost.

## **21. REGULATIONS WITHIN THE PUBLIC RIGHT-OF-WAY**

The encroachment shall be designed and operated in compliance with any regulations specific to public parking areas or vehicular streets adopted by resolution of the City Council and any further regulations promulgated by the City Manager or designee in furtherance of City Council direction.

## **22. OTHER PERMITTEE RESPONSIBILITIES**

The encroachment area shall be managed, operated, and maintained as an integral part of the adjacent dining establishment.

The permittee is responsible for running and operating the outdoor dining area and shall not delegate or assign that responsibility. Outdoor dining areas shall be continuously supervised by management. Patrons are prohibited from disturbing customers or passersby on the adjacent right-of-way by loud, boisterous, and unreasonable noise, offensive words, or disruptive behavior.

If disposable materials are used, the establishment shall comply with all applicable City recycling and waste diversion programs.

All plans and permits for the outdoor dining area approved by the City shall be kept on the premises for inspection at all times when the establishment is open for business.

On-street dining deck permittees are responsible for providing and maintaining access to the City's infrastructure (e.g., utility poles, gas valves, manhole covers, wastewater systems, fire hydrants, cisterns and catch basins, underlying pavement, and curb and gutter) Deck permittees must maintain the safety and cleanliness of the sidewalk and parking lane space and its adjacent area.

Outdoor dining areas shall be operated in a manner that meets all requirements of the Los Angeles County Health Department and other applicable regulations.

## **23. 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, Building Inspector, Police Department Official, or Fire Department Official of the City. A copy of the notice shall be filed with the Public Works Director. The Permittee shall immediately cure the violation upon receipt of notice. If the violation is not cured within the timeframe prescribed on the notice to the Permittee, the City Manager or City Manager's designee may suspend or revoke the Encroachment Permit.

The Outdoor Dining Encroachment Permit is in the nature of a revocable license and is revocable at will by the City. The City Manager or City Manager's designee may revoke an Outdoor Dining Encroachment Permit upon ten (10) days written notice, with or without cause. The City Manager or City Manager's designee's decision may be appealed to the City Council pursuant to the provisions of Chapter 12 of the Hermosa Beach Municipal Code. The City Council's decision shall be final.

In the event that an imminent safety hazard is identified, and the permittee fails to address the issue, the City reserves the right to remove or mitigate the safety issue immediately at the expense of the permittee. Violations are also subject to citation.

# ON-STREET COMMERCIAL OUTDOOR DINING ENCROACHMENT PERMIT APPLICATION

## GENERAL INFORMATION

The Hermosa Beach Outdoor Dining Program was established to help improve and enliven Hermosa Beach's commercial areas by allowing businesses to create outdoor dining areas in the public right-of-way, including on-street dining decks.

## APPLICABILITY

- NEW OUTDOOR DINING ENCROACHMENTS **(ALL EXISTING DECKS MUST REAPPLY)**
- MINOR ALTERATIONS OF OUTDOOR DINING ENCROACHMENTS
- RENEWALS

**APPLICATION FEE(S)      \$ 1,895.24**

**TERM OF ENCROACHMENT PERMIT: ONE YEAR FROM DATE OF APPROVAL**

## APPLICATIONS MUST INCLUDE:

1. COMPLETED APPLICATION (SEE PAGE 2)
2. SITE PLAN (SEE PAGE 3 FOR CHECKLIST)
3. SITE PLAN CHECKLIST
4. APPLICATION FEE
5. AFFIDAVIT
6. APPLICATION FOR BEAUTIFICATION GRANT (OPTIONAL)

Applications are not considered complete unless and until all above-mentioned items are submitted, including items detailed in the Site Plan checklist.



## HOW TO SUBMIT:

**ELECTRONICALLY:** PWPLANCHECK@HERMOSABEACH.GOV

SUBJECT LINE: "[BUSINESS NAME] - ON-STREET OUTDOOR DINING APPLICATION"

**IN-PERSON:** PUBLIC WORKS DEPARTMENT – HERMOSA BEACH CITY HALL

The requirements for On-Street Commercial Outdoor Dining Program are governed by Hermosa Beach Municipal Code (HBMC) Chapter 12.16.090. The City has prepared the **On-Street Dining Deck Design and Operational Guidelines, dated February 2024 ("Guidelines")** to assist businesses in obtaining encroachment permits.

## ON-STREET COMMERCIAL OUTDOOR DINING PERMIT APPLICATION

**Application Type (circle one):**                      **New**                      **Minor Alteration**                      **Renewal**

### Applicant Information

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

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State & Zip: \_\_\_\_\_

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

Contractor License Number and Insurance Information (if known). A no Fee staging permit for construction is required:

### Business - Property Owner Information

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

Address: \_\_\_\_\_ City: \_\_\_\_\_ State & Zip: \_\_\_\_\_

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

### Outdoor Dining Design Standards and Operations

Where is the proposed outdoor area to be located?

What is the proposed square footage of the outdoor area?

What is the sidewalk width?

### Outdoor Dining Design Standards and Operations

Regular Business Hours of Operations:                      Open                      Close

What are the proposed hours of operation of the encroachment area?

### Alcohol Services (if applicable)

Will alcohol be served in the outdoor area? ☐ Yes    ☐ No

What type of ABC License does the existing establishment have?

### Certification

**Under the penalty of perjury, I hereby certify that all the information contained herein is true and correct and I am a duly authorized representative of the above-listed business. I further certify that I have read, understood, and accept the terms of the On-Street Dining Deck Design and Operational Guidelines, dated February 2024 ("Guidelines"). I agree to operate and maintain the premises in compliance with all applicable rules and regulations. Failure to do so may result in revocation of any permit issued for this application.**

\_\_\_\_\_  
Applicant Print Name

\_\_\_\_\_  
Applicant Signature

### FOR CITY USE ONLY

Permit Number: \_\_\_\_\_ Date Received: \_\_\_\_\_

#### Community Development Review Required?

☐ Yes    ☐ No

Police Review Required? ☐ Yes    ☐ No

#### Community Development Review Approved?

☐ Yes    ☐ No

Police Review Approved? ☐ Yes    ☐ No

**APPROVED BY:** \_\_\_\_\_

## ON-STREET OUTDOOR DINING SITE PLAN CHECKLIST

All site plans must include the following items and comply with the Section III, Design Standards, of the Guidelines:

**(Please include completed checklist with application submittal)**

NOTE: Information may be located on separate diagrams or sheets, if necessary.	
<input type="checkbox"/>	1. Stamped by a licensed design professional (i.e., architect or civil engineer licensed in the State of California).
<input type="checkbox"/>	2. Drawn to scale, include north arrow, legend, all property lines, and dimensions of all major elements, existing and proposed.
<input type="checkbox"/>	3. Location(s) of existing street, traffic, and sidewalk elements, including infrastructure. Include parking meter numbers.
<input type="checkbox"/>	4. Street drainage details, including flow direction, catch basins, access
<input type="checkbox"/>	5. Visible utilities (e.g., storm drain, water valves, etc.); and vertical obstructions in the encroachment area or between the building face and the dining area (e.g., streetlights, trees, etc.).
<input type="checkbox"/>	6. Delineate the entire frontage area from the building to the centerline of street as well as the curb line, and frontage of immediately adjacent properties.
<input type="checkbox"/>	7. Dimensions of the outdoor dining area and entry points from the sidewalk.
<input type="checkbox"/>	8. Proposed materials for the flooring and verification of ADA compliance at the curb as well as proper drainage opening at the curb line.
<input type="checkbox"/>	9. Provide detail, intended use, and attachment details for any vertical elements (e.g., posts, planters, sunshade, umbrellas, lighting, speakers, etc.), that exceed the height of the exterior barrier.
<input type="checkbox"/>	10. Accessibility requirements, including Americans with Disabilities Act (ADA), including path of travel, amenities, and signage.
<input type="checkbox"/>	11. Seating and furniture plan (dimensioned) for the proposed encroachment area.
<input type="checkbox"/>	12. Plan view, section view(s), and details as necessary to show the proposed design and height of elements in relation to the roadway and sidewalk surface.
<input type="checkbox"/>	13. Locations of electrical connections and outlets, existing and proposed, including method of attachment and vertical clearances.
<input type="checkbox"/>	14. Provide details for the fabrication of the covering for the barriers, including the necessary framing, exterior materials, hardware used, and any proposed attachments to the exterior of the barrier coverings and connections to the flooring system.
<input type="checkbox"/>	15. Provide images of any signs or artwork proposed on the barrier covering.
<input type="checkbox"/>	16. Show the proposed arrangement of the pinned water-filled barriers.
<input type="checkbox"/>	17. Bicycle storage placement and details if applicable.
<input type="checkbox"/>	18. The City has the right to request additional documents as deemed necessary by the Director of Public Works, or designee.

**CITY OF HERMOSA BEACH**

**COMMERCIAL OUTDOOR DINING  
ENCROACHMENT PERMIT AND COVENANT**

**RECITALS**

A. THIS ENCROACHMENT PERMIT is made and entered into at Hermosa Beach, California, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, By and between the CITY OF HERMOSA BEACH, a municipal corporation in the county of Los Angeles, State of California, hereinafter referred to as "CITY", for the purpose of permitting a portion of the public right-of-way to be used for outdoor dining, and:

---

Hereinafter referred to as "PERMITTEE" which parties do agree as follows:

B. PERMITTEE represents that they are the owners of the business located in Hermosa Beach, legally described as follows: \_\_\_\_\_ Lot \_\_\_\_  
Block \_\_\_\_\_ Hermosa Beach Tract \_\_\_\_\_ Commonly  
known as: \_\_\_\_\_ Hermosa  
Beach, CA 90254 \_\_\_\_\_  
And doing business as \_\_\_\_\_.

C. The parties further agree that an encroachment permit application was presented to the Public Works Department of the CITY for permission to encroach in and over a portion of the public right-of-way at: \_\_\_\_\_  
for the sole purpose of outdoor dining with improvements consisting of the following:  
\_\_\_\_\_ square feet of CITY easement to be used for outdoor dining. An exhibit of the proposed improvements and encroachment is on file in the Public Works Department of the CITY and is by reference incorporated herein and made a part hereof.

D. The term of this permit shall be issued for an initial one-year term, subject to renewal for each subsequent year at the rate of \_\_\_\_\_ per square foot for \_\_\_\_\_

\_\_\_\_\_ square feet, for a monthly rate of (\$\_\_\_\_\_), subject to annual increases. The rate shall be paid quarterly, in advance, (\$\_\_\_\_\_ quarterly). The payment schedule is as follows:

**PAYMENT DUE**

**FOR**

July 1, Every Year	July, August, and September,
October 1, Every Year	October, November, and December
January 1, Every Year	January, February, and March,
April 1, Every Year	April, May, and June,

As explained below, this Encroachment Permit is revocable at any time and for any reason by the City at the sole discretion of the City.

E. PERMITTEE further agrees to deposit a cash deposit to be held by the City to guarantee the removal of the improvements. This deposit shall be in the amount of \$\_\_\_\_\_ and is evidenced by receipt number \_\_\_\_\_. This deposit shall be held by the CITY to provide for the removal of improvements on the public right-of-way in the event the PERMITTEE does not restore the area upon the revocation, termination or expiration of this Encroachment Permit. The encroachment improvements shall be removed by the PERMITTEE at no cost to the CITY upon a written notice to the PERMITTEE from the CITY. In the event PERMITTEE does not remove the improvements and restore the area, the City may, in its sole discretion, use the cash deposit to remove the improvements and restore the area.

**PERMIT**

1. Encroachment Permit. A revocable encroachment permit is hereby granted to the PERMITTEE on the right-of-way described in the recitals hereinabove as described in the drawing attached hereto as Exhibit A in accordance with the provisions of Chapter 12.16 of the Hermosa Beach Municipal Code and the provisions of this permit.

2. Term. This permit shall take effect on the date set forth hereinabove and shall remain in effect until and unless revoked by City or voluntarily relinquished or abandoned by PERMITTEE or the owner of the property "PROPERTY OWNER" at any time.

For the sake of clarity, either the PERMITTEE or the PROPERTY OWNER may either jointly or solely abandon this Encroachment Permit at any time."

3. Termination. This permit is revocable at any time by the City, with or without cause, in City's sole discretion.

4. Assignment. This permit shall not be assigned or transferred.

5. Indemnification. PERMITTEE shall indemnify and hold harmless the City, its officers, employees and agents from and against all claims, causes of action, liabilities and damages for injuries to persons and property, including reasonable costs of defense and attorney fees, arising from PERMITTEE's encroachment on City property as described in Exhibit A, including but not limited to PERMITTEE's negligent or wrongful acts, errors or omissions in the construction, erection and continued maintenance of the encroachment in its location. PERMITTEE shall promptly pay the amount of any judgment rendered against City, its officers, employees, and agents for any such indemnified claims, and reasonable costs and attorney fees incurred by City in the defense of such claims. It is understood that the duty of the PERMITTEE to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve the PERMITTEE from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

9. City's right of entry. PERMITTEE acknowledges the City's absolute right to enter upon the encroachment area for purposes of inspection, replacement, repair, or maintenance of public facilities, including the public right-of-way, above, on or under the right-of-way and PERMITTEE expressly waives any and all claims for damages to its encroachment resulting from such actions. Further, PERMITTEE expressly acknowledges that the City may have to resurface or maintain the public right-of-way which requires the PERMITTEE to remove any improvements at its sole cost.

10. Damage to right-of-way. PERMITTEE assumes responsibility for all damage to City's right-of-way caused by construction or maintenance of the encroachment and shall reimburse City for correction of any such damage. Upon failure of the PERMITTEE to reimburse City, the cost incurred by City in removing the encroachment shall be a debt of the PERMITTEE to the City, and recoverable by City in any manner provided by law.

11. Restoration of premises. Immediately upon receipt of revocation notice, PERMITTEE shall, at its sole expense, remove the improvements related to the encroachment and restore the property to its condition prior to placement of the improvements by any deadline given by the City. In the event PERMITTEE fails to do so, City shall have the option of removing the encroachment at PERMITTEE's expense and PERMITTEE waives all claims for damage to the encroachment or PERMITTEE's adjacent

property or improvements resulting from such removal. The cost incurred by City in removing the encroachment is a debt of the PERMITTEE to the City, and recoverable by City in any manner provided by law.

12. Taxes. PERMITTEE acknowledges that this permit may create a taxable interest and that PERMITTEE shall be solely responsible for satisfaction of any property taxes levied on the property.

10. Compliance with Hermosa Beach Municipal Code. PERMITTEE shall perform all work in full compliance with all applicable codes, ordinances, and laws, and obtain all necessary permits.

11. Maintenance and Operation. During the term of this permit, PERMITTEE shall at its sole expense maintain and operate the encroachment area in good condition and appearance, and in accordance with all ordinances, and the City's On-Street Dining Deck Design and Operational Guidelines, and shall not allow a nuisance condition to exist on the encroachment area.

12. Insurance. PERMITTEE, at the PERMITTEE's own cost and expense, shall procure and maintain, for the duration of the permit, the following insurance policies:

(a) Workers Compensation Insurance as required by law. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the CITY at least thirty (30) days prior to such change.

(b) General Liability Coverage. PERMITTEE shall maintain commercial general liability insurance in an amount of not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this permit or the general aggregate limit shall be at least four million dollars (\$4,000,000)

(c) Endorsements. The general liability insurance policy shall be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California, or which is approved in writing by City, and shall be endorsed as follows:

"The CITY, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of the construction, improvement or exploitation of any of the improvements or activities authorized by this Encroachment Permit."

(d) The general liability policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute with this policy.

(e) The general liability insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

(f) The general liability insurer waives all rights of subrogation against the CITY, its elected or appointed officers, officials, employees, or agents.

(g) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.

(h) The insurance provided by the general liability policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the CITY.

(i) Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, PERMITTEE shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

(j) PERMITTEE shall provide certificates of insurance with original endorsements to the CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of activities under this permit. Current certification of insurance shall be kept on file with the CITY at all times during the term of this Agreement.

**In the event PERMITTEE or PROPERTY OWNER sells, transfers, leases, or otherwise conveys any interest or right of possession in the property, PERMITTEE or PROPERTY OWNER shall provide any such purchaser, lessee, or transferee a copy of this instrument.**



IN WITNESS WHEREOF, permittee has executed this Encroachment Permit and Covenant on the date first written above.

\_\_\_\_\_  
PROPERTY OWNER (Signature)

\_\_\_\_\_  
PROPERTY OWNER (Print)

\_\_\_\_\_  
PERMITTEE (Signature)

\_\_\_\_\_  
PERMITTEE (Print)

APPROVED BY:

\_\_\_\_\_  
JOE SANCLEMENTE  
DIRECTOR OF PUBLIC WORKS

ATTEST:

\_\_\_\_\_  
MYRA MARAVILLA, CITY CLERK

