



City of Phoenix

**DECLARATION ESTABLISHING LOCAL EMERGENCY
TEMPORARY REVOCABLE PERMIT AND WAIVING CERTAIN
FEES FOR USE OF RIGHT-OF-WAY**

WHEREAS, On March 11, 2020, the Governor of the State of Arizona, Douglas A. Ducey, determined that the COVID-19 outbreak presents conditions in Arizona that justified his declaration of a State of Emergency; and

WHEREAS, on March 20, 2020, the Mayor and the Council of the City of Phoenix declared local emergency to help stop the spread of COVID-19 in the City of Phoenix;

WHEREAS, the CDC has advised that outdoor seating with appropriate spacing may be less risky than indoor seating and has suggested that restaurants prioritize outdoor seating and increased ventilation to mitigate the risk of COVID-19 transmission; and

WHEREAS, as a result of the COVID-19 outbreak and the subsequent effort to prevent the spread of the virus, many commercial activities in the City of Phoenix have experienced significant slowdown; and

WHEREAS, restaurants are one of the commercial activities that have suffered significant slowdown; and

WHEREAS, restaurants within the City of Phoenix are critical for the economy and health of the City, businesses, and the community.

NOW, THEREFORE, BE IT DECLARED BY THE CITY COUNCIL OF THE CITY OF PHOENIX as follow:

SECTION 1. A Local Emergency Temporary Revocable Permit (“Permit”) is established to allow temporary use of public right-of-way for outdoor dining facilities, to follow the general form set forth in **Exhibit A**. The Permit will be issued by the Street Transportation Department and will automatically terminate when City Council terminates the local emergency that was declared on March 20, 2020.

SECTION 2. The Street Transportation Director is authorized to waive the fees typically associated with private use of the public right-of-way, including those fees established under Phoenix City Code §§ 31-81(A) (revocable permit application fee), 31-81(C) (revocable permit annual fee), and 36-31.2(D).

PASSED by the City Council of the City of Phoenix this 1st day of July, 2020.

Kate Kelly
Mayor of the City of Phoenix

ATTEST:

Juan Acosta City Clerk



APPROVED AS TO FORM:

C. Meyer City Attorney

REVIEWED BY:

Edzo City Manager

**LOCAL EMERGENCY TEMPORARY REVOCABLE PERMIT
CITY OF PHOENIX, ARIZONA REVOCABLE PERMIT NO. RP-XXXXX**

CITY OF PHOENIX CLERK FILE NO. _____

Pursuant to Phoenix City Code Section 31-80 et seq., as amended, the City of Phoenix (the "City") Street Transportation Department, as authorized by the City Council, on this _____ day of _____, _____, hereby issues a local emergency temporary revocable permit (the "Permit") to [Owner Name], a[n] [State] [Resident/Corporation/LLC/Sole Proprietor/etc.] (the "Permittee") for the use and maintenance of a [Name of Encroachment] within the City public right-of-way (the "Encroachment"). The Encroachment as authorized by this Permit is shown on the attached Exhibit "A". (City and Permittee are collectively referred to as "Parties," or individually as "Party.")

I. ADJOINING REAL PROPERTY:

The Encroachment adjoins real property described as follows:

[Enter legal description of property and informal street address here.]

THIS PERMIT IS SUBJECT TO THE FOLLOWING CONDITIONS:

II. PERMIT TERM:

This Permit is valid from the date it is issued and will immediately expire when City Council terminates the local emergency that was declared on March 20, 2020.

III. GENERAL CONDITIONS:

- 3.1 Prior Approval of Encroachment. The Encroachment allowed by this Permit is as shown in Exhibit "A", as attached, and must adhere to the Special Condition requirements outlined in Exhibit "B". Any modifications or additions to the Encroachment within the City's right-of-way must be approved by the City. This Permit does not allow any construction within the right-of-way.
- 3.2 City Retains Full Rights. This Permit is not a construction permit. This Permit is limited to the use and maintenance of the Encroachment. The City retains full rights to the public right-of-way.
- 3.3 Insurance. Permittee must procure and maintain, for the duration of this Permit, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Permit by the Permittee, its agents, representatives, employees or contractors. The insurance requirements herein

are minimum requirements for this Permit and in no way limit the indemnity covenants contained in this Permit. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Permittee from liabilities that might arise out of this Permit for the Permittee, its agents, representatives, employees or contractors, and Permittee is free to purchase such additional insurance as may be determined necessary.

- (a) Minimum Scope and Limits of Insurance. The Permittee must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

Commercial General Liability - Occurrence Form Policy must include bodily injury, property damage and broad form contractual liability coverage.

(i)	General Aggregate/for this Permit	\$2,000,000
(ii)	Products-Completed Operations Aggregate	\$1,000,000
(iii)	Personal and Advertising Injury	\$1,000,000
(iv)	Each occurrence	\$1,000,000
(v)	Fire damage (any one fire)	\$100,000

- (b) Additional Insurance Requirements: The policy must be endorsed to include the following additional insured language: (i) the City, its officers, officials, agents, employees and volunteers are to be named as an additional insured with respect to liability arising out of the use and/or occupancy of the Encroachment subject to this Permit and activities performed by or on behalf of the Permittee; (ii) commercial general liability insurance must include broad form contractual liability coverage; (iii) the Permittee’s insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers; (iv) the Permittee’s insurance must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability; (v) coverage provided by the Permittee must not be limited to the liability assumed under the indemnification provisions of this Permit.

- (c) Notice of Cancellation and Certificate of Insurance Required: For each insurance policy required by the insurance provisions of this Permit, the Permittee must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed or hand delivered to the City, Street Transportation Department as set forth herein. Such notice must be sent by certified mail, return receipt requested.

- (d) Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an

"A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Permittee from potential insurer insolvency.

- (e) Verification of Coverage: Permittee must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Permit. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage must be clearly noted on the certificate of insurance. All certificates and endorsements must be received and approved by the City prior to issuance of this Permit. Each insurance policy required by this Permit must be in effect at or prior to issuance of this Permit and must remain in effect for the duration of the Permit. Failure to maintain the insurance policies required by this Permit or to provide evidence of renewal will be grounds for immediate revocation of this Permit. All certificates of insurance required by this Permit must be sent directly to the City at the address set forth herein. **The Permit number must be provided on the certificate of insurance.** The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Permit at any time.
- (f) Approval: Any modification or variation from the insurance requirements in this Permit must have prior approval from the City's Law Department, whose decision will be final. Such action will not require a formal Permit amendment, but may be made by administrative action.

3.4 Indemnification. Permittee agrees to indemnify, defend, save and hold harmless the City, including its officers, officials, agents, and employees, from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Permittee or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to this Permit. This indemnity includes any Claim or amount arising out of or recovered under the Worker's Compensation Law or arising out of the failure of Permittee to conform to any federal, state or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the Parties that the City will, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Permittee from and against any and all Claims. It is agreed that Permittee will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of granting this Permit, the Permittee agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising out of or resulting from the Encroachment.

- 3.5 No Transfer of Privileges. The privilege granted by this Permit cannot be assigned, leased, sold or transferred either in whole or in part.
- 3.6 Notice of Change of Address. The Permittee must notify the City Street Transportation Department at the address set forth herein within 30 days of any change in Permittee's mailing address or any proposed lease, assignment, sale or transfer of the Encroachment or Adjoining Real Property described herein.
- 3.7 No Interest in Real Property. This Permit is not a franchise, an easement, a covenant running with the land, interest in real property, nor a lease. This Permit strictly allows the Encroachment within the public right-of-way for the time set forth in Section II, Permit Term.
- 3.8 Permit Revocable at Will. This Permit is, pursuant to the City Charter and Ordinances adopted thereunder, subject to revocation at any time in the discretion of the City Council or by the City Manager or the Street Transportation Director with ratification by the Council. Such discretion will be controlled solely by consideration of the best interests of the City, which may include but are not limited to violation or breach of any federal, state or City law, ordinance, code, rule, regulation, court decree or any condition of this Permit. The failure of the Permittee to pay any annual fee will be grounds for immediate revocation of this Permit.
- 3.9 Removal of Encroachment. Upon expiration or revocation of this Permit, the Encroachment must be removed to the satisfaction of the Street Transportation Director at no cost to City within forty-eight (48) hours. In the event that Encroachments are not removed from the right-of-way after notice by the City, the City reserves the right to remove said Encroachment and Permittee will be responsible for and will pay all costs related to the removal of the Encroachment. If Permittee fails to pay the costs for the City's removal of Encroachment within ninety (90) calendar days of written request for payment, Permittee hereby agrees that the City may recover from Permittee all of the City's costs of removal of Encroachment, including attorneys' fees and collection costs, as afforded by Arizona law.
- 3.10 No Recourse. The Permittee agrees it has no recourse whatsoever against the City or its officials, boards, agents or employees for any loss, costs, expenses or damage arising out of any of the conditions or provisions of this Permit, for any defects in this Permit, or for Permittee's lawful deprivation of the use and possession of the Encroachment in accordance with the terms of this Permit.
- 3.11 Fee. There is no fee for this Permit.
- 3.12 Permit Subject to Ordinances, As Amended. This Permit is subject to general ordinance provisions now in effect and as amended from time to time. Except as specifically provided herein, nothing in this Permit will be deemed to waive the requirement of the various codes and ordinances of the City regarding permits or

the manner of construction in the City's right-of-way. This Permit is subject to, and the Permittee must comply with, any future ordinances that may be adopted by the City Council pertaining to the public right-of-way, including but not limited to the location and relocation of Encroachments.

3.13 Records. The Permittee must keep records of the Encroachment, and Permittee must furnish a copy of the records to the City's Street Transportation Department. No underground facilities are allowed under this Permit.

3.14 Maintenance and Disturbance of Public Right-of-Way.

- (a) The Permittee must maintain the Encroachment in a manner satisfactory to the Street Transportation Director. Failure to provide satisfactory maintenance can result in revocation of this Permit pursuant to Section 3.8 of the General Conditions. Permittee must submit proof of ability to repair Encroachment by a licensed contractor within 24 hours of notice. The licensed contractor must perform work in the public right-of-way that satisfies all City and Maricopa County requirements for street closures, permits, plumbing codes, health, environmental protection standards, and any other regulations that may apply.
- (b) Whenever the Permittee disturbs a public right-of-way, alley, public highway, street easement, or public utility easement for any reason as a result of construction or due to failure of any of its facilities or subsequent right-of-way restoration work, the Permittee must restore the same to the satisfaction of the Street Transportation Director and must obtain all appropriate construction permits.
- (c) The City may in its own discretion remedy Permittee's failure to maintain said Encroachment or disturbance. The cost thereof, including the cost of inspection and supervision, must be paid by the Permittee. If Permittee fails to pay the City's costs for maintenance of Encroachment within 90 calendar days of written request for payment, Permittee hereby agrees that the City may recover all of the City's costs for maintenance of the Encroachment, including attorneys' fees and all costs of collection, as afforded by law. All excavations in the public right-of-way made by the Permittee must be maintained by Permittee or its agents and contractors in a safe manner. Any barricading by Permittee must be in accordance to the City's latest Traffic Barricade Manual.
- (d) Maintenance contracts for the Encroachment, if any, with another party must be filed with the City's Street Transportation Department. Permittee or its maintenance contractor must obtain insurance, including Workers' Compensation insurance as provided herein, and perform work in a satisfactory manner and according to plans as approved by the City's Street Transportation Department.

- (e) The City will not assume any maintenance responsibility for the Encroachment and will not assure protection of the Encroachment from damage by others who are permitted in the right-of-way over or under the Encroachment herein permitted. The City does not warrant, represent or guarantee that Encroachments will not be damaged from underground seepages, failure of soil materials and or soil movements.
 - (f) The City will retain the right of access to the Encroachment at all reasonable times for inspection, maintenance and repairs.
- 3.15 Emergency Work by Permittee. Emergency work by Permittee in the public right-of-way must be barricaded according to the City's latest Traffic Barricade Manual. After barricading, Permittee must immediately contact all affected utility companies and the City's Street Transportation Department. Permittee must also obtain a construction permit from the City's Planning and Development Department before Permittee, its contractor(s) or its agent(s) restore the right-of-way to original conditions as approved by the City. At all times, Permittee must follow emergency procedures set forth by the City's Street Transportation Department.
- 3.16 User Conflicts. Nothing in this Permit will be construed to prevent the City or its permittees from constructing facilities, grading, paving, and/or altering any facilities, street, alley, or constructing any other public work or private facility permitted by the City in the public right-of-way. If any Encroachment of the Permittee herein interferes with the construction, alteration, or repair of any facility, street, alley, or easement, the Permittee and any of his assigns must relocate, remove, or replace the Encroachment at Permittee's expense according to plans submitted to and approved by the City.
- 3.17 Entire Agreement; Amendment; Waivers. This Permit constitutes the entire agreement between the City and Permittee with respect to the transactions contemplated herein and supersedes all prior negotiations, communications, discussions and correspondence, whether written or oral, concerning this subject matter. No supplement, modification, or amendment of any term of this Permit will be deemed binding or effective unless executed in writing by all the Parties. No waiver of any of the provisions of this Permit will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver.
- 3.18 Rights of Parties. Nothing in this Permit, whether express or implied, is intended to confer any rights or remedies under or by reason of this Permit on any persons other than the Parties to this Permit and their respective successors and permitted assigns, nor is anything in this Permit intended to relieve or discharge any obligation or liability of any person who is not a party to this Permit, nor will any

provision hereof give any persons not a Party to this Permit any right of subrogation or action over or against any Party to this Permit.

- 3.19 Construction. This Permit is the result of negotiations between the Parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Permit will be construed in accordance with their usual and customary meanings. The Parties hereby waive the application of any rule of law that otherwise would be applicable in connection with the construction of this Permit that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Permit or any earlier draft of the same. Unless the context of the Permit otherwise clearly requires, references to the plural include the singular and the singular the plural. The words “hereof”, “herein”, “hereunder” and similar terms in this Permit refer to this Permit as a whole and not to any particular provision of this Permit. All references to “Sections” herein refer to the sections and paragraphs of this Permit unless specifically stated otherwise. The section and other headings contained in this Permit are inserted for convenience of reference only, and they neither form a part of this Permit nor are they to be used in the construction or interpretation of this Permit. All references to “days” herein mean calendar days unless specifically noted otherwise.
- 3.20 Severability. If any covenant, condition, term or provision of this Permit is held to be illegal, or if the application thereof to any person or in any circumstances is to any extent judicially determined to be invalid or unenforceable, the remainder of this Permit or the application of such covenant, condition, term or provision to persons or in circumstances other than those to which it is held invalid or unenforceable, will not be affected thereby, and each covenant, term and condition of this Permit will be valid and enforceable to the fullest extent permitted by law.
- 3.21 Governing Law. This Permit, and the rights and obligations of the Parties hereunder, will be governed by, and construed and interpreted in accordance with, the internal substantive laws of the State of Arizona and the City.
- 3.22 Cooperation and Further Documentation. Permittee agrees to provide the City such other duly executed documents as are reasonably requested by the City to implement the intent of this Permit.
- 3.23 Survival of Representations and Warranties. All representations and warranties made in this Permit by Permittee will survive the execution and termination of this Permit.
- 3.24 Exhibits. All exhibits attached to this Permit are by this reference incorporated into and made a part of this Permit.
- 3.25 Notices. Except as otherwise set forth in this Permit, all notices, requests, demands, other communications, certificates of insurance or payments under this

Permit must be in writing and will be deemed to have been duly given and received (i) on the date of service if personally delivered on the Party to whom notice is to be given (ii) on the third day after the date of the postmark of deposit if mailed to the Party to whom notice is to be given, by first-class United States Mail, registered or certified, postage prepaid and properly addressed as follows; or (iii) on the second day after deposit with a nationally recognized private express courier service providing proof of receipt and delivery and guaranteed "same day" or "next day" delivery and properly address as follows:

If to City: City of Phoenix
Street Transportation Department
200 West Washington Street, 5th Floor
Phoenix, Arizona 85003-1611
Telephone: (602) 262-6284
Attention: Revocable Permit Section

If to Permittee: Owner Name
Title
Address
City, State Zip
Telephone

- 3.26 Conflict Among Provisions. In the event of any inconsistency or conflict among the Phoenix City Charter and City Code, City of Phoenix Ordinances or Resolutions, General Conditions of this Permit, the terms and conditions as set forth in the following priority will prevail and control: (1) City of Phoenix Charter and Code; (2) City of Phoenix Ordinances or Resolutions; (3) Permit Special Conditions; and (4) Permit General Conditions.
- 3.27 Special Conditions. Those special conditions set forth in Exhibit "B" attached hereto are by this reference incorporated into and made a part of this Permit.
- 3.28 City Cancellation. The City may cancel this Permit pursuant to Arizona Revised Statute Section 38-511.

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SIGNATURES

DATED this _____ day of _____ 2018.

CITY OF PHOENIX
An Arizona Municipal Corporation

ATTEST:

Ed Zuercher, City Manager

Denise Archibald
City Clerk

By _____
Kini L.E. Knudson
Street Transportation Director

APPROVED AS TO FORM,
CRIS MEYER, City Attorney

By: _____

PERMITTEE

I the undersigned hereby agree to the conditions set forth in this Permit and understand that any encroachment and any work associated therewith must conform with the laws of the City and the State of Arizona.

DATED: _____

BY: _____

TITLE: _____

The signature(s) of Permittee is acknowledged by me this ___ day of _____, ____;
signed by _____ of _____.

My Commission Expires

BY: _____
Notary Public

EXHIBIT "A"

EXHIBIT "B"

SPECIAL CONDITIONS

CONDITIONS APPLICABLE TO OUTDOOR DINING FACILITIES IN THE RIGHT-OF-WAY

1. Permittee must have the following information on file with the Street Transportation Department:
 - a) A submittal on file with the City, describing how Permittee's Encroachment will comply with this Permit's Special Conditions.
 - b) Written authorization from the property owner abutting the right-of-way, if different from Permittee.
 - c) A site or plot plan that depicts the location of buildings and the proposed Encroachment in the right-of-way.
 - d) An explanation as to whether the Encroachment in the right-of-way will impact existing on-street parking spaces (metered and/or unmetered spaces).

2. Permittee's Encroachment must:
 - a. Not impact the use of Americans with Disabilities Act (ADA) facilities or access points.
 - b. Maintain a minimum 4' pedestrian access route.
 - c. Not block existing private or public driveways/accessways or drive aisles.
 - d. Not block fire lanes, loading or unloading zones or other designated public safety areas.
 - e. Comply with all other applicable City Ordinances.
 - f. Not be a permanent facility and be easily removable.
 - g. Not obstruct access for emergency responders.
 - h. Not interfere with other businesses.
 - i. Not limit access to utilities.
 - j. Be related to outdoor dining.
 - k. Obtain necessary approvals from the Arizona Department of Liquor Licenses and Control, if alcohol is anticipated.
 - l. Comply with any other site-specific requirements where the Encroachment is located.

3. The Permittee's Encroachment must relate to the COVID-19 Pandemic and will be subject to immediate termination by the Street Transportation Director if Permittee does not comply with any condition of the Permit, including the Special Conditions listed above.

END