

# **Attachment No. PC 1**

Draft Resolution

INTENTIONALLY BLANK PAGE

## RESOLUTION NO. PC2024-027

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, UPHOLDING THE ZONING ADMINISTRATOR'S APPROVAL OF A LIMITED TERM PERMIT AND A COASTAL DEVELOPMENT PERMIT TO ALLOW A TEMPORARY OUTDOOR DINING AREA WITH LIVE ENTERTAINMENT LOCATED AT 3801 EAST COAST HIGHWAY (PA2023-0202)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ryan Wilson of Lawry's Restaurants Inc. ("Applicant"), concerning property located at 3801 East Coast Highway, and legally described as Parcel 1 of Resubdivision 523 ("Property").
2. Applicant requests a limited term permit and coastal development permit ("CDP") to allow an existing temporary outdoor dining patio to remain for a limited term at Five Crowns Restaurant ("Restaurant"). The expanded 1,350-square-foot dining area including an 850-square-foot canopy was originally approved by an Emergency Temporary Use Permit (ETUP) in 2020 as a temporary addition to the Restaurant's existing outdoor dining. Although the ETUP expired, the temporary outdoor dining area has remained in use. The outdoor dining area occupies existing open space behind the permanent outdoor dining. The outdoor dining area will include live entertainment and will close by 10:00 p.m. A sound wall will be installed along the rear property lines. The interior and exterior outdoor area have historically been used for private events on the weekends. The existing operating hours of the Restaurant will remain the same. The limited term permit and CDP would allow the temporary use to remain until June 30, 2025, with a possible extension until December 31, 2025 ("Project").
3. The Property is categorized as Corridor Commercial (CC) by the General Plan Land Use Element and is located within the Commercial Corridor (CC) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Corridor Commercial (CC-B) (0.0-0.75 FAR) and it is located within the Commercial Corridor (CC) Coastal Zoning District.
5. Pursuant to Assembly Bill No. 1217, Gabriel (Business Pandemic Relief), temporary relief measures to suspend certain legal restrictions related to alcohol service, food service, and parking have been extended. As it relates to parking, a local jurisdiction that has not adopted an ordinance providing relief from parking restrictions for expanded outdoor dining areas is authorized to reduce the number of required parking spaces for existing uses by the number of spaces the local jurisdiction determines are needed to accommodate an expanded outdoor dining area.

6. A public hearing before the Zoning Administrator was held on July 25, 2024, online via Zoom. A notice of the time, place, and purpose of the hearing was given in accordance with Chapter 20.62 of the Newport Beach Municipal Code ("NBMC"). At the close of the public hearing, the Zoning Administrator continued the item to August 15, 2024, to give the applicant additional time to address concerns related to noise.
7. At the continued public hearing held on August 15, 2024, online via Zoom, evidence, both written and oral, was presented to and considered by, the Zoning Administrator.
8. At the conclusion of the hearing, the Zoning Administrator Adopted Resolution No. ZA2024-045 approving Limited Term Permit (PA2023-0202).
9. On August 28, 2024, Ken and Kim Catanzarite filed an appeal of the Zoning Administrator's decision objecting to the approval of Limited Term Permit (PA2023-0202) based on noise impacts to the surrounding residential neighborhood as well as objections to processing the request as a limited term permit rather than a use permit and the continuous unpermitted use of the outdoor area for events with live entertainment.
10. A public hearing was held on December 5, 2024, in the City Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapters 20.62 and 21.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15301 under Class 1 (Existing Facilities), of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 (Existing Facilities) exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 1 exemption includes interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances as well as additions to existing structures of up to 10,000 square feet. The Project's scope of work includes the temporary use of an outdoor dining area of approximately 1,350-square-feet including an 850-square-foot tent canopy with exterior live entertainment at an existing restaurant.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The Project does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within

a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.040.(G) (Limited Term Permits - Findings and Decision) of the NBMC, the findings and facts in support of such findings are set forth as follows:

#### Finding:

*A. The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

#### Facts in Support of Finding:

1. The Project will allow an additional outdoor dining area to remain at the rear of the Property until June 30, 2025. The existing restaurant is authorized through Use Permit No. UP1822 and includes approximately 431 square feet of permanent outdoor dining.
2. The additional outdoor dining area has not posed a hazard to the general welfare of residents in the area since it was placed during the COVID-19 pandemic in 2020. The operation of the expanded outdoor dining area is limited until June 30, 2025, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. The Restaurant has been in operation since the 1950s with interior live entertainment and operating hours until 10:00 p.m. Historically, the indoor and outdoor area has been used for private events on the weekends. There is an existing outdoor dining patio that closes by 10:00 pm adjacent to the restaurant.
4. The Project is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
5. The Project shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the Applicant to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
6. The Project must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
7. Limited Term Permit (PA2023-0202) is conditioned so there are no more than four “large” private events per month. For this purpose, large events are considered events with attendance greater than 75 persons.

8. Limited Term Permit (PA2023-0202) is conditioned so the temporary outdoor dining area as part of this approval shall not extend beyond 9 p.m., Monday through Thursday, and beyond 10 p.m., Friday through Sunday and Federal Holidays.
9. Limited Term Permit (PA2023-0202) is conditioned to control exterior lighting so that such lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. Flashing, revolving, or intermittent exterior lighting visible from any property line or street shall be prohibited.
10. Limited Term Permit (PA2023-0202) is conditioned to require a sound attenuation wall and other design features to attenuate noise, pursuant to the "Five Crowns Restaurant Private Event Noise Analysis City of Newport Beach" (Updated Noise Analysis) prepared by RK Engineering Group, Inc. dated August 5, 2024. The Project is conditioned to comply with all of the design features recommended by the Updated Noise Analysis. In addition to the sound wall, the Project shall provide the following design features ("Design Features"): DF-2 (New 10-foot-tall Gate on Hazel Drive), DF-3 (Acoustical Paneling on Covered Patio), DF-4 (Maintain Dense Shrubbery), DF-5 (Speaker Location Requirements for Private Events), DF-6 (Significant Restriction of Heavy Bass Equipment), and DF-7 (Follow-Up Analysis and Monitoring of Private Events). The Design Features would reduce noise to comply with the noise regulations of the NBMC during operation of the expanded outdoor dining area and for private events with exterior live entertainment.

Finding:

- B. The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

1. The Property is approximately 0.29-acre in size and is adjacent to East Coast Highway. Based upon the site plan, there is adequate area to accommodate the temporary outdoor dining area without impacting pedestrian circulation and parking as the dining area is within an enclosed rear yard.
2. The lot abuts East Coast Highway, and the restaurant is the sole use of the Property. The existing food service use has existed at this site since 1950. The additional outdoor dining use will not impede use and enjoyment of the properties in the area.
3. The additional outdoor dining area will occupy an existing outdoor area within the private property.
4. The Design Features recommended in the Updated Noise Analysis including a sound attenuation wall, a new 10-foot-tall gate on Hazel Drive, acoustical paneling on the covered patio, maintenance of dense shrubbery, limitations on the musical instruments

and equipment, and ongoing monitoring of the private events will be required as part of project implementation.

Finding:

- C. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Fact in Support of Finding:

1. The Restaurant parking is provided within a large off-site parking lot across Poppy Avenue. The parking lot is owned by the Restaurant and will remain accessible from Poppy Avenue for guests and employees of the business. The existing Use Permit No. UP1822 requires valet service for the restaurant parking, maximizing the number of parking spaces to at least 82 spaces.
2. The additional outdoor dining area occupies an existing open yard within the Restaurant property and does not impede access or traffic. The parking for the Restaurant is provided at an off-site lot across Poppy Avenue and is managed by valet service. Use of the outdoor dining area would be in conjunction with the existing restaurant and utilize the existing valet and off-site parking. Any private events associated with the restaurant would also use the off-site parking with valet. Therefore, the additional outdoor dining area does not impact traffic or parking.

Finding:

- D. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

1. Pursuant to Assembly Bill No. 1217, as it relates to parking, the City of Newport Beach has not adopted an ordinance that provides relief from parking restrictions for expanded outdoor dining areas. Therefore, the City is able to reduce the number of required parking spaces for the existing use to accommodate an expanded temporary outdoor dining area.
2. The Restaurant is served by an off-site parking lot across Poppy Avenue. Valet service is included for Restaurant patrons for this parking lot, providing at least 82 parking spaces. The size and location of the parking lot provides ample parking for the temporary expanded outdoor dining area.
3. The commercial corridor of Corona Del Mar provides public on-street parking along East Coast Highway. Additionally, the Restaurant historically serves the surrounding residential neighborhood with a higher volume of pedestrian traffic.

Finding:

*E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The Property is categorized as Corridor Commercial (CC) by the General Plan Land Use Element and is located within the Commercial Corridor (CC) Zoning District. The Commercial Corridor designation is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The temporary outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will contribute to the neighborhood serving use.
2. Limited Term Permit (PA2023-0202) for the expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the Commercial Corridor in that it provides amenities that support the visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development) below:

**Goal LU 2** *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

**Policy LU 2.4 Economic Development** *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

3. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy also recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. Limited Term Permit (PA2023-0202) would support local business and economic prosperity while maintaining the unique character of Corona del Mar.
4. The site is not located within a specific plan area.



## Coastal Development Permit

In accordance with Section 21.52.015(F) (Coastal Development Permits - Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

### Finding:

*F. Conforms to all applicable sections of the certified Local Coastal Program.*

### Facts in Support of Finding:

1. The Property is located in the coastal zone and the proposed improvements require a CDP in accordance with NBMC Section 21.52.035C.2. (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute a change in the intensity of the existing use by adding additional temporary dining opportunities at the site. The expanded outdoor dining area consists of minor detached structures including a canopy with dining tables and chairs. The location of these improvements within an existing rear yard of a restaurant does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
2. The Project site is not located adjacent to a coastal view road or public access way. The site is located approximately 200 feet north of the Environmental Study Area, Buck Gully. However, the site is separated from Buck Gully by Hazel Drive and single-family dwellings. The Project site is approximately 1,400 feet from a public beach. The temporary patio is located within an existing rear yard area of the existing Restaurant. The expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Corona del Mar. Additionally, the Project does not contain any unique features that could degrade the visual quality of the coastal zone.
3. The Project is complementary to the area; the Restaurant and other restaurants in Corona del Mar have similar outdoor dining improvements. The additional temporary outdoor dining area will not be visible from surrounding areas or any public viewpoints, as the patio is in the rear of the property behind substantial foliage and proposed block wall. The closest coastal view road as designated by the Coastal Land Use Plan is at the intersection of Poppy Avenue and Ocean Boulevard approximately 1,200 feet southwest. The closest coastal viewpoint, as designated in the Local Coastal Land Use Plan, is at Inspiration Point and approximately 1,400 feet to the southwest.
4. There are no existing City utilities within the expanded outdoor dining area.
5. The Project is not located in an area in which the California Coastal Commission retains direct permit review or appeal authority.

Finding:

*G. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Fact in Support of Finding:

1. The Property is not located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone. The Property is located approximately 1,400 feet from a public beach or harbor and is not located near a public access point designated by the Coastal Land Use Plan. The nearest vertical and lateral access point is approximately 1,300 feet away at Little Corona Beach and the outdoor patio would not obstruct access along these routes.
2. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to temporarily expand, allowing the public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain Environmentally Sensitive Habitat Areas (ESHA), wetlands, or sandy beach area.

## SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Planning Commission of the City of Newport Beach hereby upholds the Zoning Administrator's approval of Limited Term Permit and Coastal Development Permit filed as PA2023-0202, subject to the conditions outlined in Exhibit A, which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the City Clerk by the provisions of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC. Administrative procedures for appeals are provided in the Chapters 20.64 (Appeals) and 21.64 (Appeals) of the NBMC. The Project is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED THIS 5<sup>th</sup> DAY OF DECEMBER, 2024.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Mark Rosene, Chair

BY: \_\_\_\_\_  
David Salene, Secretary

**EXHIBIT “A”****CONDITIONS OF APPROVAL****Planning Division**

1. The Project shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
3. *The Applicant understands this approval is temporary and this Limited Term Permit (PA2023-0202) and Coastal Development Permit shall be effective until June 30, 2025, with a possible extension through December 31, 2025. An extension of time is not guaranteed. The applicant shall be required to cease all permitted operations and remove any temporary improvements (not including the sound wall) made to the outdoor spaces as part of this approval on or before the end of the effective period. An amendment to Use Permit No. 1822, including a potential parking waiver and coastal development permit, would be required to retain the temporary outdoor dining area on a permanent basis. Issuance of a building permit for permanent structures (e.g. block wall) shall not be interpreted as an approval of the outdoor patio for live entertainment on a permanent basis.*
4. *The expanded outdoor dining area shall not exceed 1,350 square feet.*
5. *Live entertainment and private events within the outdoor area on the restaurant property (including the expanded temporary outdoor dining area) shall remain ancillary to the primary use of the site as a restaurant.*
6. *A sound attenuation wall shall be constructed pursuant to the details and conditions in the Updated Noise Analysis prepared by RK Engineering Group, Inc. dated August 5, 2024 (Five Crowns Restaurant Private Event Noise Analysis City of Newport Beach). The sound wall shall require the issuance of a building permit and may remain in place after the end of the effective period. In addition to the sound wall, Design Features DF-2 (New 10-foot-tall Gate on Hazel Drive), DF-3 (Acoustical Paneling on Covered Patio) and DF-4 (Maintain Dense Shrubbery), DF-5 (Speaker Location Requirements for Private Events), DF-6 (The use of heavy bass equipment, including drums, amplified bass guitars, and subwoofers will be significantly restricted including DJ sound filters and limiters); and DF-7 (Follow-Up Analysis and Monitoring) as found under Section 1.1 Project Design Features, shall be provided and maintained in good condition.*
7. *All Building and Fire permits shall be obtained for the canopy. Changes to the existing unpermitted canopy may be required to obtain the necessary permits.*

8. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the temporary outdoor dining area as part of this approval shall not extend beyond 9 p.m., Monday through Thursday, and beyond 10 p.m., Friday through Sunday and Federal Holidays.*
9. *Within 30-days of the effective date of this approval, the Applicant shall apply for a building permit for all design features, including the sound wall.*
10. *There shall be no more than four private events with attendance greater than 75 persons per month.*
11. *All loading and unloading for the Restaurant and its temporary expanded outdoor area shall occur from Poppy Avenue.*
12. *Immediately before the start and after the conclusion of any private events, the Applicant shall take reasonable steps to discourage attendees from loitering on Poppy Avenue or Hazel Drive.*
13. *Lighting shall be in compliance with applicable standards of the NBMC including Section 20.30.070 (Outdoor Lighting). Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. Flashing, revolving, or intermittent exterior lighting visible from any property line or street shall be prohibited.*
14. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
15. All owners, managers, and employees selling and serving alcohol shall comply with all ABC guidelines and regulations and shall further take all measures necessary to prevent over-service of alcohol and/or disorderly conduct from patrons. Increased calls for Police Department service to the establishment or complaints made to the City will cause a review of operations and may result in a revocation of this permit.
16. The sale of alcohol "To-Go" to patrons that dine within the expanded outdoor patios shall be prohibited.
17. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
18. The permittee shall provide adequate trash receptacles within the permitted patio and the operator shall provide for periodic and appropriate removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the property.
19. The Community Development Director or its designee may inspect the modified area at any time during normal business hours.

20. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
21. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Limited Term Permit (PA2023-0202).
22. This Limited Term Permit (PA2023-0202) may be modified or revoked by the Planning Commission if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the Property is operated or maintained so as to constitute a public nuisance.
23. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this limited term permit and coastal development permit.
24. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control), under Sections 10.26.025 (Exterior Noise Standards) and 10.26.030 (Interior Noise Standards), and other applicable noise control requirements of the NBMC.
25. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or leasing agent.
26. No outside paging system shall be utilized in conjunction with this establishment.
27. The exterior of the business shall be always maintained free of litter and graffiti. The Applicant shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
28. A Special Events Permit is required for any event or promotional activity outside the normal operating characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages (not covered in the existing ABC License), include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
29. To the fullest extent permitted by law, the Applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements, and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Five Crowns Temporary Outdoor Dining including, but not limited to, PA2023-0202 and the Coastal Development Permit. This indemnification

shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the applicant, City, and/or the parties initiating or bringing the such proceeding. The Applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages that which City incurs in enforcing the indemnification provisions outlined in this condition. The Applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

### **Fire Department**

30. Heat Lamps or other heating elements shall comply with the following requirements in accordance with Section 3107.12 of the California Fire Code:
  - Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid or solid materials) shall not be used within tents or canopies.
  - Electric Heaters must be Underwriters Laboratory (UL) Listed for use within tents/and or canopies.
  - Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located at a minimum of 10 feet from the edge of the tent or canopy.
  - All heating equipment installations shall be approved per the Fire Code Official.
31. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two or more walls) and/or canopies larger than 700 square feet (no walls or one wall):
  - Post maximum occupant load.
  - Do not exceed posted occupant load inside the tent or canopy.
  - Visible and mounted Fire Extinguishers with current service tags.
  - No Smoking Signs shall be installed.
  - Illuminated Exit Signs shall be installed.
  - Emergency Lighting shall be provided.
  - Does not cover the exit path from the building rear door. Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
  - All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
  - If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
  - LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
  - Tents and canopies shall have the State Fire Marshall tag indicating fire resistance.
  - Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

**Building Division**

32. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
  - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
  - b. Access to restrooms shall be provided at all times.
  - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
  - d. At least one accessible seating area shall be provided.
  - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.
  - f. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
33. Provide not less than 5% accessible seating at tables and counters with knee clearance of at least 27-inches-high, 30-inches-wide, and 19-inches-deep.
34. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.
35. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
36. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
37. Accessible routes, including under canopy(ies) and other overhead improvements shall maintain a minimum clear height of 80 inches.
38. All electrical distribution lines shall be in good working order and shall be protected from pedestrian and vehicular traffic and shall accommodate accessibility.

**Public Works Department**

39. There shall be a minimum of 5 feet of clearance around all overhead facilities, such as poles, and 15 feet of clearance around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
40. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
41. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.