CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

PLANNING BOARD

July 16, 2013

Greetings,

In an effort to facilitate and regulate attractive, affordable and safe options for outside dining areas located on the City's sidewalks, or other public rights of way, the City of New Bedford has implemented a "Sidewalk Café" permitting process, resulting in a license. This license would allow an establishment which also holds a common victualler's license, and which also serves dinner, to have temporary, seasonal access to permitted areas in the public rights of way, for the uses of its patrons. The process for permitting the service of alcohol in these areas is more formal, while the process for allowing only eating in these areas is quite informal.

You are receiving this letter because you are the recipient of a common victualler's license from the City. Please understand that you are under no obligation to provide outdoor seating and dining; however if you do, we have included a permit application and the form of license which results, as well as a copy of the City ordinance which more fully explains the process.

Please do not place seating, tables or other obstructions in the sidewalk area in front of your business, unless and until you have completed the application process and have received a license to do so. If you have any questions regarding this notice, or with the process, please do not hesitate to call the City Planning Office at (508) 979-1488.

Sincerely,

Jill Maclean
Acting City Planner

133 William Street, New Bedford, MA 02740 Tel: 508.979.1488 Fax: 508.979.1576

Sidewalk Café
Permit Application

Return completed application, supporting documentation, and application fee to: City of New Bedford-Planning Department Room 303 at City Hall. For assistance, Please call (508) 979-1488

Applicant Information

Date: _____
Restaurant Owner: _____
Restaurant Address: _____
Telephone: _____ Fax: _____
Requested Number of Outdoor: Tables: _____ Chairs: _____

Permit Type

☐ **New Permit ($25)**

☐ **W/alcohol ($50)**

Required Materials (Applications will not be accepted without the following)

☐ Copy of a valid restaurant license.

☐ Copy of a current certificate of insurance, naming the City of New Bedford as additional insured.

☐ A layout, drawn to scale on 8.5 x 11" paper, which accurately depicts the dimensions of the existing sidewalk area and adjacent private property, the proposed location of the sidewalk café, size and number of tables, chairs, steps, planters, and umbrellas, location of doorways, trees, parking meters, bus shelters, sidewalk benches, trash receptacles, and any other sidewalk obstructions, either existing or proposed, within the pedestrian area.

☐ Photographs, drawings, or manufacturer's brochures describing the appearance and dimensions of all tables, chairs, umbrellas or other objects related to the sidewalk Café.

☐ Signed Hold Harmless Agreement
☐ A Non-refundable application fee
☐ New permit - $25
☐ New Permit W/alcohol expansion $50

If this application is approved, I hereby agree to abide by all the relevant City regulations pertaining to the installation of sidewalk cafes, including but not limited to Chapter 15 Article VI Sec. 15-100 of the City Code of Ordinances.

Signature – Restaurant Owner _____

Official Use Only

Review date: _____ All materials submitted: _____ yes Liquor License: _____
Signature: _____ Fee: _____

Hold Harmless Agreement
(Sidewalk Café Permit)

In consideration of being issued a permit for the use of the public right-of-way (hereinafter referred to as the "property" for a sidewalk café, the undersigned applicant (hereinafter referred to as the "permittee") agrees to indemnify, defend, save, and hold harmless the City, its officers and employees, from any and all claims, lawsuits, damages, and cause of action, which may arise out of the permittee's activity on the sidewalk café, and for any loss or damage arising out of the use, or the discontinuance of any use.

The undersigned agrees and understands that the use of the property is temporary, on a day to day basis; that the undersigned does not acquire any right, title, or interest in such property, that the undersigned may be required by the City at any time to vacate all or any part of the property that the undersigned has been given permission to use; that upon demand to vacate such property, the undersigned agrees to properly remove any personal property placed thereon by the undersigned and to return the property to the same condition that it was in prior to commencement of such use or to reimburse the City for the cost of removing such property and restoring the property to its prior condition and that the undersigned has no recourse against either the City or its officers, employees or agents, either for any loss or damage occasioned by his or her being required to vacate all or any part of the property which the undersigned has been granted permission to use.

The undersigned further agrees at all times hereafter to comply with all municipal ordinances, rules, and regulations of the City of New Bedford, Massachusetts.

Dated this _____ Day of _____, _____

Name of Business/Restaurant _____

_____ _____
Signature of Permittee Printed Name of Permittee

Title _____

_____
Witness

City of New Bedford
Sidewalk Café License

THIS LICENSE, MAINTENANCE AND INDEMNIFICATION AGREEMENT is made as of this 1st day of _____, 20 _____ , by and between the CITY OF NEW BEDFORD, acting by and through its Planning Board hereinafter the "City", and_____ (hereinafter the "Licensee"), with a place of business at_____ _____, and with executive offices at the same address.

WITNESSETH THAT:

WHEREAS, Licensee is the owner and operator of the restaurant known as the _____ which is located at the owner's premises at_____, New Bedford, Massachusetts, (hereinafter the "Site"); and

WHEREAS, the Licensee petitioned the Planning Board for the issuance of a license for the purpose of placing a **[temporary]** sidewalk café (hereinafter "Café") directly in front of the Site; and

WHEREAS, the Planning Board approved Licensee's petition for a license; and

WHEREAS, the Licensor requires that this Agreement be entered into as a condition of the granting of a license for the Café.

NOW THEREFORE, in consideration of the license given by the Licensor to the Licensee, the Licensee agrees as follows:

I. <u>TERM OF LICENSE:</u>

Unless otherwise terminated by the Licensor, the license to have a Café on the Licensor's property shall be temporary, and the license will be issued for the period of May 1, 20_____ to October 31, 20_____ .

II <u>LICENSED AREA:</u>

1. *<u>Location:</u>*

   a. The Café shall be located directly in front of and contiguous to the Site. The exact location of the Café is shown on a plan entitled _____, prepared by _____, and dated_____ which plan is on file with the office of the City of New Bedford.

b. The Licensee shall have the obligation to prevent encroachment onto space not covered by this license.

2. *Dimensions:*

a. The Café measures _____ square fee. At all times the Licensee shall ensure that the Café extends no more than the area allowed by this License.

b. The Licensee shall ensure that, at all times, there will be at least four (4) feet of sidewalk free for pedestrian traffic.

c. The Licensor reserves the right to require that more than four (4) feet of sidewalk is made available during certain hours of the day, or days of the week.

3. *Pedestrian/Patron Access/Use:*

a. Licensee shall provide safe and adequate access to patrons making use of the Café and to pedestrians making use of the public way in or near the Café or Site.

b. The Licensee shall ensure that no alcohol is sold or consumed outside of the Café and Site.

c. The Café shall be constructed and maintained so as not to constitute a hazard or danger to persons making use of the Café or Site and the public way.

4. *Removal:*

a. The Licensee shall ensure that all structures comprising the Café, including but not limited to chairs, tables, fencing, bollards and planters will be easily removed during periods of non-use, and at the expiration of this license.

b. The Licensee shall remove all fixtures, chairs, tables, fencing, bollards, planters and any other items related to or connected to the Café from the public way on the last effective date of this license.

III. FEES AND COSTS:

1. *To be Paid by the Licensee:*

a. The Licensee at its own cost and expense shall maintain the Site and Café.

b. The Licensee shall bear all financial responsibility for any and all improvements to the public way, both within and surrounding the Café, which are in the opinion of any City department or agency, required for the proper and safe operation of the Café.

c. The Licensee shall bear all costs and expenses related to the construction and maintenance of any utilities and other amenities relative to this license and operation of the Café.

d. The Licensee shall, prior to its entry upon, or use or occupancy of the Site, and prior to installing or constructing any part of the Café, have paid any and all required fees associated with this license and any taxes or fees due to the City. No permit fees or other fees will be waived.

e. Annual Rental Fee:

(i) The annual license fee shall be _____Dollars ($ .00) which is payable in full before the issuance of the license.

(ii)

2. *By the Licensor:*

a. The Licensor shall not be required to make any improvements to the public way that will be occupied by the Café, or expend any money for the benefit of the Licensee.

IV HOURS OF OPERATION:

The Café shall operate the same hours as the establishment to which it is attached unless it is in or within one hundred (100) feet of a residential use, then it will close at 10:00 p.m. at the latest.

V. INDEMNIFICATION AND INSURANCE REQUIREMENTS:

1. The Licensee shall indemnify and save harmless the Licensor against all claims and demands of all persons or entities for damages, costs, expenses or compensation for, on account of, or in any way growing out of the use and occupancy by the Licensee, his patrons, and or invitees of the Site and Café, or by reason of any act or neglect of said Licensee, its officers, agents, and employees, or by any reason of any violation of any term or specification contained in this Agreement or in any license or permit necessary in the said use and occupancy of the Site or Café.

2. The Licensee shall obtain and maintain liability insurance for the period stated in Section I above. The minimum amount of insurance shall be in the amount of no less than One Million Dollars ($1,000,000.00) per occurrence combined single limit, personal injury, bodily injury and property damage. The coverage shall include an endorsement naming the city, including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members as an additional insured. This coverage must be primary. The policy will require a 30 day advance written notice of cancellation or non-renewal sent to the City Solicitor and the City Planner. A copy of the Certificate of Insurance is attached hereto as Exhibit B.

3. Prior to the issuing of any permits by the Planning Board, the Licensee shall provide the Licensor with an original Certificate of Insurance that names the City as an Additional Insured.

VI. NOTICE REQUIREMENTS:

1. All notices shall be in writing and shall be by certified or registered mail, return receipt requested, addressed as follows:

   If the Licensor at: Office of the City Planner
   133 William Street
   New Bedford, MA 02740
   With a copy to:
   The office of the City Solicitor
   133 William Street
   New Bedford, MA 02740

   And if to the Licensee at:

VII. TERMINATION:

1. Notwithstanding any language to the contrary, the Licensor reserves the right to terminate this Agreement and to require the Licensee to remove the Café from the Site if and when it deems it necessary or convenient.

VIII. ADDITIONAL TERMS AND CONDITIONS:

1. The Café shall be used solely for the purpose of dining. Consumption of alcoholic beverages is permissible but only if authorized by the Licensing Board.

2. The Café shall not be used solely for the purpose of serving alcohol.

3. The Licensee shall comply with all applicable federal, state and local rules, regulations and laws, and any amendments thereof.

4. In the event the Site is located within a historic district, the Licensee shall obtain a letter from the City Historic Commission, which sets forth approval of the Café and any furniture used therewith. A copy of said letter shall be attached hereto as Exhibit C.

5. The Licensee shall ensure that the Site remains in a clean and sanitary condition, and that the Licensee shall be solely responsible for the removal of trash from the Site.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF NEW BEDFORD Acting by and through its City Planner	LICENSEE
_____	_____
Date: _____	Date: _____

Ordinances
Sidewalk Café
License form 3-18-08

ARTICLE VI. PLANNING BOARD LICENSES AND PERMITS

Sec. 15-100. Sidewalk Café Permit.

(a) The planning board shall have the jurisdiction vested pursuant to section 20-3 of the City of NewBedford Code to grant licenses for the use of city public right-of-way property for the use of outdoor dining, and to regulate the placement of temporary tables and chairs and appurtenant street furniture for use as outdoor cafes on public ways by licensed restaurants.

(b) Conditions and standards for a license to operate an outdoor café on a city public right-of-way:

(1) Every outdoor café on a city public right-of-way shall be temporary in nature and designed so that the entire café structure and its appurtenances including, but not limited to, chairs, tables, fencing, bollards and planters can be easily removed during periods of non-use. There will be no permanent fixtures in the public right-of-way. Furthermore, the city reserves the right to require the user to remove the sidewalk café if and when it determines it to be necessary, even during the term of the license. The license is available only to a holder of a common victualler license and the sidewalk café must be in front of the place of business where the common victualler license is used.

(2) Public process. Every application for a sidewalk café will be subject to approval by the planning board.

(3) Location of sidewalk café. The sidewalk café must be appurtenant to a licensed restaurant facility located on a street level. The sidewalk café area may not extend beyond the frontage and or side faces of the licensed restaurant. There must be at least four (4) feet of free unimpeded pedestrian passageway on the sidewalk. However, the city reserves the right to require that more than four (4) feet of sidewalk be made available during certain hours of the day, or days of the week in order to accommodate pedestrian traffic.

(4) Service of alcohol. If alcohol is served at a sidewak café, necessary permits and/or licenses from the licensing board must be obtained. In an area where liquor is served, the seating area must be at least six (6) feet wide and the sidewalk café must be separated from the pedestrian walk space with a system of enclosure, such as decorative fencing, planters or removable bollards.

(5) No portion of a sidewalk café may be used for any purpose other than seated dining or circulation. Outdoor café must serve dinners. No one shall be seated in an outdoor café for the sole purpose of drinking alcohol, nor can the sidewalk café be used as a place for patrons to drink while standing.

(6) The sidewalk café area cannot be used for smoking.

(7) All sidewalk café areas shall be maintained in good order and no refuse and no refuse containers are allowed within the area.

(8) All outdoor activity must cease at the close of business or midnight; or in the event that the outdoor dining area is within five hundred (500) feet of a residential area immediately adjacent to any residential area, all outdoor activity must cease by 10:00 p.m.

(9) Table umbrellas, if used, shall not impede pedestrian flow. The design of and the use of advertising on table umbrellas are subject to the approval of the planning board and, where appropriate, the historic commission.

(10) All sidewalk cafes must comply with all applicable federal, state and local laws and regulations, including the Americans with Disabilities Act. A minimum unobstructed passageway from end of use (parallel to street) of not less than four (4) feet in width at all points will be required.

(11) The historic commission shall have aesthetic review responsibility for café enclosures, tables, chairs and accessories in areas under their jurisdiction. All proposals shall be subject to City of New Bedford Planning Board Design Review. It shall be the applicant's responsibility to provide to the planning board, written proof that it has obtained all requisite permits, approval from relevant agencies and boards.

(12) The applicant who applies for a sidewalk café license shall bear all financial responsibility for any and all improvements necessary to the public space, both within and surrounding the sidewalk café area. At no time and for no reason shall public funds be expended for improvements designed to benefit the licensee. The license shall address liability, liability insurance, maintenance and trash removal concerns, and set forth the rental cost for the licensing of the public space.

(13) Commercial general liability insurance must be procured and maintained on an "occurrence basis" in such amounts as the city solicitor's office shall from time to time determine to be required. This coverage shall include an endorsement naming the city, including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members as an additional insured. This coverage must be primary, and any other insurance maintained by the additional insured shall be considered to be excess and non-contributing with this insurance, and shall include an endorsement providing for a thirty-day advance written notice of cancellation or nonrenewal to be sent to the city

solicitor and the city planner. The city on a yearly basis shall determine the fee for the license. The certificate of insurance will be provided to the planning board prior to the issuance of license.

(14) Vaults. The department of public infrastructure shall determine whether there is a vault under the sidewalk area proposed to be used for the outdoor café. In the event that there is an underground vault, the applicant shall not obtain a license for the sidewalk café until such time as the applicant has obtained a certification from a licensed structural engineer that the sidewalk over the vault is structurally strong enough to support the use as a café.

(15) Length of license agreement. The license agreement for the use of the public space shall be seasonal from May 1st through October 30th, of each year.

(16) Fee for licensing public space. The planning board is authorized to promulgate rules and regulations governing the operation of sidewalk cafes including the license fee for use of the public space. The fee is subject to change on a yearly basis.

(17) Licenses issued for sidewalk cafes by the planning board will require that the user adhere to all applicable rules, regulations and laws governing the use of public space, and the operation of the café. Licenses will be subject to renewal on a yearly basis. The planning board reserves the right to revoke the license for any reason and at any time.

(18) By accepting a license issued pursuant to this section, the licensee shall be solely responsible for any and all costs of whatever kind and nature relating to the outdoor café and for maintaining the outdoor café. The city shall not be responsible or liable for any such costs or be requested to reimburse the licensee for such costs in any respect or to any extent.

(19) Every table or service area shall be suitably monitored by an employee of the business or organization operating the outdoor café in order to keep the area free from litter or food being left outside for extended periods of time.