

RESOLUTION 20-104

RESOLUTION TEMPORARILY RELAXING EXISTING ORDINANCES AND PROCEDURES ASSOCIATED WITH REVIEW AND APPROVAL FOR EXISTING RESTAURANTS AND FOOD ESTABLISHMENTS AND RETAIL BUSINESSES FOR OUTDOOR DINING AND OUTDOOR DISPLAYS AND TO PROVIDE ASSISTANCE TO LOCAL RETAIL BUSINESSES UNDER THE CURRENT SOCIAL DISTANCING RESTRICTIONS ENACTED IN CONNECTION WITH THE ONGOING, CORONAVIRUS PUBLIC HEALTH EMERGENCY AND SUBJECT TO THE RESCISSION AND/OR RELAXATION OF THE CURRENT "STAY AT HOME" EXECUTIVE ORDER

WHEREAS, on January 30, 2020, the World Health Organization declared the outbreak of the novel coronavirus (COVID-19) to be a Public Health Emergency of International Concern as human-to-human transmission; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared the novel Coronavirus to be a United States Public Health Emergency; and

WHEREAS, on February 3, 2020, New Jersey's Governor, Philip D. Murphy, issued Executive Order 102 establishing the New Jersey Coronavirus Task Force in an effort to monitor the spread of the Coronavirus within the State of New Jersey, the United States of America, and the entire world in order to facilitate necessary and appropriate action to ensure the safety and security of the residents of the State of New Jersey; and

WHEREAS, on March 4, 2020, the State of New Jersey reported the first confirmed positive case of Coronavirus throughout the State; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order 103 declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the novel Coronavirus within the State of New Jersey; and

WHEREAS, on March 13, 2020, the President of the United States of America formally declared the outbreak of the novel Coronavirus to constitute a National Emergency pursuant to the National Emergencies Act (50 U.S.C. § 1601. et seq.); and

WHEREAS, on March 16, 2020, Governor Murphy issued Executive Order 104 enacting several "social distancing" regulations, including but not limited to, limiting public gatherings to no more than 50 people, closing educational facilities, closing various recreation and entertainment based businesses, imposed restrictions on scope of service and hours of operation for other non-essential retail, recreational, restaurants/bars and entertainment businesses; and

WHEREAS, on March 21, 2020, Governor Murphy issued Executive Order 107 which expanded the social distancing regulations set forth within Executive Order 104, including but not limited to, directing all New Jersey remain in their home or place of residence with specific

limited exceptions, prohibited gatherings of any size, closed all non-essential retail businesses and identified essential businesses permitted to continue to operate subject to specific limitations, and reiterated and strengthened social distancing requirements when in public; and

WHEREAS, on March 21, 2020, Governor Murphy also issued Executive Order 108 which specifically voided and precluded County and Municipal Governments from imposing or enforcing any restrictions/regulations that in any way would or might conflict with any of the provisions of Executive Order 107, with the exception of regulating online marketplaces for arranging or offering lodging, municipal or country parks, and beaches and boardwalks; and

WHEREAS, Executive Order 107 specifically regulates the continued operation of Bars/Restaurants and provides, in part, that “All restaurants, cafeterias, dining establishments and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses;” and

WHEREAS, on June 3, 2020, Governor Murphy issued Executive Order 150 which specifically allows service of food or beverage at outdoor areas; and

WHEREAS, the City Council of the City of Woodbury finds it to be appropriate to temporarily relax its Ordinances, including but not limited to the procedures associated with review and approval in order to permit said establishments to locate tables and chairs out-of-doors, in the City right-of-way (including the sidewalk and the Public Areas) and/or in other locations on site, subject to the requirements and restrictions set forth herein and subsequent to the State of New Jersey rescinding and/or relaxing the restrictions of Executive Order 107 and/or any other directive prohibiting the same; and

WHEREAS, various representatives of the City of Woodbury, and its Boards, Commissions, and Agencies have discussed methods to assist and promote the economic development of local business in these extremely difficult times and have determined that the ability for local business’ to expand its available space will economically assist the businesses in the reduction of capacity caused by the social distancing requirements; and

WHEREAS, the City Council has determined that it is in the best interest of the City to temporarily relax the outdoor dining and outdoor display restrictions on local business establishments and to extend outdoor dining and outdoor retail displays into public rights of way (including sidewalks and Public Areas) and to provide for additional space for outdoor dining into designated public parking lot areas and to allow for outdoor dining areas to be established on private property and private parking lots under specific terms and conditions consistent with guidelines provided by the State of New Jersey and upon application and approval by the City Administrator and/or his designee; and

WHEREAS, *N.J.A.C. 13:2-5.5* provides: “The Director [of Alcoholic Beverage Control] for special cause shown, may issue such temporary permits for such contingencies where a license is not expressly provided for by law, and such a permit would be appropriate and

consonant with the spirit of the Alcoholic Beverage Control Act” and that “The Director may impose special conditions or requirements on any such permit;” and

WHEREAS, *N.J.A.C. 13:2-9.1* provides: “The rules of [*N.J.A.C. 13:2-1.1*, et. seq.] may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of Title 33 and the implementing rules.”; and

WHEREAS, to the extent the City Council finds it appropriate to temporarily relax its Ordinances and procedures associated with review and approval in order to permit eating establishments to locate tables out-of-doors, in the City right-of-way (including sidewalks and Public Areas) and/or in other locations on site; and

WHEREAS, the City Council is of the opinion that the Director of the New Jersey Division of Alcoholic Beverage Control should exercise the authority conferred upon the Director by statute and regulation to implement procedures whereby liquor licensees may obtain permits providing for the extension of licensed premises to the City approved outdoor table areas for so long as such City approval is valid without the necessity of having to file a formal place-to-place (expansion of licensed premises) application; and

WHEREAS, the Acting Director of ABC has issued a Special Ruling (SR 2020-10) dated June 3, 2020 establishing temporary COVID-19 Permits to Expand Licensed Premises.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Woodbury, County of Gloucester, State of New Jersey as follows:

1. The statements that are set forth in the preamble are true and accurate. All of the statements of the preamble are repeated and are incorporated herein by this reference thereto and are made a part hereof as if each and every statement were set forth fully herein.

2. Effective by way of Resolution of the City Council of the City of Woodbury that portions of Public Parking Lots to be designated by the City and Designated On-Street Parking Spaces designated by the City in consultation with the Police Chief and City Officials shall be closed to vehicular parking and traffic during the specific dates and times approved by the City Administrator and/or his designee in order for the retail businesses, restaurants and food establishments the ability to set-up outdoor display and outdoor dining areas subject to the approval provided for below.

3. Effective immediately, the City Administrator and/or his designee in consultation with City Officials, is hereby authorized to promulgate requirements, rules and regulations pertaining to the application for and the use of outdoor areas, both public and private, by local business establishments for outdoor dining and outdoor displays consistent with the guidelines established by the State of New Jersey including but not limited to all COVID related safety precautions and measures during the effective dates of this Resolution.

4. Any and all business establishments of the City of Woodbury who wish to utilize the public right of way (including sidewalks and Public Areas), the approved designated public parking lots and areas, designated off-street parking spaces and/or private parking lots or private property for outdoor displays and outdoor dining shall, prior to its use, complete and submit an application to the City for review and approval. In an effort to assist the local businesses, the City has agreed to waive any application and/or approval fees relating its review.

Restaurants/Bars/Food Service Establishment – Outdoor Dining

5. The City Administrator and/or his designee are hereby granted the authority and discretion to approve Outdoor Dining Plan Applications pertaining to existing “full-service bars/restaurants,” defined as “restaurants engaged in the preparation and service of meals/food,” subject to the review and approval of the City Administrator and/or his designee, in order to permit said establishments to relocate existing tables/seating or locate new tables/seats within the City right-of-way (including sidewalks) and/or other locations on site, during the designated times, and/or designated times, and/or other private locations during the designated times subject to the following requirements and restrictions:

A. Applicants who wish to relocate existing approved tables/seats to other locations on site, or to locate newly acquired tables/seats outdoors, including the City right-of-way (including sidewalks and Public Areas) and/or other locations on site, shall be required to submit an Outdoor Dining Plan application, and a drawing depicting the proposed layout and location of tables/seating outside of said bar/restaurant, which shall also include but not be limited to, confirmation of the number of existing, approved tables/seats, a depiction of all aisles, routes of ingress and egress, clearances/distances between tables and between the seating area outside and the curb-line, an illustration, rendering, and/or photograph of all proposed furniture, umbrellas, and trash receptacles, etc. must be of like nature and appearance to what is currently utilized on site. Applicants shall also submit a brief written narrative describing the proposed method of serving food and beverages in the newly proposed areas. The Applicant should also include how the proposed plan conforms to all safety and precautionary measures relating to social distancing and COVID-19 related issues. The approval of any temporary Outdoor Dining Plan in relation to this Resolution shall be subject to the following conditions:

- i. Applicants may be permitted to relocate existing approved tables/seats and/or to locate newly acquired tables/seats to other locations on site, including the City right-of-way (including sidewalks and Public Areas), subject to the review and approval of the City Administrator and/or his designee. Notwithstanding the provision of the Resolution, no tables/seats shall encroach on the or obstruct the free flow of pedestrian traffic on the pedestrian walkways or any of its approaches. In addition, notwithstanding the provision of the Resolution, Applicants will not be permitted to increase the currently approved capacity for the Premises.

- ii. Applicants may be permitted to utilize the public right of way (including sidewalks and Public Areas) of the adjacent property owner for outdoor dining with the express written consent and approval by the adjacent property owner and business, which must be submitted with the Application.
- iii. Tables/seats may be permitted to be located in the City right-of-way (including sidewalks) provided a minimum 6 feet pedestrian walkway is maintained and provided for the general public, subject to applicable ADA requirements.
- iv. An approved tables/seats located in an “outdoor dining area,” defined as “a designated area on the premises of a retail food establishment or restaurant, but located outside of the principal building, and where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress,” may be permitted to be utilized between the hours of 7:00 A.M. and 10:00 P.M.
- v. Applicants must submit a Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor dining area, and the frequency with which the outdoor dining area will be policed for litter in order to control the accumulation of trash/recycling.
- vi. Applicants must also acknowledge and agree to full compliance with all current and newly imposed safety and precautionary measures and guidelines established by the State of New Jersey relating to COVID -19.
- vii. The sale/service of alcoholic beverages in these locations shall be permitted, subject to compliance with any and all applicable ABC regulations/statutes, including but not limited to an extension of premises application, and subject to the review and approval of the City Clerk and Chief of Police per Special ABC Ruling #2020-10 dated June 3, 2020. The approval of any extension of premises application to permit the sale/consumption of alcoholic beverages in outdoor dining areas shall be temporary and shall automatically terminate upon the State of New Jersey rescinding Executive Order 107, and/or the elimination of all social distancing regulations, and/or the expiration of the within Resolution and/or by way of Resolution of the City Council.
- viii. The City of Woodbury may permit the consumption of alcoholic beverages at tables/seats approved by the City. However, said

consumption of alcoholic beverages shall be limited solely to the tables/seats of the food establishment.

- ix. Applicants proposing to relocate existing tables/seats to the City right-of-way designated areas of the Public Parking Lots and designated On-Street Parking shall indemnify and hold harmless the City of Woodbury, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees, and volunteers arising out of the placement, operation, and maintenance of the Outdoor Dining Area. Applicants must name the City of Woodbury as an additional insured under the Applicant's commercial general liability insurance policy and liquor liability insurance policy (if applicable) and provide evidence that workers compensation coverage is in place. General and liquor liability insurance policies are required to have a minimum limit of One Million (\$1,000,000.00) Dollars per Occurrence and Two Million Dollars (\$2,000,000) annual aggregate. Evidence of workers compensation insurance in accordance with the statutes of the State of New Jersey must be provided, including employer's liability insurance with minimum limits of: \$500,000 each accident for bodily injury by accident; \$500,000 each employee for bodily injury by disease; and \$500,000 policy limit for bodily injury by disease. Proof of insurance shall be provided to the City Administrator and/or his designee, that said policies have been amended to reflect the coverages for the proposed outdoor dining area.

Retail Businesses – Outdoor Displays

6. The City Administrator and/or his designee are hereby granted the authority and discretion to approve an Outdoor Display Plan Applications pertaining to Retail Businesses to locate outdoor displays in the City right-of-way during the designated times, and/or the designated areas of Public Parking Lots during the designated times, and/or designated On-Street Parking Spaces during the designated times, and/or other private locations during the designated times subject to the following requirements and restrictions:

- A. Applicants who wish to locate outdoor displays on site, including the City right-of-way and/or other locations on site, shall be required to submit a site plan application, and a site drawing depicting the existing and proposed lay out and location of the outdoor display, which shall also include but not be limited to, a depiction of all aisles, routes of ingress and egress, clearances/distances between the outdoor displays and the curb-line, an illustration, rendering, and/or photograph of all proposed furniture, trash receptacles, and/or the outdoor displays, mobile carts, racks and trash receptacles, etc. must be of like nature

and appearance to what is currently utilized on site. Applicants shall also submit a brief written narrative describing the proposed method of servicing customers in the newly proposed areas. The Applicant should also include how the proposed plan conforms to all safety and precautionary measures relating to social distancing and COVID-19 related issues. The approval of any outdoor display plan in relation to this Resolution shall be subject to the following conditions:

- i. Applicants may be permitted to locate outdoor displays, within the City right-of-way subject to the review and approval of the City's Administrator and/or his designee. Notwithstanding the provision of the Resolution, no outdoor display shall encroach on the or obstruct the free flow of pedestrian traffic on the pedestrian walkways or any of its approaches.
- ii. Outdoor Displays may be permitted to be located in the City right-of-way provided a minimum 6 feet pedestrian walkway is maintained and provided for the general public, subject to applicable ADA requirements,
- .iii. Applicants may be permitted to utilize the public right of way (including sidewalks and Public Areas) of the adjacent property owner for outdoor displays with the express written consent and approval by the adjacent property owner and business, which must be submitted with the Application.
- iii. An approved Outdoor Display located outside of the principal building may permitted to be utilized between the hours of 7:00A.M. and 10:00 P.M. daily.
- iv. Applicants must submit a Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor area, and the frequency with which the outdoor dining area will be policed for litter in order to control the accumulation of trash/recycling.
- v. Applicants must also acknowledge and agree to full compliance with all current and newly imposed safety and precautionary measures and guidelines established by the State of New Jersey relating to COVID -19.
- vii. Applicants proposing to locate Outdoor Displays in the City right-of-way and designated On-Street Parking shall

indemnify and hold harmless the city of Woodbury including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees, and volunteers arising out of the placement, operation, and maintenance of the Outdoor Dining Area. Applicants must name the City of Woodbury as an additional insured under the Applicant's commercial general liability insurance policy and liquor liability insurance policy (if applicable) and provide evidence that workers compensation coverage is in place. General and liquor liability insurance policies are required to have a minimum limit of One Million (\$1,000,000.00) Dollars per Occurrence and Two Million Dollars (\$2,000,000) annual aggregate. Evidence of workers compensation insurance in accordance with the statutes of the State of New Jersey must be provided, including employer's liability insurance with minimum limits of: \$500,000 each accident for bodily injury by accident; \$500,000 each employee for bodily injury by disease; and \$500,000 policy limit for bodily injury by disease. Proof of insurance shall be provided to the City Administrator and/or his designee, that said policies have been amended to reflect the coverages for the proposed outdoor dining area.

BE IT FURTHER RESOLVED by the Mayor and Council of the City of Woodbury that Chapter 55, Alcoholic Beverages, Article II of the Code of the City of Woodbury, entitled, "Consumption in Public; Open Containers" shall not apply to the specific outdoor dining and tables and chairs approved by the City Administrator and/or his designee consistent with, and for the life of the within Resolution; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that it hereby reserves the right to amend, terminate, or repeal this Resolution and/or any approvals granted herein at any point in time, if it determines that it is in the best interest of the health safety and welfare of the City, and accordingly no property rights are granted to any person(s) or entities by virtue of this Resolution and/or approval hereunder and any person(s) or entities electing to pursue temporary relief in accordance with the provisions of this Resolution are hereby given notice that the expenditure of any funds, or the incurrence of any costs, in reliance upon this Resolution and any approval hereunder shall be at their sole and exclusive risk and expense. All persons and/or entities are hereby given notice that the risk of loss for any expenditure and/or costs incurred shall be their sole and exclusive responsibility; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that with the exception of the temporary relief and application process set forth herein relating to outdoor

dining and outdoor displays, existing and proposed retail businesses must comply with any and all other federal, state, county, and local laws and regulations, including any and all other existing zoning ordinances and/or general ordinances governing the operation of bars/restaurants and retail businesses; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that in the event the City Administrator, Zoning Officer and/or Police Department determines that a business establishment or person is in violation of the conditions of any temporary Outdoor Dining and/or Outdoor Display Plan approved in relation to this Resolution, the City Administrator is hereby authorized to immediately revoke the approval received in relation to this Resolution; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that the City Administrator and/or his designee, Zoning Officer, Construction Department and Police Department are hereby authorized and empowered to enforce this Resolution and the several provisions hereof as well as the conditions of approval for the use of outdoor dining and outdoor displays; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that that the City Administrator is hereby further empowered to enforce the discretionary powers which are considered necessary in order to make the provisions hereof properly effective and useful for the benefit of the City and its businesses, including but not limited to the separation of the commencement of the application and approval process for outdoor dining and outdoor displays; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that in order to avoid injustice or the possible abuse of discretion and to correct the possibility of error in judgment, any Applicant, who's Outdoor Dining and/or Outdoor Display Plan application is denied by the City Administrator and/or his designee, has the right to appeal to the City Council by filing a notice of appeal with the City Clerk within thirty (30) days of the denial of said application. Upon receipt of any such notice of appeal, the City Council will hear the appeal at its regular meeting, at which time the owner and any other persons appearing in the matter will be heard or afforded the opportunity to be heard. At the conclusion of said hearing, the City Council will consider the matter, determine whether to uphold or overturn the City Administrator and/or his designee's decision, and thereafter notify the owner of its decision; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that the within Resolution and the authority delegated herein and the effects of any permission and/or approvals hereto are expressly conditioned upon Governor Philip Murphy relaxing the restrictions of Executive Order 107 and 150 and any other restrictions on residents of the State of New Jersey and essential and non-essential businesses and no action is authorized or permitted that would conflict with the actions and/or Executive Orders of Governor Murphy, or any rules, regulations, requirements, prohibitions, and/or guidance of the State of New Jersey and any of its Departments, Agencies, Divisions, including but not limited to the Office of Emergency Management; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that this Resolution shall take effect immediately upon and subject to the State of New Jersey relaxing the provisions of Executive Order 107 and 150, specifically the provisions pertaining to the regulations upon the residents of the State of New Jersey and the operation of restaurants and bars and/or other essential and non-essential retail businesses. However, the City Administrator is authorized to commence the promulgation of requirements, rules and regulations pertaining to the application for and the use of outdoor areas, both public and private, by local business establishments for outdoor dining and outdoor displays and the approval of same. Upon passage of the within Resolution, the City Administrator is further authorized to accept and review said Applications, however shall not be permitted to approve such applications until such time as the effective date pursuant to the terms hereto; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that in the event the prohibitions of Executive Order 107 and 150 rescinded and/or expires, any temporary approval afforded by the City Administrator and/or his designee in accordance with the terms and conditions of this Resolution shall be deemed void; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that, upon the effective date of this Resolution, all requirements of prior ordinances or parts of ordinances inconsistent with this temporary Resolution are hereby temporary suspended to the extent of their inconsistencies only; and

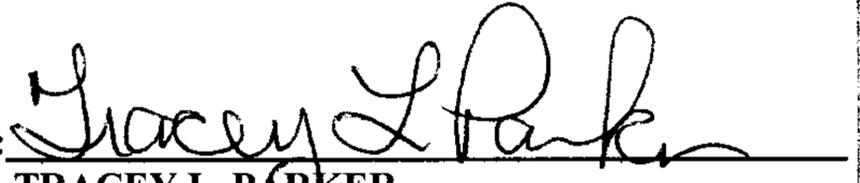
BE IT FURTHER RESOLVED, by the City Council of the City of Woodbury that the within Resolution and all authorizations contained herein and the designated areas of the Public Parking lots and the designated On-Street Parking spaces and the delegation of authority and any and all approvals to allow for outdoor dining and outdoor displays permitted herein on public and private property shall remain in effect until further Resolution of the City Council of the City of Woodbury; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that, except as provided for above pertaining to the promulgations of rules and regulations and the acceptance and approval of application, immediately upon Governor Philip Murphy's rescission or relaxation of the restrictions upon the residents of the State of New Jersey and the operation of essential and non-essential businesses throughout the State of New Jersey, all City officials, employees and agents shall take all necessary actions to in order to effectuate the within Resolution; and

BE IT FURTHER RESOLVED by the City Council of the City of Woodbury that should any section, paragraph, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid for any reason, or not approved by the State of New Jersey, the remaining portions of this Resolution shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this Resolution are hereby declared to be severable; and

ADOPTED at the regular meeting of the Mayor and City Council of the City of Woodbury held on June 19, 2020.

CITY OF WOODBURY

By: 
TRACEY L. PARKER,
President of Council

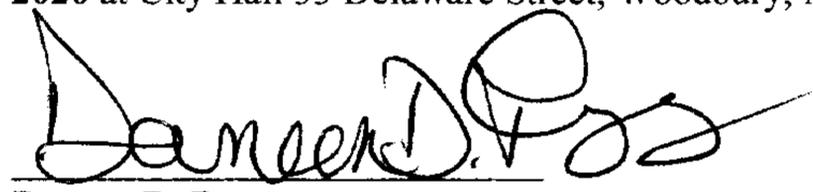
ATTEST:


DANEEN FUSS, City Clerk

Council Member	Ayes	Nays	Abstain	Absent
Councilwoman Carter	✓			
Councilman Fleming				✓
Councilman Hagerty	✓			
Councilman Johnson				✓
Councilman McIlvaine	✓			
Councilman Merinuk	✓			
Councilwoman Miller	✓			
Councilwoman O'Connor	✓			
Council President Parker	✓			
Mayor Floyd				

CERTIFICATION

I, Daneen D. Fuss hereby certify that the foregoing Resolution was adopted by the City Council, of the City of Woodbury, in the County of Gloucester and State of New Jersey at the meeting held on **June 19, 2020** at City Hall 33 Delaware Street, Woodbury, New Jersey 08096.


Daneen D. Fuss
City Clerk

(City of Woodbury)

Application for Use of Public Right of Way

APPLICANT: _____

ADDRESS: _____

EMAIL ADDRESS: _____

Responsible Party for Applicant:

Name: _____ Title: _____

Address: _____

Telephone: (H) _____ (C) _____ (W) _____

Email Address: _____

The Applicant requests the use of the Public Right of Way listed below for Restaurant Seating:
Name, Location and Specific Dimensions of the Public Right of Way to be used for seating
(include a map or drawing that depicts the Public Right of Way to be used):

If the Public Right of Way adjoins a County or State roadway, approval from that public entity must also be obtained, and provided, in writing with this application.

For the following use of the Public Right of Way (specify the number of tables and chairs to be placed in the Public Right of Way, and include a diagram of the placement of the tables and chairs in the Public Right of Way):

on the following dates: _____

Specify the hours of use: From: _____ To _____

Note: The Municipality has the right, in its sole discretion, to deny, limit, or revoke the use of requested Public Right of Way when in the opinion of the Municipality the use presents a risk of unreasonable injury to persons or damage to the Public Right of Way, the property of the Municipality or others.

Will Alcoholic Beverages be served? ____ Yes ____ No If Yes, who will be serving the alcohol?

If Yes, attach a copy of the liquor license, the liquor liability policy of insurance and an endorsement to the liquor liability policy of insurance which designates the municipality as an "additional insured".

____ Attached

The Applicant has received a copy of the **Municipality Use of Public Right of Way Agreement** and agrees to execute and abide by and comply with the terms of that Agreement.

APPLICANT: _____ **DATE:** _____
Signature

RESPONSIBLE PARTY: _____ **DATE:** _____
Signature

Use of Public Right of Way Agreement

The City of Woodbury, a Municipality of the State of New Jersey, hereinafter referred to as **“MUNICIPALITY”**, hereby agrees to allow _____ *(Name of Person(s) or Organization)*

hereinafter referred to as **“USER”**, to use the Public Right of Way listed below:

Name, Location and Specific Dimensions of the **PUBLIC RIGHT OF WAY**:

hereinafter referred to as **“ROW”**

for the following use of the Public Right of Way with ___ tables and ___ chairs to be placed in the ROW: _____

on the following dates and during the following hours of operation: _____

The above **USER** shall perform a complete and thorough inspection of the described **PUBLIC RIGHT OF WAY** prior to the use of the **ROW** and report any defective, hazardous or dangerous conditions found at the **ROW** to _____

_____ at **MUNICIPALITY**, and the **USER**
(Name and Tel. Number)

shall immediately cease the use of the **ROW** until such defective, hazardous or dangerous conditions are remedied. After the use of the **ROW**, the **USER** shall immediately report to the **MUNICIPALITY** any and all defects, hazards, damages or dangerous conditions upon or adjacent to the **ROW**.

Indemnification

The **USER** shall indemnify, hold harmless and defend the **MUNICIPALITY**, its elected and appointed officials, its employees, agents, volunteers and others working on behalf of the **MUNICIPALITY**, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of **USER's** use of the named **PUBLIC RIGHT OF WAY**, including all suits or actions of every kind or description brought against the **MUNICIPALITY**, either individually or jointly with **USER** for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, any of the activities conducted by or caused to be conducted by **USER**, or through any negligence or alleged negligence in safeguarding the **PUBLIC RIGHT OF WAY**, participants, or members of the public, or through any act, omission or fault or alleged act, omission or fault or alleged act, omission or fault of the **USER**, its employees, agents, volunteers, subcontractors or others under the direction, control or under any contractual relationship with the **USER**.

Insurance

Notwithstanding the indemnification, hold harmless and defense obligations of the **USER**, the **USER** shall purchase and maintain General Liability and Liquor Liability (if applicable) insurance described in the attached schedule as is appropriate for the type of use and hazards present and as will provide protection to the **MUNICIPALITY** from any and all claims which may arise out of or caused or alleged to have been caused in any manner from **USER's** use of the **ROW**, whether it is to be used by the **USER**, its employees, agents, volunteers, subcontractors or others under the direction, control or under any contractual relationship with the **USER** or by anyone for whose acts any of them may be liable.

The **USER** shall be required to name the **MUNICIPALITY** as an "Additional Insured" on the **USER's** policy of Commercial General Liability and Liquor Liability (if applicable) insurance, and simultaneously with the delivery of the executed *Use of Public Right of Way Agreement*, the **USER** shall provide the **MUNICIPALITY** with Certificate of Insurance and an Endorsement to the Insurance Policy indicating that the insurance coverage as described in the attached schedule, and as is appropriate for the type of use and hazards present, has been obtained and that the **MUNICIPALITY** has been designated as an "Additional Insured". On or before the renewal date of said policy, **USER** shall be required to provide the **MUNICIPALITY** with an Endorsement and a Certificate of Insurance indicating the continuation of insurance coverage and designating the **MUNICIPALITY** as an "Additional Insured" for the duration of this Agreement.

The schedule of insurance and the limits of liability for the insurance shall provide coverage for not less than the amounts listed in the attached schedule or greater where required by law.

Signed by an authorized representative of the **USER** and the **MUNICIPALITY** on

this _____ day of _____, 2020.

Witness

MUNICIPALITY

Witness

USER

Schedule of Insurance*

Notwithstanding the indemnification, hold harmless and defense obligations of the **USER**, the **USER** shall provide, at its own cost and expense, proof of the following insurance to the “**MUNICIPALITY**”:

General Liability including Products & Completed Operations Insurance with a minimum combined single limit of liability per occurrence for bodily injury and property damage of *one million (\$1,000,000) dollars** with a minimum annual aggregate of *two million (\$2,000,000) dollars**.

Liquor Liability with a minimum limit of liability per occurrence of *one million (\$1,000,000.00) dollars** with a minimum annual aggregate of *two million (\$2,000,000.00) dollars** (if applicable).

The **MUNICIPALITY** shall be named as an “Additional Insured”, and shall be provided with an endorsement to the policy evidencing the designation.

Failure by the **USER** to supply such written evidence of the required insurance coverage, and/or the failure by the **USER** to maintain the coverage for the duration of this Agreement shall result in the **USER**'s default of this Agreement and the **USER** shall be prohibited from using said **ROW**.

The insurance companies providing the above referenced coverage must be licensed by the State of New Jersey and acceptable to the **MUNICIPALITY**. The **USER** shall take no action to cancel or materially change any of the insurance required under this Agreement without the **MUNICIPALITY**'s prior approval. The maintenance of insurance under this section shall not relieve the **USER** of any liability greater than the limits or scope of the applicable insurance coverage.

* The Insurance Schedule detailed above should be prepared in consultation with your Risk Management Consultant as recommended within the JIF Certificate of Insurance Guidelines.