



City of Farmington
Community Works Department
805 Municipal Dr.
Farmington, New Mexico
kwalker@fmtn.org | 505-599-1317



Dine and Shop Downtown Farmington

Application Process

For the temporary use of City property, sidewalks and streets, for outdoor dining and retail service.

Sketch a simple Layout Plan of the area and what furnishings will be used. It must be drawn to scale. You can use the grid on the next page.

Mark where your outdoor seating or retail area will be located. You may request an aerial map of your property via email to kwalker@fmtn.org. The following requirements shall be followed:

- A four-foot wide travel aisle shall be maintained along the sidewalk and between the seating area and front entrance of the building.
- Emergency lighting shall be in place to illuminate exits in case of a power failure.

Fill out the application form. Review the guidelines for use and sign the form.

Read through the License Agreement, fill in information where needed, and sign the form.

If your outdoor dining proposal includes service of alcohol, submit a copy of your approved liquor license and if applicable an approved amended premises from the state.

Submit the completed application packet, including the required proof of insurance to:

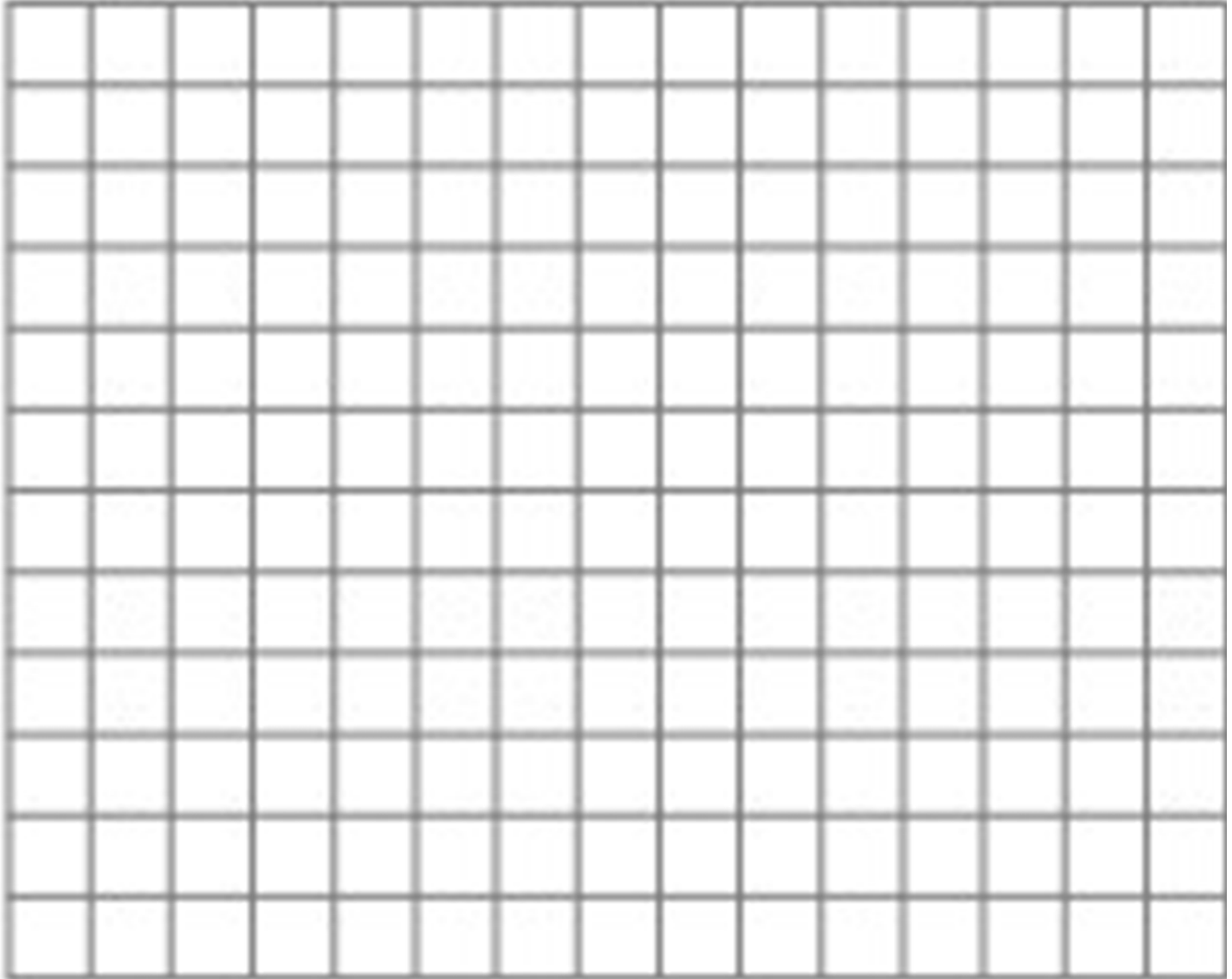
City of Farmington Planning Division
800 Municipal Dr.
Farmington, New Mexico 87401
kwalker@fmtn.org
505-599-1317.

If necessary, provide any additional information requested during the review of the application.

License issued! City staff will email you a signed copy of the License Agreement then you can set up and start operating!

PLEASE NOTE: No licenses shall be issued until Substantial Completions of the Main Street Complete Streets Construction has occurred at your location.

Use the following grid for Site Layout Drawing or provide a separate sheet. Outdoor Commerce areas located on Main Street shall not be wider than 10' from the curb. The area shall extend only the length of the existing storefront unless other arrangements are made, including support from neighboring businesses.



Scale = 1: _____

CITY OF FARMINGTON TEMPORARY OUTDOOR COMMERCE LICENSE AGREEMENT 2020 APPLICATION

The City of Farmington Temporary Outdoor Commerce Program is designed to allow businesses to use public outdoor space to increase service options in response to COVID-19. This application applies only to commercial use of the public-right-of-way. Approved applicants will be able to expand into designated Outdoor Commerce areas until November 1, 2020, or until terminated as described in the License Agreement, whichever is sooner.

If you have question about this application form or the License Agreement, contact Karen Walker in the Community Works Department at 505-599-1317 or kwalker@fmtn.org

Applicant: _____

Business: _____

Physical Address: _____

Property Owner: _____

Email: _____ Phone: _____

Check all items to be placed in the Temporary Outdoor Commerce area:

- | | | |
|---------------------------------------|--|------------------------------------|
| <input type="checkbox"/> Tables | <input type="checkbox"/> Equipment | <input type="checkbox"/> Tent |
| <input type="checkbox"/> Chairs | <input type="checkbox"/> Sandwich Boards | <input type="checkbox"/> Signs |
| <input type="checkbox"/> Benches | <input type="checkbox"/> Racks | <input type="checkbox"/> Umbrellas |
| <input type="checkbox"/> Other: _____ | | |

NOTE: Layout of outdoor dining area shall comply with all state public health orders.

Guidelines for Use:

The Public Right-of-Way (ROW) is the dedicated space where the public is allowed to pass through the City without the need to obtain permission from private property owners. It is also the location where the City provides many of its services and constructs and maintains critical infrastructure provided for the public. There are multiple considerations which local businesses must agree to in order to take advantage of the public right-of-way for commercial purposes.

An exhaustive list of the guidelines for using these areas is included in the Lease Agreement, but the key items are summarized below:

- Use of the area shall be between the hours of 6:00 AM to 11:00 PM.
- Furnishings, signs, tent, and other items must be securely anchored.
- Employees and servers will be informed about illicit discharges and shall not allow waste, food, litter, or beverages to be poured on the street or sidewalk.

- The use of the area cannot inhibit the free movement of pedestrians on the sidewalk.
- A four-foot aisle shall be maintained along the sidewalk and to and from the front entrance.
- No amplified music is allowed in these areas.

By signing below and by entering into the attached License Agreement, the applicant agrees to all the terms and conditions listed in the License Agreement.

Applicant Signature: _____

Date of Submission: _____

-----**FOR OFFICIAL USE ONLY**-----

Received by: _____

Date of Receipt: _____ Date of Approval: _____

Reviewer Name: _____ Reviewer Signature: _____

Notes:

**LICENSE AGREEMENT FOR TEMPORARY USE
OF PUBLIC RIGHT OF WAY FOR OUTDOOR COMMERCE**

THIS LICENSE AGREEMENT (hereinafter “Agreement”) is made and entered into this ____ day of _____, 20____, by and between the City of Farmington, New Mexico, a home rule municipal corporation (hereinafter “City”) and _____ (hereinafter “Licensee”).

Corporate Name of Licensee: _____

Business License Number: _____ Liquor License Number (If applicable): _____

Address of Business: _____

Phone Number: _____ Email: _____

WHEREAS, the impacts of the COVID-19 pandemic have caused significant impacts on commerce within the City due to closures and limited ability to operate; and

WHEREAS, the City desires to explore options to increase the opportunities for owners and operators of businesses within the City to conduct operations under current state and local health orders, including the use of City rights of way and sidewalks on a temporary basis for outdoor commerce; and

WHEREAS, the Licensee desires to obtain a revocable and non-exclusive license from the City to use and occupy a portion of the City’s rights of way and/or sidewalks to allow a temporary expansion of its current business operations; and

WHEREAS, the City is willing to grant Licensee a revocable and non-exclusive license for such purpose, upon the terms and conditions of this Agreement.

NOW, THEREFORE, the City and Licensee agree as follows:

1. Licensed Premises. The City hereby grants to Licensee a revocable and non-exclusive license to occupy and use the following described premises (the “Premises”) on the terms contained herein, located adjacent to or near _____, as more particularly described and depicted in Exhibit “A”, attached hereto and incorporated herein by reference.

2. Term. The license herein granted shall be effective beginning _____, 20____, and shall continue until November 1, 2020, unless terminated sooner as provided herein.

3. Payment. There shall be no fee for the Temporary License, the City being benefitted by the increase in commerce within the City resulting from the use of the Premises.

4. Use. The Licensee shall be entitled to use and occupy the Premises for the sole purpose of operating and maintaining a temporary outdoor expansion of its current business operation. Such area shall be open to the public. Use of the area shall be between the hours of 6:00 AM to 11:00 PM. Lessee further agrees to use the

premises for no purpose prohibited by the laws of the United States, the State of New Mexico, or ordinances of the City of Farmington. All use of the Temporary Outdoor Commerce space must comply with all relevant public health orders issued by the State of New Mexico, San Juan County Public Health, and the City of Farmington. Further, lessee agrees to comply with all reasonable recommendations by the City of Farmington relating to the use of the leased premises.

5. Conduct of Use. The temporary use and occupancy of the Premises by Licensee, including any proposed improvements, shall be installed and conducted in accordance with conditions, standards and requirements listed below. Licensee agrees to permit agents of the City to enter upon the Premises at any time to inspect and make any necessary repairs or alterations to the sidewalks, curbs, gutters, streets, utility poles, or other public facilities as the City may deem necessary or proper for the safety, improvement, maintenance or preservation thereof. Licensee further agrees that if the City of Farmington shall determine to make major structural changes to city property which may affect any structures placed within the Premises by the Licensee that the Licensee, by execution of this agreement, hereby agrees to remove equipment from the Premises and waives any and all right make any claim for damages to the improvements (or to its leasehold interest) and agrees to remove any structures necessary during such construction periods.

6. General Use and Care of Premises. Licensee agrees to take such actions as are necessary to maintain any approved improvements and Premises in good and safe condition at all times. Licensee further agrees to comply at all times with the ordinances, resolutions, rules, and regulations of the City, all health orders or advisories then in effect and all other applicable rules, laws or regulations imposed by any other entity with jurisdiction. All use of the premises must abide by the following provisions:

- a. Equipment shall not obstruct any fire hydrants, which includes a clear path from the street and 5 foot clear zone around the hydrant.
- b. Equipment shall not obstruct any valves or other apparatus necessary to operate or maintain the water system.
- c. Fire Department Connections shall have a clear path from the street to the building with no obstacles to connect equipment.
- d. Outdoor Commerce space shall not cover or obstruct any inlets or sewer manholes.
- e. Cleanouts will be available for access for cleaning and maintenance.
- f. Fats, oils, and greases shall be disposed of internally in a proper oil or grease trap, not outdoors or in any sewer manhole service connection.
- g. The curb and gutter shall not be obstructed and the outdoor space shall provide for drainage to flow in the curblines.
- h. Outdoor Commerce space shall be cleaned daily and shall be kept clean before the start of a storm event.
- i. Employees and servers will be informed about illicit discharges and shall not allow waste, food, litter, or beverages including alcohol, soda, coffee, and teas to be poured on the street or sidewalk.
- j. All non-secured equipment must be removed from the Temporary Outdoor Commerce area between the hours of 11:00 PM - 6:00 AM.
- k. Furnishings, signs, tent, and other items must be securely anchored within the Temporary Outdoor Commerce area.
- l. Costs associated with acquiring, maintaining and insuring equipment and activity within the Outdoor Commerce space will be the responsibility of the applicant and the City must be coinsured.

- m. Applicants must continuously maintain a minimum of four feet for pedestrian use on the sidewalks and staff must avoid blocking pedestrian flow.
- n. Equipment in the Outdoor Commerce space cannot be used as pet tie outs.
- o. This License does not include authorization for liquor license or other permit requirements. The applicant is responsible for ensuring all the required permits and license are attained.
- p. Furniture shall not be made of reflective materials.
- q. Umbrellas and retractable canopies are permitted and must be securely anchored. No tents or sides on a canopy/umbrella covering are allowed. Umbrellas and shade canopies may be used provided there is at least seven feet of clearance under the umbrella or canopy. Umbrellas that are visible from public rights-of-way may not have signs or logos that advertise any product or business.
- r. No amplified music is allowed in the Premises.
- s. Garbage receptacles and wait stations must be taken in at night. Garbage receptacles and wait stations must comply with New Mexico retail food regulations.
- t. No food preparation is allowed in the Premises.
- u. Portable gas heaters cannot be located beneath, or closer than 5 feet to combustible decorations, combustible overhangs, awnings, sunshades, or similar combustible materials. This includes trees and other vegetation.
- v. Portable gas-fired heaters cannot be located any closer than 5 feet to buildings.
- w. Portable gas-fired heaters cannot be located within 5 feet of exits or exit paths. A safer, recommended alternative to gas-fired heaters are infrared patio heaters or directly connected natural gas heaters.
- x. Smoking shall be prohibited within the outside seating area or the parking lot.
- y. One sign containing a menu or other information of no more than four (4) square feet is permitted in leased premises. Signage must be submitted as part of the License application. Signage shall not impede pedestrian access.

7. Compliance. If Licensee fails to comply with its obligations under this Agreement, the City may at its sole option terminate this Agreement as provided herein or take such measures as it determines necessary to bring the Premises into compliance with the terms hereof, and the cost of any such measures shall be paid by Licensee. Generally, one warning will be issued and any repeat infractions will result in the revocation of this License.

8. Acknowledgment of General Condition. Licensee acknowledges that its use and occupancy hereunder is of the Premises in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges the City shall have no obligation to repair, replace or improve any portion of the Premises in order to make such Premises suitable for Licensee's intended uses.

9. Taxes. The Premises are presently exempt from any real property taxation. In the event the County Assessor determines that the Premises is subject to the lien of general property taxes due to Licensee's use or occupancy, Licensee shall be responsible for the payment of taxes.

10. Liens. Licensee shall be solely responsible for and shall promptly pay for all services, labor or materials furnished to the Premises at the instance of Licensee. The City may at Licensee's expense discharge any liens or claims arising from the same.

11. Licensee and City's Property. The City shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property of Licensee placed or located on, at, or in the Premises, it being acknowledged and understood by Licensee that the safety and security of any such property is the sole responsibility and risk of Licensee.

12. Indemnity and Release. Licensee shall be solely responsible for any damages suffered by the City or others as a result of Licensee's use and occupancy of the Premises. Licensee agrees to indemnify and hold harmless the City, its elected and appointed officers, agents, employees and insurers harmless from and against all liability, claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of, resulting from, or in any way connected with (a) Licensee's use and occupancy of the Premises; (b) the conduct of Licensee's operations or activities on the Premises; (c) any liens or other claims made, asserted or recorded against the Premises as a result of Licensee's use or occupancy thereof; or (d) the rights and obligations of Licensee under this Agreement. Licensee hereby further expressly releases and discharges the City, its elected and appointed officers, agents, employees and insurers, from any and all liabilities for any loss, injury, death or damages or any person or property that may be sustained by reason of the use or occupancy of the Premises under this Agreement, excepting only those arising solely from willful and wanton conduct of the City's officer's or employees.

13. Insurance. Licensee represents that it will maintain for itself, its owners, its agents, successors and assigns necessary and adequate worker's compensation insurance, property damage insurance, and comprehensive general liability insurance with limits no less than \$1,000,000. In the event the Premises will be used to serve, sell or furnish liquor or alcoholic beverages of any kind, then the Licensee shall obtain and maintain, in addition to the above referenced coverage, an adequate liquor liability policy which shall be at all times in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence for any damages arising out of the sale, service or furnishing of any alcoholic beverage, and no occupancy of the Premises shall be commenced until an acceptable proof of such insurance is provided by the Licensee to the City. The City of Farmington shall be named as a secondary insurer on these policies. Failure on the part of Licensee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach hereof upon which the City may immediately terminate this Agreement.

14. No Waiver of Immunity or Impairment of Other Obligations. The City is relying on and does not waive or intend to waive by any provision of this Agreement the monetary limitations or any other rights, immunities, and protections provided by the New Mexico Tort Claims Act NMSA 41-4-1 et seq., as from time to time amended, or otherwise available to the City, and its officers and employees.

15. Termination. This License agreement may be terminated as follows: (a) if there is a breach or default in its terms by the Licensee, (b) upon the termination of the Licensee's possession of the Licensee's adjacent property or cessation of operation of its primary business location, (c) at the City's sole option at any time for its convenience and without any cause of any nature by giving written notice to the Licensee at least 10 days in advance of the termination date.

16. Restoration of Premises. At the termination of this Agreement by lapse of time or otherwise, Licensee shall deliver up the Premises in as good a condition as when Licensee took possession, excepting only ordinary wear and tear. At the time of such termination, Licensee at its sole expense shall remove from the Premises all improvements and other items placed on the Premises. If any such improvements or items are not removed at the termination of this Agreement, the City may remove them at Licensee's sole expense, and Licensee

shall reimburse the City for all costs incurred, including but not limited to staff time and administrative overhead, within 15 days of receipt of a City invoice for same.

17. Notices. Any notices or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City: City of Farmington Attn: City Manager 800 Municipal Drive Farmington, NM 87402	LICENSEE: _____ _____ _____ _____
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or to such other address or the attention of such other person(s) as hereafter designated in writing by the parties. Notices given in the manner described above shall be effective, respectively, upon personal delivery, upon facsimile receipt, or upon mailing.

18. Existing Rights. Licensee understands that the license granted hereunder is granted subject to prior franchise agreements and subject to all easements, rights to use and other interests of record applicable to the Premises, including those rights belonging to the City. Licensee shall be solely responsible for coordinating its activities hereunder with the City and the holders of such franchise agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such franchises or easements or other interests.

19. Agreement Personal. This Agreement is personal to the parties hereto. Licensee shall not transfer or assign any rights hereunder without the prior written approval of the City, which approval shall be at the City's sole option and discretion.

20. Entire Agreement; Authority. This Agreement is the entire agreement between the City and Licensee and may be amended only by written instrument subsequently executed by the City and Licensee. The undersigned signatory of Licensee represents that he or she has been duly authorized to execute this Agreement on behalf of Licensee and has full power and authority to bind Licensee to the terms and conditions hereof.

21. Survival. All of the terms and conditions of this Agreement concerning release, indemnification, termination, restoration of the Premises, remedies and enforcement shall survive termination of this Agreement.

22. No Third Party Beneficiaries. The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

City of Farmington
800 Municipal Drive
Farmington, NM 87401

CITY OF FARMINGTON, NEW MEXICO

City Manager (or designee)

Entered this _____ day of _____ 2020.

NOTARY SEAL

Notary Public - Commission Expires

Licensee Printed Name

Licensee Signature

Entered this _____ day of _____ 2020.

NOTARY SEAL

Notary Public - Commission Expires

Attachments:

- Description and Depiction of Licensed Premises
- Detailed Description and/or Pictures of Improvements
- Copy of Liquor License
- Proof of insurance showing the City of Farmington as a secondary insurer