

# **OUTDOOR DINING AND DISPLAY PACKET** For uses in the Downtown Specific Plan and Downtown Core Plan Areas

#### **INSTRUCTIONS:**

Please follow these instructions upon submittal of the following application packet and consistent with the requirements of Chapter 6 & 10 of the DSP for Outdoor Dining Uses.

- The applicant shall complete the general application and encroachment permit application.
- 2. The applicant shall provide five (5) copies of a dimensional site plan. The site plan must be folded 9" x 12" maximum and show the following:
  - a. Address
  - b. The underlying right-of-way (and parking spaces if requesting to use the flexible zone) and the location of adjacent City street trees and furnishings, including, but not limited to, planters, light poles, trellis structures, benches, trash containers, kiosks, etc.
  - c. An outline of the area proposed for outdoor dining use and the location of any existing and adjacent outdoor dining uses.
  - d. The proposed layout of all use furnishings, including, but not limited to, tables, chairs, umbrellas, heaters, planters, fencing, signage, etc.
  - e. The proposed electrical connections to serve the use if electrical service is requested (electrical service is permitted for lighting in the flexible zones only).
  - f. The proposed circulation to and from the outdoor dining use and the associated business, general pedestrian circulation, and building ingress/egress.
  - g. Location of all proposed signage. (Note: A separate sign application and fee ARE NOT required.)
  - h. Location of all buildings and structures adjacent to the outdoor dining use, including the building proposing the use.
  - i. Location, type and height of any fencing surrounding the outdoor dining use.
- 3. In addition to the general application, encroachment permit application, and dimensional site plan, the applicant shall provide the following:
  - a. A letter of agreement signed by the underlying property owner and adjacent business owner(s) if the outdoor dining use is requesting to expand in front of an adjacent business. The applicant must demonstrate that the proposed use will not block the display windows or signage of the adjacent business(s).
  - b. Specifications for the design, colors, and materials of all proposed furnishings including but not limited to tables, chairs, umbrellas, heaters, planters, fencing, trash receptacles, etc., demonstrating that all furnishings are of commercial grade and

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- designed for outdoor use and consistent with the requirements of the DSP Master Design Program for Outdoor Dining.
- c. Specifications for all proposed signage.
- d. A lighting plan, including under umbrella, table lighting, and any other lighting proposed, showing fixture and lamp type and locations.
- e. An operational schedule including hours, days, and months (outdoor dining uses within the sidewalk area shall be required to operate for a minimum of 4 hours per day, and outdoor dining uses within the flexible zone shall be required to operate for a minimum of 8 hours per day, 6 days a week as weather permits).
- f. Evidence of Comprehensive Liability Insurance, evidence of Workers Compensation Insurance, and a signed Hold Harmless and Indemnification statement (that indemnifies and holds harmless the City of Livermore, its officials, employees, agents and volunteers, and the underlying property owner(s)), in a form approved by the City's Risk Manager, as approved by City Council Resolution 2005-246.
- g. A copy of the applicant's approved City of Livermore business license.
- 4. The applicant shall pay the following fees:
  - a. Annual Outdoor Dining Permit Fee \$500
  - b. Annual Electrical Service Charge \$40 (if requesting to plug into City fixtures in the flexible zones)
  - c. Annual Maintenance Charge 15 cents per square foot of the area used for outdoor dining
  - d. A one-time Maintenance/Damage Deposit \$279
- 5. The Planner shall enter the application and obtain an ODP number from Permits Plus.
- 6. The Planner shall give the application packet to the Principal Planner for assignment.
- 7. The Planner shall provide the applicant with a receipt.

## **OUTDOOR DINING USES – APPLICATION HANDOUT**



#### **MASTER DESIGN PROGRAM - OUTDOOR DINING USES**

The intent of the flexible zone is to provide for curbside parking. Alternatively, the flexible zone, along with the adjacent sidewalk area, may be used for outdoor dining uses, subject to City approval. An individual application may be made for the use of a portion of the flexible zone and/or sidewalk area for outdoor dining use by an individual fronting ground floor restaurant use subject to the provisions of the Downtown Specific Plan and Chapter 3-25 of the Livermore Planning and Zoning Code. Approval of an application for outdoor dining use shall be granted to the applicant only, and shall not be transferable. Beyond the requirements for approval of an individual application, the number of parking spaces converted to outdoor dining use shall be limited to 25 percent of all parking spaces on First Street between L Street and Maple Street. In addition, the City reserves the right to limit the number of parking spaces that may be converted to outdoor dining use based on the cumulative effect of the loss of parking spaces on a block by block basis.

Allocation of the Flexible Zone: Allocation of the flexible zone for outdoor dining use shall be based on frontage between the extended property lines of the building in which the associated fronting ground floor storefront restaurant use is an occupant. Where more than one-half of the total square footage of a parking space is located between the extended property lines, an application for allocation of that parking space may be made by the owner or tenant of such use. Where one-half or less of the total square footage of a parking space is located between the extended property lines, an application for allocation of that parking space may be made by the owner or tenant of such use, but shall require the written agreement of the affected underlying property owner, at no compensation, and shall be conditionally allocated until such time the affected adjacent ground floor storefront restaurant use requests and is approved for allocation of the flexible zone fronting their use. In such circumstance, the extended property line will become the dividing mechanism between the two allocated uses, and 15 days notice shall be given to vacate any previous conditional allocation that is outside a uses property line extensions.

<u>Allocation of the Sidewalk Area:</u> Allocation of the sidewalk area for outdoor dining uses shall be based on frontage between extended property lines (on corner lots this applies to both frontages), and shall meet the following standards:

Outdoor dining uses shall be limited to an area beginning at the building wall or sidewalk steps and extending up to six feet into the sidewalk area, provided that a minimum five foot sidewalk corridor is maintained.

Where fronting on the Plaza at the southwest corner of Livermore Avenue and First Street, outdoor dining uses may extend more than six feet into the sidewalk area provided that a minimum five foot sidewalk corridor is maintained. If the fronting ground floor storefront at the southeast corner of First Street and J Street is occupied by a restaurant, use of the paved area that surrounds the specimen tree at the southwest corner of the Plaza may be requested. Outdoor dining uses shall not be permitted directly adjacent to the semi-circular steps providing access from the sidewalk to the turf area of the Plaza.

Where directly adjacent (not separated by structures or landscape features) to a City park or plaza (other than the plaza located at the southwest corner of First Street and Livermore Avenue), outdoor dining uses may request the use of paved areas within the park or plaza that are part of or connected to a sidewalk or pedestrian pathway, provided that a minimum five foot sidewalk/pathway corridor is maintained.

#### **General Standards:**

Outdoor dining uses may request to use the sidewalk area, flexible zone, or both. Outdoor dining uses within the flexible zone shall use the entire area between the face of the bottom riser of the two step curb and the back edge of the valley gutter. In the flexible zone, outdoor dining use operators may propose to use a parking space located completely outside of their extended property lines and in front of an adjacent business with the written agreement of the underlying property owner and adjacent business owner, at no compensation. In the sidewalk area, outdoor dining uses may propose to extend in front of an adjacent business outside of their extended property lines with the written agreement of the underlying property owner and adjacent business owner, at no compensation. In no case, shall such extension be permitted to block the display windows or signage of the adjacent business. In the flexible zone, only one additional parking space may be requested from each side of an applicant's extended property lines. The maximum number of parking spaces that may be converted to outdoor dining is three per restaurant use.

An outdoor dining use may be located directly adjacent to another outdoor dining use, where the extended property line will become the dividing mechanism between the two allocated uses.

All outdoor dining uses shall meet ADA requirements.

All outdoor dining uses shall maintain ingress/egress and pedestrian circulation pursuant to Uniform Building Code and Uniform Fire Code; and shall comply with the following minimum requirements (the City reserves the right to require larger clearance, ingress/egress, and pedestrian corridors depending upon the circumstances pertaining to the use area):

 Maintain a minimum five foot wide access in a direct and straight path to the building entrance clear and unimpeded for ingress and egress.

- Maintain a minimum five foot wide sidewalk corridor for general pedestrian circulation adjacent to the use.
- Maintain a minimum 15-foot radius from street corner intersections, measured from the back of curb.
- Within the sidewalk and flexible zone areas, the City may require a minimum five-foot clearance adjacent to City street trees and furnishings, to allow for use of trash containers and benches by the general public, and to allow access for maintenance of planters, trellis structures, street lights and other street furnishings by City maintenance crews. City staff will review each applicant's site plan to determine if additional access or clearance is required.

Within the flexible zone, planters constructed of sturdy, durable, and attractive materials consistent with this Program shall be placed within the flexible zone adjacent to the valley gutter and along the sides of the use area to define the use area and protect users from vehicular traffic. Planters shall be provided, put in place, planted, maintained, and removed by the City (see furnishing standards below for site plan requirements).

Permanent changes to the flexible zone or sidewalk area shall not be permitted. No decking or stages are permitted. Any flexible zone, sidewalk, or City improvements, furnishings, and utilities damaged or destroyed by the outdoor dining use shall be replaced to City standards with the cost borne by the use operator.

Furnishings and decorations shall not encroach beyond the permitted use area or overhang pedestrian or vehicular circulation paths.

All outdoor dining area furnishings shall be maintained in a safe and clean condition. All sidewalk use furnishings shall be stored indoors nightly. Flexible zone use furnishings may be secured within the flexible zone use area, or stored indoors nightly. Furnishings shall not be stacked outside at any time.

All outdoor dining use areas shall be maintained in an attractive, clean (free from spills, litter and other debris) and safe manner.

Signage shall be subject to the provisions of this Program.

Tablecloths are permitted to be cloth only. Vinyl tablecloths are not permitted. Tablecloths shall be brought indoors nightly and shall be clean when placed outside each day.

To minimize litter and debris, where table wait service is provided, or food is served to the customer on a tray to be taken and eaten on site in the outdoor dining area, plates, glasses, cups, and silverware made of permanent (non-disposable) materials such as glass, ceramic, and metal, and cloth napkins shall be required. The use of disposable food containers, utensils, and napkins is permitted only where food is served to the customer "to go" only.

Trash receptacles, consistent with this Program, shall be required for all outdoor dining use areas where food is served "to go" with disposable containers, utensils and napkins. The applicant shall be responsible for maintaining the use area and trash receptacles in a clean and tidy manner, including emptying the receptacle daily, or more frequently if needed in high use areas, into the primary restaurant trash receptacle serving the business for proper disposal.

If an outdoor dining use offers alcoholic beverage service, such use operator shall be duly licensed by the State Department of Alcoholic Beverage Control and shall conform to the requirements of such license.

Outdoor dining uses shall comply with all applicable laws and regulations regarding the sale and service of food and beverages to the public.

Outdoor dining use area furnishings shall be removed immediately upon the permanent closure of the associated business.

#### **Hours of Operation:**

Outdoor dining uses within the sidewalk area shall be required to operate for a minimum of 4 hours per day, and outdoor dining uses within the flexible zone shall be required to operate for a minimum of 8 hours per day, 6 days a week as weather permits.

#### **Furnishing Standards:**

All outdoor dining furnishings shall be of commercial grade and designed for outdoor use. All furnishings shall be properly maintained and cleaned regularly.

#### Tables and Chairs for Outdoor Dining

Tables and chairs shall be of the same or a similar and compatible design. Plastic or resin tables and chairs are prohibited. All tables and chairs within a use area shall be of the same or compatible color. Bright, reflective, and fluorescent colors are prohibited.

#### Materials - Permitted:

- Framework: Wrought iron, fabricated steel, cast aluminum, cane or teak.
- Chair Seat: Wrought iron, fabricated steel, cast aluminum, cane, teak or rattan.
- Table Top: Solid tops of slate, marble, granite, faux stone, wrought iron, embossed aluminum, teak, tempered glass, and mesh tops of wrought iron and aluminum are permitted. Plastic, resin, and plain metal table tops are not permitted.

#### Size:

- Table Top Dimensions: Square 28", Rectangular 36" x 24", round 30".
- Table Height: Standard café height up to 30".

#### Umbrellas and Umbrella Stands

Table center and freestanding umbrellas are permitted. All umbrella panels shall be of the same solid color. A complementary solid color may be used for trim (such as piping). Patterns (floral, stripes, etc.) and fluorescent colors are prohibited.

#### Materials - Permitted:

- Umbrellas: Canvas only. Vinyl or plastic umbrellas are prohibited.
- Stands: Cast aluminum, wrought iron, fabricated steel, or wood.

#### Lighting

Under umbrella lighting (directional or tube) and table top lighting (candles or other low level light sources) are permitted. Lighting shall create a soft glow directed at the tabletop or cart surface. Lighting shall not create glare or fall outside of the use area. To provide for a warm glow, lighting sources shall be of warm white light (2700 to 3200 degrees Kelvin). Cool white lighting can create a harsh glare and is prohibited. Bare bulb neon, backlit signage, colored lights, blinking or "chasing" lights are prohibited.

#### Portable Heaters

Standing portable propane heaters are permitted, subject to review and approval by the Fire Department. Electric or fuel heaters other than propane are prohibited.

#### Trash Receptacles

Trash receptacles shall be of an appropriate size in relation to the use area and of materials and design compatible with other use furnishings.

#### <u>Planters</u>

Planters are required as a buffer between outdoor dining uses within the flexible zone area. City maintenance staff shall plant and maintain (including water) the planters provided by the City for outdoor dining uses within the flexible zone. In addition, planters will be provided and placed by the City of Livermore, however must be shown on the submitted site plan based on the following dimensions:

Rectangular planters: 24" wide x 36" long.

Round planters: 24" in diameter (to be used at corners and planter row ends).

Where adjacent to a parking space divider that does not contain a tree or trellis, planter placement shall observe a 1 foot setback from the dividing line between parking spaces. Planters adjacent to a parking space divider that contains a tree or trellis may be placed in-line with such tree or trellis. Planters shall be spaced approximately 6" to 12" apart along the street frontage and one-half the length of the sides of the use area, beginning at the valley gutter.

#### **Fencing**

If fencing is proposed it shall be designed of wrought iron or cast aluminum and shall not exceed 36" in height. If alcoholic beverages are to be served, fencing shall meet the requirements of the use associated license issued by the State Department of Alcoholic Beverage Control.

#### Other Decorative Items

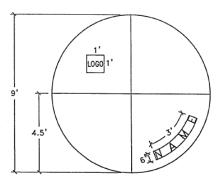
- Padded fabric chair pads are permitted, shall be brought indoors nightly, and shall be clean when placed outside each day.
- Tabletop flower arrangements, centerpieces, and candles are permitted and shall be brought in nightly.
- Streamers, balloons, banners, and other decorative items not specifically permitted herein are prohibited.

#### Signage Standards:

Permitted signage for outdoor dining uses shall not count toward the businesses aggregate signage under the provisions of Chapter 6 of the Downtown Specific Plan; however, shall be consistent with the design standards contained therein. All signage shall apply to the associated business only; no generic advertising, such as applying to and/or provided by, for example, beer, soft drink, ice cream or other third party vendor sponsors shall be permitted.

Signage for outdoor dining uses is limited to umbrella signs and menu boards as defined below.

Umbrella Signs: Each umbrella may display the name of the business twice on opposite panels, or may display the name of the business once and the business logo once, each on opposite panels. Lettering shall not exceed 6 inches in height and logos shall not exceed one square foot. Total signage on each umbrella shall not exceed 10 percent of the area of the umbrella.



Menu Boards: Menu boards are limited to no more than 2' by 2' in size. Paper menus shall be mounted behind clear plastic covers. Chalk boards are also permitted. Menu boards may be mounted to the building façade, or may be placed on a portable support with an overall height not to exceed 4 feet. The design of menu board supports or frames shall utilize decorative metal or other high quality materials that relate to the design of other furnishings within the use area.

Banner signs, electrical signs, illuminated signs, and other signage not specifically permitted herein are prohibited.

#### OUTDOOR DINING USES - OUTDOOR DINING/DISPLAY PERMIT APPLICATION REQUIRED

Permit Required: No person shall place tables and chairs for outdoor dining within the public right-of way without first obtaining a City of Livermore Outdoor Dining Permit. An application for an Outdoor Dining Permit shall be accompanied by an application for an encroachment permit.

An application for an Outdoor Dining Permit shall include the following:

- 1. Completed general planning and encroachment permit application forms; associated property and business owner signatures are required.
- 2. Appropriate application fees and deposits.
- 3. A dimensional site plan that demonstrates:
  - a. The underlying right-of-way (and parking spaces if requesting to use the flexible zone) and the location of adjacent City street trees and furnishings, including but not limited to planters, light poles, trellis structures, benches, trash containers, kiosks, etc.
  - b. An outline of the area proposed for outdoor dining use and the location of any existing and adjacent outdoor dining uses.
  - c. The proposed layout of all use furnishings including but not limited to tables, chairs, umbrellas, heaters, planters, fencing, signage, etc.
  - d. The proposed electrical connections to serve the use if electrical service is requested (electrical service is permitted for lighting only);
  - e. The proposed circulation to and from the outdoor dining use and the associated business, general pedestrian circulation, and building ingress/egress.
- 4. If an outdoor dining use is requesting to expand in front of an adjacent business, a letter of agreement signed by the underlying property owner and adjacent business owner is required. The applicant must demonstrate that the proposed use will not block the display windows or signage of the adjacent business.
- 5. Specifications for the design, colors, and materials of all proposed furnishings including but not limited to tables, chairs, umbrellas, heaters, planters, fencing, trash receptacles, etc., demonstrating that all furnishings are of commercial grade and designed for outdoor use.
- 6. Specifications for all proposed signage.
- 7. A lighting plan, including under umbrella, table lighting, and any other lighting proposed, showing fixture and lamp type and locations.

- 8. An operational schedule including hours, days, and months (Outdoor dining uses within the sidewalk area shall be required to operate for a minimum of 4 hours per day, and outdoor dining uses within the flexible zone shall be required to operate for a minimum of 8 hours per day, 6 days a week as weather permits).
- 9. Evidence of comprehensive liability insurance, evidence of Workers Compensation Insurance, and a signed Hold Harmless and Indemnification statement (that indemnifies and holds harmless the City of Livermore, its officials, employees, agents and volunteers, and the underlying property owner), in a form approved by the City's Risk Manager, as approved by City Council Resolution 2005-246.
- 10. A copy of the applicant's City of Livermore business license.

The Zoning Administrator shall have the authority to approve, conditionally approve, or deny an application for an Outdoor Dining Permit, and shall provide written notification of the action taken to the applicant. The Zoning Administrator may refer the application to the Planning Commission for review and recommendation if the proposed application is inconsistent with the Downtown Specific Plan, or where unique circumstances exist. The Zoning Administrator shall only approve or conditionally approve an application for an Outdoor Dining Permit if the following findings can be made:

- 1. That the design, location, and layout of the proposed outdoor dining use are consistent with the requirements for use, development, design and permitting contained within Downtown Specific Plan Chapters 5, 6 and 10, and all other applicable laws and regulations.
- 2. That the proposed outdoor dining use will promote the continued development and revitalization of the City's pedestrian-oriented Downtown by assisting in the creation of a lively and inviting streetscape.
- 3. That the outdoor dining use will not pose a danger to the public health, safety, or welfare, and/or any violations of these standards or the conditions of a previous permit have been abated or corrected prior to the issuance of a subsequent permit.

Permits for subsequent years will be issued on a first come basis, except that the holders of a permit for the prior year will be given priority over new applicants.

Annual Permit: An Outdoor Dining Permit shall be valid for a period of one year, beginning on January 1<sup>st</sup> and ending on December 31<sup>st</sup>. However, during the year for which the permit is issued, flexible zone use is limited to a period of eight months, beginning March 15<sup>th</sup> and ending November 15<sup>th</sup>.

Annual Permit Required: Each year, the applicant shall submit a complete application for an Outdoor Dining Permit as defined above, including application, service and maintenance charges and deposits. The Zoning Administrator shall approve, conditionally approve, or deny the permit request, and shall provide written notification of the action taken to the applicant.

Outdoor Dining Permits Not Transferable: Outdoor Dining Permits are not transferable.

Interruption of Use: An Outdoor Dining Permit is an interruptible privilege. The City may interrupt the operation of an outdoor dining use at any time due to anticipated or actual conflicts. Such conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades or marches, repairs to the public right of way, or demonstrations or emergencies occurring in the area. Outdoor dining uses shall be permitted to continue during special events unless the City of Livermore specifically requests that the use temporarily discontinue for the duration of the event. Such request may include the removal of all use furnishings.

#### FEES, CHARGES, AND DEPOSITS:

- 1. Annual Outdoor Dining Permit Fee of \$500 (due upon the submittal of each application for an annual Outdoor Dining Permit).
- 2. Annual Electrical Service Charge of \$40 (when an applicant requests an electrical service connection, this charge is due upon the submittal of each application for an annual Outdoor Dining Permit).
- 3. Annual Maintenance Charge of 15¢ per square foot (due upon the submittal of each application for an annual Outdoor Dining Permit in support of use related costs for additional pressure washing of the sidewalk and flexible zone areas).
- 4. Maintenance/Damages Deposit of \$279 (a one-time deposit due upon an applicant's initial application for an annual Outdoor Dining Permit. If the applicant re-applies for an annual permit the following year, the deposit will be carried over to the new permit. If the applicant does not re-apply for an annual permit, or the use is discontinued, an inspection of the use area would determine if the deposit, or a portion thereof, would be applied to repair any damages created by the use. If no damages have occurred, the deposit would be refunded to the applicant).

# OFFICE OF THE CITY ATTORNEY LIVERMORE, CALIFORNIA RISK MANAGEMENT DEPARTMENT

### **OUTDOOR DINING AND MERCHANT DISPLAY USE PERMIT**

# INSURANCE REQUIREMENTS & HOLD HARMLESS AND INDEMNIFICATION

The permittee agrees to purchase and maintain for the duration of this permit insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of this Permit by the Permittee, the Permittee's officers, employees, agents, or assigns.

#### **MINIMUM SCOPE OF INSURANCE:**

Coverage shall be at least as broad as:

- 1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.

#### **MINIMUM LIMITS OF INSURANCE:**

Permittee shall maintain limits not less than:

- 1. General Liability: \$1,000,000 (One Million dollars) per occurrence for bodily injury, personal injury and property damage.
- 2. Employer Liability: \$1,000,000 (One Million dollars) per accident for bodily injury or disease.
- 3. Workers' Compensation statutory to the State of California.

#### **DEDUCTIBLES AND SELF-INSURED RETENTIONS:**

Any deductibles or self-insured retentions must be declared to and approved by the City's Risk Manager.

#### **OTHER INSURANCE PROVISIONS:**

The general liability policy shall contain and be endorsed to contain the following provisions:

1. The City of Livermore, its officials, employees, agents and designated volunteers are to be covered as insureds as respects: liability arising out of the activities performed by or on behalf of this Permit. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officials, employees, agents or volunteers.

- 2. For any claims related to this Permit, the Permittee's insurance shall be primary insurance as respects the City of Livermore, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City of Livermore, its officials, employees, agents and volunteers shall be excess of the Permittee's insurance and shall not contribute to it.
- 3. Any failure to comply with reporting or other provisions of the Permittee's policies, including breaches of warranties shall not affect coverage provided to the City of Livermore, its officials, employees, agents or volunteers.
- 4. The Permittee's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 5. Each insurance policy required by this clause shall be endorse to state that the coverage shall not be reduced, suspended, voided or canceled except after thirty (30) days written notice by certified mail, return receipt, has been given to the City's Risk Manager.

#### **ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

#### **VERIFICATION OF COVERAGE:**

Permittee shall furnish to the City's Risk Manager, original Certificate of Insurance and endorsements effecting coverage required by this clause. All certificates and endorsements shall be received and approved before a Permit becomes effective. As an alternative to a Certificate of Insurance and endorsement, the Risk Manager, at his sole discretion, may require certified copies of insurance policies.

# HOLD HARMLESS AND INDEMNIFICATION

Permittee agrees to and shall defend, indemnify and hold the City of Livermore, its officials, employees, agents and volunteers harmless from and against any and all losses, liability, and damage, including reasonable attorney's fees and/or court costs arising out of the performance of this Permit.

Permittee's name - PRINTED	
Permittee's Signature	 Date

#### **EXHIBIT A**