

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

PUBLIC WALKWAYS OCCUPANCY PERMIT
(With Parklet)

32455

This Public Walkways Occupancy Permit ("Permit") is granted this 30 day of November, 2011, pursuant to minute order adopted by the City Council of the City of Long Beach at its meeting held on November 8, 2011, to EAT, DRINK & BE MERRY, INC., a California corporation ("Permittee"), whose address is 2118 E. 4th Street, Long Beach, California 90814, as the operator of NUMBER NINE and lessee of premises at 2118 E. 4th Street, Long Beach, California.

Permission is granted to Permittee to occupy the public right-of-way, including a temporary sidewalk extension ("Parklet"), and the following obstruction: **low barrier, nine (9) tables, eighteen (18) chairs, menu board, seven (7) rectangular planters, and two (2) corner planters** at 2118 E. 4th Street, Long Beach, California. Dimensions and location of the area to be occupied are as shown on Exhibit "A", incorporated by reference and made a part of this Permit; provided that all obstructions are placed only within the permit area shown on Exhibit "A".

This Permit is granted with reference to the following facts:

1. Permittee proposes to occupy the public right-of-way as shown on Exhibit "A"; and
2. The proposed occupancy will not now or at any time interfere with continued public use of the public street right-of-way; and
3. That there is no present or foreseeable conflicting public need for the proposed use of the public street right-of-way area and its temporary withdrawal from public use will not be injurious or detrimental to the public; and
4. That this use of a portion of the public street right-of-way is consistent with proper and lawful street uses and the use is approved; and
5. The City Engineer has determined that this use is in compliance with Chapter 14.14 of the Long Beach Municipal Code, all related to temporary use of the public rights-of-way; and

1 6. The Permittee shall obtain a public works street improvement permit
2 required under Chapter 14.14 of the Long Beach Municipal Code, prior to construction
3 and installation of the proposed Parklet.

4 The use of the public street right-of-way is granted upon and subject to the
5 following terms and conditions:

6 1. The minimum width of the public walkway shall be ten (10) feet, or as
7 otherwise approved by the City Council pursuant to Chapter 14.14 of the Long Beach
8 Municipal Code, and any obstruction must permit at least five (5) feet of unobstructed
9 area of public walkway.

10 2. The obstruction shall not be located in a manner which interferes
11 with the flow of pedestrian or other traffic.

12 3. The maximum height of any such obstruction shall be six (6) feet and
13 all such obstructions shall be entirely portable, except as specifically authorized by the
14 City Engineer.

15 4. This Permit may be immediately suspended for a designated time
16 period at any time in the event that, in the discretion of the City Council or City Manager,
17 such obstruction would interfere with street improvement activities, construction activities,
18 cleaning efforts or other similar activities.

19 5. The obstruction shall be kept in a good state of repair and in a safe,
20 sanitary, and attractive condition.

21 6. The public street right-of-way shall be used by Permittee only for the
22 obstructions described above and in the area shown on Exhibit "A".

23 7. The area in front of the entrance to the business shall not be
24 obstructed by barricades, chairs, tables or other furniture.

25 8. The Permittee shall place all obstructions, and any accessories or
26 equipment located within a dining or entertainment area, in strict accordance with all
27 standards established by the Fire Department and Health and Human Services
28 Department and contained within Chapter 14.14 of the City of Long Beach Municipal

1 Code.

2 9. No surface improvements, included but not limited to special paving
3 surfaces, may be removed or altered by the Permittee unless approved in advance in
4 writing by the City Engineer.

5 10. The Permittee shall not allow cleaning chemicals, or other foreign
6 matter to flow into street tree wells, and shall otherwise protect the health of adjacent
7 trees, and shall likewise prevent the discharge of litter, cleaning chemicals and all other
8 foreign matter into the storm drain system.

9 11. The Permittee shall protect any trees in the immediate vicinity of the
10 permit area from damage due to the Permittee's cleaning or other activities on the public
11 walkway. The Permittee shall not interfere with City's access to street trees for
12 maintenance purposes. Any special maintenance of street trees is the responsibility of
13 the Permittee and must be performed by a qualified landscape contractor acting under a
14 permit from City's Street Landscaping Division. City shall not be held financially
15 responsible for damage to Permittee's sidewalk furniture or awnings occurring in the
16 course of regular street tree maintenance.

17 12. Upon any termination of this Permit, whether by revocation or
18 otherwise, Permittee shall remove the obstructions authorized by this Permit at the sole
19 discretion of the City Engineer and shall otherwise restore the public street right-of-way to
20 a condition substantially the same as existed immediately prior to the occupancy
21 provided for by this Permit. Should Permittee fail or refuse to remove the obstructions,
22 City may do so and, in such event, the security deposit paid by Permittee shall be applied
23 to City's costs. Permittee shall reimburse City for any costs in excess of the security
24 deposit. In the event of removal by City of all or any portion of the obstructions, City shall
25 not be liable for any damage to or loss of any property of Permittee.

26 13. Additional guidelines and conditions set forth in Exhibit "D", attached
27 hereto and incorporated by reference, shall apply to public walkways occupancy permits
28 that include areas provided by a Parklet.

1 14. The following additional conditions shall apply to public walkways
2 occupancy permits for dining or entertainment areas:

3 A. Any dining or entertainment area shall be defined by
4 placement of sturdy fencing or other suitable barriers, as approved by the City Engineer.
5 Such barriers may only be affixed to public property with the prior approval of the City
6 Engineer.

7 B. All tables and chairs and any other accessories to dining or
8 entertainment uses may not exceed those enumerated on Exhibit "A", and must be
9 located inside the permitted area, as shown on Exhibit "A".

10 C. All dining and entertainment which takes place on the public
11 right-of-way shall conform to the requirements of Chapter 8.80 of the Long Beach
12 Municipal Code regarding noise. Complaints regarding noise shall be logged by city staff
13 and may be the basis for suspension, cancellation, or non-renewal of a permit.

14 D. The Permittee shall be responsible for cleaning the public
15 walkway occupied by a dining or entertainment area.

16 15. Any permit issued within the downtown area as defined on Exhibit
17 "B" and made a part of this Permit shall comply with all of the foregoing requirements and
18 the following additional requirements:

19 A. No tents or windbreaks may be used in, over, or around dining
20 or entertainment areas.

21 B. Temporary banners, not exceeding the height of the barrier
22 and attached to the barrier are permitted for a two (2) week period no more than four (4)
23 times per year.

24 C. Menu boards must be portable, located within the dining area,
25 and must not exceed five (5) feet, six (6) inches tall. Menu boards may be either a single
26 pole pedestal of painted metal or a board attached to the inside of the barrier, parallel to
27 the barrier.

28 D. The following are prohibited on the public walkway in the

1 downtown area: television monitors, canopies and A-frame signs.

2 16. Upon expiration, a new permit must be obtained on the basis of a
3 new application and payment of a new fee and any security deposit amount due.
4 Renewal of the permit is not automatic and there is no right or entitlement to any use of
5 the public right-of-way. Security deposits may be adjusted from year to year based on
6 permit compliance and enforcement cost history. This Permit shall never be construed
7 as the grant by City of any right to permanently use or occupy all or any portion of the
8 public right-of-way; nor shall it ever be construed as a waiver on the part of City, or as an
9 estoppel against it, which would in any manner whatsoever bar or limit, or otherwise
10 prejudice, its right to at any time whatsoever require a discontinuance of the use or
11 occupancy of all or any part of the public street right-of-way, the removal therefrom of all
12 or any obstructions erected or maintained under this Permit and the restoration of such
13 public street right-of-way to a clean condition, all at the sole cost and expense of
14 Permittee.

15 17. Notices of violation of any of the terms and conditions of this permit
16 may be issued by the City of Long Beach. Within the downtown area as defined on
17 Exhibit "B", preliminary informal notices may be issued by Downtown Long Beach
18 Associates. The enforcement process is set forth on Exhibit "C", attached hereto, and
19 made a part of this permit. Notwithstanding the above, City may revoke this Permit at
20 any time by giving thirty (30) days written notice to Permittee or cancel the permit for
21 noncompliance with its terms. Such notice shall be signed by the City Manager, postage
22 pre-paid, and addressed to Permittee at its address provided above.

23 18. Permittee accepts this public right-of-way in its present condition and
24 agrees to maintain the same in a safe, clean, and orderly condition. Any and all uses
25 made of the public right-of-way shall be at the sole risk, cost, and expense of Permittee.
26 Permittee, by its acceptance of this Permit, agrees to indemnify, defend, save and keep
27 City, its officers, agents, and employees free and harmless from and against any and all
28 liability as well as from and against any and all loss, claims, demands, damages,

1 expenses and costs of whatsoever nature arising out of or in any manner resulting,
2 directly or indirectly, from Permittee's operations on or the condition, use or misuse of the
3 public street right-of-way, including liability, claims or damages to or as a result of any
4 structures or fixtures on the public street right-of-way or appurtenances to it.

5 19. In partial performance of this obligation, Permittee shall obtain and
6 keep in full force and effect such public liability insurance and property damage insurance
7 as required by the Long Beach Municipal Code.

8 20. Nothing in this Permit shall be construed to excuse compliance by
9 Permittee with any and all of the laws and ordinances of City and State; neither shall this
10 Permit be deemed to obviate the necessity of Permittee's obtaining such other permits or
11 licenses as are required to conduct specific activities within the area, including but not
12 limited to entertainment or the sale, service or consumption of alcoholic beverages.

13 21. The terms of this permit shall be enforced by the procedure set forth
14 on Exhibit "C", attached and made a part of this permit.

15 22. In case suit shall be brought for the recovery of possession of all or
16 any portion of the public right-of-way or because of the breach of any covenant contained
17 in this Permit to be kept and performed on the part of Permittee, Permittee shall pay to
18 City reasonable attorneys' fees which shall be fixed by the court.

19 23. Permittee shall not assign this Permit, or any interest in it, nor shall
20 this Permit, or any interest in it, be subject to transfer or assignment by order of any
21 court. Any such transfer or assignment shall not create any right whatsoever in the
22 transferee or assignees and shall entitle the City Manager, at his discretion, to terminate
23 this Permit.

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The acceptance of this Permit by Permittee shall be endorsed on this Permit and shall be an acceptance by Permittee of all of the terms and conditions of this Permit and an agreement to abide and comply with it. Permittee further acknowledges that Permittee is aware of the requirements of Long Beach Municipal Code Chapter 14.14, and that Permittee shall conduct all activities hereunder in compliance with such chapter.

EAT, DRINK & BE MERRY, INC., a California corporation

By [Signature], 2011
President
Frank Nakano
Type or Print Name

By HIDEKI OBAYASHI, 2011
Secretary
Hideki Obayashi
Type or Print Name

"PERMITTEE"

CITY OF LONG BEACH, a municipal corporation

By [Signature], 2011
Assistant City Manager
City Manager
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"CITY"

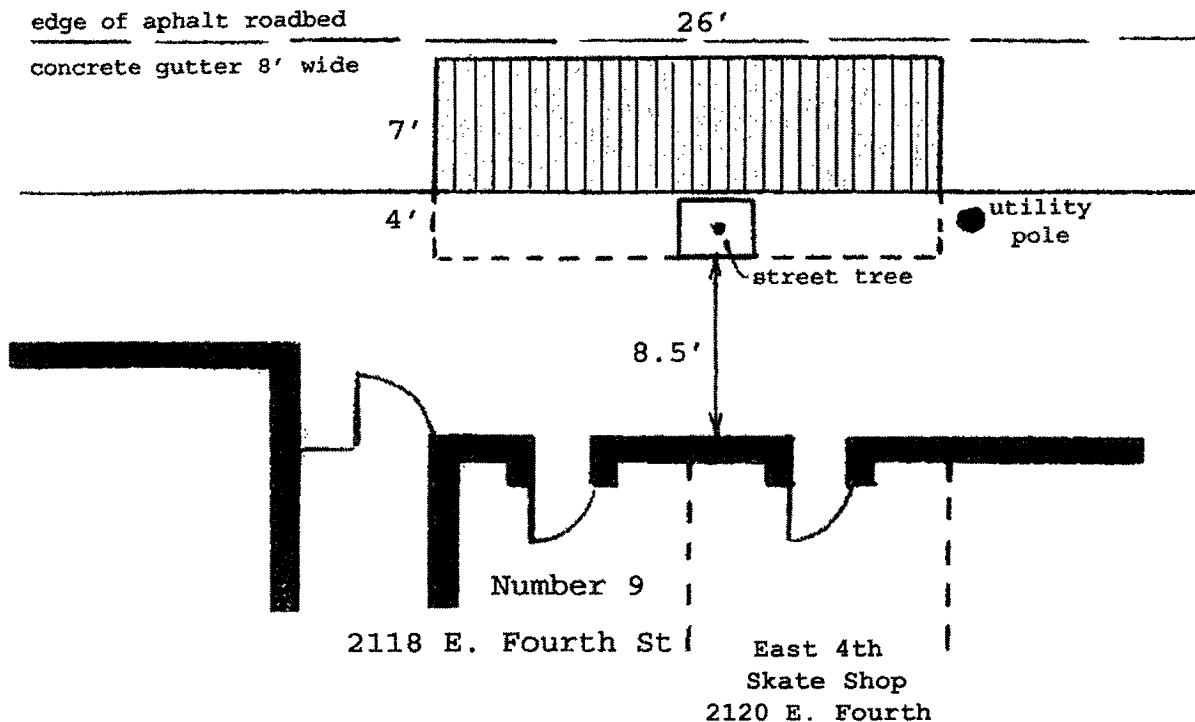
Approved as to form this 17th day of November, 2011.

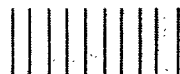

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy City Attorney

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ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

FOURTH STREET



-  restaurant parklet area (included in permit)
-  encloses additional permit area

PUBLIC WALKWAYS OCCUPANCY PERMIT WITH PARKLET NUMBER NINE 2118 E. FOURTH-STREET

List of Approved Furnishings and Accessories
(Attachment to Public Walkways Occupancy Permit for Sidewalk Dining Purposes)

Restaurant: Number Nine

Permittee: Eat Drink & Be Merry, Inc.

Address: 2118 E. Fourth St.

Telephone: (562) 434-2009

Tables number: 9

Chairs number: 18

Umbrella(s) height & number: _____

Heater(s) height & number: _____

Menu board
note: maximum height of 5 ft 6 in, maximum width of 2 ft & none permitted in the coastal zone

Waiter station size: _____

Planters for trees or other greenscaping
describe: 7 rectangular planters
+ 2 corner planter

Other: decking for parklet

We intend to make occasional use of the permit area for live or recorded entertainment (Note: A separate entertainment permit is required).

The following are prohibited:

- canopies (ground supported)
- television monitors

Permittee signature: 

Date: 9/01/2011

Print name here: Atsuhiko Teraji

This list of furnishings and accessories is effective only when attached to a completed Public Walkways Occupancy Permit.

EXHIBIT "B"

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"Downtown area" means the area bounded northerly by the centerline of Tenth Street; westerly by the centerline of Maine Avenue north of First Street, and the centerline of Golden Avenue south of First Street and the centerline of Golden Shore and its southerly prolongation; easterly by the centerline of Lime Avenue north of First Street and the centerline of Alamitos Avenue and its southerly prolongation south of First Street; southerly by the mean high tide line of the Pacific Ocean and its prolongation across the entrance to Pacific Terrace Harbor and Queen's Way Landing Boat Basin.

EXHIBIT "C"

**PUBLIC WALKWAYS OCCUPANCY PERMITS
ENFORCEMENT PROCESS**

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1. Letter of information sent to Permittee regarding Long Beach Municipal Code requirements and requested to correct an observed violation of permit conditions.
 - If not remedied in ten (10) working days, send official Notice of Violation.
2. Notice of Violation
 - Indicates that Permittee can be found in default for failure to comply with permit conditions per Long Beach Municipal Code Section 14.14.090.
 - Notes that uncorrected violations will be reported to the City Council at the next permit application.
 - Alerts Permittee that the Alcoholic Beverage Control (ABC) will be notified of all permits declared in default.
 - If violation of permit conditions is not corrected within ten (10) working days, send Second Notice of Violation by certified mail.
 - Copies of Notice of Violation to be sent to the City Manager, Downtown Long Beach Associates (DLBA) and the Redevelopment Agency.
3. Second Notice of Violation
 - Inform Permittee that "On (date 10 working days hence) you will receive a Notice of Default if permit violations not corrected."
 - If permit violations not corrected within ten (10) working days, send Notice of Default by certified mail.
 - Copies of Second Notice of Violation to be sent to the City Manager, DLBA and the Redevelopment Agency.
4. Notice of Default by Department of Public Work
 - Provides Permittee ten (10) working days to remedy violation.
 - "If Permittee fails or refuses to remedy the default within the time specified, the right of the Permittee to use the public walkway shall cease and City shall have the right to remove the public walkway obstruction at Permittee's expense" (LBMC 14.14.090).
 - If a Notice of Default is issued, the security deposit that was paid with the permit application will be forfeited.
 - Second ABC notice of permit status upon actual default.
 - City Manager, DLBA and Redevelopment Agency informed when final default occurs.
5. City pick-up of obstructions at Permittee's expense and/or possible legal action to restrain use of sidewalk by the City Prosecutor.
6. Prior to New Permit Issuance
 - Payment of new permit processing fee and security deposit.
 - Payment of any fees, damages, or City costs assessed for prior code enforcement actions.

EXHIBIT "D"

GUIDELINES AND CONDITIONS FOR
TEMPORARY SIDEWALK EXTENSION
("PARKLET")

1. Applicants for a Parklet shall work with the applicable community organization(s) affected by the installation of a Parklet and submit written evidence showing their approval of (or lack of objection to) parklet installation and the loss of parking spaces.
2. Prior to the installation of a Parklet, complete plans specifying the deck and barrier components and their installation details shall be reviewed and approved by the City Engineer, and a public works street improvement permit shall be obtained from the Department of Public Works Construction Services Division in accordance with Chapter 14.08 of the Long Beach Municipal Code.
3. The Permittee shall be responsible for temporary removal and re-installation of the Parklet due to any permitted construction activity, and shall also be responsible for any damage to any facilities of the City, including but not limited to, the Department of Public Works, the Long Beach Water Department, and public utility companies due to this occupancy.
4. The Permittee shall comply with all terms and conditions of the public works street improvement permit issued for construction and installation of the Parklet, including but not limited to the following, subject to change at the City Engineer's discretion:
 - The Parklet permitted herein shall be confined to the area shown on the plan submitted by the Permittee and approved by the Department of Public Works.
 - The Parklet site shall be located at least one (1) parking spot in from a corner or protected by a bollard, sidewalk bulb-out, or other similar feature, if located at the corner.
 - The street has parking lanes that will not become a use lane during morning or afternoon peak hours, and the Parklet may not extend beyond seven feet (7') from the curb line where there is parallel parking, or fifteen feet (15') from the curb line where there is diagonal parking.
 - Parklets shall be required to have solid edging, such as substantial planters, and a vertical element at least five feet (5') tall at the leading edge of the Parklet (with respect to the direction of travel), which may consist of plant material in a planter. Other safety elements, such as reflective tape, soft hit posts, and wheel stops may be required by the City Traffic Engineer.
 - Parklets shall not be allowed in front of a fire hydrant, or over a manhole or public utility valve or cover.
 - All elements of the above mentioned Parklets shall be constructed and/or installed to conform to the applicable provisions, rules, regulations and guidelines of Long Beach Building Code, the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG), including but not limited to providing and maintaining a minimum four foot (4') clearance between the occupancy permitted herein and any existing street furniture (e.g., utility poles, parking meters, mailboxes, etc.).

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5. The Permittee shall provide maintenance for the Parklet as follows:
- Keep all plants in good health.
 - Keep the Parklet free of graffiti, debris and grime.
 - Adequately maintain the surface.
 - The area under the Parklet shall be maintained in a sanitary condition free from infestation from pests and clear of obstacles to storm water movement along the gutter flow line.
 - As necessary and at the direction of the City Engineer, the Permittee shall remove the Parklet and thoroughly clean under the Parklet area.