



March 13, 2013

VIA : Hand Delivery and US Mail

Lee Pisiewski
4 Leaf LLC
Oski's Pub & Grille
840 Victorian Ave.
Sparks, NV 89431

Re: Outdoor Dining and Encroachment Permit

Dear Mr. Pisiewski:

The City is in the process of reviewing the outdoor dining permits issued in the Victorian Square area. Please accept this letter as the City's notice that pursuant to Oski's Outdoor Dining Permit Section 4.02 the permit will expire on April 14, 2013. Oski's permit will not automatically renew this year as it has in years past.

It will be necessary for a representative from Oski's to meet with City staff to discuss the new terms of the permit. The proposed new permit will then be presented to City Council for their review and possible approval.

Please contact David Vill at 353-1669 at your earliest convenience to set up an appointment.

Thank you and we look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Martini". The signature is fluid and cursive, with a large initial 'J' and 'M'.

John A. Martini, P.E.
Assistant Community Services Director

OUTDOOR DINING and
ENCROACHMENT PERMIT
(SMC Chapter 5.77)

1. PARTIES AND PREMISES:

Permitter: City of Sparks
431 Prater Way
Sparks, Nevada 89432
Phone: (775) 353-2330

Permittee: O'Ski's Pub and Grille
840 Victorian Ave.
Sparks, Nevada 89431

Encroachment Area:

An area extending 17 feet onto the sidewalk area directly in front of the southern frontage located at 840 Victorian Avenue, Sparks, Nevada. The eastern and western boundaries of the Premises are direct linear extensions of the east and west property lines of O'Ski's Pub and Grille (approximately 357 Square Feet).

2. RECITALS

Permittee operates a restaurant as defined by 5.77.020 immediately adjacent to the Premises and desires to obtain a revocable outdoor dining permit from the Sparks City Council and an Encroachment Permit from the Public Works Director under Sparks Municipal Code Chapter 5.77 (Sidewalk Cafes") to operate a sidewalk café on the Premises.

Under SMC 5.77.100, the City Council for the City of Sparks desires to issue a revocable Outdoor Dining Permit, and the Director of Public Works desires to issue a revocable Encroachment Permit to allow the sidewalk café to encroach on the public right of way, subject to certain terms and conditions.

3. TERM

Rent: Yearly rent of FOUR HUNDRED AND TEN DOLLARS AND FOURTEEN CENTS (\$410.14) payable no later than June 30, 2013 to the

Finance Department, Revenue Division, 431 Prater Way, Sparks, Nevada 89432-0857. Rent does not include and Permittee is responsible for payment of all utilities, maintenance, repairs, taxes (if any) and insurance on the Premises.

Commencement Date: **July 1, 2013.**

Subject to the approval of the Sparks City Council and the Director of Community Services the Outdoor Dining Permit and the Encroachment Permit commence on July 1, 2013, and terminate at close of business on the Expiration Date stated below. If Permittee fails to pay the yearly rent amount in full and provide proof of required insurance on or before Commencement Date the Outdoor Dining Permit and the Encroachment Permit shall not be issued.

Termination Date: **June 30, 2014**

Renewal: The parties agree to meet each April to review the terms and conditions of this permit, and if an agreement is reached, and if the Permittee is in compliance with terms and conditions this permit, a renewal Permit may be issued upon payment of the rent, proof of insurance, and approval by the Director of Community Services (Encroachment Permit) and the City Council (Outdoor Dining Permit.)

City Notice Address: 431 Prater Way
Sparks, Nevada 89432
ATTN: Deputy City Manager, Community Services
Phone: (775) 353-2330

Permittee Notice Address: O'Ski's Pub and Grille
840 Victorian Ave.
Sparks, Nevada 89431

Liability Insurance: \$1,000,000 combined single limit per occurrence.

Policy minimum: See Section 6.02.

4. **OUTDOOR DINING PERMIT**

4.01 Grant. The City Council hereby grants to Permittee a revocable Outdoor Dining Permit commencing on the date stated above and continuing annually until the Termination Date.

4.02 Conditions for Permit. Permittee agrees to the following conditions for this revocable Outdoor Dining Permit:

.01 Compliance with law. Permittee shall comply at all times with the provisions of SMC Chapter 5.77 (a copy of which is attached as Exhibit A) and with all other applicable ordinances, statues, regulations, and laws of the City of Sparks, County of Washoe, State of Nevada and the United States.

.02 Limitations on use of Premises. Permittee shall use the Premises only for the purpose of on-premises consumption of food and beverage as outlined in SMC Chapter 5.77 and for no other purposes.

.03 Aesthetics; prior approvals. The Premises lies in a redevelopment area for the City. Pursuant to SMC 5.77.100, before opening the sidewalk café, Permittee shall obtain the approval of the Director of Community Services for the design of the permitted area.

.04 Hours of operation; coordination with Special Events. As provided in SMC 5.77.080, the hours of operation of the outdoor dining area shall be limited to 7:00 a.m. to 11:00 p.m. However, the City Manager or his designated representative may direct the shortening or elimination of hours of operation on certain days based on conflict with a Special Event held in the Victorian Square area as defined in SMC 9.34 and 9.35 or to protect the public health, safety or welfare. Notice of any required reduction in the daily hours will be given as far in advance as is practical under the circumstances to minimize the disruption to the business and its employees.

.05 Music, noise. Outdoor music will be permitted so long as the sound is not disturbing outside the subject premises.

.06 Cleanliness of Premises. Permittee shall maintain the Premises and the immediately surrounding plaza in a clean, safe and attractive condition. Permittee shall repair or replace any damage to paved surfaces and City owned property at Permittee's sole cost and expense. The outdoor tables and Premises must be kept neat and clean. Permittee shall dispose of all trash and garbage in its own garbage receptacle, not those belonging to the City. Permittee shall empty any City-owned garbage receptacle which is within the Premises.

.07 Nondiscrimination; accessibility. Permittee shall not refuse or provide less service to or otherwise discriminate against any person because of race, religious creed, color, age, sex, disability, national origin or ancestry, or familial status. The outdoor dining area must be accessible to the physically disabled in compliance with all standards under the Americans with Disability Act and related legislation and implementing regulations, and Permittee must comply with NRS 651.050 through 651.120 regarding equal accommodation to the Premises.

.08 Encroachment Permit. If the Premises are located on a public right of way, public easement, or public land, Permittee shall obtain and at all times have in effect an Encroachment Permit.

.09 Abandonment. Should Permittee vacate or abandon the Premises or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a default hereunder and this permit shall terminate with no further action by the City.

4.03 Revocation. This permit is revocable by the City Council following notice and hearing as provided in SMC 5.77.110.

5. ENCROACHMENT PERMIT

5.01 Grant. Subject to all terms and conditions stated herein, the Director of Community Services hereby grants to Permittee a revocable non-exclusive license to encroach upon any public right of way, public easement, or public property owned or controlled by the City within the boundaries of and for the use of the Premises in accordance with the Outdoor Dining Permit. Violation of the following terms and conditions may be grounds for termination of the Encroachment Permit by the Community Services Director.

5.02. Property Damage. Permittee agrees to pay to City the cost to the City , to repair any damages to the Premises caused by the Permittee or patrons of Permittee (other than normal wear and tear) and to pay the reasonable costs of cleaning the Premises if Permittee fails to do so after notice from the City of the repairs or cleaning being necessary.

5.03 Conditions of Permit.

.01 Outdoor Dining Permit. Permittee must first have obtained and at all times be in compliance with all of the conditions of an Outdoor Dining

Permit. A breach of any condition of an Outdoor Dining Permit shall be a breach of this Permit.

.02 Payment of Rent. Permittee shall not owe any delinquent amounts of money (ie rent, business license, fire inspection) to the City of Sparks for any purpose and must maintain the necessary insurance. If Permittee is delinquent in any payments or if insurance is determined to void during the term of the Permits, the Permits may deemed terminated by the City with no further action by the City.

.03 Alterations and Improvements. Permittee shall not, without City's prior consent, make any alterations, improvements or utility installation in, on or about the Premises. Permittee agrees to remove any such alterations, improvements or utility installation during any seasonal closure and upon the termination of this Agreement. All alterations, additions, improvements and utility installations which are not removed by Permittee within 30 days following termination of this permit become property of the City.

.04 Cleanliness and Condition of Premises. Permittee shall maintain the Premises and the immediately surrounding plaza in a clean, safe and attractive condition. Permittee shall repair or replace any damage to paved surfaces and street furniture. The outdoor tables and Premises must be kept neat and clean. Permittee shall dispose of all trash and garbage in its own garbage receptacle, not those belonging to the City. Permittee shall empty any City-owned garbage receptacle which is within the Premises. A walk-through will be undertaken by Permittee and the Public Works Director or designated representative on the day prior to the first day of operation and on a day immediately after the seasonal or permanent cessation of business. Any damage or defacement must be replaced at Permittee's expense. Permittee is solely responsible for the clean-up of all trash which it generates.

6. GENERAL TERMS AND CONDITIONS APPLICABLE TO PERMITTEE

6.01 Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, hold harmless and defend the indemnified parties from and against all liability caused in whole or in part by an act or omission of Permittee or a related party arising out of the use of the Premises, regardless of whether or not the liability is also caused in part by the indemnified party. "Indemnified party" includes City, the Redevelopment Agency for the City of Sparks and their officers, employees, agents and contractors, successors and assigns. "Liability" includes all claims, actions, damages, losses, judgments, injuries, costs and expenses, including but not limited to attorney's fees and costs, including those related to bodily injury, sickness, disease or death or to injury to destruction of

tangible property. "Arising out of the use of" includes construction, maintenance and use of any improvements and landscaping now existing or hereafter constructed on the Premises. The terms "act or omission" includes any act, negligence, or omission. The terms "of Permittee or a related party" includes Permittee and all officers, employees, agents, contractors and subcontractors, successors and assigns of Permittee as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

6.02 General Liability Insurance. Permittee shall at all times during the term of this permit maintain general liability insurance which would cover the premises liability and general liability arising out of the use of the Premises by the general public or business invitees of the Permittee in the form and amount satisfactory to the Risk Manager of the City. ~~Proof of insurance must be provided to the City Clerk at the above address.~~ The policy limit shall be no less than the amount stated above for bodily injury, personal injury and property damage. Any deductibles or self-insured retentions must be declared to and approved by the City Risk Management Division. City reserves the right to request additional documentation, financial or otherwise, prior to giving its approval of the deductibles and self-insured retention and prior to executing. Any changes to the deductibles or self-insured retentions made during the term of this Permit must be approved by the City Risk Management Division. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to the Premises. Coverage shall be at least as broad as ISO (Insurance Services Office) Commercial General Liability "occurrence" form CG0001 01/96 or ISO Comprehensive General Liability form GL 0002 Ed 01/73 with the Broad Form Comprehensive General Liability Endorsement. City shall be named via endorsement as an additional insured under the policy, and the insurance coverage shall be endorsed to state the coverage shall not be suspended, voided, cancelled or non-renewed by either party, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to City except for nonpayment of premium.

6.03 Proof of Workman's Compensation Insurance. Permittee must provide a certificate issued by an insurer in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210. 30 days prior to yearly renewal, Permittee will provide proof of Workmen's Compensation as outlined herein prior to renewal of the outdoor Encroachment Permit.

6.04 Abandonment. Permittee agrees not to vacate or abandon the Premises at any time during the term of the permit except for seasonal closure described above. Should Permittee vacate or abandon the Premises or be dispossessed by

process of law or otherwise, such abandonment, vacation or dispossession shall be a default hereunder.

6.05 Breach, notice and right to cure; repayment and interest on funds expended by City. In the event that Permittee breaches any condition for this Encroachment Permit, or the Outdoor Dining Permit, City shall provide notice thereof before exercising any remedies, and shall give the Permittee ten calendar days from the date of notice to cure the breach. If the breach is other than the nonpayment of rent and cannot reasonably be cured within ten days, City shall give such additional time needed, provided however, that Permittee shall diligently pursue its obligations to cure. Upon expiration of the cure period, if the breach is not cured to the satisfaction of the City, in addition to all remedies provided in law and equity, City may terminate this Encroachment Permit or the Outdoor Dining Permit and may immediately enter the Premises and remove all furniture, fixtures and equipment thereon. Additionally, City may apply to the City Council for revocation of the Outdoor Dining Permit. All remedies are cumulative to each other and any other remedies afforded by law and equity.

6.06 Removal of property upon termination. Upon termination of this Encroachment Permit or the Outdoor Dining Permit, Permittee agrees to immediately cease all outdoor dining on the Premises and to remove all property from the Premises and to restore the Premises to its original condition, ordinary wear and tear excepted. Any property not removed within thirty days after termination of this Encroachment Permit or the Outdoor Dining Permit becomes property of the City.

7. GENERAL TERMS APPLICABLE TO BOTH PERMITS.

7.01 Seasonal Closure. The parties contemplate that outdoor dining may not be practical during the winter or other seasons. Permittee may close the outdoor dining facility. Permittee must maintain the area in a clean and responsible manner. Encroachment Permit

7.02 Non-transferrable, non-alienable. Except to successor owners of Permittee's restaurant, (i) no right hereunder may be assigned, divided, transferred, encumbered or granted by Permittee and (ii) Permittee may not sublet, grant a sub-easement or any license or permit any use of the Premises for anything other than to its contractors for the purpose of construction, operation and maintenance of improvements.

7.03 No third Party beneficiary rights. These permits are not intended to nor shall they be construed as creating any rights in any parties except for Permittee and City and their respective officers, employees, agents and contractors.

7.04 Governing Law; choice of jurisdiction. The ordinances of the City of Sparks and Washoe County and the laws of Nevada shall govern this Permit, without regard to conflicts of laws principles. Any action brought to enforce this agreement shall be brought in the Second Judicial District Court for the State of Nevada in and for Washoe County.

7.05 Notices. All notices, demands and correspondence required or provided for under this permit shall be in writing and delivered in person or by courier or mailed, postage prepaid, to the addresses indicated above or any subsequent address provided in writing to the sending party. When delivered in person or by courier, notice will be deemed given when actually delivered to a person at the addresses indicated above, and when mailed, three business days after depositing in the U.S. Mail system.

7.06 Attorney's fees and costs. If any party hereto institutes any action of proceeding (including arbitration, if authorized, or litigation) against the other or others arising out of or relating to this Permit, each party shall pay its own attorney's fees regardless of who prevails. Costs may be allocated between the parties under Nevada law or the rules of such proceedings, but if the law or rules do not provide for allocation of costs, then each party will bear its own costs of the proceeding.

7.07 Modifications. The Outdoor Dining Permit may be modified only with the approval of the Sparks City Council. The Encroachment Permit may be modified by a written agreement between Permittee and the Director of Public Works (or City Engineer) of the City.

5.08 No waiver. The failure of either party to this permit insist on the performance of any of the terms and conditions of this agreement shall not constitute a waiver unless expressed in writing, and any written waiver shall be limited only to the waiver expressed therein and shall not be construed as or create an implication or expectation that any future waivers will be given.

5.09 Enforcement; Partial Invalidity. This permit shall be enforced only to the extent permitted by law. If any provision herein is deemed invalid or unenforceable, it shall be deemed modified to the extent to bring it within the limits of validity, but if it cannot be so modified, then the offending provision shall be stricken from this permit. In either event, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement or modification of the invalid provision.

EXECUTED on the dates indicated below.

CITY
City of Sparks,
a municipal corporation

OUTDOOR DINING PERMIT

By: _____
Geno Martini, Mayor

Date: _____

Attest:
By: _____
Theresa Gardner, City Clerk

Date: _____

ENCROACHMENT PERMIT

By: _____
Public Works Director

Date: _____

PERMITTEE

4 LEAF, dba O'SKI'S PUB AND GRILLE

By: _____
LEE M. PISTELSKI

Date: 5/23/13

APPROVED AS TO FORM

By: *Shirle T. Eiting*
Shirle T. Eiting
Sr. Asst. City Attorney

Date: 6/6/13

O'ski's Pub & Grille
840 Victorian Avenue
Sparks, NV 89431

N
1/4" = 1'

25'

Security

10'

Pedestrian
Walkway

10'

Security

21'

Wine
Barrel
Planter

Picnic
Table

Picnic
Table

Existing
Bench

4.5'

3'

4.5'

Wine
Barrel
Planter

Picnic
Table
6'

Picnic
Table
3'

17'

Wine
Barrel
Planter

Trash

News
Paper
Stand

Existing
Bench

Wine
Barrel
Planter

OUTDOOR CAFE - 17' x 21'

----- Proposed Farmer's Market Expansmion (p-11P)

VICTORIAN AVENUE

Sparks, Nevada, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> Title 5 - BUSINESS LICENSES, TAXES AND REGULATIONS >> Chapter 5.77 - SIDEWALK CAFES >>

Chapter 5.77 - SIDEWALK CAFES

EXHIBIT A

Sections:

Section 5.77.010 - Purpose.

Section 5.77.020 - Definitions.

Section 5.77.030 - Outdoor services permit/encroachment permit required.

Section 5.77.040 - Outdoor services in public rights-of-way permitted.

Section 5.77.050 - Required sidewalk width.

Section 5.77.060 - Alcoholic beverage restrictions.

Section 5.77.070 - Health standards.

Section 5.77.080 - Hours of operation.

Section 5.77.090 - Special closures.

Section 5.77.100 - Permit issuance.

Section 5.77.110 - Permit revocation.

Section 5.77.010 - Purpose.

The purpose of the regulations and standards in this chapter is to allow increased business and pedestrian traffic by providing safe and visually appealing opportunities for outdoor services at the discretion of the Sparks City Manager or his or her designee.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.020 - Definitions.

"Outdoor services" means the use of sidewalks and public rights-of-way for the consumption of food and/or beverages.

"Restaurant" means a business licensed to serve food and/or beverages for on-premises consumption and/or which uses a kitchen on the premises for food preparation with a minimum floor area of 200 square feet.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.030 - Outdoor services permit/encroachment permit required.

Outdoor services are not allowed without an outdoor services permit and an encroachment permit as set forth in Section 5.77.100. This chapter does not apply to outdoor services authorized by a special event permit issued pursuant to Chapter 9.34 of this code.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.040 - Outdoor services in public rights-of-way permitted.

Outdoor services are not permitted where the speed, volume or nearness of vehicular traffic is not compatible with sidewalk services. All outdoor service areas must be adjacent to and incidental to the operation of an indoor restaurant. Use of the sidewalk must be confined to the actual sidewalk and public right-of-way frontage of the indoor restaurant building.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.050 - Required sidewalk width.

Outdoor services are permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the proposed activity. The outdoor service area shall leave not less than six consecutive feet of sidewalk width at every point which is clear and unimpeded for pedestrian traffic.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.060 - Alcoholic beverage restrictions.

The service of alcoholic beverages shall be restricted solely to on-premise consumption by customers within the outdoor service area. Each of the following standards apply to service of alcoholic beverages:

- A. The outdoor service area must be immediately adjacent to and abutting the indoor restaurant which provides it with food and/or beverage service;
- B. The outdoor service area must be clearly separated from pedestrian traffic;
- C. The operator shall post a written notice to customers that the drinking or carrying of an open container of alcoholic beverage is prohibited and unlawful outside the outdoor service area;
- D. The outdoor service operation must maintain a valid alcoholic beverage license.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.070 - Health standards.

The operator shall not permit the following outside the building: tables preset with utensils, glasses, napkins, condiments, bussing service stations, or trash and garbage storage. Outdoor food preparation is not allowed except in compliance with conditions of an outdoor services permit. All exterior surfaces within the outdoor service area shall be easily cleanable and shall be kept clean at all times by the permittee. Rest rooms sufficient for indoor and outdoor services shall be provided in the adjoining indoor restaurant. The permittee shall be responsible for maintaining the outdoor service area, including the sidewalk surface and furniture and adjacent areas in a clean and safe condition.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.080 - Hours of operation.

Outdoor cafes may only operate between seven a.m. and eleven p.m.

(Ord. 1816, 1994.)

Section 5.77.090 - Special closures.

Outdoor services are a privilege. The city shall have the right and power, acting through the city manager and his/her designee, to prohibit the operation of an outdoor service area at any time because of anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. To the extent possible, the permittee shall be given prior written notice of any time period during which the operation of the outdoor service area will be prohibited by the city.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.100 - Permit issuance. 

The city council may issue an outdoor service permit upon such terms, conditions and fees as it deems appropriate. The design and signage of the proposed outdoor service area must meet the minimum standards set by the Sparks Redevelopment Agency Design Review Committee.

The director of public works is authorized to issue the necessary encroachment permit. The director of public works shall condition the permit on:

- A. Execution of a hold harmless agreement in a form acceptable to the city attorney;
- B. Insurance meeting the requirements contained in the city's administrative policy entitled "Policy Processing Contracts/Agreements for the City of Sparks";
- C. Such other conditions as are necessary for public safety or to protect public improvements;
- D. Conditions necessary to restore the appearance of the sidewalk on termination of use.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)

Section 5.77.110 - Permit revocation. 

An outdoor service permit may be revoked by the city council following notice to the permittee and a noticed public meeting. The permit may be revoked if the city council finds that one or more conditions of the permit or of this chapter have been violated or that the outdoor service area is being operated in a manner which constitutes a nuisance, or that the operation of the sidewalk cafe unduly impedes or restricts the movement of pedestrians past the outdoor service area.

(Ord. 1816, 1994.) (Ord. 2231, Amended, 07/12/2004)