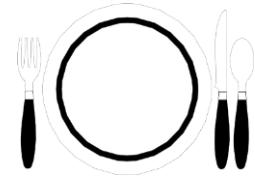


**2019**  
**Temporary Encroachment Permit**  
**(TABLES & CHAIRS PERMIT)**  
**INFORMATION AND APPLICATION PACKET**

**THE TEMPORARY USE OF PUBLIC RIGHT-OF-WAY**  
**FOR OUTDOOR DINING FACILITIES**

For additional information, please contact The Community & Economic Development Department  
Gerardo Victoria  
At (925)943-5834 x2369  
Victoria@walnut-creek.org



## CITY OF WALNUT CREEK OUTDOOR DINING POLICY

### ***Purpose and Intent***

The purpose of permitting outdoor dining on either private or public property is to bring pedestrian activity and visual interest to a street or courtyard in addition to allowing citizens to fully enjoy Walnut Creek's mild climate. A bustling, active streetscape with people sitting and strolling about is not only beneficial to the subject business, but surrounding businesses as well. Further, outdoor dining provides restaurant owners with additional seating during seasonal increases in business.

Outdoor dining is intended for seasonal use and helps create street character. The City of Walnut Creek does not require business owners to provide additional parking for the dining area. To date, there has not been an identified parking problem related to this limited increase in seating capacity. To ensure that this does not become a problem, and to adhere to the purpose and intent of outdoor dining, the following policies have been adopted.

### ***Policies***

- The area should be open to an adjacent street, courtyard, creek, or park. Diners should be visible to people passing by, and views of the streetscape or public amenity should be available to diners.
- The outdoor dining area should be ancillary to the successful operation of the business. The business should not rely on outdoor seating to be a year-round successful business in the community.
- The size of the outdoor dining area should be ancillary to any interior dining area. A good ratio for full service restaurants is a 2/3 interior dining and 1/3 exterior dining ratio.
- Outdoor dining no longer serves as a public benefit if it is enclosed to a great degree. Four walls and a roof, regardless of whether the area is heated or conditioned, takes away from the open, inviting atmosphere of the outdoor area.
- Protecting outdoor dining areas from wind and cold with clear plexiglass or other fully transparent materials is acceptable as long as the protection is limited in its use, and the majority of the dining area is still open and unenclosed.
- The appropriate use of overhead coverings, trellises, dividing walls, windscreens, etc., is subject to the discretion of the Planning Manager, in light of these policies and their purpose and intent. Special requests will be considered by the City, and are typically forwarded to the Design Review Commission for its comment and approval.
- Enclosing an outdoor area encourages its use as a year-round facility, which has the potential to increase the parking demand and impact surrounding businesses.
- If outdoor dining is proposed on public property, such as the sidewalk, an encroachment permit is required. Development standards and submittal requirements for an encroachment permit to establish temporary outdoor dining facilities in the public right-of-way are provided in this information and application packet.

## **GENERAL INFORMATION**

### **Why Does the City Issue Temporary Encroachment Permits on Public Sidewalks for Outdoor Dining Facilities?**

The downtown area of Walnut Creek includes many restaurants, cafes, and specialty food stores. These businesses are often located in buildings that sit directly on the property line, next to the City sidewalk. As a result some business owners would like to place portable tables and chairs within the adjacent public sidewalk areas. These tables and chairs allow customers to consume food purchases or be served while enjoying the outdoor atmosphere.

The allowance and use of this temporary street furniture brings life and movement to the downtown. This in turn attracts more people to the area, to the benefit of all businesses. For this reason the City will issue Temporary Encroachment Permits to food service businesses for the placement of tables, chairs, umbrellas and in some cases, limited fencing, on the City sidewalks. This permit is not appropriate for the sale or display of products or services or for the construction of any permanent structures within the right-of-way.

Temporary Encroachment Permits are required to allow private use of the public sidewalk in order to insure that adequate pedestrian paths remain clear and easily maneuverable, that permits are issued in an equitable manner, that pedestrian safety has been considered, and that the goals and policies of the Pedestrian Retail District (the downtown area) are adhered to.

### **Under What Conditions will a Temporary Encroachment Permit be issued?**

The City Engineer may issue a Temporary Encroachment Permit for outdoor dining facilities on the public sidewalk, if the application and related plans are found to be in conformance with the following limitations:

1. Temporary Encroachment Permits shall only be issued for businesses within the Pedestrian Retail Zoning District.
2. The Temporary Encroachment Permit shall be issued only for that section of the right-of-way in front of the business requesting the permit.
3. Permits may be issued for portable dining tables, chairs, accessory umbrellas, landscape planter boxes and limited fencing only. Permanent structures, or the display or sale of products and services are not permitted.
4. Tables, chairs and related appurtenances must be placed so as to retain a minimum 5' 6" wide unobstructed pedestrian path within the public right-of-way. When the outdoor dining area is to be separated from pedestrian traffic by a fence, the unobstructed pedestrian path shall be a minimum of 8 feet wide. The required minimum width shall be exclusive of any permanent structures or other obstructions, including but not limited to street trees, parking meters, light poles, newspaper racks, and planters.
5. Tables, chairs, fences and other obstructions shall be placed at least 2.5 feet away from the edge of the street.
6. Except for the support pole, all portions of an approved umbrella structure shall be a minimum of 7 feet above the walkway.
7. Umbrella canvas shall be solid in color and of a muted tone.

8. No writing, symbols, advertising, or other forms of signs will be permitted on the umbrellas or as a part of the permit.
9. The business is responsible for the timely removal of all trash created by the users within the encroachment area. The applicant shall either provide a convenient trashcan (Existing City trashcans may not be used) for consumers, which shall be emptied daily by the business, or ensure that designated business personnel clear tables and remove debris after each seating.
10. Tables and chairs must be removed at the end of each business day.
11. Alcohol cannot be served or consumed within the encroachment area without prior approval of the Police Department, the Alcoholic Beverage Control Board (ABC) and compliance with City and ABC requirements for a delineated physical barrier enclosing the encroachment area. If alcohol is to be consumed in the encroachment area, the applicant shall submit the required site plan and a business management plan discussing how the area will be supervised, what signage will be used to ensure compliance with all laws pertaining to the consumption of alcohol and any other pertinent information to the police department for their review and approval. An encroachment permit that allows alcohol consumption within the public right-of-way will not be issued until the Police Department has approved the site plan and business management plan. (For additional information, see "Starting a Business with an Alcoholic Beverage License" brochure available from the Community Development Department, the Police Department or the Business License Department.)
12. Fencing shall be designed to support weight leaning against it and so that it cannot be easily stepped over, moved, or knocked over. Fencing and other physical barriers shall provide a minimum 36 inches wide opening for handicap access to outdoor dining facilities.
13. Any fencing proposed shall be designed to enhance the pedestrian experience with special features such as decorative iron railings and planter boxes but shall also be in compliance with the requirements of the Police Department.
14. Fencing and other physical barriers shall be designed to be easily removable. The sleeves or supports shall be designed and/or covered in such a manner that they do not create tripping hazards when the barrier is removed.
15. Fenced areas shall be designed to meet all relevant building code requirements regarding entrances/exits.

The City Engineer has the authority to issue encroachment permits and establish conditions of approval in accordance with the provisions of Title 7-1.202 of the Municipal Code.

### **What Is Required For Submittal?**

Upon receipt of a complete submittal package to the Community & Economic Development Department, the Temporary Encroachment Permit request will be routed to the appropriate Divisions and Police Department for processing. Submittal packages should include the following:

1. Completed and signed Application Form
2. Completed and signed Temporary Encroachment Agreement
3. Copy of Certificate of Liability Insurance. The general liability insurance policy limit shall be no less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

4. **Insurance endorsement naming the City of Walnut Creek as an additional insured and stating that the insurance is primary & non-contributory. A sample endorsement is attached. It is the responsibility of each business to provide current requirements for the period of 2019. If insurance lapses, the business is required to provide the current insurance information for the 2019 calendar year.**
5. Four copies of site plan and design specifications (see Plan Submittal Requirements below).
6. A 4" x 6" (or larger) photograph of storefront and area to be used.
7. Payment of current fee (Check made payable to "City of Walnut Creek"). The current fee for 2019 is \$200. **Checks will not be cashed until the current 2019 Insurance is received.**

### **How Long Does It Take To Get A Temporary Encroachment Permit?**

Once received, the Planning Division will route the application to the Transportation and Police Departments for review and comment. After comments are returned, the City Engineer or his/her designee will approve or deny the application based on the comments received and conformance with the required conditions of approval.

### **When Does the Temporary Encroachment Permit Expire?**

Temporary Encroachment Permits will be issued for up to one year, expiring December 31<sup>st</sup> of each year. Applications may be refiled annually; however, the issuance of a permit does not guarantee future permit approval.

The permit is an agreement for temporary use of public right-of-way between the applicant and the City of Walnut Creek. It is not transferable to future applicants and owners.

All conditions to use of the permit shall be adhered to. Violations of the conditions, or his/her designee, of the permit must be corrected upon notification of the violation. The City Engineer may terminate the permit for any reason by written notification 30 days prior to the date of termination.

### **What If My Application Is Denied?**

An applicant may appeal the decision of the City Engineer, or his/her designee, concerning the terms and conditions of an encroachment permit to the City Council pursuant to the provisions of Chapter 4 of Title 1 of the Municipal Code.

### **What If I Don't Renew My Temporary Encroachment Permit?**

Temporary Encroachment Permits expire at midnight on December 31<sup>st</sup>, and tables and chairs may not be placed in the public right-of-way until a new permit has been issued by the City. Tables and chairs placed in the public right-of-way without a permit may result in the issuance of Administrative Citations starting at \$100, and increasing to \$500, per day. The City's Code Enforcement staff will check for compliance with the Temporary Encroachment Permit requirements at the start of each year, so it is important that you renew your permit early.

## PLAN SUBMITTAL REQUIREMENTS

1. Submit **four** site plans on 8.5" by 11" size paper, or larger, if necessary to provide the information requested below. (Attached is a sample drawing for Temporary Encroachment Permit proposals.)
  - a. Provide accurate, fully dimensioned, scaled drawings showing the business storefront, storefronts on each side of business, and the full sidewalk area in front of all three businesses. Size and font must be legible.
  - b. Show and label all existing encroachments between the curb and the front of the three businesses, including, but not limited to, doors, awnings, roof overhangs, street trees, street tree grates, trash cans, parking meters, light poles, newspaper racks, phone booths, landscape planters, benches, sign poles, etc.
  - c. Delineate and dimension the area proposed for the encroachment.
  - d. Show and label all proposed street furniture and appurtenances requested to be placed within the proposed encroachment area.
  - e. Provide north arrow, scale, street name, business address, and business name.
  - f. Provide all property lines on plan.
2. Provide specifications and details of proposed furniture, fencing and other appurtenances requested to be installed within the public right-of-way. Identify any exposed sleeves or supports, which would still be in pavement when fence/barrier is removed and identify how you will prevent trip hazards resulting there from. If alcohol is to be consumed within the encroachment area, the site plan shall include the location of the required fencing as indicated in Condition #12 above and location and design of signage that will be used to ensure compliance with all laws pertaining to the consumption of alcohol.
3. If alcohol is to be consumed within the encroachment area, submit a business management plan that outlines how the encroachment area will be supervised and managed.

Note: Dimensions should include, but are not limited to, business storefront widths, sidewalk widths, width of unobstructed paths, width of encroachment areas and clearance between fence/furniture and curb.



PERMIT NO. TC- \_\_\_\_\_

APPLICATION FORM  
CITY OF WALNUT CREEK

TEMPORARY ENCROACHMENT PERMIT  
For OUTDOOR DINING FACILITIES

Name of Applicant: \_\_\_\_\_

Name of Business: \_\_\_\_\_

Address of Business: \_\_\_\_\_

Applicant Phone Number: \_\_\_\_\_

Name of Right-of-Way Street: \_\_\_\_\_

Total Square Feet of Proposed Area Within Public Right-of-Way: \_\_\_\_\_

Describe Area to be used: \_\_\_\_\_

Describe Purpose of Use: \_\_\_\_\_

Describe Type and Color of Encroachment Furniture/Fixtures: \_\_\_\_\_

Please respond to the following questions by indicating yes or no as appropriate. A permit will only be issued if all applicable questions can be answered by a YES response.

N/A    YES    NO

1. Is this permit requested for right-of-way within the Pedestrian Retail Zoning District?
2. Is the subject area adjacent to the applicant's business?
3. Is this permit for the encroachment of outdoor dining tables, chairs, accessory umbrellas, planter boxes and fencing only? *(Circle those that apply)*
4. Will placement of all new tables, chairs and other encroachments allow a continuous and unobstructed path at least 5 feet 6 inches wide between any permanent structures (trees, parking meters, light poles, buildings, etc.)?
5. Will any new fencing/barrier be located to provide at least an 8-foot wide minimum unobstructed pedestrian path between any existing permanent structures and any new fence/barrier around the proposed outdoor dining area?
6. Will all furniture and related obstructions be at least 2.5 feet away from the curb?
7. Will umbrellas be at least 7 feet in height above grade at all points (except support pole)?
8. Are the umbrellas a solid color and a muted tone? Note color: \_\_\_\_\_
9. Are the umbrellas free of any writing, symbols, or advertising?
10. Will private trash cans be available to the public or will personnel be assigned to remove trash?



TEMPORARY ENCROACHMENT PERMIT AGREEMENT  
FOR OUTDOOR DINING FACILITIES

PERMIT NO. \_\_\_\_\_

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (“**Permittee**”) and THE CITY OF WALNUT CREEK, a California municipal corporation (“**City**”).

RECITALS

This Agreement is based upon the following facts:

- A. Permittee is the operator of a certain business located in the City commonly known as \_\_\_\_\_ [Name of Restaurant] located at \_\_\_\_\_ [Street Address] (the “**Property**”)
- B. The proposed fencing, portable tables, chairs, umbrellas, and appurtenances along with the area to be utilized for their placement, constitutes an encroachment onto the City’s right-of-way known as \_\_\_\_\_ [Street Name] (collectively the “**Encroachment**”).
- C. The Encroachment will serve the business at the Property immediately adjacent to the Encroachment.
- D. In accordance with Chapter 1 of Title 7 of the Walnut Creek Municipal Code, City has determined that the Encroachment, at this time and as conditioned by this Agreement, does not jeopardize the public health, safety, or welfare.

AGREEMENT

- 1. City hereby grants to Permittee a Temporary Encroachment Permit (the “**Permit**”) to encroach into the City’s right-of-way on \_\_\_\_\_ [Street Name], by installing and maintaining private improvements for the use and benefit of the Property. In consideration of City’s issuance of the Permit, Permittee covenants and agrees to abide by the terms and conditions set forth below.

2. By executing this Agreement, Permittee warrants and represents to City that it has the full power and authority to accept and perform the terms and conditions contained in this Agreement.
3. Any work done pursuant to the Permit shall constitute acceptance of the terms and conditions contained in this Agreement.
4. The Encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk, and responsibility of Permittee and its successors in interest.
5. This Permit shall only be valid for businesses located within the Pedestrian Retail Zoning District.
6. The Encroachment shall only be for that portion of the right-of-way directly in front of the Property and as depicted on Site Plan, provided or on file with the City.
7. No permanent structures, nor the display or sale of products and services, are permitted within the Encroachment area.
8. Permittee shall retain a minimum 5' 6" unobstructed pedestrian path within the public right-of-way at all times and a minimum 8' 0" unobstructed pedestrian path within the public right-of-way adjacent to all fenced dining areas.
9. Tables and chairs and related appurtenances shall be maintained at least 2.5 feet away from the edge of the street at all times.
10. Except for the support pole, all portions of an approved umbrella and its supporting structure shall be a minimum of seven (7) feet above the walkway at all times. Any umbrella canvas shall be a solid, muted color. Worn and faded umbrellas shall be promptly replaced to maintain an attractive pedestrian environment. No writing, symbols, advertising, or other form of signs are permitted on umbrellas.
11. Permittee is responsible for the timely removal of all trash located or created within or resulting from the Encroachment. Permittee shall provide a convenient trash can and ensure that it is emptied daily, or as an alternative, ensure that designated business personnel clear tables and remove debris promptly after each seating. Existing City trash cans may not be used.
12. Tables, chairs, and other portable appurtenances must be promptly removed from the Encroachment area at the end of each business day.
13. No alcoholic beverage may be served or consumed within the Encroachment area without prior written approval of the California Department of Alcoholic Beverage Control ("ABC") and compliance with ABC and City requirements for a delineated physical barrier enclosing the Encroachment area.

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14. Approved fencing shall be installed and maintained in a manner that makes it easily removable each night while supporting the weight of persons who may lean on it when in place. The method of fence installation shall be approved by staff prior to its initial installation. The sleeves or supports shall be designed and/or covered in such a manner that they do not create tripping hazards when the fence is removed.
  15. Utilities: Encroachment may be located above and/or adjacent to utilities. Permittee may not misuse or interfere with any existing utilities. There may be instances when utility owners are required to access, maintain, repair or replace their utilities, which will require removal of Permittee's Encroachment. City and Utility owners will attempt to provide advance notice to Permittee, however in the event of emergencies; there will be little to no notice to the Permittee. Under no circumstances will the City, utility owner, their representative or contractors be responsible for any costs related to removal and replacement of Encroachment, including costs for loss or disruption of business. In addition, the City, Utility owner, their representative or contractors will not be responsible for any Permittee costs related to their access, maintenance, or repair or replacement of utility, except for costs that would have been incurred absent the Encroachment.
  16. Entry to the outdoor eating area shall be a minimum 36 inches for handicapped accessibility.
  17. There shall be no potted plants or other elements installed outside of the fence that reduces or impedes pedestrian access around the outside perimeter of the fence.
  18. Permittee must routinely clean the sidewalk and, if necessary or as otherwise directed by the City Engineer, replace soiled or damaged pavers.
  19. No addition, alteration, improvement, or expansion shall be made to the Encroachment that would cause further physical encroachment into City's right-of-way.
  20. Any fencing, mounting, furniture, or conditions of use associated with the Encroachment that, in the opinion of the City Engineer (or his/her designee), is unsafe, not secure, damaged, or disfigured shall be deemed a nuisance and shall promptly be corrected or removed by Permittee within five (5) days after written notice to remove the Encroachment is mailed by the City Engineer.
  21. This Permit may be revoked without cause for any reason whatsoever upon written notice from City to Permittee. Permittee shall remove, relocate, or restore the Encroachment area, as directed by the City Engineer, within thirty (30) days following written notice from City. In the case of an emergency, as determined by the City Engineer, the City may require that the Encroachment be removed immediately, or within less than thirty (30) days. If the Permittee fails to remove, relocate, restore, or otherwise comply with the direction of the City Engineer regarding the Encroachment, City may cause the work to be done, and the costs thereof shall be a lien against the Property.
  22. Whatever rights and Obligations City possesses with respect to the right-of-way shall remain and continue in full force and effect and shall in no way be affected by City's grant of permission to install and maintain the Encroachment as contemplated by this Agreement.

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23. Permittee shall procure and maintain, at its sole cost for the duration of this Agreement, a general liability insurance policy that protects City from any claims that may arise in connection with the Encroachment in a form and with an insurer acceptable to City's Risk Manager. The policy (i) shall name City and its elected officials, officers, employees, agents, and representatives as additional insureds, (ii) shall contain no special limitations on the scope of protection afforded to such additional insureds, (iii) shall contain policy limits of no less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage, and (iv) shall provide that the policy shall not be cancelled or materially altered without thirty days advance written notice addressed to: Risk Manager, City of Walnut Creek, 1666 N. Main Street, Walnut Creek, CA 94596. Permittee's insurance coverage shall be primary insurance with respect to the City and its elected officials, officers, employees, agents, and representatives, and any insurance or self-insurance maintained by the City or any other additional insureds hereunder shall be excess insurance and shall not contribute with Permittee's insurance. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. An endorsement evidencing such coverage shall be filed with City's Risk Manager prior to any use of the Encroachment area by Permittee. The endorsement must reference the insurance policy number indicated on the certificate of insurance and must be signed by an individual authorized to bind coverage on the insured's behalf.
24. To the fullest extent permitted by law, Permittee shall indemnify, defend and hold harmless City and its officers, employees, elected and appointed officials, agents, representatives, and volunteers from and against any and all claims, demands, causes of action, lawsuits (whether at law, equity or both), proceedings, liabilities, losses, damages (including but not limited to injury or death to any person or damage to property), expenses, costs (including without limitation fees and costs of attorneys and expert witnesses), judgments, penalties, and liens of every nature arising or claimed to arise, directly or indirectly, out of (a) Permittee's use or enjoyment of the Encroachment area, (b) any other activity of Permittee in, on, or about the Encroachment area, including but not limited to the performance of, or failure to perform, any maintenance, repair, or construction work thereon, or (c) Permittee's failure to comply with any provision of this Agreement. This indemnification obligation shall survive this Agreement and shall not be limited by the term of any insurance policy required under this Agreement.

Also covered by this section is liability arising from, related to, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of City and its elected and appointed officials, officers, employees, agents, representatives, and volunteers that may occur in combination with any active or passive negligent acts or omissions of Permittee, its officers, employees, agents, or any third party. However, Permittee's duty to indemnify, defend and hold harmless shall not include any claims or liabilities arising from the sole negligent acts or sole willful misconduct of the City and its elected and appointed officials, officers, employees, agents, representatives, and volunteers. Permittee further agrees to pay any and all costs City incurs to enforce this indemnity and defense provision. This Agreement shall run with the land.

25. This permit is valid commencing on the date of execution set forth immediately below and shall expire on December 31, 2019.

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EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in Walnut Creek, California.

APPLICANT/PERMITTEE:

\_\_\_\_\_  
Signature of Applicant/Permittee

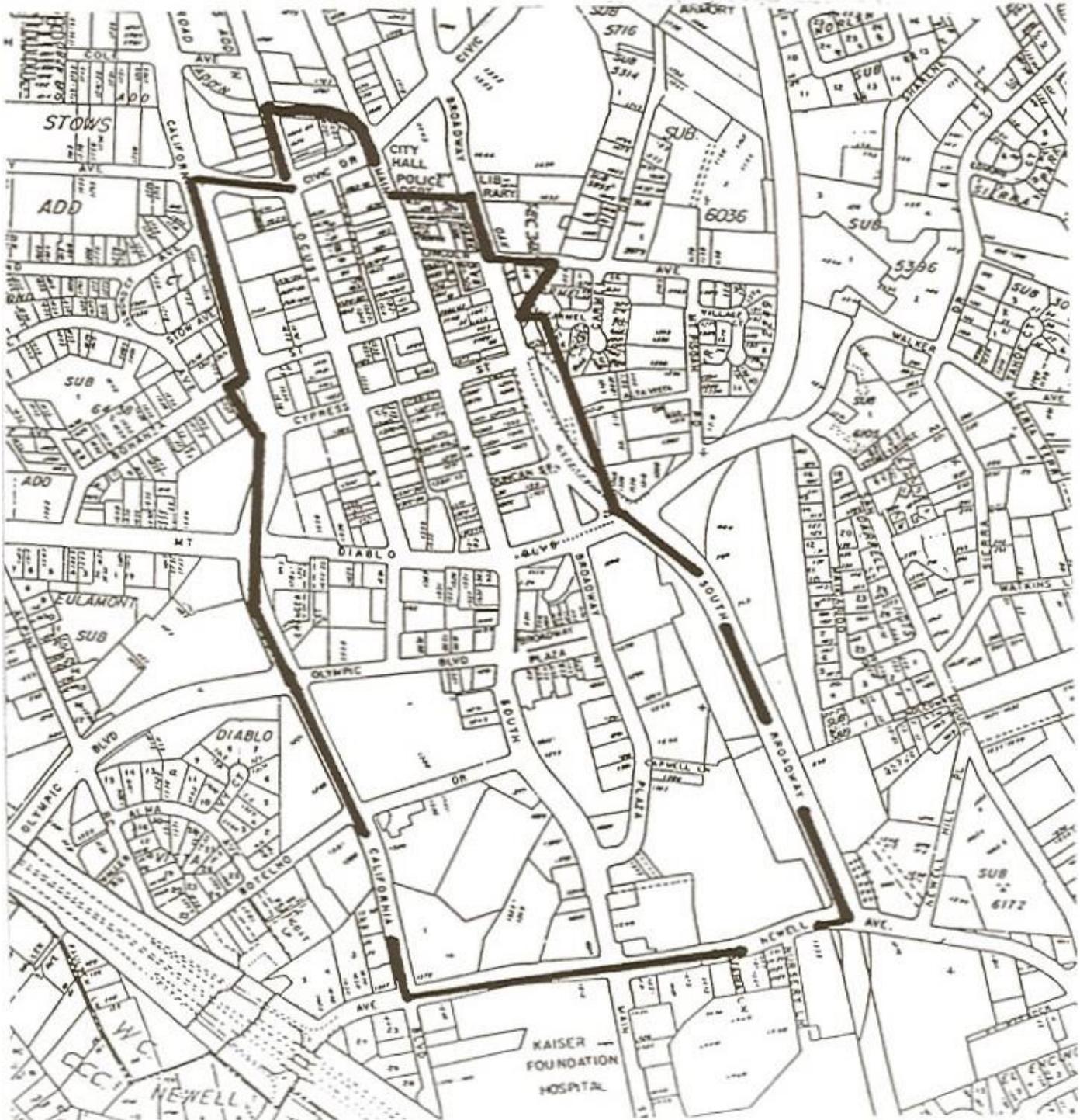
\_\_\_\_\_  
Printed Name of Applicant/Permittee

CITY OF WALNUT CREEK:

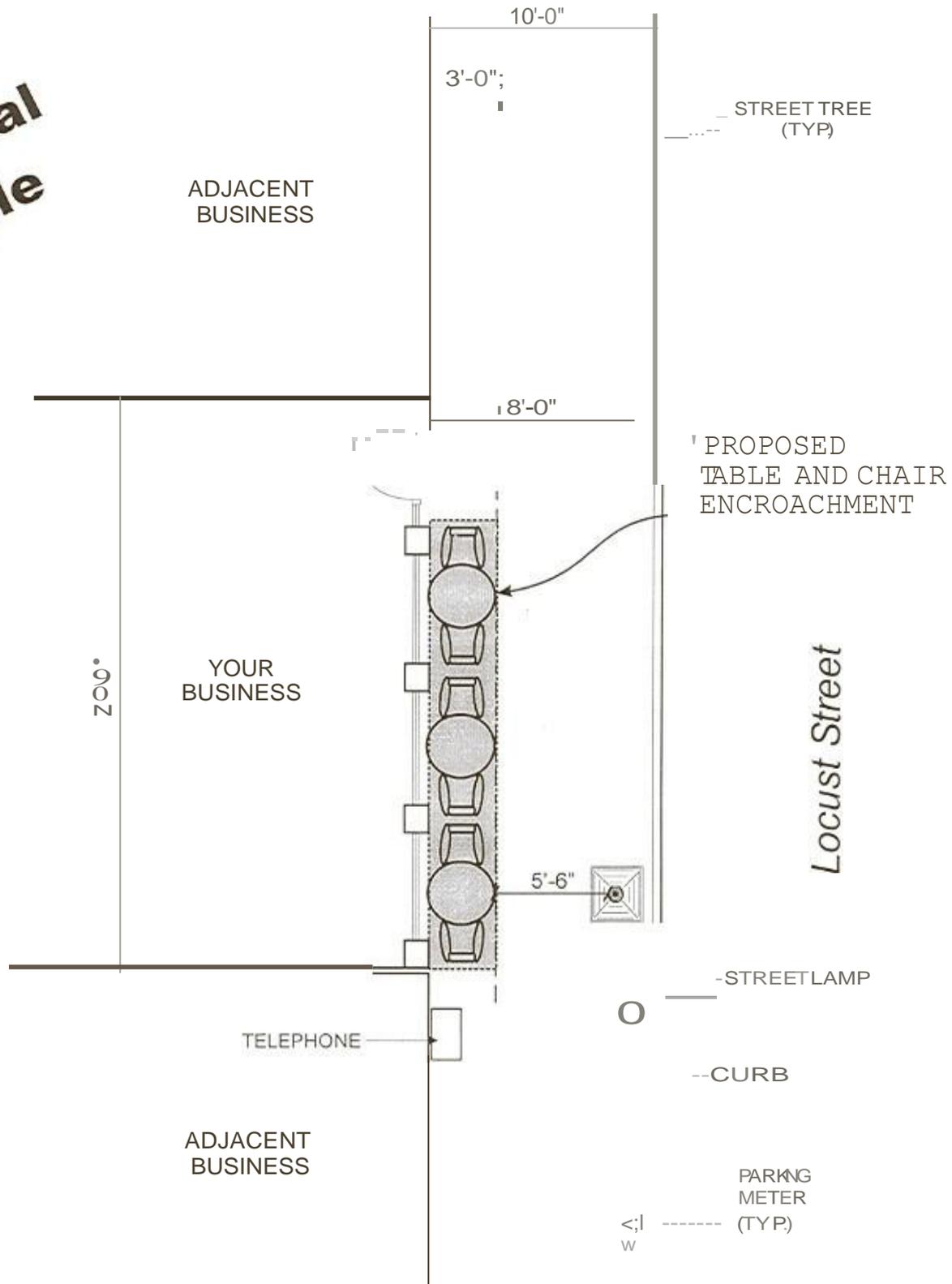
\_\_\_\_\_  
City Engineer or Authorized Designee

# PEDESTRIAN RETAIL DISTRICT

Please identify the Area of Encroachment



**Submittal  
Sample**



SCALE: 1/8" = 1'-0"

ADDRESS: \_\_\_\_\_  
PROJECT APPLICANT: \_\_\_\_\_  
BUSINESS NAME: \_\_\_\_\_

# SITE PLAN



## (SAMPLE ENDORSEMENT LANGUAGE)

**POLICY NUMBER:** \_\_\_\_\_ [must be the same as the Commercial General Liability policy number on the Certificate of Insurance]

### **ADDITIONAL INSURED**

The City of Walnut Creek, its officials, officer, directors, employees, agents, and volunteers are additional insured.

or

Additional insured when required by written contract or agreement.

or

“Blanket” additional insured

### **PRIMARY & NON-CONTRIBUTORY**

This insurance is primary with respect to the additional insured. Any other insurance available to the City of Walnut Creek, its officials, officers, directors, employees, agents, and volunteers shall be excess and non-contributing.

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[Endorsement must be signed by individual authorized to bind coverage on the insured's behalf]