



WESTPORT, CONNECTICUT
Jennifer S. Tooker, First Selectwoman

POP-UP DINING PERMIT POLICY AND APPLICATION

Approved by the Board of Selectmen on March 14, 2012, AMENDED, RESTATED, RENAMED and APPROVED by the Board of Selectwomen on January 11, 2023.

POLICY:

The Board of Selectmen of the Town of Westport adopted Pop-Up Seating and Pop-Up Café Guidelines in 2012 in order to advance the objectives of the 2007 Town Plan of Conservation and Development, through creating more opportunities for Westport residents and others to enjoy downtown while relaxing outside.

Pop-Up Dining Areas (“Pop-Ups”) are created by converting into dining areas certain parking spaces that are along the curb lane of a municipal roadway or in municipal parking lots, if such parking spaces are directly in front of existing dining establishments. They are referred to as “Pop-Ups” because a temporary area is defined for this purpose.

The Board of Selectwomen, acting in its capacity as the Local Traffic Authority, regulates the use and safety of public roadways and public parking lots in conjunction with the “Procedure for Use of Town-Owned Property, Facilities and/or Public Roadways” dated September 15, 2010, updated June 2017 and January 2018 (“2018 Procedures”).

The Board of Selectwomen hereby amends, restates, and renames the Pop-Up Seating and Pop-Up Café Guidelines, now to be known as the Pop-Up Dining Permit Policy and Application (the “Policy”) with respect to the issuance of permits for Pop-Ups. To the extent that there is a conflict with the 2018 Procedures as applied to Pop-Ups, the terms of this Policy will apply.

REGULATIONS, RESTRICTIONS, CONDITIONS:

LOCATION:

- Pop-Ups are allowed in all non-residential zoning districts except the CPD, DDD, RPOD, and GBD/R districts.
- Pop-Ups can project no more than six feet (6’) onto the roadway or parking lot.
- Pop-Ups may only be located on one-way streets or in municipal parking lots with one-way traffic flows.
- The number of parking spaces permitted to be used for the Pop-Up shall be at the discretion of the Town.
- The area of the Pop-Up shall be for the exclusive use of the Permittee.

- Pop-Ups shall not be located in front of any fire hydrant, fire department connection, active driveway, manhole, or active utility access point.

CONSTRUCTION:

- The cost, design, construction and maintenance of each Pop-Up shall be paid for by the Permittee.
- Pop-Ups shall be constructed on a platform that is as flush with the sidewalk as possible. In addition, the Pop-Up must allow for easy access to the space underneath and must be load-bearing to at least 750lbs per square foot.
- Pop-Ups shall not impede surface drainage.
- Each Pop-Up should have some vertical elements (e.g., planters, umbrellas) so that it is visible from vehicles.
- Each Pop-Up must include a continuous physical barrier along the street-facing perimeter while maintaining clear visual sightlines to the street.
- Each Pop-Up shall be constructed, established, and maintained in accordance with Federal ADA requirements and applicable state accessibility requirements. Pop-Ups may require a building permit, and it is the responsibility of the Permittee to comply with the State Building Code.
- Each Pop-Up should be finished with quality materials, preferably using recycled or sustainably harvested products.
- Pop-Ups shall not impede any egress from adjacent structures.
- Table centers and freestanding umbrellas shall be adequately anchored. Tents are subject to the approval of the Board of Selectwomen, the Building Official and the Fire Marshal.
- Lighting (LED or battery-powered candles or other low level light sources) is permitted. Open flames are prohibited. No power extension from the Pop-Up area across the adjacent sidewalks or roadways is allowed.
- Standing portable propane heaters are permitted, but shall not be located under/in tents. All propane heaters shall be inspected by the Fire Marshal's office prior to use. Electric or fuel heaters other than propane are prohibited.
- There shall be no additional signage for the Pop-Up including any wording, logos or advertisements on umbrellas or seating area and enclosures.

DATES OF OPERATION:

- No Pop-Up shall be open to the public until a Pop-Up Dining Permit has been issued pursuant to the attached Application Process and all relevant approvals from Town officials and the Aspetuck Health District have been obtained.
- Pop-Up Dining Permits are valid from April 1st to November 1st of each year. Chairs, tables and appurtenances may only be located on the Pop-Up area during such time period.
- Hours of operation for Pop-Ups shall be from 6:30am to 11:00pm Sunday through Thursday and from 6:30am to 12:00 midnight Friday and Saturday. No amplified outdoor music is allowed and no music after 9:00pm.

- If a Pop-Up is not used for 7 days or more, it must be removed by the Applicant, or by the Town if the Applicant fails to do so.

COMPLIANCE:

- Any damage done to the public roadway, parking lot, or sidewalk by the Permittee or by its patrons shall be repaired promptly by the Permittee at its expense.
- The Permittee shall ensure and be responsible for compliance with this Policy and all appropriate laws, rules, regulations, and other policies, including but not limited to those regarding the safe handling and servicing of food and beverages.
- The Town may terminate the permit and require the immediate removal of the Pop-Up and all equipment if there is a violation of any term or condition of this Policy. The Town may also remove the Pop-Up and all such equipment at the Permittee's sole cost and expense if the Permittee fails to do so when requested.

MAINTENANCE:

- Pop-Up dining areas and furnishings must be maintained in an attractive, clean (free from spills, litter and other debris) and safe manner.
- No trash receptacles of any type shall be added to the Pop-Up area or adjacent sidewalk.

HEALTH:

- Smoking is prohibited at Pop-Ups.
- Pop-Ups shall comply with the Aspetuck Health District Outdoor Patio Dining Regulations.
- Pop-Ups are limited to restaurants or retail food establishments that have a valid food service establishment permit from the Aspetuck Health District.
- The restaurants or retail food establishment must have consistently maintained an acceptable food service inspection rating from the Aspetuck Health District during the previous 4 inspection quarters.
- Pop-Ups shall comply with all applicable requirements of the Liquor Control Act of the State of Connecticut.
- No animals are allowed in the Pop-Up, with the exception of certified service animals.

EMERGENCIES:

- In the event of a public necessity or emergency where access to the street, parking lot, sidewalk or adjacent building is impaired for any reason, the Pop-Up shall be temporarily moved by the Permittee or emergency responders (i.e., police/fire). All costs associated with the relocation of the Pop-Up, or any damage incurred to the Pop-Up, in the event of a public emergency or otherwise, shall be borne by the Permittee.
- In the event of a pending flood, the Pop-Up platform and furnishings should be firmly secured or removed.

ENFORCEMENT:

- Failure to adhere to this Policy will result in the revocation of the Permit until such time that the violation has been corrected to the satisfaction of the Town.

- In addition to all other rights and remedies that the Town may have under this Policy and applicable law, the Town may expend all or any portion of the Permittee's \$5,000 deposit to pay for (i) the removal of any furnishings, equipment and structures from the Pop-Up area if the Permittee fails to do so when instructed by the Town, or in the event of an emergency as provided above, (ii) any damage to any Town property caused by the Permittee or by its patrons, or (iii) any cost or expense resulting from a violation of this Policy by the Permittee.

APPLICATION PROCESS:

1. The applicant shall apply for a Pop-Up Dining Permit from the Board of Selectwomen on an annual basis and at least 90 days in advance of proposed Pop-Up installation. *The Town of Westport may deny a Pop-Up Dining Permit or renewal if the applicant establishment has a history of violations of any term or condition of this Policy or any prior version of it, failed to correct any violations when duly noticed, or has any tax delinquencies.*
2. The applicant shall provide a plan showing the area intended for outdoor dining, the proposed seating area, the barrier fencing and the ingress and egress. In addition, the plan shall also include the dimensions of the seating area and the projection onto the municipal roadway or parking lot. Such plans shall be prepared by a CT licensed Land Surveyor, Professional Engineer, Architect or Landscape Architect, or in a form approved by Town Departments.
3. Before the application is scheduled for Board of Selectwomen review, the design plan(s) will be reviewed and/or approved as appropriate by the Public Works Director, Fire Chief and/or Fire Marshal, Building Official, Chief of Police, Aspetuck Health District, and Planning and Zoning Director, or their designees. Any comments will be forwarded to the Applicant.
4. At the time of application, the property owner must include a list of names and addresses of all property owners located within 250 feet of the Pop-Up area, as shown on the tax assessment records as of the date of application submission (available via GIS on Town Website www.westportct.gov), along with stamped business envelopes addressed to the applicant and each such property owner.
5. The applicant shall provide an indemnity and hold harmless agreement in a form approved by the Town Attorney's Office (see attached).
6. The applicant shall provide evidence, in the form of a Certificate of Insurance and appropriate endorsements acceptable to the Town Attorney's Office, of the insurance coverages as described in the indemnity and hold harmless agreement.
7. A five thousand (\$5,000) dollar deposit in the form of a certified check, letter of credit, or other form of deposit acceptable to the Town Attorney's Office, shall be required to ensure the removal of the Pop-Up as needed, the restoration of any damage to the roadway, sidewalk or other public property, or the costs resulting from any violations, as described in this Policy.
8. In the event alcoholic beverages are to be sold, the following shall be presented:
 - a. a copy of a valid and current liquor permit from the State Liquor Commission;
 - and

- b. an application for a patio liquor permit signed by the Director of Planning and Zoning, the Fire Chief and the Aspetuck Health District.
9. Application for a Pop-Up Dining Permit shall be accompanied by a non-refundable application fee in the amount of one hundred fifty dollars (\$150).
10. Return completed application with all required documentation (including fees) to:
Selectwoman's Office, 110 Myrtle Avenue, Westport, CT 06880

POP-UP DINING PERMIT APPLICATION

TOWN ROAD OR PARKING LOT

TO BE USED:

(adjacent address) _____

NAME OF FOOD

ESTABLISHMENT: _____

NAME OF APPLICANT:

(Owner/Proprietor) _____

CONTACT NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

E-MAIL: _____

APPLICANT CHECK LIST:

- Application
- Processing Fee = \$150
- Certified Check/Form of Deposit Acceptable to Town Attorney = \$5,000
- Certificate of Insurance with Endorsements
- Indemnity and Hold Harmless Agreement
- Construction/Set up Plans
- List + Envelopes 250' Abutters
- AHD Permits – Patio, Liquor, Health

FOR OFFICE USE ONLY
THE FOLLOWING DEPARTMENT REVIEWS AND/OR APPROVALS MUST BE RECEIVED PRIOR TO PLACEMENT ON BOARD OF SELECTWOMEN'S AGENDA:

	DATE
Police Department	
Fire Department / Fire Marshal	
Public Works Department	
Building Official	
Aspetuck Health District	
Planning and Zoning	
Assistant Town Attorney	
Board of Selectwomen/Traffic Authority Public Meeting PERMIT NO:	

DEPOSIT,
INDEMNITY
AGREEMENT &
INSURANCE
RECEIVED:
APPROVED



WESTPORT, CONNECTICUT

Jennifer Tooker
First Selectwoman

POP-UP DINING PERMITTEE
INDEMNITY AND HOLD HARMLESS AGREEMENT

(Revised January 2023)

This Indemnity and Hold Harmless Agreement ("Agreement") is made this ____ day of _____, 20____, by

[PRINT NAME OF RESTAURANT EXACTLY AS SHOWN ON INSURANCE CERTIFICATE] ("Indemnitor")

with an address at _____ [ADDRESS] for the benefit of the
Town of Westport, a municipality in the State of Connecticut ("Town").

WHEREAS, Indemnitor has submitted an application (the "Application") for the Town's permission to use
public roads, and/or other Town-owned property (the "Premises") for Pop-Up Dining ("Pop-Up Dining") under the
Town's Pop-Up Dining Permit Policy and Application ("Pop-Up Policy") according to the terms of the Application
and the Pop-Up Policy; and

WHEREAS, the Board of Selectmen of the Town has approved the Application for Pop-Up Dining on Town
Premises subject to the conditions provided below;

NOW THEREFORE, in consideration of Indemnitor's receipt of said authorization, permission, and approval
from the Town, Indemnitor agrees as follows:

- 1. Permission to use the Premises for Pop-Up Dining may be revoked by the Town immediately upon the breach
by Indemnitor of any term of this Agreement or any term or condition of the Pop-Up Policy or the approved
Application. This Agreement shall survive any such revocation, and Indemnitor shall remain bound by the terms
of this Agreement.
2. Indemnitor shall cease use of the Premises for Pop-Up Dining at close of business on October 31 of the year for
which the permit for Pop-Up Dining was issued. Indemnitor shall remove all furniture, barriers, displays,
decorations, and all other property related to Pop-Up Dining, and restore the Premises to its original condition,
by close of business on November 5 of such year. Failure to abide by any of these requirements may be
prosecuted by the Town to the fullest extent of the law and additionally, upon such failure the Town shall be
authorized to remove all of the Indemnitor's property from the Premises and make such restoration at the
Indemnitor's full cost and expense, even if it exceeds the Indemnitor's \$5,000 bond that has been provided for
this purpose, and the Town may exercise all other remedies available to it under the Pop-Up Policy and
applicable law.
3. Indemnitor shall indemnify, defend and hold harmless the Town and its agents, employees, elected and
appointed officials, boards, commissions, committees, volunteers and representatives, to the fullest extent

permitted by law, from and against any and all losses, claims, allegations, actions, awards, costs and expenses (including but not limited to, court costs and attorney's fees), judgments, subrogations and damages of every kind and character which may arise out of or result from, in whole or in part, Indemnitor's use of the Premises or from the negligent or willful acts or omissions of the Indemnitor or any of its employees or agents, subcontractors, third parties invited or authorized by the Indemnitor to participate in the Pop-Up Dining, and/or anyone else for whose acts Indemnitor may be liable, in connection with the Indemnitor's use of the Premises, in any such case whether during the time period specified above in the recitals to this Agreement or otherwise.

4. Indemnitor shall (i) make no improvements or alterations to the Premises without specific prior written approval from the Town's First Selectwoman, (ii) relinquish use of the Premises upon expiration or termination of Pop-Up Dining in the same condition as it was prior to its entrance on the Premises, (iii) promptly remove all litter, trash and other refuse from the Premises, and (iv) use the Premises in strict compliance with the terms and conditions of the Pop-Up Policy and the approved Application and all policies, procedures and conditions relating to the use of Town-owned properties, and in accordance with all applicable laws, rules, regulations and ordinances of all governmental authorities.
5. Indemnitor shall safeguard all who come upon the Premises and shall protect against any personal injuries and property damage resulting from Indemnitor's use of the Premises.
6. Indemnitor shall obtain the following insurance coverages covering the Indemnitor's obligations under this Agreement, including without limitation claims by participants in Pop-Up Dining, from companies with an A.M. Best rating of A- (VII) or better:
 - a. **Commercial General Liability insurance** including Products and Completed Operations. Limits shall be at least: **Bodily Injury & Property Damage with an occurrence limit of \$1,000,000; Personal & Advertising Injury limit of \$1,000,000 per occurrence; General Aggregate limit of \$2,000,000 (other than Products and Completed Operations) per location; and Products and Completed Operations aggregate limit of \$2,000,000. For each policy required by this Agreement, the Indemnitor is required to provide the amount of insurance specified in this Agreement or the amount of insurance that the Indemnitor actually has, whichever is higher.**
 - b. **Liquor Liability insurance** in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless Pop-Up Dining is scheduled as an exception to the liquor liability exclusion on the Commercial General Liability policy.
 - c. **Workers Compensation insurance** required by statute with Employer's Liability limits for at least the amounts of liability for bodily injury by accident of \$500,000 each accident, bodily injury by disease of \$500,000, and \$500,000 disease aggregate, including a waiver of subrogation in favor of the Town.
7. Indemnitor shall provide the Town with Certificate(s) of Insurance on Acord 25 (2016/03) or later edition evidencing all insurance policies required by this Agreement, and all such Certificate(s) of Insurance, shall:
 - a. Name the "Town of Westport" as an **additional insured** and include **ISO Form CG 20 26 04 13** ("**Additional Insured – Designated Person or Organization**") and **ISO Form CG 20 12 04 13** ("**Additional Insured – State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations**") or equivalent (except that this is not required for Workers Compensation insurance), and
 - b. Be provided on an **occurrence basis** and will be **primary and shall not contribute** in any way to any insurance or self-insured retention carried by the Town, and
 - c. Contain a **waiver of subrogation** in favor of the Town, and
 - d. Contain a **broad form contractual liability** endorsement or wording within the policy form to comply with the hold harmless and indemnity obligations of Indemnitor under this Agreement, and
 - e. Declare all **deductible and self-insured retentions**, and all such deductibles and self-insured retentions are subject to the approval of the Town.
 - f. Show that policies are in effect for all of the days of Pop-Up Dining; otherwise, a renewal certificate is required.
 - g. Require notice of cancellation to the Town according to policy provisions.

8. If a high risk third party, as determined by the Town, (e.g., tent provider, valet parking service) will be authorized to participate in connection with the Pop-Up Dining, the third party shall execute and deliver a separate Indemnity and Hold Harmless Agreement and provide the insurance coverages required hereby.
9. This Agreement and the Town's permission to use the Premises shall not be assigned by Indemnitor without the prior written approval of the Town's First Selectwoman.
10. This Agreement and the Application and the Town's policies and procedures supersede any and all prior agreements and understandings with the Indemnitor regarding the subject matter of this Agreement. This Agreement shall be governed and interpreted in accordance with the laws of the State of Connecticut. No provision of this Agreement shall be deemed waived by the Town unless the waiver is in writing and signed by the Town's First Selectwoman. Any provision of this Agreement that is deemed unenforceable by a court of competent jurisdiction shall be deemed amended and construed to have a valid meaning that is the most protective to the Town, and if no such validating construction is possible shall be severed from this Agreement, and the enforceability of the remaining provisions shall not be impaired thereby. The Whereas clauses in this Agreement are binding on the Indemnitor and incorporated herein by reference.

This Agreement shall be binding on Indemnitor and its heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Town of Westport and its agents, employees, elected and appointed officials, boards, commissions, committees, volunteers, representatives, and assigns.

[NAMES APPEAR ON FOLLOWING PAGE]

POP-UP DINING PERMIT

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER: _____

[INSERT NAME AND ADDRESS OF ISSUER]

Date of Issue: _____ **Letter of Credit Number:** _____

Amount: **U.S. \$5,000.00 (Five Thousand and 00/100 U.S. Dollars)**

Beneficiary: **Town of Westport, Connecticut**
c/o Gary Conrad, Finance Director
110 Myrtle Avenue
Westport, CT 06880

For Account Of: _____

LETTER OF CREDIT: Issuer establishes this Irrevocable Standby Letter of Credit (“Letter of Credit”) in favor of Beneficiary in the amount indicated above. Beneficiary may draw on this Letter of Credit with one or more Drafts, together with the documents described below. Each Draft shall be signed on behalf of Beneficiary and shall be marked “*Drawn under [Name of Issuer] Letter of Credit No. _____ dated _____, 20____.*” Drafts must be presented at Issuer’s address shown above on or before the Expiration Date. The presentation of any Draft shall reduce the Amount available under this Letter of Credit by the amount of the Draft.

This Letter of Credit sets forth in full the terms of Issuer's obligation to Beneficiary. This obligation cannot be modified by any reference in this Letter of Credit, or any document to which this Letter of Credit may be related.

DRAFTS: Partial Drafts are permitted. The maximum number of Drafts that may be made is five (5).

DOCUMENTS: Each Draft must be accompanied by the following:

1. A copy of this Letter of Credit, together with any amendments.
2. A signed statement by Beneficiary including the following statement:

"_____ has defaulted in its obligations under that certain Town of Westport Dining Permit Policy and Application, and/or that certain Pop-Up Dining Indemnity and Hold Harmless Agreement between the Town of Westport and _____ dated _____, 20____."

Issuer shall be entitled to accept a Draft and the documentation described above, as required by the terms of this Letter of Credit, from any person purporting to be an authorized officer or representative of Beneficiary without any obligation or duty on the part of Issuer to verify the identity or authority of the person presenting the Draft and such documentation.

EXPIRATION DATE: This Letter of Credit expires one year after the Date of Issue, at the close of business at the address of Issuer that is stated above (the "Expiration Date"). Issuer agrees to honor all Drafts presented in strict compliance with the provisions of this Letter of Credit on or before the Expiration Date.

TRANSFERABILITY: This Letter of Credit is non-transferable.

APPLICABLE LAW: This Letter of Credit shall be governed by the Uniform Customs and Practices for Documentary Credits ("UCP") issued by the International Chamber of Commerce as UCP600. This Letter of Credit shall also be governed by the laws of the State of Connecticut, the United States of America, so long as such laws are not inconsistent with the UCP.

[NAME OF ISSUER]

By: _____

Print Name: _____

Print Title: _____

Date: _____