



WESTPORT, CONNECTICUT

James S. Marpe
First Selectman

TOWN OF WESTPORT **POP-UP SEATING AND POP-UP CAFÉ GUIDELINES**

Approved by the Board of Selectmen on March 14, 2012

The Town of Westport wishes 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. To this end, the Town of Westport seeks to expand opportunities for outside seating and/or dining during the spring, summer and fall.

Pop-up Seating and/or Pop-up Cafés (“Pop-Ups”) are created by converting parking spaces along the curb lane of a municipal roadway into dining and/or seating areas. They are referred to as “Pop-Ups” because a temporary area is defined for this purpose. These Pop-Ups are proposed to be located on municipal streets where existing sidewalks are currently too narrow to allow for outside seating.

The Board of Selectmen, acting in its capacity as the Traffic Control Authority, regulates the use and safety of public roadways in accordance with the “Procedure for Use of Town-Owned Property, Facilities and/or Public Roadways” dated September 15, 2010 (“2010 Procedures”).

Notwithstanding the provisions of the 2010 Procedures, the Board of Selectmen hereby adopts the following regulations with respect to the issuance of a permit for a Pop-Up to be located on Town roadways.

Regulations and Restrictions:

1. Pop-ups are only allowed in the BCD and BCD/H zones.
2. Pop-ups can project no more than 6' onto a Town roadway.
3. Pop-ups may only be located on one-way streets or in municipal parking lots with one way traffic flows.
4. The cost, design, construction and maintenance of each Pop-up shall be paid for by the sponsoring retail establishment.
5. 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 at least 750lbs per square foot.
6. Each Pop-up should have some vertical elements (e.g. planters, umbrellas) so that it is visible from vehicles.
7. Each Pop-up must include a continuous physical barrier along the street facing perimeter

while maintaining clear visual sightlines to the street.

8. Each Pop-up should be finished with quality materials, preferably using recycled or sustainable harvested products.
9. Table centers and freestanding umbrellas shall be adequately anchored.
10. Lighting (candles or other low level light sources) is permitted. No power extension from the sponsoring establishment across the adjacent sidewalks or roadways is allowed.
11. Standing portable propane heaters are permitted, subject to review and approval by the Fire Department. Electric or fuel heaters other than propane are prohibited.
12. Pop-ups shall not be located in front of a fire hydrant, active driveway, manhole or active utility access point. In addition Pop-ups shall not impede surface drainage.
13. Pop-up permits are valid from April 1st to November 1st of each year. Chairs, tables and appurtenances may only be located on the Pop-up seating area during such time period.
14. 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.
15. Any damage done to the public right-of-way or sidewalk by the sponsoring establishment or by its patrons shall be repaired promptly by the establishment at its expense.
16. The sponsoring establishment shall ensure and be responsible for compliance with all appropriate laws, statutes, and regulations, including but not limited to those regarding the safe handling and servicing of food and beverages.
17. Pop-up seating areas and furnishings should be maintained in an attractive, clean (free from spills, litter and other debris) and safe manner.
18. No trash receptacles of any type shall be added to the Pop-up seating area or adjacent sidewalk.
19. There shall be no additional signage for the Pop-up including any wording, logos or advertisements on umbrellas or seating area and enclosures.
20. Smoking is prohibited at Pop-ups.
21. In the event of a public necessity or emergency where access to the street sidewalk or adjacent building is impaired for any reason, the Pop-up shall be temporarily moved by the sponsoring establishment 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 sponsoring establishment.
22. In the event of a pending flood, the Pop-up platform and furnishings should be firmly secured or removed.
23. Failure to adhere to these regulations will result in the revocation of the permit until such time that the violation has been corrected.

Additional Regulations and Restrictions for Pop-Up Cafes

1. Pop-Up Cafés shall comply with the Westport Weston Health District Outdoor Patio Dining Regulations.
2. Pop-up Cafés are limited to restaurants or retail food establishments that have a valid food service establishment permit from the Westport Weston Health District.
3. The restaurants or retail food establishment must have consistently maintained an acceptable food service inspection rating from the Health District during the previous 4 inspection quarters.
4. Table centered umbrellas or other covering are required to protect the eating area and tables from airborne contaminants.
5. Pop-Up Cafés shall comply with all applicable requirements of the Liquor Control Act of the State of Connecticut.
6. No animals are allowed in the Pop-Up Café, with the exception of certified service animals.
7. The area of the Pop-Up Café shall be for the exclusive use of the sponsoring restaurant or retail food establishment.

Permit Procedures/Checklist:

1. The applicant shall apply for a Pop-up Permit from the Board of Selectmen on an annual basis. The applicant shall provide a plan showing the area intended for outdoor dining or seating, 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. Such plans shall be prepared by a CT licensed Land Surveyor, Professional Engineer, Architect or Landscape Architect.

2. Before the application is scheduled for Board of Selectmen review, the design plan must first be submitted and approved by the Director of the Department of Public Works, the Fire Chief, the Building Official, the Chief of Police and the Health District.

3. The applicant shall provide an indemnity agreement in a form approved by the Town Attorney (see attached).

4. The applicant shall also provide evidence, in the form of a Certificate of Insurance, of the following insurance:

- a. General liability insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate.
- b. Worker’s Compensation Insurance in such amount as required by law; and
- c. If applicable, liquor liability insurance in the minimum amount of \$1,000,000.

The Certificate of Insurance shall indicate that the *Town of Westport is named as an additional insured on the applicant’s insurance policy* and that the policy is effective for the duration of the pop-up permit. (Pop-up permits are valid from April 1st to November 1st of each year)

5. A five thousand (\$5,000) dollar bond in the form of a certified check shall be required to insure the removal of the Pop-up at the end of the season and the restoration, if any, of the roadway or other public property.

6. 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 Westport Weston Health District.

7. The Town of Westport may deny a Pop-up permit or renewal if the sponsoring establishment has a history of violations of any of these regulations, failed to correct any violations when duly noticed, or has any tax delinquencies.

8. Application for a Pop-up Permit shall be accompanied by a non-refundable application fee in the amount of one hundred fifty (\$150) dollars.

9. Return completed application with all required documentation (including fees) to:

Selectman’s Office
Westport Town Hall, Room 310



WESTPORT, CONNECTICUT

**James S. Marpe
First Selectman**

Westport, CT 06880

**APPLICATION FOR USE OF TOWN-OWNED
ROADWAYS FOR POP-UP CAFÉ**

NAME OF APPLICANT: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

CONTACT NAME/E-MAIL: _____

ADDRESS: _____

TOWN ROAD TO BE USED: _____

BOND & INDEMNITY AGREEMENT RECEIVED:	DATE
Assistant Town Attorney	_____
APPROVALS (must be received PRIOR to placement on BOS Agenda):	
Chief, Westport Police Department	_____
Chief, Westport Fire Department	_____
Director, Public Works Department	_____
Building Official	_____
Westport/Weston Health District	_____
Board of Selectmen/Traffic Authority Public Mtg	_____



WESTPORT, CONNECTICUT

James S. Marpe
First Selectman

EVENT PERMITTEE INDEMNITY AND HOLD HARMLESS AGREEMENT

(revised March 2018)

This Indemnity and Hold Harmless Agreement ("Agreement") is made this _____ day of _____, 20____, by _____ ("Indemnitor") of _____ (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 athletic facilities, parks, public roads, the Wakeman Town Farm, and/or other Town-owned property (the "Premises")** for the purpose of

_____ (the "Event")
beginning _____ (earliest start date, including set-up) and ending _____ (latest end date including breakdown and rain date),

OR

WHEREAS, Indemnitor has requested **permission to hang a banner (the "Banner") across Main Street or at Luciano Park or Compo Beach or at _____ location on _____** (date(s)),

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

1. Permission to use the Premises for the Event or permission to hang the Banner, as the case may be, 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 approved Application. This Agreement shall survive any such revocation, and Indemnitor shall remain bound by the terms of this Agreement.
2. 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 hanging of the Banner, as the case may be, 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 at the Event, and/or anyone else for whose acts Indemnitor may be liable, in connection with the Indemnitor's use of the Premises or the hanging of the Banner, as the case may be.
3. Indemnitor shall (i) make no improvements or alterations to the Premises without specific prior written approval from the Town's First Selectman or the Director of Parks and Recreation, (ii) relinquish use of the Premises

upon expiration or termination of the Event in the same condition as it was prior to its entrance on the Premises, (iii) remove all litter, trash and other refuse from the Premises following the conclusion of its use, and (iv) use the Premises in strict compliance with the terms and conditions of 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.

4. 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.
5. Indemnitor shall obtain the following insurance coverages 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.**
 - i. If drones are permitted at, on or above the Premises, this coverage must include **drone liability insurance** for the limits above.
 - ii. If children at the Event will be under the care, custody or control of the Indemnitor or any employee, volunteer, or other agent of the Indemnitor or any subcontractor of the Indemnitor, this coverage shall include **Abuse and Molestation liability insurance** with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for the actual or threatened abuse or molestation of anyone or any person while in the care, custody or control of any Indemnitor.
 - iii. If alcoholic beverages will be sold, provided and/or served and either (i) a fee is charged for the Event or (ii) an alcoholic beverage permit is obtained, **Liquor Liability insurance** in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless the Event is scheduled as an exception to the liquor liability exclusion on the Commercial General Liability policy.
 - iv. If automobiles are an integral part of the Event (car shows, road rallies, touch-a-truck, filming from automobiles, and the like), **Automobile insurance** in the amount of \$1,000,000 each accident combined single limit covering bodily injury and property damage for all owned, hired and non-owned autos.
 - v. If Indemnitor has employees, **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.
 - vi. If Indemnitor is renting a Town building, **Damage and Rented Premises insurance** in the amount of \$500,000 per occurrence.
6. 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 2010 (04/13) and CG 2037 (04/13) 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 the Event; otherwise a renewal certificate is required.
- g. Require notice of cancellation to the Town according to policy provisions.

7. **If a high risk third party, as determined by the Town, (e.g., tent provider, bouncy house provider, valet parking service, fireworks provider)** will be authorized to participate at the Event, the third party shall execute and deliver a separate Indemnity and Hold Harmless Agreement and provide the insurance coverages required hereby.

8. This Agreement and the Town's permission to use the Premises or hang the Banner, as the case may be, shall not be assigned by Indemnitor without the prior written approval of the Town's First Selectman, the Director of Parks and Recreation, or the Farm Director.

9. 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 Selectman or the Director of Parks and Recreation. 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.

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.

WITNESS

INDEMNITOR

 Print Name:
 Print Address:

 Print Name of Indemnitor (the entity holding the Event)

By _____
 Print Name:
 Print Title:

STATE OF CONNECTICUT)
) ss: Westport, Connecticut, _____20_____
 COUNTY OF FAIRFIELD)

Personally appeared _____ signer(s) and sealer of the forgoing instrument, and acknowledged before me the same to be his/her/their free act and deed, and acknowledged before me that he or she is authorized to execute this agreement on behalf of Indemnitor and to bind Indemnitor to its terms and that he or she holds the title with Indemnitor that is written below his or her name above.

 Notary Public
 Print Name:
 Print Address:
 My Commission Expires: _____
 Commissioner of the Superior Court