

City of Hudson

PROPOSED LEGISLATION

DATE: October 1, 2004

TO: Honorable Mayor and Members of City Council

04-183

FROM: Douglas R. Elliott, Jr., City Manager
Thomas E. King, Community Development Director

LEGISLATION: Authorizing the City Manager to Enter into a License Agreement with Restaurants for the Use of Public Walk Area for Outdoor Seating

MEETING: City Council Meeting - October 6, 2004

I. Legislative History

Approval of the Planned Development Plan, passed October 2, 2002, amended by Council October 15, 2003, June 2, 2004, August 4, 2004 and amended for the off street parking lot at Clinton Street behind Main Street retail, September 15, 2004. Ordinance No. 03-30 approving the contract for sale of land for private redevelopment with Hudson Village Development Company, Ltd, passed March 19, 2003,

II. Purpose & Explanation

The Solicitor's Office has prepared a master License Agreement which upon City Council's authorization, the City Manager may enter three-party agreements between the City, Hudson Village Development Corporation, and the individual restaurant. The license agreement provides for annual renewal, compliance with housekeeping and operating rules, and references a seating plan approved for each restaurant by the Planning Commission or for twelve (12) seats by administrative approval.

Sidewalk café seating has been thought to be important to pedestrian activity for the new downtown development since project inception and is one reason sidewalks are typically 14' in width. The approved plans for outdoor seating maintain at least a 5' wide aisle for public use outside of the seating area. Plans of seating on public walks have been approved by Planning Commission to date for San Francisco Oven, Vue Restaurant, and D'Agnese's Grill in addition to additional restaurant outdoor seating on private walks or patios.

III. Recommended Action

Staff recommends approval of the resolution authorizing the City Manager to enter into license agreements for outdoor seating.

TEK/cgm

RESOLUTION NO.: 04-183

OFFERED BY: Mayor Currin

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO LICENSE AGREEMENTS WITH THE OWNER(S) AND TENANTS OF PROPERTIES WITH DINING ESTABLISHMENTS IN THE DOWNTOWN REDEVELOPMENT AREA FOR OUTDOOR DINING PURPOSES.

WHEREAS, this Council has determined that outdoor dining areas for retail dining and beverage establishments in the Downtown Redevelopment Area will enhance the economic viability of the downtown redevelopment area and provide a desirable amenity to the citizens of Hudson and other customers of such downtown redevelopment area establishments; and

WHEREAS, outdoor dining facilities in the downtown redevelopment area necessitate the use of public sidewalks for such dining areas and, therefore, a license from the City is necessary to permit such use and strict regulation of such use is necessary;

NOW, THEREFORE, BE IT RESOLVED by the Council of Hudson, Summit County, State of Ohio, that:

Section 1: The City Manager be, and hereby is, authorized to enter into license agreements with the owner(s) and tenants of properties with retail dining and beverage establishments in the Downtown Redevelopment Area of the City in a form that is substantially in accordance with the License Agreement attached hereto and incorporated herein as Exhibit A.

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Resolution shall take effect and be in force from and after the earliest period allowed by law.


PASSED: October 6, 2004


William A. Currin

ATTEST:


Mary Ann George, Clerk of Council

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on October 6, 2004.


Mary Ann George, Clerk of Council

LICENSE AGREEMENT

This LICENSE AGREEMENT, entered into this ____ day of _____, 200__, by and between the City of Hudson, an Ohio municipal corporation, whose mailing address is 27 East Main Street, Hudson, Ohio, 44236 (hereinafter, the "City"), and _____ (tenant), whose mailing address is _____, and Hudson Village Development Company, Ltd. (owner), whose mailing address is _____ (hereinafter collectively tenant and owner are referred to as the "Licensee").

WITNESSETH:

WHEREAS, tenant Licensee is an operator of a retail dining and beverage establishment in the Downtown Redevelopment Area of the City of Hudson; and

WHEREAS, as used in this Agreement, the term "Licensee" shall also include the owner of the premises upon which the tenant Licensee occupies and operates its business, and the owner is included as a party to this Agreement for enforcement and other purposes; and

WHEREAS, Licensee has requested permission from the City to place tables and chairs on that portion of sidewalk in the public right of way outside the retail dining and beverage establishment at _____ in the City in order to offer outdoor dining; and

WHEREAS, the City has determined by City Council Resolution No. _____ that it would be in the best interest of the City and its residents to enter into such an agreement with the Licensee to provide the aforesaid outdoor area for dining and beverage seating and service.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. Dining and Beverage Area License. In consideration of the covenants and agreements hereinafter set forth, City does hereby grant to Licensee a license for the use and occupancy of the real property located in the public right of way immediately adjacent to the building located at _____, in Hudson, Ohio, for the purpose of providing space for outdoor seating for dining and beverage consumption for Licensee's retail dining and beverage establishment (the "Licensed Dining Area") as established by the plan approved by the City of Hudson Planning Commission on _____ (the "Outdoor Dining Plan"). The license for outdoor dining is supplemental to, and contingent upon, the operation of Licensee's retail dining establishment in the indoor premises located at the aforementioned address, and the outdoor dining shall not be allowed if the retail dining establishment ceases operation.
2. Area of Enclosure. Licensee shall configure the Licensed Dining Area to the specifications set forth in the Outdoor Dining Plan, which is attached to and made a part of this Agreement.

3. Term. The initial term of this Agreement shall be for a period of one (1) year, commencing _____, 200__ through _____, 200__ (hereinafter, the "License Term"). This Agreement shall automatically renew for one (1) year terms during subsequent years, unless the City terminates the Agreement pursuant to Paragraph 4 below or prior to the expiration of any of the one-year terms, the City proposes amendments to this Agreement that are to be effective in subsequent terms of the Agreement.
4. Termination.
 - a. The City may terminate this Agreement at any time during the License Term, or any renewal term, for violation of the terms of this Agreement by giving Licensee ten (10) days written notice. Any costs of repairs to the Licensed Dining Area upon such termination shall be at the sole expense of Licensee.
 - b. The City may terminate this Agreement upon twenty-four (24) hours notice to Licensee for good cause as determined by the City, which may include but is not limited to: the sale of alcoholic beverages to minors or intoxicated persons (whether or not any criminal charges are ever brought or successfully prosecuted); failure to keep the tables, chairs, and surrounding area in a clean and neat condition; loud noise or other persistent misbehavior by patrons; impairment of pedestrian traffic; or the causing of a nuisance.
5. Insurance. Licensee shall maintain and keep in full force throughout the term of this Agreement comprehensive general liability insurance against all claims for personal injury, death or property damage occurring on the Licensed Dining Area with minimum limits of liability of One Million Dollars (\$1,000,000.00) per person, Three Million Dollars (\$3,000,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) for property damage. Licensee shall furnish certificates of insurance evidencing payment therefor to City prior to the commencement of the License Term and at such additional times as may be requested by the City. Such policies shall name the City as an additional insured and shall be non-cancelable for any cause without first giving the City fifteen (15) days prior written notice. Licensee may satisfy this insurance requirement by maintaining such coverage under chain-wide umbrella policies, provided that the City is named as an additional insured.
6. Indemnification. Licensee shall indemnify, defend, keep and hold the City and its officers, agents, and employees free and harmless from liability for any and all damages, loss, or penalties of any kind whatsoever incurred as a result of Licensee's conduct or performance under this Agreement or exercise of the Agreement. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, fire, and all other damages arising out of Licensee's exercise of the Agreement, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement; such indemnification shall include, but not be limited to, reasonable attorney's fees and costs.
7. Improvement and Equipment.

- a. Licensee shall not make any temporary or permanent improvements to the Licensed Dining Area, including but limited to placing planters or ropes on the Licensed Dining Area, placing railings or fencing in the Licensed Dining Area, or blocking off sections of the Licensed Dining Area, without the prior written consent of the City.
 - b. Licensee may install standards or fencing with the prior written approval of the City. Any standards or fencing supports must utilize installed slip holes which shall be installed as approved by the Outdoor Dining Plan and with the supervision of the City Public Works Department. The installed slip holes must receive the standards or fence supports and must be covered with plugs approved by the City upon any removal of the standards or fencing.
 - c. After the conclusion of the License Term, Licensee shall remove any improvements it has made to the Licensed Dining Area or items of personal property it has placed on the Licensed Dining Area and repair and restore any and all areas to their previous condition. The City may, however, consent in writing that an improvement may remain.
 - d. Licensee shall provide all fencing, tables, chairs, and other necessary equipment for use in the Licensed Dining Area which shall be approved by the City Community Development Department. Licensee shall limit the equipment to a reasonable amount and consistent with the Outdoor Dining Plan so as to ensure the safety of the public in the Licensed Dining Area.
8. Maintenance and Repair.
 - a. Licensee shall be responsible for cleaning and routine maintenance of the equipment in Licensed Dining Area, including but not limited to: ensuring that the Outdoor Dining Plan is followed by Licensee; cleaning the tables and chairs; maintaining the equipment in good and reasonable repair; and immediately replacing any and all broken, cracked, bent or otherwise defective equipment.
 - b. Licensee shall be responsible for cleaning and routine maintenance of the Licensed Dining Area, including but not limited to: ensuring that the Outdoor Dining Plan is followed by Licensee; ensuring that the entire area is free of litter and refuse; sweeping of the pavement as needed; removing debris from the tables and chairs immediately upon exit of patrons; washing down tables and chairs as needed, but not less than once per day; hosing off the cement floor as needed, but not less than once a day; and chaining or removing table and chairs indoors at the end of the day.
9. Permits and Approvals. Licensee shall be responsible for obtaining all permits, licenses, and/or approvals pertaining to occupancy, zoning, environmental controls and any other relevant governmental issues which are necessary to permit Licensee to operate outdoor dining on the Licensed Dining Area. In the event Licensee intends to serve liquor on the Licensed Dining Area, Licensee shall be required to obtain the necessary permits from the Ohio Department of Liquor Control.
10. Use and Occupancy.
 - a. Licensee shall use and occupy the Licensed Dining Area in a careful, safe and proper manner and in compliance with all relevant federal, state and local ordinances, laws, rules and regulations. In the event Licensee

intends to serve alcohol on the Licensed Dining Area, Licensee shall use and occupy the Licensed Dining Area in compliance with all applicable liquor control statutes, regulations, and ordinances.

- b. Licensee shall not occupy or use the Licensed Dining Area or permit the same to be occupied or used for any purpose or business which is unlawful, contrary to this Agreement, or, in the City's reasonable judgment, is disreputable, immoral, or inappropriate.
 - c. Licensee shall not allow said Licensed Dining Area to be used for any purpose or in any way which will increase the rate of insurance on the Licensed Dining Area nor for any purpose other than that specified in the Agreement.
 - d. Licensee shall not permit the Licensed Dining Areas be to occupied in whole or in part by any persons other than those specified in the Agreement.
 - e. Licensee shall not use any substance or force that will increase the hazard of fire in the Licensed Dining Area.
 - f. Licensee shall not allow the Licensed Dining Area to be used for any unlawful purpose or in any way that will injure the reputation of the downtown district or disturb the neighborhood.
 - g. No musical instruments, stereos, or other amplified sound shall be allowed on the Licensed Dining Area without the prior consent of the City.
 - h. Licensee shall make appropriate provision for disposal of all trash, garbage or debris that is generated from Licensee's use of its premises and of the Licensed Dining Area and the same shall not be disposed of in any receptacles owned and/or controlled by the City.
11. Seasonal Removal of Equipment. Licensee shall remove all furniture and fencing before November 1 of each year of this Agreement or renewal term. Licensee may begin installing furniture and equipment on March 31 of each year of this Agreement or renewal term. Between November 1 and March 31, Licensee may install the furniture and fencing for special occasions such as holiday shopping or sidewalk sales, if the weather is permitting. During special occasions, all furniture and fencing in the Licensed Dining Area must be removed from the Licensed Dining Area at the close of the business day, and all furniture and fencing must be immediately removed from the Licensed Dining Area when the weather no longer permits outdoor dining.
12. Times of Operation. Outdoor dining will be permitted only between the hours of 6:30 am through 11:00 pm, Sunday through Thursday, and 7:30 am through 1:00 am, Friday and Saturday.
13. Signs. Any signs on the Licensed Dining Area, including but not limited to signs on tables or chairs, must be in accordance with all applicable laws and ordinances and must be approved in writing in advance by the City.
14. Public Property. Licensee acknowledges that the Licensed Dining Area is public property and the area immediately adjacent to the Licensed Dining Area will continue to be used as a public right-of-way.
15. Assignment. Licensee's interest hereunder is a personal interest which may not be assigned to any other party without the written consent of the City. Neither the license interest, nor any interest of Licensee in the Licensed Dining Area or any improvements or personal property thereon shall be

subject to involuntary assignment, transfer, or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer or sale shall be void and of no effect and shall, at the option of the City, terminate this Agreement.

16. Non-Waiver. The failure of the City to enforce any of the rights given to it under this Agreement by reason of a violation by Licensee of any of the terms of this Agreement shall not be construed as a waiver of the power of the City to exercise any such rights as to any subsequent or different violation.
17. Severability. In the event any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall in any way be affected thereby.
18. Survival of Covenants. All promises made in this Agreement, including but not limited to indemnification and insurance provisions, shall survive the termination or expiration of this Agreement.
19. Entire Agreement. This written License Agreement constitutes the entire understanding between the parties, superseding all previous negotiations and discussions, and no modification or alteration of this Agreement shall be binding unless it is in writing and signed by both parties.
20. Service. Service of any communication required or permitted in this Agreement shall be made by personal service or certified mail, return receipt requested, at the addresses listed in the heading or at such other addresses as either party may provide in writing from time to time.
21. Authorization. Each person executing this Agreement warrants and represents that he or she is authorized to execute this Agreement on of his or her legal entity.

"CITY OF HUDSON, OHIO"

By: _____
Douglas R. Elliott, Jr.
City Manager

"LICENSEE"

By : _____
(Tenant) Please type or print.

By: _____
(Signature)

(Name) Please type or print.

(Title)

AND

By: Hudson Village Development
Company, Ltd.

By: _____
(Signature)

(Name) Please type or print

(Title)

Approved as to legal form:

Solicitor
City of Hudson