

1  
2 **Resolution Relating to**

**RESOLUTION**

Sponsor(s): Councilors Dober,  
Berezniak, Mulvaney-Stanak: License Com.

3  
4  
5 AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT  
6 TO MAINTAIN TABLES AND CHAIRS ON A  
7 PORTION OF THE CITY'S RIGHT-OF-WAY WITH  
8 BIG FATTY'S BBQ

Introduced: 03/28/11  
Referred to: \_\_\_\_\_  
Action: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signed by Mayor: \_\_\_\_\_

11  
12 **CITY OF BURLINGTON**

13  
14 In the year Two Thousand Eleven.....

15 Resolved by the City Council of the City of Burlington, as follows:

16  
17 That WHEREAS, MAPLE STREET CATERING d/b/a BIG FATTY'S BBQ of  
18 Burlington, Vermont (hereinafter BIG FATTY'S) is an establishment doing business in a  
19 commercial building located at 55 Main St. in the City of Burlington, Vermont; and

20 WHEREAS, BIG FATTY'S desires to place 2 tables and 4 chairs in the public right-of-  
21 way in front of its establishment at 55 Main St.; and

22 WHEREAS, BIG FATTY'S wishes to enter into a License Agreement with the City for  
23 such tables and chairs; and

24 WHEREAS, the placement of the respective tables and chairs has been reviewed and  
25 approved by the Department of Public Works with conditions to address public safety concerns;  
26 and

27 WHEREAS, the Charter of the City of Burlington, Sec. 48XLIX and the Code of  
28 Ordinances Sec. 27-32 require authorization by the City Council for such use of a public  
29 thoroughfare for periods in excess of thirty (30) days;

30 NOW, THEREFORE, BE IT RESOLVED that this City Council hereby authorizes BIG  
31 FATTY'S to place 2 tables and 4 chairs on a portion of the public right-of-way adjacent to its  
32 establishment on Main St. as indicated in and pursuant to its License Agreement for a period in  
33 excess of thirty (30) days upon entering into the License Agreement in substantially the form

36 **Resolution Relating to**

AUTHORIZATION TO ENTER INTO LICENSE  
AGREEMENT TO MAINTAIN TABLES AND CHAIRS  
ON A PORTION OF THE CITY'S RIGHT-OF-WAY  
WITH BIG FATTY'S BBQ

41  
42 attached hereto; and

43 BE IT FURTHER RESOLVED that Mayor Bob Kiss be and hereby is authorized to  
44 execute a License Agreement, in substantially the form attached, on behalf of the City of  
45 Burlington for a term commencing on the date of execution of the License Agreement and  
46 terminating on April 30, 2012.

47

48  
49 lb/naf/c: Resolutions 2011/License Agree for Encumbrance – BIG FATTY'S BBQ, 55 Main St. (Tables & Chairs) 2011  
50 3/17/10

**LICENSE AGREEMENT FOR TABLES AND CHAIRS**  
**WITH BIG FATTY'S BBQ**  
**2011-2012 SEASON**

This LICENSE AGREEMENT is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (hereinafter CITY) and MAPLE STREET CATERING d/b/a BIG FATTY'S BBQ a commercial establishment located at 55 Main Street, Burlington, Vermont (hereinafter BIG FATTY'S or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 55 Main Street; and

WHEREAS, BIG FATTY'S stated on its application (attached hereto as Exhibit A) that it wishes to place 2 bistro tables and 4 chairs on the sidewalk area in front of the building at 55 Main Street; and

WHEREAS, BIG FATTY'S has stated in its permit application that there are no physical barriers around the tables and chairs and they will cover a 30 sq. ft. area; and

WHEREAS, this application was reviewed and approved by the Department of Public Works attached hereto as Exhibit B; and

WHEREAS, such use of a public thoroughfare for periods in excess of 30 days requires approval of the City Council under Charter Sec. 48XLIX and Burlington Code of Ordinances Chap. 27, Sec. 27-32;

W I T N E S S E T H :

The CITY and BIG FATTY'S enter into the following License Agreement:

1. TERM

The CITY grants to BIG FATTY'S (hereinafter LICENSEE) a license to place 2 tables and 4 chairs on the public right-of-way for a term commencing as of the date of execution of

this Agreement and terminating on April 30, 2012 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain tables and chairs on the public right-of-way (hereinafter referred to as the premises) for the consumption of food and beverage. Licensee must ensure that at all times there is an 8 ft. right-of-way for pedestrian traffic and that the tables and chairs are placed next to the building. A copy of the approved plan is attached hereto as Exhibit C.

3. MAINTENANCE

- a. LICENSEE shall maintain the tables and chairs in proper condition.
- b. LICENSEE shall be responsible for the maintenance and upkeep of the tables and chairs and any damage to the tables and chairs is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the tables and chairs, this License Agreement is revocable on notice by the CITY to LICENSEE of a violation of this section; however LICENSEE shall have 14 days to cure any problem if it notifies the CITY in writing within three (3) days of its intent to cure the violation.
- c. The tables and chairs shall be placed in accordance with all conditions set by the Department of Public Works (attached hereto as Exhibit B) and shall not impede the CITY'S ability to maintain the road, sidewalk, parking meters or greenbelt.
- d. The tables and chairs shall not cause an obstruction or inconvenience to members of the public using the sidewalk, parking meters or street.
- e. LICENSEE shall pick up and sweep debris created by its use of the public right-of-way.

4. LICENSE FEE

There shall be a fee for this license equal to the encumbrance application fee and the square foot use fee. This fee shall be payable immediately to the Burlington City Clerk's Office. **Failure to pay the annual fee shall result in the immediate revocation of the license.**

5. REVOCATION

This License Agreement is immediately revocable should LICENSEE discontinue use of the tables and chairs. In any event, this Agreement is revocable by the CITY within 30 days upon sending written notice to LICENSEE. Upon revocation, LICENSEE must remove at its own expense the tables and chairs and other materials or obstructions placed on the property. If LICENSEE refuses to promptly remove such obstructions, they may be removed by the CITY and LICENSEE shall be liable for all expenses of such removal.

6. INSURANCE

- a. LICENSEE shall maintain in effect throughout the term of this Agreement comprehensive public liability insurance with an A rated insurance carrier, or better, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Agreement in an amount not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. The CITY shall be named as an additional insured on such insurance policy.
- b. Prior to execution of this Agreement, LICENSEE shall furnish the CITY with a certificate of insurance which shall include the provision that the CITY is named as an additional insured

and shall be given 30 days written notification prior to cancellation of such insurance. The certificate shall be attached to this Agreement as Exhibit D.

c. It is the responsibility of LICENSEE to ensure that a current certificate of insurance is on file with the CITY at all times. **Failure to furnish a current certificate of insurance will result in immediate revocation of this license.**

7. INDEMNIFICATION

LICENSEE agrees to indemnify, defend and hold the CITY harmless and free from liability arising out of LICENSEE'S use of the CITY'S right-of-way, and LICENSEE agrees to make no claim against the CITY or any of its officers, employees, agents or representatives for any loss or damage caused by the CITY'S use or maintenance of its right-of-way.

8. PERMITS

LICENSEE shall be responsible for obtaining all necessary CITY and/or State permits including zoning permits, prior to placement of the tables and chairs.

9. NUISANCES PROHIBITED

LICENSEE shall not, during the term hereof, on or in the premises maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City of Burlington ordinance, State or Federal statute, or controlling bylaw, regulation, or condition imposed whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement.

10. ASSIGNMENT OF RIGHTS

LICENSEE shall not sell or assign its rights pursuant to this Agreement or permit the use of the premises or any part thereof by any other entity without the express prior written

consent of the CITY. Any unauthorized action in violation of this provision shall be void, and shall terminate LICENSEE'S rights pursuant to this Agreement.

11. LIMITATION OF RIGHTS

LICENSEE acknowledges that no property or other right is created other than that specifically defined and limited by this Agreement.

DATED at Burlington, Vermont this \_\_\_\_\_ day of \_\_\_\_\_,

2011.

CITY OF BURLINGTON

\_\_\_\_\_  
Witness

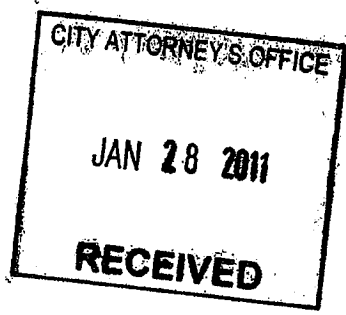
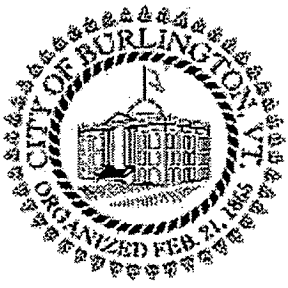
By: \_\_\_\_\_  
Bob Kiss, Mayor  
Duly Authorized

MAPLE STREET CATERING d/b/a  
BIG FATTY'S BBQ

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Duly Authorized

lb/c: NAF 2011/License Agree for Encumbrance – BIG FATTY'S BBQ, 55 Main St. (Tables & Chairs) 2011  
3/17/11



OFFICE OF THE CLERK AND TREASURER  
 149 CHURCH STREET  
 BURLINGTON, VT 05401  
 Voice (802)865-7000  
 FAX (802)865-7014  
 TTY (802)865-7142  
 Sue Meehan (802)865-7135  
 Ron Gore (802)865-7562

**Encumbrance Application / Renewal**

Effective 05/01/2011 - 04/30/2012

BETHANY LEWIS/CLAY VAGNINI  
 BIG FATTY'S BBQ  
 20 West Canal Street Apt 212  
 White River Junction, VT 05404

DATE: Thursday, January 13, 2011  
 PHONE: 802-864-5513 802-291-4000

FAX: 802-399-2259

EMAIL:

DBA NAME: BIG FATTY'S BBQ

COMPANY: MAPLE STREET CATERING, LLC

LOCATION: 55 MAIN STREET

Permission is requested to allow/continue the encumbrance in the following area and manner (please describe fully, including size and physical barriers around area i.e. trees, grates, parking meters, etc with photos, diagrams, blueprints; may reference prior application):

Placement of Encumbrance: 2 bistro tables, 4 chairs at 55 Main Street

Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): 30

**PLEASE ATTACH:**

Certificate of Liability Insurance with holder as the: "CITY OF BURLINGTON, CLERK/TREASURER'S OFFICE ENCUMBRANCE APPLICATION DEPT., 149 CHURCH ST., BURLINGTON, VT 05401" with a 30 DAY NOTICE FOR CANCELLATION EFFECTIVE MAY 1 TO APRIL 30 OF THE CURRENT YEAR in the amount of \$2 million for the general aggregate and \$1 million for each occurrence. Your insurance agent can fax the certificate to this office at the above number.

Encumbrance Fee \$30.00

Application Fee \$25.00

Total **\$55.00**

Signature

BETHANY LEWIS/CLAY VAGNINI

Date

1/20/11

For office use only: Amount received \$

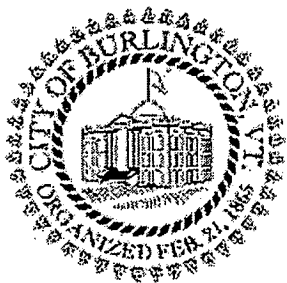
55.00 on 1/20/11 Check # 9090

Sent to Attorney:

1/28/11

*Exhibit A*





OFFICE OF THE CLERK AND TREASURER  
149 CHURCH STREET  
BURLINGTON, VT 05401  
Voice (802)865-7000  
FAX (802)865-7014  
TTY (802)865-7142  
Sue Meehan (802)865-7135  
Ron Gore (802)865-7562

### Encumbrance DPW Approval Form

Effective 05/01/2011 - 04/30/2012

ATTENTION: RON GORE, BURLINGTON DEPARTMENT OF PUBLIC WORKS

DBA NAME: BIG FATTY'S BBQ DATE: Thursday, January 13, 2011  
COMPANY: MAPLE STREET CATERING, LLC PHONE: 802-864-5513 802-291-4000  
LOCATION: 55 MAIN STREET FAX: 802-399-2259  
MAILING ADDRESS: BETHANY LEWIS/CLAY VAGNINI  
20 West Canal Street Apt 212  
White River Junction, VT 05404

#### RACKS / RAMPS / STAIRS / TABLES / CHAIRS ETC

1. Racks, ramps, sidewalks encumbrances should be located on private property, if possible. In the opinion of the City Building Inspector, is there an available alternative location for the ramp on private property? Yes  No

2. Will there be sufficient width for plows and pedestrian access if racks, ramp, sidewalk, tables & chairs encumbrances are added on the sidewalk? Yes  No

3. Additional Comments: TABLES / CHAIRS NEXT TO BUILDING ✓

4. A 30 square foot placement of 2 bistro tables, 4 chairs at 55 Main Street at 55 MAIN STREET

#### DEPARTMENT OF PUBLIC WORKS

Approved? Yes   
No

Explain: RENEWAL

Signature Ron Gore

Date: 01/29/11

*Exhibit B*



Exhibit 2



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/20/2011

PRODUCER (802) 773-3000, Fax (802) 775-2110  
11 Maynard Hersey Ins. Services, Inc.  
105 Center Street  
PO Box 550  
Rutland VT 05701  
INSURED  
MAPLE STREET CATERING LLC  
DBA BIG FATTY'S BBQ  
2196 CHRISTIAN ST  
WHITE RIVER JUNCTIO VT 050019481

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE NAIC #  
INSURER A: Patriot Mutual Insurance Co  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR X LIQUOR LIABILITY FOR CATERING GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRQ-JECT LOC	CPP6054545	03/29/2010	03/29/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	BA 6054545	03/29/2010	03/29/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A	EXCESS / UMBRELLA LIABILITY X OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE X RETENTION \$ 10,000	CPP6054545	03/29/2010	03/29/2011	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below OTHER	WC 6054545	03/29/2010	03/29/2011	WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
IN REGARDS TO BIG FATTY'S BBQ, 55 MAIN ST, BURLINGTON, VT 2 BISTRO TABLE, 4 BISTRO CHAIRS DIRECTLY IN FRONT OF BUILDING CITY OF BURLINGTON ADDED AS ADDITIONAL INSURED FOR LIABILITY

### CERTIFICATE HOLDER

City of Burlington  
City Clerk's Office  
Encumbrance Application Division  
149 Church Street  
Burlington, VT 05401

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
Lori Wedsworth

Exhibit D

