



Deep roots reach higher.
Developing deals, navigating complex regulatory hurdles, responding to disputes, growing an enterprise – experience the difference that law elevated makes.

REAL ESTATE PRACTICE GROUP | MARCH 2016

Otten Johnson Alert -

Sunshine Eating – Legal and Practical Issues of Outdoor Seating Areas

As Denver continues to attract new residents who love the outdoors and dining out, outdoor patios have become a standard feature of the thriving foodie scene. Commercial landlords and tenants, however, need to navigate the various legal and practical considerations of sunshine eating.

Papering the Patio

Before the first microbrew is poured or gourmet taco is served on a new restaurant patio, the landlord and tenant will need to memorialize their agreement with respect to such outdoor space. While there will be obvious business points, such as the size and location of the outdoor space, there are some additional lease terms that may be overlooked.

Landlords typically do not include the outdoor seating area when they measure the total square footage of the demised premises or calculate base rent under the lease. However, landlords should remember to include express language stating that such outdoor area constitutes part of the demised premises when it comes to tenant's insurance and indemnification obligations. The reason for this is clear—potential liability. Both landlords and tenants should discuss with their insurance providers whether additional insurance coverage is needed in order to cover the outdoor space.

Assuming that the outdoor seating area is not part of the demised premises, granting a revocable license to use the outdoor space in the lease is a sensible approach. From a tenant's perspective, the outdoor area is treated as an amenity, which gives the tenant the flexibility to modify the use of the outdoor area based on evolving needs. From a landlord's perspective, the landlord will reserve the right to revoke the license if the tenant or its patrons are misusing the space.

Additionally, landlords and tenants should treat lease negotiations as an opportunity to discuss practical considerations. If the curb appeal of the overall project is directly impacted by the outdoor seating areas, landlords may want to have more input on the appearance, arrangement and storage of the outdoor furniture. If there are multiple tenants with outdoor seating, a landlord may want to require matching furniture sets. A landlord may also want to require certain types of outdoor heating equipment to minimize fire hazards. The landlord should consider incorporating reasonable rules and regulations, particularly noise restrictions, into the lease so that clear expectations are established prior to opening for business. And lastly, the lease should address who is responsible for obtaining any necessary governmental approvals, as further discussed below. All of these considerations are subject to change based on the context of the particular project and tenant.

Permitting the Patio

The permitting process for outdoor seating areas will vary based on the jurisdiction. The City and County of Denver requires a Tables, Chairs and Railings (TCR) permit if an outdoor seating area extends onto the public right-of-way. If the City determines there is a significant encroachment onto the public right-of-way, a Major Encumbrance Permit (MEP) will be required. If the commercial project is located within a business improvement district, such as the 16th Street Mall or RiNo, additional requirements will apply.

Landlords sometimes require tenants to apply for construction permits related to tenant's build-out. However, it may end up being more efficient for landlords to apply for patio-related permits directly. Landlords will need to gather extensive information pertaining to the entire project and provide a certificate of insurance. Moreover, permits are ultimately issued to the property owner, not the tenant. Once the permits have been issued, landlords could then shift any construction obligations related to the outdoor patios onto the tenants.

Puppies on the Patio

As we discussed in a [prior OJ Alert](#), pets are not allowed in retail food establishments. However, dogs may actually be allowed in certain outdoor seating areas that are connected to such establishments. Under Denver regulations, dogs are allowed on outdoor patios so long as the restaurant or bar provides direct access to the patio without going through the indoor space, there is no outdoor table service and it is registered with the Department of Environmental Health, among other various requirements. If these requirements are met, it is up to individual landlords and tenants to determine whether to share the patio with some furry friends.

Otten Johnson's attorneys have substantial experience with helping clients navigate business issues like those highlighted in this alert. For more information, or for help evaluating your current situation, contact any of the attorneys in the [Real Estate practice group](#).

AUTHOR:

[Heather Park](#)

Colorado Real Estate Blog—Otten Johnson hosts a blog about development, financing and other property news in Colorado. Our attorneys are posting information and commentary on legal issues and business developments related to the real estate industry in Colorado and the West. Check it out: rockymountainrealestatelaw.com.

Our lawyers are pleased to present timely, topical issue alerts on the latest legal developments, trends and other subjects of interest to our clients and colleagues. Otten Johnson publishes Otten Johnson Alerts on a monthly basis. If you do not wish to receive future Otten Johnson Alerts, you may unsubscribe by clicking the "opt out" link below. This Otten Johnson Alert has been prepared for informational purposes only and does not constitute legal advice or the opinion of Otten Johnson. Receipt of this summary does not create an attorney-client relationship between you and Otten Johnson. You should not act or rely on any information in this article without seeking the advice of an attorney. Otten Johnson provides legal advice only after being engaged to do so by a client with respect to particular facts and circumstances.

Click here to read our [full disclaimer](#).

Please visit our website: ottenjohnson.com.

950 17TH STREET, SUITE 1600 | DENVER, CO 80202 | T 303.825.8400 | F 303.825.6525 | ottenjohnson.com

Share this email:



[Manage](#) your preferences | [Opt out](#) using TrueRemove™

Got this as a forward? [Sign up](#) to receive our future emails.

[View this email online](#).

info@ottenjohnson.com | ojalerts@ottenjohnson.com
Denver, CO, CO | 80202 US

This email was sent to .
To continue receiving our emails, add us to your address book.

