



City of Santa Monica
HOW TO REQUEST A
COVID-19 TEMPORARY
OUTDOOR ENCROACHMENT AGREEMENT

What is a Temporary COVID-19 Outdoor Encroachment Agreement?

It is an agreement with the City of Santa Monica that allows all restaurants to temporarily utilize the public sidewalk for outdoor dining for no fee until June 30, unless extended further by the City, in accordance with the City of Santa Monica's Local Emergency Order.

Information About Expanding Outdoor Dining to the Public Sidewalk

Established restaurants currently licensed to operate in Santa Monica with a valid Santa Monica business license may enter into a Temporary COVID-19 Outdoor Encroachment Agreement with the City of Santa Monica for a temporary expansion of outdoor dining on the public sidewalk. Insurance, including adding the City of Santa Monica as an additional insured, is required and explained in the application checklist below. Outdoor dining areas proposed entirely on private property do not require this Encroachment Agreement but shall obtain written consent from the owner of the private outdoor space.

Outdoor dining is required to comply with all social distancing and infection control protocols as described in the County's Protocol for Restaurants Opening [for On-Site Dining](#), as well as all of the Conditions and Requirements (Exhibit A).

Alcoholic beverages may be served only by restaurants that:

- a) have a license to sell alcoholic beverages from the California Department of Alcoholic Beverage Control ("ABC");
- b) have a Conditional Use Permit or Alcohol Exemption issued by the City or are operating as an existing legal non-conforming alcohol outlet without a Conditional Use Permit; and
- c) if the restaurant seeks to serve alcohol in the expanded outdoor dining space, the restaurant must submit a COVID-19 Temporary [Catering Authorization Form to and obtain approval from the ABC](#).

Restaurants without an alcohol license seeking the ability to serve alcoholic beverages must first obtain all required Alcohol Permits from the City of Santa Monica and licenses to sell alcoholic beverages from the ABC.

APPLICATION CHECKLIST

The following materials shall be submitted to the City of Santa Monica Economic Development Division in order to process the agreement: econdev@smgov.net

COMPLETED TEMPORARY COVID-19 OUTDOOR ENCROACHMENT AGREEMENT FORM (EXHIBIT B)

CERTIFICATE OF INSURANCE

Provide proof of insurance with the following requirements:

- a) Commercial General Liability of \$1,000,000 each occurrence / \$2,000,000 in the annual aggregate
- b) Worker's Compensation and Employer's Liability \$1,000,000
- c) Minimum Scope of Insurance: CGL insurance shall be written on Insurance Services Office Form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability. The City of Santa Monica, its officers, officials, employees, and volunteers (collectively "City"), are to be covered as additional insureds. Permittee has 14 days from the requested start date of outdoor activities to add the City as an additional insured to Permittee's CGL policy.
- d) The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Santa Monica for all work performed by the Applicant, its employees, agents and subcontractors. Permittee has 14 days from the requested start date of outdoor activities to obtain a waiver of subrogation.
- e) Applicant must also grant to the City of Santa Monica a waiver of any right of subrogation, which any insurer of said Applicant may acquire against the City of Santa Monica by virtue of payment of any loss. Applicant must obtain any endorsement that may be necessary to affect this waiver of subrogation, but note that the Waiver of Subrogation provision in the agreement applies regardless of whether or not the City of Santa Monica has received a waiver of subrogation endorsement from the insurer.

CHECKLIST OF CONDITIONS AND REQUIREMENTS FOR OUTDOOR DINING ON PUBLIC SIDEWALK (EXHIBIT A)

EXHIBIT A

**CHECKLIST OF CONDITIONS AND REQUIREMENTS
FOR OUTDOOR DINING ON PUBLIC SIDEWALK**

Restaurants without existing outdoor dining permits and restaurants that seek to use additional sidewalk area that exceeds outdoor dining area currently authorized by an existing outdoor dining permit, may conduct outdoor dining subject to the below conditions.

Condition/Requirement	Does the Premises Comply?
1. For any encroachment on the sidewalk, restaurants must enter into a Temporary COVID-19 Outdoor Encroachment Agreement with the City.	<input type="checkbox"/> YES <input type="checkbox"/> NO
2. Outdoor dining must be conducted in accordance with all social distancing and infection control protocols imposed by applicable State Executive Orders, State Health Officer Orders, and the County Department of Public Health’s Safer at Home Order, including any amendments and successors thereto.	<input type="checkbox"/> YES <input type="checkbox"/> NO
3. Outdoor dining authorized by this Order shall be conducted as a temporary accessory use to a legally established restaurant that is located on the parcel, on a contiguous adjacent parcel, or, if the outdoor dining is conducted on a sidewalk, adjacent to the outdoor dining space. Nothing in this Order shall be considered an entitlement or permit for use of an outdoor dining and seating area, as that term is defined by Santa Monica Municipal Code Section 9.51.030(B)(9), or to confer any vested rights to any ongoing or continuing activities beyond the expiration of this Order .	<input type="checkbox"/> YES <input type="checkbox"/> NO
4. Adequate pedestrian access on the sidewalk must be provided and maintained, which is considered to be no less than five (5) feet of unobstructed access between chair/table and curb edge or street furniture, e.g., bus benches, meters, etc.	<input type="checkbox"/> YES <input type="checkbox"/> NO

Condition/Requirement	Does the Premises Comply?
<p>5. Alcohol may be served only by restaurants that: (i) have obtained and are operating under a license to sell alcoholic beverages from ABC; and (ii) have obtained and are operating under a Conditional Use Permit or Alcohol Exemption issued by the City, or are operating as an existing alcohol outlet without a Conditional Use Permit pursuant to Section 9.31.040 of the Santa Monica Municipal Code. Sales shall be conducted in accordance with all requirements and conditions set forth in such licenses and permits, as may be modified by any Notices of Regulatory Relief issued by ABC, the Seventh Supplement to the Executive Order of the Director of Emergency Services Declaring a Local Emergency issued on March 21, 2020, Interim Zoning Ordinance Numbers 2636 (CCS) and 2637, adopted by the City Council on May 12, 2020, and any successors thereto.</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>6. Furnishings for outdoor dining are limited to movable tables, chairs, umbrellas that are secured and maintain the height clearance for sidewalk or pedestrian passage, and electric cordless lighting. In addition, lighting fixtures may be temporarily affixed to the exterior portion of the building occupied by the restaurant facing the outdoor dining area, provided that any such lighting meets applicable California Electrical Code standards. All movable chairs, tables, umbrellas, and cordless lighting shall be removed every day upon closing of the outdoor dining service. Heaters, table lamps using liquid fuel, candles, or any other fixture using an open flame are not permitted. Barriers are not permitted, except for temporary barriers required by ABC pursuant to the Fourth Notice of Regulatory Relief issued on May 15, 2020. Any such temporary barriers, if used, must be removed along with all other furnishings every day upon closing of the outdoor dining service, and must comply with the requirements imposed on use of other furnishings by subsection h below.</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>

Condition/Requirement	Does the Premises Comply?
<p>7. A single, non-permanent sign with the restaurant's name and an attached menu may be placed within the outdoor dining area in an area visible to pedestrians on the sidewalk or adjacent pedestrian area. This sign shall be removed along with all other outdoor dining furnishings upon closing of the outdoor dining service and must comply with the requirements imposed on use of other furnishings by subsection h below.</p>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>8. Furnishings, signs, and temporary barriers used for outdoor dining shall not block any portion of the full width of any legal exit from the building or any exit path from such legal exit to the public right of way. A minimum of a 44-inch wide exit path is required to be maintained from each legal exit from the building to the public right of way.</p>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>9. Outdoor dining areas are for sit-down food and beverage service only; no stand-up service is permitted.</p>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>10. No structure or enclosure to accommodate the storage of trash or garbage shall be erected or placed on, adjacent to, or separate from the outdoor dining area on the public sidewalk or right-of-way. Outdoor dining areas shall be kept clear of litter at all times and must be cleaned (swept and mopped) with all litter removed each day upon closing of the outdoor dining service. The outdoor dining area shall be maintained in a clean and orderly manner at all times. All food or drink spills must be immediately removed from the sidewalk area.</p>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>11. Hours of operation of the outdoor dining area shall be limited to the hours of operation of the associated restaurant, subject to limitations on alcohol sales set forth in all applicable permits, license, and regulations.</p>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>12. Any outdoor dining area use shall be in compliance with the noise restrictions in Chapter 4.12 of the Santa Monica Municipal Code.</p>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>13. All forms of speaker amplification are prohibited in association with the outdoor dining permitted under this Section.</p>	<input type="checkbox"/> YES <input type="checkbox"/> NO

Condition/Requirement	Does the Premises Comply?
<p>14. Any outdoor dining area established by conversion of parking areas shall provide for safe separation of the outdoor dining area from the remaining parking area, such as by the installation of large planters or other appropriate barrier, so that the outdoor dining space is sufficiently protected from vehicle intrusion. In no event shall any converted parking space area used for outdoor dining block or cause any obstruction that would prevent parked vehicles from exiting the parking area. In no event shall any barrier used to create safe separation block any portion of the full width of any legal exit from the building or any exit path from such legal exit to the public right of way. A minimum of a 44-inch wide exit path is required to be maintained from each legal exit from the building to the public right of way.</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>15. The area used for outdoor dining may not exceed the area necessary, in accordance with all social distancing and infection control protocols imposed by applicable State Executive Orders, State Health Officer Orders, and the County Department of Public Health's Safer at Home order, including any amendments and successors thereto, to permit the combined occupancy of inside dining and outdoor dining to match the maximum occupancy of the restaurant, including any previously permitted outdoor dining area, prior to imposition of the social distancing and infection control protocols.</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>16. In the event the restaurant seeks to use sidewalk space in front of an adjacent tenant space or building, the restaurant shall obtain prior written consent from the owner of the adjacent building and furnish such consent to the City upon request.</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>17. In the event the restaurant seeks to use private outdoor space for outdoor dining as permitted under this Order, the restaurant shall obtain prior written consent from the owner of the private outdoor space and furnish such consent to the City upon request.</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>

EXHIBIT B

TEMPORARY COVID-19 OUTDOOR ENCROACHMENT AGREEMENT

1. Business Information

Business Name (“Permittee”): _____
Mailing Address: _____
Business Address: _____
Business Phone: _____
Business Email: _____
Business License No. _____

2. Proposed Activities. Outdoor dining in accordance with the conditions set out in Sections 21 and 22 of the First Revised Eighteenth Supplement to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency (the “Order”) limited to the areas adjacent to the Business as specified in those Sections.

3. Requested Start Date of Outdoor Activities: _____

4. Proposed Duration of Outdoor Activities (Which May Not Extend Beyond September 7): _____

5. Amendments to Proposal by City of Santa Monica (“City”) and/or Additional Terms of Agreement [*To be Completed by City with Additional Sheets Attached as Necessary*]:

6. Terms of Agreement:

A. Incorporation of Conditions of Operation. The conditions for operation of on-site dining in the sidewalk area adjacent to the restaurant or private open space, as that term is defined in Section 18 of the Order, for outdoor dining as set forth in Sections 21 and 22 of the Order are incorporated herein by this reference. Permittee expressly agrees to abide by each and every one of these conditions.

B. Consent of Adjacent Building Owner. To the extent Permittee seeks to operate on-site dining in the sidewalk area in front of an adjacent tenant space or building, Permittee has obtained written consent of the owner. Permittee acknowledges and agrees that it may engage in outdoor dining in the sidewalk area in front of an adjacent tenant space or building only for as long as such consent is granted, and in no case any longer than the duration as set forth in paragraph 3 above.

C. **Indemnification.** Permittee agrees to accept all responsibility for loss or damage to any person or entity and to indemnify, hold harmless, and defend and release City, together with City's agents and employees (collectively, the "City Indemnitees") from and against any and all liability actions, claims, damages, costs, or expenses which may be asserted by any person or entity, including Permittee, arising out of or in connection with the willful act or negligence of Permittee engaging in the activities associated with this Agreement, whether or not there is concurrent negligence on the part of City Indemnitees, but excluding liability due to the sole active negligence or sole willful misconduct of the City Indemnitees.

D. **Removal or Relocation of Improvements.** Pursuant to the conditions of operation, no fixed improvements are permitted. City reserves the right to order the removal or relocation of any fixed improvements at Permittee's cost. Permittee hereby grants to City the right to remove or relocate any such fixed improvements and to come upon Permittee's premises to effect said removal or relocation if deemed necessary by City. Permittee waives any claim or right it may have for inverse condemnation, damages, or loss of income or business resulting from said removal. Upon removal or relocation of said improvements, all rights of Permittee under this agreement and the permit itself shall terminate.

E. **Duty to Comply with the Law.** Permittee shall comply with all applicable local, State, and Federal laws and regulations at all times during the effective period of this agreement, including, but not limited to, laws regarding the obstruction of vehicular traffic, the Americans with Disabilities Act, ABC regulations and orders relating to the service of alcohol, and County health laws regarding provision of food services.

F. **Insurance.** Permittee shall procure and maintain for the duration of this Agreement, and furnish proof of along with this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement, as set forth in Attachment A to this Agreement. The cost of such insurance shall be borne by Permittee. No later than 14 days after the requested start date of outdoor activities, Permittee shall add the City as an additional insured on Permittee's CGL policy in compliance in compliance with Attachment A and obtain a waiver of subrogation in compliance with Attachment A.

G. **Alcohol Sales or Service.** If Permittee proposes to sell or serve alcohol as a part of its outdoor activities, Permittee shall furnish, along with this Agreement, proof of a liquor liability coverage endorsement or policy.

H. **Violation of Agreement.** Any violation of this Agreement or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such; violations of this Agreement or the provisions of the Order may result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement or the Order.

I. **No Vested or Ongoing Rights Conferred.** Permittee understands and agrees that this Agreement and the Order confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement and the Order are temporary

in nature and granted solely to enable businesses to operate in compliance with State, County, and local orders regarding social distancing and COVID-19.

J. **Non-Transferable.** This Agreement is non-transferable. Only the permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.

K. **Independent Contractor.** It is understood and agreed that Permittee, in the performance of this Agreement, will be acting in a wholly independent capacity and not as agent, employee, partner, or joint venturer of City.

L. **Entire Agreement.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations of modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged and duly recorded.

THE UNDERSIGNED AGREES THAT THE PROPOSED ACTIVITIES DESCRIBED ABOVE SHALL BE IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT'S TERMS AND CONDITIONS, THE ORDER, AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO THE GOVERNOR'S STAY AT HOME ORDER AND THE COUNTY DEPARTMENT OF PUBLIC HEALTH'S SAFER AT HOME ORDER.

Permittee

Date

Director of Economic Development
or Designee

Date

ATTACHMENT A
(Insurance Requirements)

Permittee shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the Permittee's possession, occupancy, operation or use of the premises by the Permittee, its agents, representatives, employees, subcontractors, and guests.

Minimum Scope and Limits of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (Insurance Services Office Form CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Workers' Compensation:** Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease (see footnote #1).

If the Permittee maintains broader coverage or higher limits than the minimums shown above, the City of Santa Monica requires and shall be entitled to the broader coverage or higher limits maintained by the Permittee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Santa Monica.

Other Insurance Provisions

1. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status:** The City of Santa Monica, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the use, occupancy, operations or maintenance of the leased premises, including work or operations performed by or on behalf of Permittee. CGL coverage can be provided in the form of an endorsement to the Permittee's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85, or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 **and** CG 20 37).

 - b. **Primary Coverage:** For any claims related to this Agreement, the Permittee's insurance shall be primary coverage as least as broad as Insurance Services Office Form CG 20 01

04 13 as respects the City of Santa Monica, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Santa Monica, its officers, officials, employees or volunteers shall be in excess of the Permittee's insurance and shall not contribute with it.

- c. **Notice of Cancellation:** Each insurance policy required herein shall state that coverage shall not be cancelled except after notice has been given to the City of Santa Monica.
- d. **Waiver of Subrogation:** Permittee hereby grants to the City of Santa Monica a waiver of any right of subrogation which any insurer of said Permittee may acquire against the City of Santa Monica by virtue of payment of any loss. Permittee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Santa Monica has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Santa Monica for all work performed by the Permittee, its employees, agents and subcontractors.

2. The insurance policies are to contain a description of the areas, including address(es), where the outdoor dining permitted under this Agreement is taking place.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Santa Monica. The City of Santa Monica may require the Permittee to purchase coverage with a lower retention or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the name insured or the City of Santa Monica.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City of Santa Monica.

Verification of Coverage

Permittee shall furnish the City of Santa Monica with original certificates and amendatory endorsements (or copies of the applicable policy language effecting coverage provided by this clause). All certificates and endorsements are to be received and approved by the City of Santa Monica before the lease commences. However, failure to obtain required documents prior to the lease beginning shall not waive the Permittee's obligation to provide them. The City of Santa Monica reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

Failure to Maintain Insurance Coverage

If Permittee, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The City of Santa Monica, at its sole option, may terminate this Agreement and obtain damages from the Permittee resulting from said breach.

Maintenance/Permittee Improvements

Permittee shall require and verify that all contractors hired by the Permittee maintain CGL with limits of no less than \$1,000,000 per occurrence and comply with the insurance requirements stated herein for all maintenance, repair and Permittee improvements performed on the leased premises. All exceptions must be approved in writing by the Risk Manager.

Footnotes

1: Workers' Compensation insurance coverage is not required if the Permittee does not have employees. The Permittee must, however, execute the City's Workers' Compensation Coverage Exemption Declaration Form.