



City of  
**Santa  
Monica**

SANTA MONICA TEMPORARY USE OF  
PRIVATE OUTDOOR SPACE  
ADMINISTRATIVE REGULATIONS

July 22, 2021

- I. **Scope.** These administrative regulations (“Regulations”) are established pursuant to Emergency Interim Zoning Ordinance Number 2674 (CCS) (“IZO 2674”) for temporary use of private outdoor space.
- II. **Definitions.** The definitions in IZO 2674 apply to the words and phrases used in these Regulations. In addition, for purposes of these Regulations, the following terms have the following meanings:
  - A. “Interim zoning regulations” means the interim zoning regulations established by IZO 2674, as may be amended or extended by the Santa Monica City Council in accordance with Santa Monica Municipal Code Section 9.46.090(C).
  - B. “Permitted space” means the private outdoor space that is the subject of a temporary use of private outdoor space permit issued to an eligible business.
  - C. “Temporary furnishings” means the furnishings placed by the eligible business in the permitted space. Temporary furnishings may include, but are not limited to, movable tables, chairs, floor coverings, bookcases, exercise equipment, garment racks, displays of merchandise, planter boxes, umbrellas or canopies that are secured and maintain a minimum 7-foot height clearance for sidewalk or pedestrian passage, electric cordless lighting, and other temporary décor.

### III. **Issuance of Permits**

- A. **Director Authorization to Issue Permits.** The Director is authorized to issue temporary use of private outdoor space permits and to require the submission of additional information or supporting data to ensure protection of public health, welfare, and safety of the City, including, but not limited to, a site plan.
- B. **Director Retains Discretion.** The Director retains discretion to deny a temporary use of private outdoor space permit upon a determination that the proposed use of private space is not in compliance with applicable provisions of the interim zoning regulations, these Regulations, or any other applicable law, including, but not limited to, Articles VIII and IX of the Santa Monica Municipal Code.
- C. **Specific Temporary Use of Private Outdoor Space Application Requirements.** To obtain a temporary use of private outdoor space permit, the business must qualify as either an eligible business or restaurant. Any eligible business seeking to obtain a temporary use of private outdoor space permit shall submit an application using a form designated by the Director for that purpose. Any application shall be accompanied by the required fee, if any, adopted in accordance with Santa Monica Municipal Code Section 9.37.020(C).

- D. **Temporary Accessory Use and No Vested Rights.** Eligible business activity authorized by the interim zoning regulations and these Regulations shall be conducted as a temporary use, or a temporary accessory use, to a legally established business that is located on the parcel or an adjacent parcel. Nothing in the interim zoning regulations or these Regulations, or any permits issued pursuant to the interim zoning regulations, shall be considered an entitlement or permit for permanent use of the permitted space, including, but not limited to, a permit for outdoor dining and seating area, as that term is defined by Santa Monica Municipal Code Section 9.51.030(B)(9), confer any vested rights to any ongoing or continuing activities beyond the expiration of the interim zoning regulations, or any permits issued pursuant to the interim zoning regulations, or to permanently modify any applicable provisions of the City of Sana Monica Comprehensive Zoning Ordinance, Divisions 1 through 5 of Article IX of the Santa Monica Municipal Code, including, but not limited to, parking requirements and maximum floor area ratio, which (other than requirements for accessible parking) have been temporarily suspended by the interim zoning regulations to the extent necessary to accommodate the temporary uses authorized by the interim zoning regulations and these Regulations.

**IV. Terms and Conditions for Temporary Use of Private Outdoor Space.** An eligible business that has obtained a temporary use of private outdoor space permit shall comply with the following terms and conditions:

- A. The temporary use of private outdoor space permit shall be displayed by the eligible business during business hours.
- B. An eligible business may place a single, non-permanent sign with the eligible business's name and, if the eligible business is a restaurant, a menu within the permitted space.
- C. An eligible business shall comply with all applicable Federal, State, and City laws, rules, and regulations, including, but not limited to, the requirement to have a current business license, the noise restrictions in SMMC Chapter 4.12 of this Code, the protection of public trees in compliance with SMMC Chapter 7.40 of this Code, compliance with the Americans with Disabilities Act ("ADA"), and compliance with any public health orders issued by the State or County of Los Angeles.
- D. An eligible business may utilize a canopy within the permitted space so long as there is compliance with the following conditions:
  - 1. A canopy with all sides open shall (a) not exceed 700 square feet in the aggregate, (b) be sufficiently secured to meet wind load requirements, (c) if used in connection with an electric heater, provide at least 3 feet of clearance from the heater to top of the

canopy or any other combustible material, (d) not be used in close proximity of a propane heater, unless the propane heater is placed outside of and at least 5 feet away from the canopy; and (e) not be placed within 12 feet of any building. Multiple canopies placed side by side will be considered a single canopy for purposes of calculating the 700 square feet in the aggregate, unless each canopy is placed at least 12 feet apart from one another.

2. A canopy with one or more sides down shall (a) not exceed 400 square feet in the aggregate, (b) be sufficiently secured to meet wind load requirements, (c) if used in connection with an electric heater, provide at least 3 feet of clearance from the electric heater to the top or sidewall of the canopy or any other combustible material, (d) not be used in close proximity to a propane heater, unless the propane heater is placed outside of and at least 5 feet away from the canopy or a duct-style propane heater is utilized and is placed outside of and at least 5 feet away from the canopy, and (e) not be placed within 12 feet of any building. Multiple canopies placed side by side will be considered a single canopy for purposes of calculating the 400 square feet in the aggregate, unless each canopy is placed at least 12 feet apart from one another.
3. Any canopy in compliance with subsections IV(D)(1) or IV(D)(2) that exceeds 120 square feet may not be utilized for more than 180 consecutive days.
4. Any canopy that does not meet either the square footage or the 12-foot distance from a building requirements set forth in subsections IV(D)(1) or IV(D)(2) may only be utilized if a special event permit is obtained from the Santa Monica Fire Department and there is compliance with the conditions stated in such a permit, which may vary from the terms of these Regulations.

- E. Propane or electric heaters may be utilized in the permitted space so long as the eligible business complies with the heater requirements in subsection IV(D) if such heaters are used in connection with a canopy. In addition, propane heaters may only be utilized in the permitted space so long as the eligible business (1) has an existing or obtains a propane heater permit from the Santa Monica Fire Department, (2) complies with the Santa Monica Fire Department's Fire Prevention Policy Number 1-9 on Portable Propane Heaters, (3) secures or removes the propane heater(s) every day upon closing of the business, (4) does not place a propane or electric heater within 6 feet of a public tree; and (5) does not place a propane or electric heater within 5 feet of any other combustible material, including an umbrella. Any use of a propane or electric heater is subject to inspection by the Fire Marshal and the terms of such use may be

modified by the Fire Marshal if, in his sole and complete discretion, he determines such modifications are in furtherance of public safety.

- F. Table lamps using liquid fuel, candles, or any fixtures other than a propane heater using an open flame are not permitted. Decorative lighting plugged into a legal outlet is permitted, provided that such lighting is strung overhead, maintains a 7-foot height clearance for pedestrian passage, and the electrical cord is not placed on the ground surface, or if it is not feasible to string the lighting overhead, any extension cord must be covered with a flat and bright extension cord cover that is ADA accessible.
- G. If the physical location of the eligible business is adjacent to the permitted space, the eligible business may temporarily affix lighting fixtures to the exterior portion of the building occupied by the eligible business facing the permitted space, provided that any such lighting meets applicable California Electrical Code standards and any required building permits are obtained.
- H. An eligible business shall provide and maintain adequate pedestrian access on the adjacent sidewalk, which is considered to be no less than five (5) feet of unobstructed access.
- I. The eligible business must not attach any object, including a temporary barrier, canopy, lighting, or other temporary furnishing, to a public tree.
- J. All merchandise or services displayed in the permitted space shall be of the same types ordinarily sold indoors at the associated eligible business.
- K. Temporary furnishings, signs, propane heaters, and temporary barriers used in the permitted space 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.
- L. All forms of speaker amplification are prohibited.
- M. No structure or enclosure to accommodate the storage of trash or garbage shall be erected or placed on, adjacent to, or separate from permitted space on the public sidewalk or right-of-way. The permitted space 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 or business activities.
- N. Hours of operation of the permitted space shall not exceed the hours of operation of the associated eligible business, subject to limitations on alcohol sales set forth in all applicable permits, license, and regulations.

- O. In addition to the foregoing terms and conditions, a restaurant shall also comply with the following terms and conditions.
1. Only to the extent authorized by the ABC, including through issuance of a COVID-19 temporary catering authorization, alcohol may be served in outdoor dining areas by restaurants that: (a) have obtained and are operating under a license to sell alcoholic beverages from ABC; and (b) 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, Interim Zoning Ordinance Number 2674 (CCS) and any successors thereto.
  2. Permitted spaces used by restaurants are for sit-down food and beverage service only; no stand-up service is permitted.
- P. The eligible business shall obtain any required building permits for any construction in the permitted space utilized for outdoor eligible business activities, including, but not limited to, (1) any building over 120 square feet; (2) any building taller than 14 feet in height; (3) any detached deck or platform taller than 30 inches in height; (4) any alteration of electric wiring, and (5) any plumbing or mechanical connections. If applicable, the eligible business shall also obtain any required approval from the Landmarks Commission, or the Secretary to the Commission if permitted under Resolution Number 14-002 (LCS), for construction in the permitted space. The approval by the Landmarks Commission or Secretary and the issuance of a building permit for any construction in a permitted space shall not 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 or use of any newly constructed structure beyond the expiration of the interim zoning regulations.
- Q. The eligible business may construct a temporary detached deck in the private outdoor space without obtaining a building permit so long as any such deck complies with the following design and safety specifications:
1. The deck shall have a non-slippery surface; loose material (such as sand or gravel) cannot be used in the parklet.
  2. The deck shall be designed and constructed to support 100 lb per square feet live uniform load.

3. To ensure drainage, any openings at either end of the deck shall be covered with screens to prevent debris buildup beneath the deck.
  4. The maximum gap in between decking and planks is ½ an inch.
  5. Any vertical post attached to the decking shall not exceed 7 feet in height and shall not be placed closer than 6 feet to another vertical post. No other vertical member attached to the decking (e.g., guards, barriers, Plexiglas partitions) shall exceed 7 feet in height.
  6. The deck shall not have a roof, trellis, or other overhead shelter other than a canopy or umbrella authorized by subsection IV(D).
  7. Compliance with Americans with Disabilities Act 2010 Standards accessibility requirements
- R. Regardless of whether a building permit for any new construction in the private outdoor space is required or obtained, the City reserves the right to require the eligible business to remove any new construction in the permitted space, including, but not limited to, the temporary deck authorized by subsection IV(Q), following the expiration of the interim zoning regulations for any reason, including that the structure fails to comply with any provisions of Article IX of the Santa Monica Municipal Code, or any conditions to permits previously issued by the City, including, but not limited to, parking requirements and maximum floor area ratio that are temporarily suspended under Section 3 of the interim zoning regulations. The construction of a temporary deck or other structure in the private outdoor space does not confer any vested rights to any ongoing or continuing activities or use of such a deck or structure beyond the expiration of the interim zoning regulations.
- S. Any permitted space established by conversion of parking areas or other private outdoor space where there may be vehicle intrusion shall provide for safe separation of the outdoor eligible business activity area from the remaining parking area or other private outdoor space where there may be vehicle intrusion, such as by the installation of large planters or other appropriate barrier, so that the outdoor eligible business activity space is sufficiently protected from vehicle intrusion. No accessible parking spaces (ADA spaces), access aisle, or path of travel shall be converted. In no event shall any such converted permitted space 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.

- T. The eligible business shall obtain prior written consent from the property owner or tenant of the private outdoor space and furnish such consent to the City upon request.
- U. Nothing in these Regulations relieves an eligible business from any obligations or laws requiring consent of adjacent building owners or tenants for use of private outdoor space. Nothing in these Regulations compels a landlord to permit a tenant eligible business to expand its business to a private open space. If a tenant has granted consent under subsection IV(T), nothing in these Regulations relieves that tenant from any obligation or laws relating to any consent required of the property owner.