

CITY OF CHICO
EMERGENCY SERVICES DIRECTOR EXECUTIVE ORDER NO. 2020-002

DECLARATION OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF CHICO TO PROTECT THE PUBLIC HEALTH REGARDING TEMPORARY EXPANSION OF OUTSIDE DINING AT EXISTING RESTAURANTS AND BONA FIDE EATING ESTABLISHMENTS

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency in response to COVID-19; and

WHEREAS, on March 6, 2020, Butte County Health Officer, Dr. Andy Miller, declared a local public health emergency as a result of COVID-19, citing an imminent and proximate threat of COVID-19 in the County pursuant to Health and Safety Code section 101080; and

WHEREAS, on March 6, 2020, the Butte County Assistant Chief Administration Officer, Brian Ring, proclaimed a local emergency as a result of COVID-19 pursuant to Butte County Code section 8-5(i); and

WHEREAS, on March 10, 2020, the Butte County Board of Supervisors ratified the proclamation of a local emergency in the County of Butte as a result of COVID-19; and

WHEREAS, on March 11, 2020, the City Manager of the City of Chico implemented department level emergency operations to monitor and respond to developments in the effects of COVID-19; and

WHEREAS, on March 12, 2020, Governor Gavin Newsom signed Executive Order N-25-20 giving state and local public health officials the authority to issue guidance limiting or recommending limitations upon attendance at public assemblies, conferences or other mass events; and

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency as a result of COVID-19; and

WHEREAS, on March 15, 2020, Governor Gavin Newsom called for the closure of all bars, pubs, and wineries in the State and restrictions on restaurants; and

WHEREAS, on March 16, 2020, the California Department of Public Health established guidelines for social distancing, elimination of non-essential gatherings, and isolation for specific individuals, in order to prevent the transmission of COVID-19 (“DPH Guidance”); and

WHEREAS, on March 19, 2020, Governor Gavin Newsom signed Executive Order N-3-20 requiring that all persons statewide stay at their home or place of residence except as needed to maintain continuity of operations of the critical infrastructure sectors; and

WHEREAS, Governor Gavin Newsom and State Public Health Officer Dr. Sonia Y. Angell have continued to issue various Executive Orders and Public Health Orders; and

WHEREAS, despite sustained efforts, COVID-19 remains a threat, and further efforts to

control the spread of the virus to reduce and minimize the risk of infection are needed; and

WHEREAS, on July 13, 2020, State Public Health Officer Dr. Sonia Y. Angell issued a Public Health Order causing all bars, pubs, brewpubs, and breweries, whether operating indoors or outdoors, across the state to close, unless such businesses offer outdoor, sit-down, dine-in meals in compliance with state guidance; and

WHEREAS, the July 13, 2020 State Public Health Officer Order also prohibits all restaurants statewide from engaging in indoor dine-in operations, but allowed continued operation of outdoor dining subject to state guidance for outdoor dining; and

WHEREAS, businesses desiring to utilize the exceptions for outdoor dining under the July 13, 2020 State Public Health Officer Order, must comply with the Covid-19 Industry Guidance bulletins published by the California Department of Public Health and CalOSHA which allow restaurants providing outdoor dining service to expand their outdoor seating, and alcohol offerings in compliance with local laws and regulations;

WHEREAS, City of Chico has various local laws and regulations related to location and operation of businesses;

WHEREAS, Chico Municipal Code section 2.68.030 empowers the City Manager, as Director of Emergency Services, to declare the existence or threatened existence of a local emergency that is beyond the control of the services, personnel, equipment, facilities and resources of the City and which will require, or is likely to require, the assistance and resources of other public or private local, regional or state agencies to combat, a local emergency; and

WHEREAS, Government Code section 8634 states, "During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread publicity and notice; and

WHEREAS, on March 25, 2020, the City Council approved Resolution 7-20 declaring a local emergency due to the outbreak of COVID-19, adopting regulations for private and public facilities and gatherings, establishing protections for residential and commercial tenants, and authoring the City Manager to take all necessary actions as the Director of Emergency Services; and

WHEREAS, increasing rates of COVID-19 exposure are resulting in the State of California placing certain counties with insufficient progress to containing their disease transmission and hospitalization rates, the County may be forced into closing certain businesses, including indoor dining, by an order of the State Public Health Officer; and

WHEREAS, allowing for the use of outdoor space would enhance a Food Establishment's ability to institute exposure reduction measures and reduce the propagation of COVID-19 while allowing for access to needed food staples; and

WHEREAS, the health and vitality of Food Establishments support the general economic and proper function of the community are critical to the continued ability to combat the COVID-19 virus and ensure future health and safety; and

WHEREAS, this order is enforceable under Government Code Section 8665 and/or Chico Municipal Code Section 2.68.090.

NOW, THEREFORE, I, Mark Orme, City Manager of the City of Chico, as Director of Emergency Services, in accordance with the authority vested in me by Government Code section 8634 and City Council Resolution No. 7-20, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. Notwithstanding anything to the contrary in the City's zoning ordinances, development code, approved land use entitlements, or site plan review approvals, all existing restaurants, wineries, tasting rooms, bars, pubs, brewpubs, and breweries (collectively, "Food Establishments") may utilize additional outdoor dining areas by completing a Temporary Use for Covid-19 (Outdoor Dining) application (Exhibit A), operating pursuant to the standards and conditions therein, and adhering to requirements specified by the Community Development Director and the requirements of the July 13, 2020 State Public Health Order. The Director may impose additional conditions deemed reasonably necessary to ensure the safe and lawful operation of outdoor Food Establishment activities and services. No fee will be required for the application.

2. Areas that Food Establishments may utilize pursuant to a Temporary Use for Covid-19 (Outdoor Dining) include private sidewalks (non-public right of way), parking lots, recreation space, and other space on private property that is conducive to outdoor dining, within the lot on which such Food Establishment exists or within the private shopping center on which such Food Establishment exists.

3. Food Establishments desiring to use public common areas including sidewalks, streets, parking lots, recreation space, and other public space that might be conducive to outdoor activities and services may apply through Public Works under a separate application.

4. The City shall have the right to immediately suspend the operation of Temporary Use for Covid-19 (Outdoor Dining) due to failure to abide by applicable standards, conditions, and guidelines. Upon expiration or revocation Temporary Use for Covid-19 (Outdoor Dining), the Food Establishment shall restore the area to its prior condition.

5. Temporary Use for Covid-19 (Outdoor Dining) is not intended to convey a property or vested right to operate contrary to City codes, standards, and requirements. All Temporary Use for Covid-19 (Outdoor Dining) shall automatically expire upon the lifting or expiration of the City's declared local emergency, or upon earlier modification of this Order.

6. Temporary Use for Covid-19 (Outdoor Dining) are approved at the discretion of the Community Development Director ("Director") and may be revoked or modified by the Director for the following reasons:

- A. Approval based on a material misrepresentation by, on behalf of, or attributable to the applicant or the property owner, regardless of whether the misrepresentation was intentional or negligent or otherwise inadvertent;
- B. One or more of the standards, conditions or guidelines have not been met or have been violated;
- C. The improvement, use, or exercise of any right or privilege allowed is detrimental to the public interest, health, safety, convenience, or welfare of the city, or constitutes a nuisance;

7. Upon determining to order the revocation of a Temporary Use issued, the Director shall cause written notice of such order to be served on the person to whom the Temporary Use was issued. A person served with a notice of the order of the Director revoking a Temporary Use issued pursuant to the provisions of this chapter shall promptly terminate the use of the Temporary Use. Denial or revocation of a Temporary Use for Covid-19 (Outdoor Dining) may be appealed to the City Manager, where the decision shall be final. The denial or revocation of a Temporary Use may be appealed to the City Manager, where the decision shall be final. Any appeal to the City Manager shall be an informal proceeding without the technical rules of evidence.

8. This Order shall be filed in the Office of the City Clerk, posted at Chico City Hall, and published in the Chico Enterprise Record.

SO ORDERED.



Mark Orme,

City Manager/Director of Emergency Services

ATTEST:


Debbie Presson, City Clerk

APPROVED AS TO FORM:


Andrew Jared, City Attorney



City of Chico

TEMPORARY USE COVID-19 OUTDOOR DINING

This Temporary Use is intended to assist local Food Establishments (otherwise referred to as “restaurants, wineries, tasting rooms, bars, pubs, brewpubs, and breweries”) to comply with state guidelines regarding operating under recent outdoor dining guidelines while minimizing health and safety risks to employees and customers. The temporary use allows established Food Establishments, currently licensed to operate in Chico, to expand or create outdoor dining areas on private property due to the reduced seating capacity and social distancing requirements associated with COVID-19.

For any questions regarding the allowance for this temporary use, please contact the Planning Division at (530) 879-6800. Applications may be submitted via email to zoning@chicoca.gov. There shall be no fee associated with this process.

Business Information

Organization/Business Name _____
Business Owner Contact Name _____ Phone # _____
Business Owner Mailing Address _____
Business Owner Email _____
Business Tax Number _____

Property Owner Information

Shopping Center Name (if applicable) _____	
Property Owner _____ Phone # _____	
Property Owner Mailing Address _____	
As the authorized agent of the Property Owner of said Shopping Center, I authorize applicant to utilize the space identified in this application for use as temporary outdoor dining.	
Property Owner _____	Date _____

Restaurant Information

Shopping Center Name (if applicable) _____
Pre-COVID-19 Seating Capacity Indoor ____ Outdoor ____ # Parking Spaces ____
Temporary Seating Capacity Indoor ____ Outdoor ____ # Parking Spaces ____
Use Permit: ____ No ____ Yes. If yes, resolution number: _____
Alcohol Served: ____ No ____ Yes.
Will alcohol be served in a new or modified outdoor seating area? (Y/N) _____

Purpose of the COVID-19 Temporary Outdoor Dining

- Allows for restaurants to temporarily convert common areas and parking spaces to outdoor dining when located on private property.
- Tables, chairs, umbrellas, movable barricades and other minor appurtenances may be placed in these areas as allowed and restricted per the standards outlined below.
- Unenclosed tents (open on four sides) may be utilized for outdoor dining areas as allowed and restricted per the standards outlined below.

Who is Eligible?

- Restaurants operating at a reduced indoor capacity, with a valid City of Chico business license and all other required licensing.

Procedure

1. Submit this completed form, including property owner authorization and Business Owner signature.
2. Submit a site plan showing the parcel boundary lines, limits of the outdoor dining area, as well as the number and location of tables. This will be reviewed to ensure Fire Department access is not impeded, tables do not conflict with traffic patterns, adequate parking remains available to customers, and ADA compliance.
 - a. Plan MUST show: dimensions of the proposed outdoor dining area, number and size of tables, number of seats per table, spacing between tables, lighting (where applicable), and any other proposed changes. The plan shall indicate the location and number of all usable off-street parking areas under the proposed configuration. If the plan proposal includes a tent, the tent can only be used as a type of roof covering without sides. Dimensions of the tent(s) MUST be provided.
 - b. Plan may be hand-drawn on an aerial photo printed from Google Maps or similar service.
 - c. The business owner is responsible for implementing all industry guidance for re-opening from the California Department of Public Health and Butte County Public Health Department.
3. Submit general liability insurance of \$1 million per occurrence and \$2 million in the aggregate with additional insured endorsements CG 20 12* or CG 20 26. Must provide certificate of insurance listing the City of Chico as a named insured and include policy declarations, coverage part, and schedule of forms (endorsement/exclusions list). Email hr@chicoca.gov to obtain more specific insurance information if needed. Valid and sufficient insurance as determined by the City's Risk Manager is required prior to approval of this application.
4. Where proposed outdoor dining DOES NOT include vehicular use areas, City staff will verify that all required information has been provided and will send a reply email to the business owner stating that the restaurant has been authorized for the temporary outdoor seating arrangement. The email shall list any conditions of approval necessary to meet code requirements or to restore the temporary seating area to its previous state. Upon receipt of that email, the temporary outdoor seating may begin operation. City staff will subsequently visit the establishment to assist the restaurant owner or restaurant manager in assuring compliance with all applicable requirements.
5. Where the proposed outdoor seating DOES include vehicular use areas, City staff will verify that all required information has been provided and will route the proposal for review by the Public Works Department and Fire Marshal. Should the review result in approval, City staff will send a reply email to the business owner stating that the restaurant has been approved for the new/additional outdoor seating. This initial approval email shall include any conditions of

approval (if applicable), and provide notification that the operator must call to schedule an inspection once the temporary seating arrangement has been set up. The restaurant owner or restaurant manager must be present in order to immediately address any compliance issues. Following a passing inspection, City staff shall send a final email stating that the new/additional outdoor seating is approved to begin operation.

6. Any additional conditions or requirements will be included in the final application approval.

Standards for Temporary Use - COVID-19 Outdoor Dining

1. The temporary use shall be in accordance with all Executive Orders of the Governor, Executive Orders of the City of Chico, City of Chico Regulations, Butte County Regulations, and the California Department of Health Regulations.
2. The temporary use shall comply with all applicable Fire Department regulations.
3. Operations authorized are limited solely to temporary outdoor dining on private property. Additional activities or operations other than patron dining are not allowed. No parties or special events.
4. Under no circumstances shall the total pre-COVID-19 seating capacity of an establishment be increased as a result of this authorization. The intent is to mitigate the amount of the reduced indoor seating capacity by allowing additional outdoor seating capacity.
5. Open sided tents may be installed over approved outdoor dining areas for protection from the elements, consistent with applicable building and fire codes. All temporary shade protection structures may be subject to removal at the direction of the Building Division (e.g., in the event of extreme weather).
6. No streets, fire lanes, driveways, access easements, or other shared means for traffic circulation shall be impeded or blocked.
7. A maximum of fifty percent (50%) of the number of normally required parking spaces may be occupied or otherwise rendered unusable by the placement of temporary seating and other features associated with the temporary use. Such maximum may be increased or decreased at the discretion of the City's Public Works Director based on unique site conditions.
8. Outdoor dining areas shall be separated from parking and vehicular use areas by temporary physical barriers (e.g., planters).
9. All sidewalks or other pedestrian paths must maintain a minimum five-foot width.
10. A minimum of six feet of distance must be maintained between table groups.
11. Each table group shall be limited to parties of no more than ten (10) individuals.
12. New/additional outdoor seating shall not block any established exits from any building.
13. Seating areas shall not encroach into any required landscaped areas or buffers.
14. Umbrellas, tables, chairs, or tents shall not block any public rights-of-way, fire lanes, hydrants, or ADA parking spaces.
15. ADA parking spaces shall not be used for outdoor dining purposes. All existing ADA access and parking shall be maintained.
16. To ensure that all dining establishments are afforded an equitable opportunity to establish temporary outdoor seating arrangements, no business owner shall be authorized to have outdoor dining on sidewalk space in front of another dining establishment. Outdoor dining areas provided within parking lots shared with another dining establishment shall be limited to the width of the associated tenant suite as determined feasible by the Community Development Director.
17. Temporary outdoor dining shall be allowed within the same hours of operation of the establishment.
18. Any alcohol sales or consumption shall comply with State and local regulations.

19. Permanent plumbing, electrical, and lighting fixtures shall not be installed pursuant to this authorization. All such temporary improvements shall be properly permitted, as applicable, and removed once social distancing guidelines by the California Department of Public Health are lifted.
20. Any direction by the Fire Marshal to modify or discontinue the temporary use due to safety concerns shall be heeded immediately.
21. All outdoor dining areas must be maintained and kept clean of litter.
22. The temporary outdoor dining authorization may be revoked if compliance with the standards listed above is not maintained.
23. The City reserves the right to require the removal of temporary outdoor dining should it, in the opinion of the City, pose a hazard to the health, safety, and/or welfare of the public.
24. Upon expiration of State order restricting indoor seating capacity, the temporary outdoor dining use shall cease within five days from the date of the order expiration. Following this cessation, the area used for temporary outdoor dining shall be returned to its previous state.

Conditions of Use:

- a. **Incorporation of Standards for Temporary Use COVID-19 (Outdoor Dining).** The standards for operation of a temporary outdoor dining use and any additional conditions to ensure adherence to same are incorporated herein by this reference. Business Owner expressly agrees to abide by each and every one of these standards and conditions.
- b. **Indemnification.** To the fullest extent permitted by law, during the operative period of this Temporary Use, Business shall defend (with counsel of City's choosing), indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Business, its officials, officers, employees, sublessees, consultants or agents in connection with Business's activity under this Temporary Use including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Business shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Business's responsibility for such defense and indemnity obligations shall survive the of this Temporary Use for the full period of time allowed by law. The defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Temporary Use or as determined by the City's Risk Manager. Business's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its directors, officials, officers, employees, agents, or volunteers.
- c. **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 Business Owner's cost. Business Owner hereby grants to City the right to remove or relocate any such fixed improvements and to come upon Business Owner's premises to effect said removal or relocation if deemed necessary by City. Business Owner 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 Business Owner under this agreement shall terminate.

- d. **Duty to Comply with the Law.** Business Owner 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 (ADA), California Alcohol Beverage Control (ABC) regulations and orders relating to the service of alcohol, and County health laws regarding provision of food services.
- e. **Insurance.** Business Owner shall procure and maintain for the duration of this Temporary Use for Covid-19 (Outdoor Dining) insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Temporary Use for Covid-19 (Outdoor Dining). The cost of such insurance shall be borne by Business Owner. No later than 7 days after the requested start date of outdoor activities, Business Owner shall provide the City with proof of insurance, satisfactory to the City's Risk Manager, adding the City of Chico as an additional insured on Business Owner's insurance policies. Questions about coverage requirements may be made to hr@chicoca.gov.
- f. **Alcohol Sales or Service.** If Business Owner proposes to sell or serve alcohol as a part of its outdoor activities, Business Owner shall furnish, along with this Temporary Use for Covid-19 (Outdoor Dining), proof of a liquor liability coverage endorsement or policy. Business Owner shall obtain authorization by ABC for outdoor alcohol service prior to operation and provide documentation of such upon request.
- g. **Violation of Agreement.** Any violation of this Temporary Use for Covid-19 (Outdoor Dining) 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 Temporary Use for Covid-19 (Outdoor Dining) or the provisions of the Order may result in the immediate termination of this Temporary Use for Covid-19 (Outdoor Dining) and the cessation of any activities authorized by this Temporary Use for Covid-19 (Outdoor Dining) or the Order. The City shall not be responsible for any liability or damages associated with issuance or revocation of a Waiver, or with the immediate suspension of outdoor Business Establishment activities as provided for under this Order, and the Business Establishment, affiliates, successors, and assigns, in accepting a Waiver agree to release, hold harmless, and defend the City from any such liability.
- h. **No Vested or Ongoing Rights Conferred.** Business Owner understands and agrees that this Temporary Use for Covid-19 (Outdoor Dining) and the Order confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Temporary Use for Covid-19 (Outdoor Dining) 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.
- i. **Non-Transferable.** This Temporary Use for Covid-19 (Outdoor Dining) is non-transferable. Only the Business Owner with whom this Temporary Use for Covid-19 (Outdoor Dining) was entered shall be permitted to engage in the activities authorized herein.
- j. **Independent Contractor.** It is understood and agreed that Business Owner, in the performance of this Temporary Use for Covid-19 (Outdoor Dining), will be acting in a wholly independent capacity and not as agent, employee, partner, or joint venturer of City.
- k. **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 THE TERMS AND CONDITIONS ABOVE, THE ORDER, AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS.

Business Owner

Date

Property Owner

Date

AUTHORIZED:

Community Development Department Director
or Designee

Date

APPROVED AS TO FORM:

Andrew L. Jared, City Attorney*
* pursuant to Chico City Charter, sec. 906(D)

Final Approved Application will include:

- Completed Temporary Use COVID-19 Outdoor Dining application signed by all parties listed above.
- **Attachment A** Completed Site Plan
- **Attachment B** Additional Conditions Required by the City
- **Attachment C** Complete Insurance Documentation including Additional Insured Endorsement

**ATTACHMENT A
COMPLETED SITE PLAN**

ATTACHMENT B
ADDITIONAL CONDITIONS

ATTACHMENT C
INSURANCE DOCUMENTS