

**CITY OF CHICO**  
**EMERGENCY SERVICES DIRECTOR EXECUTIVE ORDER NO. 2020-004**

**DECLARATION OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF CHICO TO PROTECT THE PUBLIC HEALTH REGARDING TEMPORARY EXPANSION OF OUTSIDE COMMERCE FOR NON-FOOD BUSINESSES AT EXISTING BUSINESSES ON PRIVATE PROPERTY**

**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**, 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**, 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. In addition, the State Public Health Officer also implemented additional indoor sector closures for Counties on a Monitoring List for three consecutive days which included gyms, places of worship, protests, non-critical offices, personal care services, malls and air salons/barbers; and

**WHEREAS**, businesses desiring to utilize the exceptions for outdoor activity 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 certain business types to providing outdoor service while in compliance with local laws and regulations; and

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

**WHEREAS**, on July 15, 2020, the City Manager, as Director of Emergency Services, issued Emergency Services Director Executive Order No. 2020-002 allowing for the expansion of restaurant seating on private property; and

**WHEREAS**, the City already retains an outdoor café permit allow for food establishments to utilize public right of way adjacent to their business for outdoor service, and the City intends to work with businesses to allow for temporary outdoor service; and

**WHEREAS**, on July 25, 2020 after being listed on the State's Monitoring List for three days, Butte County would be subject to the additional indoor sector closures; and

**WHEREAS**, allowing for the use of outdoor space would enhance impacted businesses with the ability to institute exposure reduction measures and reduce the propagation of COVID-19 while allowing for access to needed goods and services; and

**WHEREAS**, the health and vitality of local businesses support the general economic and proper functioning of the community and are critical to the continued ability to combat the COVID-19 virus and ensure future health and safety; and

**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**, 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:**

**A. Use of Private Property**

1) Notwithstanding anything to the contrary in the City's zoning ordinances, development code, approved land use entitlements, or site plan review approvals, all businesses subject to the California State Public Health Order of July 13, 2020 (collectively, "Businesses" or "Business") may utilize additional outdoor private areas by completing a Temporary Use for Covid-19 (Outdoor Service) 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 Business activities and services. No fee will be required for the application.

2) Areas that Businesses may utilize pursuant to a Temporary Use for Covid-19 (Outdoor Service) include private sidewalks (non-public right of way), parking lots, recreation space, and other space on private property that is conducive to outdoor commerce, within the lot on which such Business exists or within the private shopping center on which such Business exists. Business may occupy up to 100% of the square footage of usable floor space of the Business' building outdoors, but in no event shall occupy more than 50% of the available parking area on site. Such use shall be in compliance with ADA regulations and shall not eliminate any ADA parking spaces. Such use shall not operate outside of such business' regular operating hours.

3) Businesses 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 Service) due to failure to abide by applicable standards, conditions, and guidelines. Upon expiration or revocation Temporary Use for Covid-19 (Outdoor Service), the Business shall restore the area to its prior condition.

5) Temporary Use for Covid-19 (Outdoor Service) 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 Service) 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 Service) 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 Service) 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.**



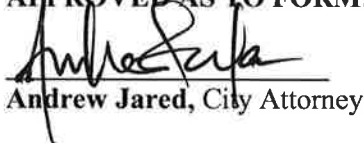
**Mark Orme,**  
City Manager/Director of Emergency Services

**ATTEST:**



**Debbie Presson,** City Clerk

**APPROVED AS TO FORM:**



**Andrew Jared,** City Attorney



# City of Chico

## TEMPORARY USE OF EXPANDED PRIVATE COVID-19 OUTDOOR COMMERCE

**This Temporary Use** is intended to assist non-food businesses impacted by State Public Health Orders issued since July 13, 2020 to comply with state guidelines regarding operating under recent outdoor operation guidelines while minimizing health and safety risks to employees and customers. The temporary use allows businesses impacted by closing indoor operations but allowed to operate outside, currently licensed to operate in Chico, to expand or create outdoor commerce areas on private property adjacent to their business.

For any questions regarding the allowance for this temporary use for private property, please contact the Planning Division at (530) 879-6800. Applications may be submitted via email to [zoning@chicoca.gov](mailto: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 Name	_____ Phone # _____
Property Owner Mailing Address	_____
<i>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 commerce.</i>	
Property Owner	Date _____

### Business Details

Shopping Center Name (if applicable)	_____
Pre-COVID-19 square footage:	Indoor _____ Outdoor _____ # Parking Spaces _____
Temporary square footage:	Indoor _____ Outdoor _____ # Parking Spaces _____
Use Permit:	No _____ Yes _____ If yes, resolution number: _____

### **Purpose of the COVID-19 Temporary Outdoor Commerce**

- Allows for businesses to temporarily convert common areas and parking spaces to outdoor commerce areas when located on private property.
- Tables, racks, 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 commerce areas as allowed and restricted per the standards outlined below.

### **Who is Eligible?**

- Businesses 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 commerce area, as well as the number and location of tables, racks, umbrellas, movable barricades, other minor appurtenances and any other furniture. This will be reviewed to ensure Fire Department access is not impeded, no conflicts with traffic patterns, adequate parking remains available to customers, and ADA compliance.
  - a. Plan MUST show: dimensions of the proposed outdoor commerce area, location, spacing, number and size of tables, racks, umbrellas, movable barricades and other minor appurtenances, lighting (where applicable), location of furniture 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](mailto: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 commerce 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 business has been authorized for the temporary outdoor service. The email shall list any conditions of approval necessary to meet code requirements or to restore the temporary service area to its previous state. Upon receipt of that email, the temporary outdoor service may begin operation. City staff will subsequently visit the establishment to assist the business owner or business manager in assuring compliance with all applicable requirements.
5. Where the proposed outdoor service 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 business has been approved for the new/additional outdoor activity. 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 arrangement has been set up. The business owner or business 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 activity 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 Commerce**

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 commerce on private property. Additional activities or operations other than patron commerce are not allowed. No parties or special events.
4. Under no circumstances shall the total pre-COVID-19 floor capacity of an establishment be increased as a result of this authorization. The intent is to mitigate the amount of the reduced indoor floor capacity by allowing additional outdoor floor capacity.
5. Open sided tents may be installed over approved outdoor commerce 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 service area 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 commerce 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. New/additional outdoor area shall not block any established exits from any building.
11. Service areas shall not encroach into any required landscaped areas or buffers.
12. Umbrellas, tables, racks, umbrellas, movable barricades and other minor appurtenances or tents shall not block any public rights-of-way, fire lanes, hydrants, or ADA parking spaces.
13. ADA parking spaces shall not be used for outdoor commerce purposes. All existing ADA access and parking shall be maintained.
14. To ensure that all commerce establishments are afforded an equitable opportunity to establish temporary outdoor service, no business owner shall be authorized to have outdoor commerce on sidewalk space in front of another commerce establishment. Outdoor commerce areas provided within parking lots shared with another commerce establishment shall be limited to the width of the associated tenant suite as determined feasible by the Community Development Director.
15. Temporary outdoor commerce shall be allowed within the same hours of operation of the establishment.

16. 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.
17. Any direction by the Fire Marshal to modify or discontinue the temporary use due to safety concerns shall be heeded immediately.
18. All outdoor commerce areas must be maintained and kept clean of litter.
19. The temporary outdoor commerce authorization may be revoked if compliance with the standards listed above is not maintained.
20. The City reserves the right to require the removal of temporary outdoor commerce should it, in the opinion of the City, pose a hazard to the health, safety, and/or welfare of the public.
21. Upon expiration of State order restricting indoor floor capacity, the temporary outdoor commerce use shall cease within five days from the date of the order expiration. Following this cessation, the area used for temporary outdoor commerce shall be returned to its previous state.

#### **Conditions of Use:**

- a. **Incorporation of Standards for Temporary Use COVID-19 (Outdoor Commerce).** The standards for operation of a temporary outdoor commerce 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 Commerce) 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 Commerce). 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](mailto:hr@chicoca.gov).
- f. **Violation of Agreement.** Any violation of this Temporary Use for Covid-19 (Outdoor Commerce) 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 Commerce) or the provisions of the Order may result in the immediate termination of this Temporary Use for Covid-19 (Outdoor Commerce) and the cessation of any activities authorized by this Temporary Use for Covid-19 (Outdoor Commerce) 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.
- g. **No Vested or Ongoing Rights Conferred.** Business Owner understands and agrees that this Temporary Use for Covid-19 (Outdoor Commerce) 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 Commerce) 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.
- h. **Non-Transferable.** This Temporary Use for Covid-19 (Outdoor Commerce) is non-transferable. Only the Business Owner with whom this Temporary Use for Covid-19 (Outdoor Commerce) was entered shall be permitted to engage in the activities authorized herein.
- i. **Independent Contractor.** It is understood and agreed that Business Owner, in the performance of this Temporary Use for Covid-19 (Outdoor Commerce), will be acting in a wholly independent capacity and not as agent, employee, partner, or joint venturer of City.
- j. **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 Commerce 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**

THE UNDERSIGNED AGREES THAT THE PROPOSED ACTIVITIES DESCRIBED IN THIS APPLICATION 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



**ATTACHMENT C**  
**INSURANCE DOCUMENTS**