

TEMPORARY COVID-19 OUTDOOR ACTIVITIES AND ENCROACHMENT AGREEMENT

This temporary agreement is designed to be used for all requests for consideration of outdoor business operation expansion as described in Emergency Order 20-4. No City fees are charged for this agreement however the business (permittee) must provide insurance coverage as described later in this agreement.

Once completed, please submit this agreement application to Acting City Manager Erik Upson at eupson@ci.benicia.ca.us, or arrange dropoff at City Hall by calling his office at 707-746-4200.

1. Business Identification

Business Name (Permittee): _____

Mailing Address: _____

Business Address: _____

Business Phone: _____

Business Email: _____

2. Type of Business [Check one]

Restaurant

Retail

Personal services such as hair and nail salons

Other (including, but not limited to religious institutions, childcare, schools, and other public or private entities) Please Describe _____

3. Proposed Type of Outdoor Activities [Check one or more]

Outdoor Dining

Outdoor Dining with alcohol service (liquor liability coverage endorsement required; see page __)

Outdoor Food Sales

Outdoor Retail Display

Outdoor Retail Sales

Outdoor personal services such as hair and nail salons (with licensing agency permission)

Other (including, but not limited to uses related to religious institutions, childcare, schools, and other public or private entities) Please describe _____

4. Right-of-Way Encroachments. Will proposed outdoor activity require the use of public right-of-way including but not limited to sidewalks, streets, or public parking?

Yes No

If yes, please describe the public right-of-way proposed to be used _____

5. Design Review. Is Benicia Historic Preservation Resource Commission design review required for proposed outdoor improvements and installations?*

Yes No

*If unsure of the answer to this question, please contact the Community Development Department at 707-746-4320.

6. Use of Private Property. Will proposed outdoor activity require the use of private property not owned or leased by Permittee? Yes No

If response to above question is yes, has Permittee obtained all required authorizations (including but not limited to written agreements, licenses, and/or leases) to use said private property? Yes No

Copy of "Consent to Use Private Property for Temporary Outdoor Activities" is attached (if applicable, see Attachment 1)

7. Proposed Activities. Please provide the following information on separate piece of paper and attach; please be specific:

(a) **a description of the business** (i.e., a sports bar motif restaurant that serves informal food such as burgers and pizza, and wine, beer and alcohol, with operating hours of 5:30 – 10:00 p.m.)

(b) **proposed outdoor activities** (i.e., we want to extend our restaurant service operation outdoors to serve more customers during COVID-19 closures and in compliance with State protocols)

(c) **a description of all improvements, structures and/or materials** to be used to facilitate outdoor activities (i.e., construct a trellis, set up planters, add tables and chairs, etc.)

(d) **description of area in which proposed outdoor activities will take place along with a drawing, map or other visual depiction** such as photographs, showing improvements, structures and/or materials to be placed in area.

8. Requested Start Date of Outdoor Activities: _____

9. Proposed Duration/End Date of Outdoor Activities: _____

10. Amendments to Proposal by City and/or Additional Terms of Agreement [To be Completed by City]:

11. Terms of Agreement:

A. Business (permittee) accepts all responsibility. Permittee agrees to accept all responsibility for loss or damage to any person or entity and to indemnify, hold harmless, and defend and release the City of Benicia, its agents, and employees 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 the City, but excluding liability due to the sole active negligence or sole willful misconduct of the City.

B. City right to remove or relocate improvements. The City reserves the right to order the removal or relocation of the improvements listed in paragraphs 3-6, above, at Permittee's cost in the event same is required by the City and/or a Utility. Whether or not said removal or relocation is required shall be left to the unfettered discretion of the City and/or a Utility and may be based upon a determination of nuisance, street sweeping, changes to Federal, State, or local COVID-19 orders, and/or any other reason deemed by the City to require removal or relocation. Permittee hereby grants to the City the right to remove or relocate said improvements and to come upon Permittee's land to effect said removal or relocation if deemed necessary by the City and/or a Utility. Permittee waives any claim or right he/she/it may have for inverse condemnation, damages, or loss of income or business resulting from said removal. However, the City will be responsible for repairing any physical damage caused to Permittee's structure(s) or property by the City's but not a Utility's removal or relocation of said improvements. Upon removal or relocation of said improvements, all rights of Permittee under this agreement and the permit itself shall terminate.

C. Compliance with all laws and regulations. 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, laws regarding noise and noise related nuisances, the Americans with Disabilities Act and County health laws regarding provision of food services.

D. Required Insurance Coverage for encroachment into public right-of-way and/or a public easement. 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 this section. The cost of such insurance shall be borne by Permittee. Permittee's whose activities do not encroach into public right-of-way and/or a public easement, shall not be required to obtain said insurance.

Minimum Scope of Insurance. Permittee shall obtain and all times during duration of this Outdoor Activities Agreement maintain coverage at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

(b) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Permittees with employees).

(c) Property insurance against all risks of loss to any tenant improvements or betterments.

Permittee shall maintain limits no less than:

(a) General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(b) Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

(c) Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Permittee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

(a) The City, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of the premises/property owned by or leased to the Permittee.

(b) The Permittee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Permittee's insurance and shall not contribute with it.

(c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless prior approval is received from the City Attorney.

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

F. 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 and/or Emergency Order No. 20-4 may result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement and Emergency Order No. 20-4.

G. No Vested or Ongoing Rights Conferred. Permittee understands and agrees that this Agreement and Order No. 20-4 confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement and Order are temporary in nature and granted solely to enable businesses to operate in compliance with State and local orders regarding social distancing and COVID-19. All improvements, structures and installments approved pursuant to this Agreement shall be removed in their entirety upon expiration of this Agreement.

H. 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.

I. 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, CITY OF BENICIA EMERGENCY ORDER NO. 20-4, AND

ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO STATE AND COUNTY EMERGENCY ORDERS REGARDING THE COVID-19 PANDEMIC.

Permitee signature

Date

Permitee Name (printed)

Erik Upson
Acting City Manager
Director of Emergency Services
City of Benicia

Date

**CONSENT TO USE PRIVATE PROPERTY
FOR TEMPORARY OUTDOOR ACTIVITIES**

This form must be completed if proposed outdoor activity requires the use of private property which is neither owned nor leased by Permittee.

I, _____, declare that:

1. I am the record title owner of the property located at:

_____, Benicia, California,
(Physical Address)

2. I am aware that the Permittee _____ (Business name) is in the process of entering into a Temporary COVID-19 Outdoor Activities and Encroachment Agreement with the City of Benicia to use my property, described in paragraph 1, for certain outdoor activities described in the Agreement.

3. I consent and agree to use of my property for the outdoor activities described in the Agreement.

Signed this _____ day of _____, 20

(Landowner Signature)