



CITY OF HUNTINGTON BEACH

COVID-19 TEMPORARY EMERGENCY USE PERMIT OUTDOOR COMMERCIAL ACTIVITY

PRIVATE PROPERTY CRITERIA

The City of Huntington Beach would like to ensure businesses have the ability to operate safely and successfully during the COVID-19 economic recovery. In order to maintain social distancing and safety protocols and allow businesses to recreate some level of pre-COVID 19 capacity, the City is allowing flexibility in parking and other standards to permit businesses to operate outdoors on a temporary basis.

This is a discretionary permit. Providing the information detailed in this memorandum and on the forms referenced herein is not a guarantee of permit approval. The City at its sole discretion may approve or deny the issuance of a permit.

1. Applicability

- ***Private Sidewalks and Parking Lots.*** Businesses and religious institutions with access to private sidewalks and/or private parking lots may utilize portions of these areas for dining, retail sales, personal services, and curbside pick-up.
- ***Uses and Businesses Identified by State and County Order can Operate.*** The uses and businesses that will be allowed to operate outdoors shall only be those that have been identified by the State and Orange County Health Care Agency. As the State and County expand the list of businesses that are allowed to operate, the list of uses that can operate outdoors in Huntington Beach will automatically expand accordingly.
- ***Uses with Licenses or Approvals by Other Agencies.*** Businesses that are subject to operating under other licenses or agency approval (ABC, Cosmetology, Health Care Agency, California Coastal Commission, etc.) shall continue to be subject to those laws and/or operational standards.
- ***Duration.*** The Temporary Emergency Use Permit does not confer any type of property interest and may not be construed as such. Permittee expressly agree that as a condition of receiving a permit, the City may terminate the permit at any time without any due process including notice or hearings. The Permit shall automatically terminate when: (a) the local emergency proclaimed on March 16, 2020, (as may be extended) is no longer in effect; or (b) the State and County allow resumption of normal and full commercial operations. Permittees expressly agree that as as a use or business is permitted to resume full and normal operations, they shall abandon outdoor operations, relocate back indoors, and restore outside areas to original conditions at their sole cost and expense.

2. Permit Process

- **Temporary Emergency Use Permit application.** Please complete a Temporary Emergency Use Permit Application and return to the Planning Division. Your application will be reviewed for completeness upon receipt by the Planning, Building, Public Works, Fire, and Police Departments and responded to within two business days. Please email your completed applications and fully dimensioned site plans to: community.development@surfcity-hb.org . Be aware that hard copies submitted to City Hall require 24-hour quarantine, which may delay response.
- **Commercial Centers.** If there are multiple tenants in a commercial center, it is highly encouraged that a Temporary Emergency Use Permit for an entire center be submitted by the property manager. Individual businesses within a plan approved for the center may then simply sign a Temporary Emergency Use Permit application and operate. Plans for the Center must comply with the provisions contained herein and the property manager shall be responsible for identifying the outdoor commercial activity area for each tenant.
- **Individual Uses and Businesses in Commercial Centers.** If a Temporary Emergency Use Permit for the entire commercial center in which the individual use/business is located has not been approved, businesses in commercial centers may complete a Temporary Emergency Use Permit on an individual basis with approval of the property owner/manager. In this case, the temporary outdoor commercial activity area shall be limited to the sidewalk/plaza area directly in front of the store. The length of the outdoor commercial activity area shall be limited to the leasehold frontage and the depth will be dependent upon the required ADA and social distancing clearances. The temporary outdoor commercial activity for an individual use/business shall comply with all applicable provisions of these criteria.
- **Application Contents.** In addition to a completed application, the Temporary Emergency Use Permit application shall include a fully dimensioned site plan showing:
 - The location of the outdoor commercial activity area(s) and pedestrian paths with social distancing measurements.
 - The vehicular and pedestrian circulation patterns, curbside pick-up areas (if any), outdoor commercial activity areas by tenant, outdoor seating areas with seating/table plan and capacity clearly noted, pedestrian flow areas, any shade structures, proposed measures to secure outdoor use areas, and for controlling vehicle and pedestrian access to the area, and ADA path of travel.
 - The location of equipment such as wash stations and hand sanitizing stations, stations for staff set up and service, waste receptacles, and any storage containers.
 - The location of Fire protective equipment, fire lanes, and egress routes from buildings.

- If area is enclosed with barriers, state the proposed occupant load and show the egress routes from the space.

3. Criteria for Temporary Outdoor Commercial Activity on Private Property

a. Permitted Locations (General).

- Temporary outdoor commercial activity may occur within private parking lots, plazas, and sidewalks when the safety criteria described herein is met.
- The use of removable barriers to define outdoor commercial activity areas, seating areas, curbside pick-up areas, pedestrian paths, vehicular paths is permissible. There is no limitation as to the type of temporary barriers, but they must clearly serve the intended purpose and ensure public safety.
- Removable barriers shall be not located in Fire Department access lanes, egress paths, or ADA pathways.

b. Private Sidewalks and Plazas

- Tenants may use the sidewalk or plaza directly in front of their business for temporary outdoor commercial activity as long as the egress and Americans with Disabilities Act (ADA) pathways are kept clear to the public way. The width of the outdoor commercial activity area shall not exceed the width of the frontage of the subject business. The depth of the outdoor commercial activity area shall depend upon the other required clearances described below. However, the property manager may approve alternative locations, lengths, and sizes of outdoor commercial activity areas for individual tenants in a Temporary Emergency Use Permit for the entire center.
- Temporary outdoor commercial activity areas shall allow for at least a 4 ft. wide separation between the outdoor commercial activity area and any obstructions (note: some locations may require additional width if deemed a high pedestrian traffic area).
- The temporary outdoor commercial area and/or pedestrian path shall be physically separated from pedestrian and vehicular paths and clearly demarked by durable and removable barriers.
- The 4 ft. wide pedestrian path shall be measured from the outdoor commercial activity boundary to the curb face and other large obstructions (e.g. planters, utility boxes). No tables, or chairs, umbrellas or other fixtures shall be permitted within the pedestrian path.
- Access to public utilities, building entrances/exits, ADA facilities, fire hydrants, fire department connections, or fire extinguishers shall not be obstructed by barriers or seating.

c. Parking Lots

- As approved for a commercial center, tenants may convert a portion of the parking lot near their business for temporary outdoor commercial activity. Individual tenants may

not utilize private parking lots of a commercial center without a Temporary Emergency Use Permit approved first for the entire commercial center.

- All parking areas used for commercial activity must be appropriately secured from vehicle entry and shall not prohibit adequate circulation within the open portions of the parking lot. Examples of such security measures to prevent vehicles from entering the seating or shopping area are cement or water barriers, temporary structures, or other means subject to City approval.
- Up to 50% of off-site private parking in a center may be converted to outdoor commercial activity.
- No parking for disabled persons may be repurposed – unless replaced and demarked elsewhere in the center.
- Landscape areas shall not be used or converted for parking, outside seating, or commercial activities.
- Vehicular paths and curbside pick-up areas must be clearly marked and signed to ensure pedestrian safety.
- The marked fire lane shall not be obstructed at any time. Modifications to the fire department access lanes must be approved by HBFD.

d. Tents and Other Shade Structures

- Tents that are 10 feet by 10 feet in size or smaller may be erected in the approved outdoor commercial activity areas. Tents or shade structures that are larger than 10 feet by 10 feet in size must comply with Chapter 31 of the California Fire Code and will require a temporary operational permit from the HBFD.
- If tents are staked, the parking lot must be repaired upon removal of the tent.
- If not staked, all tent legs must be weighted by a minimum of 30 lbs. and weights must be securely attached to canopy roof and canopy leg separately. Items that make acceptable weights include: 5 gallon bucket full of water, sand, or concrete or sand bags.
- Ropes and straps should be strong (bungee or rubber straps are prohibited).
- Weights must be on the ground and not dangling.
- Weights and lines must not pose a hazard and be clearly visible.
- For maximum safety, do not leave tents unsecured at any time.
- Heaters of any kind shall not be used under tents or umbrellas.
- Smoking is prohibited under tents and shade structures.
- Tents shall not have closed walls in place while open to the public and all sides should be open for airflow.
- For tents and other shade structures over 700 sq. ft. in area, a permit application must be obtained from the Fire Department and all tents shall be inspected prior to use.

e. Operational Criteria

- The hours of operation of the temporary outdoor commercial activity area for all business types shall be restricted to between 7:00AM – 10:00 PM only, including all daily set-up and break-down activities.
- Vehicular circulation/access lanes and all fire access roads must be kept clear at all times.
- Driveways must be kept clear at all times to prevent cars from stacking into streets. This may require that parking lot monitors be employed by the business and/or commercial center.
- Temporary banners advertising the business may be permitted in conjunction with Temporary Emergency Use Permit. One banner per tenant and three banners for the commercial center shall be allowed. The maximum size shall be: 45 square feet in area and 3 ft. by 15 ft. Banners shall be located on the temporary outdoor commercial activity area for the tenant. Banners for the commercial center may be allowed within the perimeter landscaped area but not within the corner/intersection visibility areas.
- There is no limit on directional and safety signage (e.g. one way, exit only, maintain social distancing, etc...) that does not contain advertisements.
- Space heaters are permitted if they are an outdoor approved type, are located in accordance with the manufacturer's recommendations, and are at least five (5) feet from the edge of any umbrella canvas, any foliage, or any other flammable object or material. Space Heaters shall not be located within a tent or membrane structure and shall comply with the setback requirements stated below.
 - “Five Foot” Rule for heaters CFC § 603.4.2.1
 - Heaters shall not be placed closer than 5 feet from buildings.
 - Heaters shall not obstruct the clear path of exits and must be at least 5 feet from exit or exit discharges.
 - Heaters shall maintain a minimum of 5 feet clearance from any combustible material (e.g., umbrellas, sunshades, awnings, or similar attachments)
- No heating, cooking or open flames are permitted in the outdoor commercial activity area.
- Tents, umbrellas and other decorative material shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. No portion of an umbrella shall be less than six (6) feet, eight (8) inches (eighty (80) inches) above the sidewalk.
- No outdoor amplified noise or live entertainment shall be permitted.
- The business and property manager shall be responsible for cleaning up trash as needed but at a minimum of two times per day.
- Keep it simple. Limit visual clutter (banners, flags, signs, etc.) so public can easily figure out how to access the pick-up areas.

f. Outdoor Seating

- Maintain a 6 ft. separation between each table, including chairs.
- If people are at a table together, they do not need to be 6 ft. apart. Each table grouping needs to be 6 ft. from other tables measured from the back of each chair, chair-to-chair.
- Identify the total capacity of each outdoor area; the maximum number of customers or patrons permitted within the outdoor seating area shall be based on available seats; there shall be no standing permitted.
- The total capacity of dining areas shall not exceed the total interior maximum number of seats pre-COVID. For example, if a restaurant was limited to a maximum of 12 seats prior to the pandemic, the total seating capacity of both indoor and outdoor seating areas shall not exceed 12 seats.

g. Alcoholic Beverages

- Prior to sales, service or consumption of alcoholic beverages the business shall have a valid ABC license. Businesses must only serve what is allowed on their current license type.
- Restaurants not currently permitted to sell alcohol will not be affected by this program.
- When the temporary stay-at-home orders have been lifted in Orange County by the State, a Copy of the completed COVID-19 Temporary Catering Authorization application that has been approved by ABC (available here: <https://www.abc.ca.gov/fourth-notice-of-regulatory-relief/>) shall be submitted.
- Alcohol may only be served in conjunction with food service in outdoor areas.
- Only an employee, and not a patron, will be permitted to carry an alcoholic beverage from the interior portion of the premises to said outdoor area, or from said outdoor area to the interior portion of the premises.
- Plastic cups only, no glasses or glass bottles allowed in the temporary outdoor dining area.
- A sign shall be posted in a conspicuous space at the exit point in the outdoor area, which shall state "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT."
- The outdoor area shall have a physical barrier of no less than 36 inches in height surrounding the outdoor dining area and designed in a manner that will prohibit passing of alcohol through the barrier.
- All areas where the sales, service, and consumption of alcoholic beverages will be permitted must be sufficiently illuminated to permit the identification of patrons.
- All owners, employees, representatives, and agents must obey all state, local, and municipal laws, and conditions of the Conditional Use Permit, Alcoholic Beverage Control License and any other regulations, provisions, or restrictions prescribed by a regulatory authority with jurisdiction over the premise at all times.

4. Business Responsibilities for Outdoor Commercial Activity

- It shall be the responsibility of the business and/or property manager to maintain and secure the removable barriers per the approved plans and all materials located inside the commercial outdoor activity areas.
- Maintenance (daily upkeep, litter cleanup, etc.) associated with business operations shall be the responsibility of the business and/or property manager.
- Permittee shall carry at all times incident hereto, on all activities to be performed in the Permittees Area as contemplated herein, general liability insurance, including coverage for bodily injury, and property damage. All insurance shall be underwritten by insurance companies in forms satisfactory to City in its commercially reasonable discretion. Said insurance shall name City, its officers, agents and employees as additional insureds. In the event of aggregate coverage, Permittee shall immediately notify City of any known depletion of limits. Permittee shall require its insurer to waive its subrogation rights against City and agrees to provide certificates evidencing the same. Prior to accessing and using the Permittee Area pursuant to this Agreement, Permittee shall furnish to City certificates of insurance subject to approval of City evidencing the foregoing insurance coverages as required by the Permit; said certificates shall provide the name and policy number of each carrier and policy, and shall state that the policy is currently in force and shall promise to provide that such policies will not be cancelled without thirty (30) days prior written notice to City. Permittee shall maintain the foregoing insurance coverages in force until the Permit is terminated.

The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of Permittee by Permittee under the Permit. City or its representative shall at all times have the right to demand the original or a copy of all said policies of insurance. A separate copy of the additional insured endorsement to each of Permittee's insurance policies, naming City, its officers, agents and employees as additional insureds shall be provided to City for approval prior to accessing the License Area pursuant to this Permit.

- The Temporary Emergency Use Permit is not effective unless it is signed by the applicant indicating and acknowledging his/her understanding of the conditions imposed therein.
- By signing and accepting the Temporary Emergency Use Permit, the applicant accepts the benefits conferred by the permit subject to the conditions imposed therein. By accepting the right to operate pursuant to the Temporary Emergency Use Permit, the applicant waives all rights to challenge any condition imposed as unfair or unreasonable.
- The applicant understands that there are inherent safety concerns when operating outdoors, especially in a parking lot, and by signing the Temporary Emergency Use Permit the applicant agrees protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with Permittees (or Permittee's subcontractors, if any) use of the Permit or its failure to comply with any of its

obligations contained in the Permit by Permittee, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. Permittee will conduct all defense at its sole cost and expense and CITY shall approve selection of Permittee's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Permittee. This provision shall survive termination of this Permit.

- The city is not responsible for any damages or loss of equipment installed pursuant to an approved Temporary Emergency Use Permit.

5. Revocation

- The Temporary Emergency Use Permit does not confer any type of property interest and may not be construed as such. Permittee expressly agree that as a condition of receiving a permit, the City may terminate the permit at any time without any due process including notice or hearings. The Permit shall automatically terminate when: (a) the local emergency proclaimed on March 16, 2020, (as may be extended) is no longer in effect; (b) the State and County allow resumption of normal and full commercial operations; (c) the installation represents a danger to the health, safety or general welfare of the public; or (d) a business violates the requirements of a Temporary Emergency Use Permit.
- Permittees expressly agree that as a use or business is permitted to resume full and normal operations, they shall abandon outdoor operations, relocate back indoors, and restore outside areas to original conditions at their sole cost and expense.
- The applicant shall comply with all federal, state, and local laws. Violations of any of those laws in connection with the use will be cause for revocation of this Temporary Emergency Use Permit.