



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: June 16, 2020

TO: Christine Daniel, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: **Expediting Permitting For Temporary Outdoor Seating For Restaurants And Bars During COVID-19 Pandemic And Urging The County To Expedite Permits For Such Outdoor Seating**

An Ordinance Of The City Council Of The City Of Emeryville Temporarily Waiving Or Modifying Certain Provisions Of The Planning Regulations Related To Outdoor Seating For Restaurants And Bars During The COVID-19 Pandemic; CEQA Determination: Exempt Pursuant to California Public Resources Code Section 21080(b)(4) and State CEQA Guidelines 15269(c) and 15061(b)(3)

An Urgency Ordinance Of The City Council Of The City Of Emeryville Temporarily Waiving Or Modifying Certain Provisions Of The Planning Regulations Related To Outdoor Seating For Restaurants And Bars During The COVID-19 Pandemic; CEQA Determination: Exempt Pursuant to California Public Resources Code Section 21080(b)(4) and State CEQA Guidelines 15269(c) and 15061(b)(3)

RECOMMENDATION

Staff recommends that the City Council adopt the first reading of the above-referenced ordinance temporarily waiving certain provisions of the Planning Regulations related to outdoor seating for Restaurants and bars during the COVID-19 pandemic. Staff also recommends that the City Council adopt the companion urgency ordinance, which will take effect immediately if adopted by a 4/5 vote of the entire Council. Staff further recommends that the Council approve a motion authorizing the City Manager to send a letter to the Alameda County Board of Supervisors urging that the Alameda County Department of Environmental Health's permitting process for outdoor seating for restaurants and bars be expedited.

BACKGROUND

Due to the novel coronavirus (COVID-19) pandemic, restaurants are currently not able to accommodate dine-in customers. Under the current Alameda County Health Officer's Shelter in Place Order ("Order"), restaurants are limited to take-out and delivery service only. However, it is anticipated that, at some point in the not-too-distant future, restaurants may be allowed to serve on-site customers. When this occurs, it is expected that the number of customers that can be accommodated will be much fewer than before the pandemic, due to the required protocols for social distancing. Therefore,

many restaurants may wish to provide outdoor seating in order to increase their capacities and minimize interactions of customers in enclosed environments. At the May 19, 2020 City Council meeting, the Council directed staff to develop a streamlined approval process and reduce or eliminate fees for outdoor seating for consideration at a future Council meeting. This item responds to that request.

The State of California has developed a “Resilience Roadmap” for the gradual reopening of businesses and other activities (<https://covid19.ca.gov/roadmap/>), consisting of four stages:

1. Safety and preparedness
2. Lower-risk workplaces
3. Higher-risk workplaces
4. End of Stay Home Order

According to the State’s COVID-19 website, we are now in early Stage 2, where retail, related logistics and manufacturing, office workplaces, limited personal services, outdoor museums, childcare, and essential businesses can open with modifications. The state is issuing guidance to help these workplaces reopen safely. Note that dine-in restaurants are not included in early Stage 2. However, local health jurisdictions that meet the criteria set forth by the California Department of Public Health and follow the process in the county guidance may move further ahead in the Resilience Roadmap to “expanded Stage 2”, which does include dine-in restaurants. To be eligible for expanded Stage 2, a county must file an “Attestation” that they have met the readiness criteria specified in the California Department of Public Health COVID-19 County Variance Attestation Form. As of this writing, Alameda County has not filed a County Variance Attestation Form.

For those counties that are allowed to open dine-in restaurants, on May 12, 2020, the California Department of Public Health and Department of Industrial Relations issued “COVID-19 Industry Guidance: Dine-In Restaurants” (see Attachment 1). This document provides guidance for dine-in restaurants, brewpubs, craft distilleries, breweries, bars, pubs, and wineries to support a safe, clean environment for workers and customers. It encourages restaurants to continue to provide takeout, delivery, and drive through options. It also encourages restaurants to “Prioritize outdoor seating and curbside pickup to minimize cross flow of customers in enclosed environments. Restaurants can expand their outdoor seating, and alcohol offerings in those areas, if they comply with local laws and regulations.”

The guidance stipulates that “Brewpubs, breweries, bars, pubs, craft distilleries, and wineries should remain closed until those establishments are allowed to resume modified or full operation unless they are offering sit-down, dine-in meals. Alcohol can only be sold in the same transaction as a meal.” However, the guidance does allow such establishments to contract with another vendor to provide sit-down meals, in which case they may “serve dine-in meals provided both businesses follow the guidance ... and alcohol is only sold in the same transaction as a meal.”

Note that dine-in restaurants will be allowed throughout the state in Stage 3. The proposed ordinances provide an expedited process for outdoor seating for restaurants

and bars will take effect upon the effective date of an order of the Alameda County Health Officer allowing dine-in restaurants to operate in Emeryville.

DISCUSSION

Outdoor seating for restaurants can occur either on private property or in the public right-of-way and may be in parking spaces or on sidewalks or other outdoor areas. Outdoor seating on private property is approved through the Temporary Use Permit process. In the public right-of-way, sidewalk seating is approved via the Sidewalk Café Permit process. Seating in an on-street parking space is called a “Parklet” and is also approved through the Sidewalk Café Permit process, but with modified rules and procedures. The discussion below describes each of these processes, and the waivers and modifications to each that staff proposes to expedite approvals. Staff also proposes that the fees for these approvals be waived.

Temporary Use Permit. Temporary Use Permits (TUPs) are regulated by Article 6 of Chapter 7 of the Planning Regulations (see Attachment 2), and are defined in Section 9-8.220(d) as “a discretionary planning permit that may be granted by the Director of Planning and Building [i.e. Community Development Director] to allow a temporary use with any necessary conditions of approval.” According to the statement of purpose in Section 9-7.601, they “are intended to have a limited duration and will not permanently alter the character or physical facilities of the property where they occur.” Typical Temporary Use Permits that have been approved in the past have included holiday tree lots, pumpkin lots for Halloween, parking lot events such as the grand opening activities at Decathlon, and food truck events such as Off the Grid at the Public Market.

An application for a TUP is considered by the Community Development Director (“Director”) in consultation with the Public Works Director, Chief Building Official, Fire Marshal, Police Chief, and other City staff as deemed appropriate. The application must be submitted at least 14 days before the temporary use is intended to begin, and must include a site plan of the proposed use that shows any electrical or plumbing connections, the relation of the temporary use to existing buildings, parking spaces, landscaping, and other features of the site; a description of operating characteristics, including dates, hours, number of employees, expected visitors, and security if appropriate; and any other information deemed necessary by the Director. Certain findings must be made to approve a TUP, and standard conditions of approval apply, as well as any additional conditions that the Director deems appropriate. The Director’s decision on a TUP may be appealed to the Planning Commission. The Planning Commission’s decision on appeal is final and not subject to further appeal before the City Council.

The duration of a TUP may be either “one time” or “recurring”. A one-time event is limited to 60 days, except food trucks, which are limited to one year. A recurring event is one that is intended to recur at the same location at regular or irregular intervals, where each occurrence lasts for seven days or fewer, the interval between occurrences is at least twice the length of each occurrence, and the total number of occurrences may or may not be limited. Examples include farmers markets and similar recurring events. TUPs for recurring events are limited to one year.

Proposed Waivers and Modifications. Outdoor seating for restaurants and bars serving meals is likely to be continuous, not recurring, and would therefore be limited to 60 days under the TUP regulations. Staff recommends that this time limit be waived for outdoor seating for restaurants and bars serving meals, and that such TUPs instead be limited to the duration of this ordinance.

The current fee for a TUP application is \$553, and will increase to \$566 as of July 1, 2020, pursuant to the Master Fee Schedule for fiscal year 2020-2021 that was approved by the City Council on April 21, 2020. Staff proposes that this fee be waived for outdoor seating for restaurants and bars serving meals. The other regulations and procedures for TUPs are reasonable and not onerous; therefore, staff does not propose any other waivers or modifications. A typical TUP is approved within two weeks, and staff will make every effort to expedite those for outdoor seating for restaurants and bars serving meals during the COVID-19 pandemic.

Sidewalk Cafés. Sidewalk cafes are regulated by Article 15 of Chapter 5 of the Planning Regulations (see Attachment 3), and are defined in Section 9-5.1515(g) as “an area of the sidewalk used exclusively for eating, drinking, and related pedestrian circulation and located adjacent to, and operated in conjunction with, a street-level Restaurant.” In addition to the public walkway along a street, a “sidewalk” also includes any other publicly accessible pedestrian area owned or controlled by the City of Emeryville such as greenways and parks. Thus, the outdoor seating area of the Broken Rack Sports Bar and Billiards Hall along the Peladeau Park portion of the Greenway is considered a sidewalk café, even though it is not on a street, because it occupies a publicly-accessible pedestrian area owned by the City. Because a sidewalk cafe occurs within the public right-of-way or other City-owned property, it is not a land use entitlement, but rather is a temporary license for the use of public property.

An application for a sidewalk cafe is considered by the Community Development Director in consultation with the Public Works Director, Chief Building Official, Fire Marshal and Police Chief. The application must include a detailed site plan showing the proposed arrangement of tables and chairs; any other proposed features such as umbrellas, railings, and planters; all other features in the public right-of-way; details of the design of all such furnishings and features; and pedestrian circulation including the accessible path of travel. It must also include photographs of the sidewalk area prior to establishment of the sidewalk café so that it can be restored to its original condition when the sidewalk café is removed. In addition, the application must include proof of insurance and a statement that the permittee will indemnify the City from any claim, action, or proceeding against the City. Certain findings must be made to approve a sidewalk cafe, and the Director may impose any conditions of approval deemed appropriate to ensure conformity to the Sidewalk Café Regulations. The Director’s decision on a sidewalk café permit may be appealed to the Planning Commission and whose decision on appeal is final. Alternatively, an application for a sidewalk café permit may be referred by the Director to the Planning Commission for a decision, in which case it is appealable to the City Council. In staff’s experience, no sidewalk café permit has ever been referred to the Planning Commission, nor has one ever been appealed.

A sidewalk café permit is intended to eliminate the need for a separate encroachment permit, because it includes all of the standard requirements and safeguards of an

encroachment permit. In the past, the Public Works Director has sometimes required an encroachment permit in addition to a Sidewalk Café Permit, out of an abundance of caution. Staff feels that this should not be necessary, especially during the term of this ordinance.

A sidewalk café is subject to specific standards, including that it must adjoin and be operated in conjunction with a bona fide Restaurant; that the permittee must comply with all applicable laws; that the hours of operation of the sidewalk café may not exceed those of the Restaurant with which it is associated; that no food may be prepared or stored in the sidewalk café area; that all furnishing must be removed at the end of each business day except for semi-permanent barriers; that at least four feet of clear public sidewalk must be maintained adjacent to the sidewalk café for pedestrian circulation; that the sidewalk café must be maintained in a clean, sanitary, and attractive condition at all times, and that a final cleanup must be conducted at the end of each business day; that amplified sound is not permitted in the sidewalk café area; and that smoking is prohibited in the sidewalk café area and within 25 feet of the associated Restaurant.

Alcoholic beverages are permitted to be served within the sidewalk café area provided that the permittee has a valid State liquor license; that the permittee must comply with all applicable laws related to alcohol sales; that the sidewalk café area is separated from the adjacent sidewalk by a physical barrier; that alcohol may only be consumed within the sidewalk café area and associated Restaurant; and that the sidewalk café must maintain full food service and operate as a bona fide eating place at all times that it is in operation. The regulations explicitly state that “no sidewalk cafe may function as a bar, tavern, or cocktail lounge, and no sidewalk café shall be associated with a Bar/Nightclub/Lounge.”

A sidewalk café permit is valid for one calendar year and expires on December 31 of each year. The regulations spell out a process for renewing the permit each year. However, the regulations do not require the City to send reminder notices, and include the provision that “in the absence of any action by the City or the permittee to renew a sidewalk cafe permit ... the permit shall be deemed to be renewed for one year.” The initial application fee for a sidewalk café is \$100, and there is no renewal fee. What this means in practice is that sidewalk café permits are automatically renewed each year. If there are problems with a sidewalk café, the regulations spell out a revocation process; alternatively, the City could just decide not to renew the permit for the following year. It should be noted that, in staff’s experience, neither has ever occurred.

Proposed Waivers and Modifications. Given the need for social distancing, staff proposes to modify the minimum clear sidewalk width around a sidewalk cafe from four feet to no less than six feet. In addition, staff proposes to waive the regulation requiring that all furnishings be removed at the end of each business day, as long as such furnishings are adequately secured.

Staff further recommends waiving the restriction that prohibits bars from having sidewalk cafes, provided that the bar provides full meal service as required by the State guidance, either from its own kitchen or by contract with another vendor. Notwithstanding the current Shelter in Place Order, staff has previously had inquiries from several popular bars about sidewalk seating. The current restriction was included

in the Sidewalk Café Regulations out of an abundance of caution, and, in the future, staff would propose to eliminate that provision from the regulations. For purposes of this ordinance, staff feels that bars should be allowed to have sidewalk seating as long as they comply with the State guidance to serve full meals until they are allowed to reopen as bars.

As noted above, the fee to establish a sidewalk café is \$100, and there is no annual renewal fee; these fees were not modified in the Master Fee Schedule for fiscal year 2020-2021 that was approved by the City Council on April 21, 2020. Staff proposes that this fee be waived for sidewalk cafes for restaurants and bars serving meals for the duration of this ordinance. Staff also proposes to make it explicit that a separate encroachment permit is not required for a sidewalk café. The other regulations and procedures for sidewalk cafes are reasonable and not onerous; therefore, staff does not propose any other waivers or modifications. Staff will make every effort to expedite sidewalk café permits for restaurants and bars during the COVID-19 pandemic.

Parklets. Section 9-5.1515(a) of the Planning Regulations defines “parklet” as “the temporary use of space in the roadway, adjacent to the curb and typically located in a parking space, unused bus stop, or other vehicular zone, with or without a platform to extend the grade of the sidewalk into the roadway. A parklet may feature tables and chairs for public use, benches, planters and landscaping features, bicycle parking, and other public amenities, and may be built and operated in conjunction with an adjacent street-level Restaurant or other use. A parklet may also function as a ‘bicycle corral’ with bicycle racks in the roadway for the on-street parking of bicycles.” A parklet is considered a type of sidewalk café, and is therefore processed under the Sidewalk Café Regulations in Article 15 of Chapter 5 of the Planning Regulations (see Attachment 3). Specific provisions for parklets are contained in Section 9-5.1514 of that Article.

Like a sidewalk café, an application for a parklet is considered by the Community Development Director in consultation with the Public Works Director, Chief Building Official, Fire Marshal and Police Chief. However, because it is in the street, Section 9-5.1514(a) provides that “A parklet shall require the approval of the City Council, upon the recommendation of the Transportation Committee, prior to the approval of a sidewalk cafe permit. Any conditions and requirements designated by the City Council in its approval shall become conditions of approval of the sidewalk cafe permit.”

Section 9-5.1514(b) further stipulates that “A parklet shall be available for use by the general public and shall not be reserved for the exclusive use an adjacent Restaurant or other use, even if built and operated in conjunction with that Restaurant or other use, nor for the exclusive use of any other private enterprise.” Sections 9-5.1514(c) and (e), respectively, specify that “table service shall not be permitted in a parklet”, and “service and consumption of alcoholic beverages shall not be permitted in a parklet.” Section 9-1514(g) stipulates that “A building permit shall not be required for a parklet, but its design and construction shall comply with all applicable building regulations, including but not limited to disabled access, and any design criteria issued by the Director.”

Proposed Waivers and Modifications. Given that the purpose of this ordinance is to allow for the expansion of outdoor seating for Restaurants, staff proposes waiving the provisions that “a parklet shall be available for use by the general public and shall not

be reserved for the exclusive use an adjacent Restaurant”, that “table service shall not be permitted in a parklet”, and that “service and consumption of alcoholic beverages shall not be permitted in a parklet”, as long as a physical barrier is provided similar to sidewalk cafes that serve alcohol. Any necessary accommodations for disabled access will be handled by staff on a case-by-case basis, and no modifications or waivers to the existing regulations are required to account for this.

To expedite the approval process, staff proposes eliminating the requirement for Transportation Committee review and City Council approval. Similar to sidewalk cafes, staff feels that bars should be allowed to have parklets as long as they comply with the State guidance to serve full meals until they are allowed to reopen as bars. Staff also proposes to waive the \$100 fee to establish a parklet and will make every effort to expedite sidewalk café permits for parklets during the COVID-19 pandemic.

General Provisions. Under the proposed ordinance, all outdoor seating for restaurants and bars would be required to comply with any and all COVID-19 protocols established by Alameda County and the State of California, as well as all other applicable local, state, and federal laws and regulations. In addition, except as noted above, all outdoor seating would be required to comply with the accessibility provisions of the California Building Code and/or the Americans with Disabilities Act.

Duration of Ordinance. The proposed urgency ordinance will take effect immediately upon passage but will not be operative until the effective date of an order of the Alameda County Health Officer allowing dine-in restaurants to operate in Emeryville; it will cease to be effective when the regular ordinance takes effect. The regular ordinance will take effect upon the effective date of an order of the Alameda County Health Officer allowing dine-in restaurants to operate in Emeryville, but no sooner than 30 days following its final passage; it will expire one year after its effective date, unless otherwise extended by the City Council by resolution.

County Permits. All retail food facilities require a permit from the Alameda County Department of Environmental Health (not to be confused with the Alameda County Public Health Department). This involves submitting plans for review and approval, receiving a permit, constructing the project, having an inspection, and then having the permit finalized. As a separate motion from the proposed ordinances, staff recommends that the City Council authorize the City Manager to send a letter to the Alameda County Board of Supervisors urging that the Department of Environmental Health’s permitting process for outdoor seating for restaurants and bars be expedited.

ENVIRONMENTAL REVIEW

Adoption of the two proposed ordinances is exempt from the California Environmental Quality Act (CEQA) under California Public Resources Code Section 21080(b)(4) and State CEQA Guidelines Section 15269(c), which pertain to actions taken to mitigate an emergency, and the “common sense exemption” at State CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

FISCAL IMPACT

Aside from the recommended fee waivers, which are negligible, these ordinances will have no fiscal impact on the City.

STAFF COMMUNICATION WITH THE PUBLIC

Staff has fielded several inquiries from the public concerning the ability of restaurants and bars to have outdoor seating during the COVID-19 pandemic.

CONCLUSION

Staff recommends that the City Council take the following actions on the urgency ordinance:

1. Introduce the proposed urgency ordinance after a motion to read by title only.
2. Take public testimony regarding the proposed urgency ordinance.
3. Adopt the proposed urgency ordinance by at least a 4/5 vote of the entire Council.

Staff further recommends that the City Council take the following actions on the ordinance:

1. Introduce the proposed ordinance after a motion to read by title only.
2. Take public testimony regarding the proposed ordinance.
3. Adopt the first reading of the proposed ordinance.

Staff also recommends that the City Council approve a motion authorizing the City Manager to send a letter to the Alameda County Board of Supervisors urging that the Alameda County Department of Environmental Health's permitting process for outdoor seating for restaurants and bars be expedited.

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Christine Daniel, City Manager

ATTACHMENTS

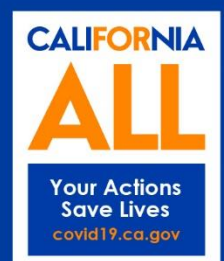
- Attachment 1 – State of California COVID-19 Industry Guidance for Dine-In Restaurants
- Attachment 2 – Planning Regulations provisions for Temporary Use Permits
- Attachment 3 – Planning Regulations provisions for Sidewalk Cafes and Parklets
- Draft Regular Ordinance
- Draft Urgency Ordinance



COVID-19 INDUSTRY GUIDANCE: Dine-In Restaurants

May 12, 2020

covid19.ca.gov



Attachment 1 from
June 16, 2020 staff report

OVERVIEW

On March 19, 2020, the State Public Health Officer and Director of the California Department of Public Health issued an order requiring most Californians to stay at home to disrupt the spread of COVID-19 among the population.

The impact of COVID-19 on the health of Californians is not yet fully known. Reported illness ranges from very mild (some people have no symptoms) to severe illness that may result in death. Certain groups, including people aged 65 or older and those with serious underlying medical conditions, such as heart or lung disease or diabetes, are at higher risk of hospitalization and serious complications. Transmission is most likely when people are in close contact with an infected person, even if that person does not have any symptoms or has not yet developed symptoms.

Precise information about the number and rates of COVID-19 by industry or occupational groups, including among critical infrastructure workers, is not available at this time. There have been multiple outbreaks in a range of workplaces, indicating that workers are at risk of acquiring or transmitting COVID-19 infection. Examples of these workplaces include long-term care facilities, prisons, food production, warehouses, meat processing plants, and grocery stores.

As stay-at-home orders are modified, it is essential that all possible steps be taken to ensure the safety of workers and the public.

Key prevention practices include:

- ✓ physical distancing to the maximum extent possible,
- ✓ use of face coverings by employees (where respiratory protection is not required) and customers/clients,
- ✓ frequent handwashing and regular cleaning and disinfection,
- ✓ training employees on these and other elements of the COVID-19 prevention plan.

In addition, it will be critical to have in place appropriate processes to identify new cases of illness in workplaces and, when they are identified, to intervene quickly and work with public health authorities to halt the spread of the virus.

PURPOSE

This document provides guidance for dine-in restaurants, brewpubs, craft distilleries, breweries, bars, pubs, and wineries to support a safe, clean environment for workers and customers. The guidance is not intended to revoke or repeal any employee rights, either statutory, regulatory or collectively bargained, and is not exhaustive, as it does not include county health orders, nor is it a substitute for any existing safety and health-related regulatory requirements such as those of Cal/OSHA.¹ Stay current on changes to public health guidance and state/local orders as the COVID-19 situation continues. Cal/OSHA has more comprehensive guidance on their [Cal/OSHA Interim General Guidelines on Protecting Workers from COVID-19 webpage](#). The U.S. Food and Drug Administration has [guidance for restaurants](#) and the CDC has additional requirements in their [guidance](#) for businesses and employers.

- Brewpubs, breweries, bars, pubs, craft distilleries, and wineries should remain closed until those establishments are allowed to resume modified or full operation **unless they are offering sit-down, dine-in meals. Alcohol can only be sold in the same transaction as a meal.**
- Dine-in restaurants, brewpubs, breweries, bars, pubs, craft distilleries, and wineries that provide sit-down meals should follow the restaurant guidance below and should continue to **encourage takeout and delivery service whenever possible.**
- Brewpubs, breweries, bars, pubs, craft distilleries, and wineries that do not provide sit-down meals themselves, but can contract with another vendor to do so, can serve dine-in meals provided both businesses follow the guidance below and alcohol is only sold in the same transaction as a meal.
- Venues that are currently authorized to provide off sale beer, wine, and spirits to be consumed off premises and do not offer sit-down, dine-in meals should follow the [guidance for retail operations](#) and offer curbside sales only, until local and/or statewide rules allow additional retail activity.
- Producers of beer, wine, and spirits should follow the [guidance for manufacturing operations](#).
- This guidance is not intended for concert, performance, or entertainment venues. Those types of establishments should remain closed until they are allowed to resume modified or full operation through a specific reopening order or guidance. Establishments that serve full meals must discontinue this type of entertainment until these types of activities are allowed to resume modified or full operation.



Workplace Specific Plan

- Establish a written, worksite-specific COVID-19 prevention plan at every location, perform a comprehensive risk assessment of all work areas, and designate a person at each establishment to implement the plan.
- Identify contact information for the local health department where the restaurant is located for communicating information about COVID-19 outbreaks among employees or customers.
- Train and communicate with employees and employee representatives on the plan.
- Regularly evaluate the establishment for compliance with the plan and document and correct deficiencies identified.
- Investigate any COVID-19 illness and determine if any work-related factors could have contributed to risk of infection. Update the plan as needed to prevent further cases.
- Identify close contacts (within six feet for 15 minutes or more) of an infected employee and take steps to isolate COVID-19 positive employee(s) and close contacts.
- Adhere to the guidelines below. Failure to do so could result in workplace illnesses that may cause operations to be temporarily closed or limited.



Topics for Employee Training

- Information on [COVID-19](#), how to prevent it from spreading, and which underlying health conditions may make individuals more susceptible to contracting the virus.
- Self-screening at home, including temperature and/or symptom checks using [CDC guidelines](#).
- The importance of not coming to work if employees have a frequent cough, fever, difficulty breathing, chills, muscle pain, headache, sore throat, recent loss of taste or smell, or if they or someone they live with have been diagnosed with COVID-19.
- To seek medical attention if their symptoms become severe, including persistent pain or pressure in the chest, confusion, or bluish lips or face. Updates and further details are available on [CDC's webpage](#).

- The importance of frequent handwashing with soap and water, including scrubbing with soap for 20 seconds (or using hand sanitizer with at least 60% ethanol or 70% isopropanol when employees cannot get to a sink or handwashing station, per [CDC guidelines](#)).
- The importance of physical distancing, both at work and off work time (see Physical Distancing section below).
- Proper use of face coverings, including:
 - Face coverings do not protect the wearer and are not personal protective equipment (PPE).
 - Face coverings can help protect people near the wearer, but do not replace the need for physical distancing and frequent handwashing.
 - Employees should wash or sanitize hands before and after using or adjusting face coverings.
 - Avoid touching the eyes, nose, and mouth.
 - Face coverings should be washed after each shift.
- Information on employer or government-sponsored leave benefits the employee may be entitled to receive that would make it financially easier to stay at home. See additional information on [government programs supporting sick leave and worker's compensation for COVID-19](#), including employee's sick leave rights under the [Families First Coronavirus Response Act](#) and the Governor's [Executive Order N-51-20](#), and employee's rights to workers' compensation benefits and presumption of the work-relatedness of COVID-19 pursuant to the Governor's [Executive order N-62-20](#).



Individual Control Measures and Screening

- Provide temperature and/or symptom screenings for all workers at the beginning of their shift and any vendors, contractors, or other workers entering the establishment. Make sure the temperature/symptom screener avoids close contact with workers to the extent possible. Both screeners and employees should wear face coverings for the screening.
- If requiring self-screening at home, which is an appropriate alternative to providing it at the establishment, ensure that screening was performed prior to the worker leaving the home for their shift and follows [CDC guidelines](#), as described in the Topics for Employee Training section above.

- Encourage workers who are sick or exhibiting symptoms of COVID-19 to stay home.
- Employers should provide and ensure workers use all required protective equipment, including face coverings and gloves where necessary.
- Employers should consider where disposable glove use may be helpful to supplement frequent handwashing or use of hand sanitizer; examples are for workers who are screening others for symptoms or handling commonly touched items. Workers should wear gloves when handling items contaminated by body fluids.
- Face coverings are strongly recommended when employees are in the vicinity of others. Workers should have face coverings available and wear them when at work, in offices, or in a vehicle during work-related travel with others. Face coverings must not be shared.
- Establishments must take reasonable measures, including posting signage in strategic and highly-visible locations, to remind the public that they should use face coverings and practice physical distancing while waiting for service and take-out.
- Servers, bussers, and other workers moving items used by customers (dirty cups, plates, napkins, etc.) or handling trash bags should use disposable gloves (and wash hands before putting them on and after removing them) and provide aprons and change frequently.
- Dishwashers should use equipment to protect the eyes, nose, and mouth from contaminant splash using a combination of face coverings, protective glasses, and/or face shields. Dishwashers must be provided impermeable aprons and change frequently. Reusable protective equipment such as shields and glasses should be properly disinfected between uses.



Cleaning and Disinfecting Protocols

- Perform thorough cleaning in high traffic areas, such as customer waiting areas and lobbies, break rooms, lunch areas and areas of ingress and egress including host stands, entry ways, stairways, stairwells, escalators, handrails, and elevator controls. Frequently disinfect commonly used surfaces including doors, door handles, crash bars, light switches, waiting area chairs, credit card terminals, ATM PIN pads, receipt trays, bus tubs, serving trays, water pitcher handles, phones, toilets, and handwashing facilities.

- Frequently clean items touched by patrons, especially those that might attract contact from children including candy and toy vending machines, decorative fish tanks, display cases, decorative fountains, etc.
- Clean touchable surfaces between shifts or between users, whichever is more frequent, including but not limited to working surfaces, phones, registers, touchpads/touchscreens, tablets, timeclocks, appliances, kitchen and bar utensils and implements, oven doors, grill and range knobs, carts and trolleys, keys, etc.
- Avoid sharing audio equipment, phones, tablets, laptops, desks, pens, and other work supplies wherever possible. Never share PPE.
- Discontinue shared use of audio headsets and other equipment between employees unless the equipment can be properly disinfected after use. Consult equipment manufacturers to determine appropriate disinfection steps, particularly for soft, porous surfaces such as foam earmuffs.
- Provide time for workers to implement cleaning practices during their shift. Cleaning assignments should be assigned during working hours as part of the employees' job duties.
- Procure options for third-party cleaning companies to assist with the increased cleaning demand, as needed.
- Equip spaces such as dining rooms, bar areas, host stands, and kitchens with proper sanitation products, including hand sanitizer and sanitizing wipes to all staff directly assisting customers.
- Ensure that sanitary facilities stay operational and stocked at all times and provide additional soap, paper towels, and hand sanitizer when needed.
- When choosing cleaning chemicals, employers should use products approved for use against COVID-19 on the [Environmental Protection Agency \(EPA\)-approved](#) list and follow product instructions. Use disinfectants labeled to be effective against emerging viral pathogens, diluted household bleach solutions (5 tablespoons per gallon of water), or alcohol solutions with at least 70% alcohol that are appropriate for the surface. Provide employees training on manufacturer's directions and Cal/OSHA requirements for safe use. Workers using cleaners or disinfectants should wear gloves as required by the product instructions.
- Restaurants should increase fresh air circulation by opening windows or doors, if possible to do so.
- Consider installing portable high-efficiency air cleaners, upgrading the building's air filters to the highest efficiency possible, and making other modifications to increase the quantity of outside air and ventilation in all working areas.

- Provide disposable menus to guests and make menus available digitally so that customers can view on a personal electronic device, if possible. If disposable menus cannot be provided, properly disinfect menus before and after customer use. Consider options for customers to order ahead of time.
- Discontinue pre-setting tables with napkins, cutlery, glassware, food ware, etc. These should be supplied individually to customers as needed. Do not leave card stands, flyers, napkin holders, or other items on tables.
- Suspend use of shared food items such as condiment bottles, salt and pepper shakers, etc. and provide these foods in single serve containers, if possible. Where this is not possible, shared items such as condiment bottles, shakers, etc., should be supplied as needed to customers and disinfected after each use.
- Pre-roll utensils in napkins prior to use by customers. Employees must wash hands before pre-rolling utensils in napkins. The pre-roll should then be stored in a clean container. After customers are seated, the pre-roll should be put on the table by an employee who recently washed their hands.
- Reusable customer items including utensils, food ware, breadbaskets, etc., must be properly washed, rinsed, and sanitized. Cleaned flatware, stemware, dishware, etc., must be properly stored away from customers and personnel until ready for use. Use disposable items if proper cleaning of reusable items is infeasible.
- Takeout containers must be filled by customers and available only upon request.
- Dirty linens used at dining tables such as tablecloths and napkins should be removed after each customer use and transported from dining areas in sealed bags. Employees should wear gloves when handling dirty linens.
- Thoroughly clean each customer dining location after every use. This will include disinfecting tables, chairs, booster seats, highchairs, booths, etc. and allowing adequate time for proper disinfection, following product instructions. Many EPA-approved disinfectants require minimal contact time (seconds to one minute) against human coronavirus.
- Close areas where customers may congregate or touch food or food ware items that other guests may use. Provide these items to guests individually and discard or clean and disinfect after each use, as appropriate. This includes but is not limited to:
 - Self-service areas with condiment caddies, utensil caddies, napkins, lids, straws, water pitchers, to-go containers, etc.

- Self-service machines including ice, soda, frozen yogurt dispensers, etc.
- Self-service food areas such as buffets, salsa bars, salad bars, etc.
- Discontinue tableside food preparation and presentation such as food item selection carts and conveyor belts, guacamole preparation, etc.
- Do not leave out after-meal mints, candies, snacks, or toothpicks for customers. Offer them with the check or provide only on request.
- Install hand sanitizer dispensers, touchless if possible, at guest and employee entrances and contact areas such as driveways, reception areas, in dining rooms, near elevator landings, etc.
- Discontinue use of shared entertainment items such as board games, pool tables, arcade games, vending machines, etc. Close game and entertainment areas where customers may share items such as bowling alleys, etc.
- Continue to follow existing codes regarding requirements for sanitizing (rather than disinfecting) food contact surfaces.



Physical Distancing Guidelines

- Prioritize outdoor seating and curbside pickup to minimize cross flow of customers in enclosed environments. Restaurants can expand their outdoor seating, and alcohol offerings in those areas, if they comply with local laws and regulations.
- Provide takeout, delivery, and drive through options for customers when possible.
- Encourage reservations to allow for time to disinfect restaurant areas and provide guidance via digital platforms if possible to customers for physical distancing while at the restaurant.
- Consider allowing dine-in customers to order ahead of time to limit the amount of time spent in the establishment.
- Ask customers to wait in their cars or away from the establishment while waiting to be seated. If possible, alert patrons through their mobile phones when their table is ready to avoid touching and use of “buzzers.”
- Implement measures to ensure physical distancing of at least six feet between workers and customers. This can include use of physical partitions or visual cues (e.g., floor markings or signs to indicate to where employees and/or guests should stand).

- Install physical barriers or partitions at cash registers, bars, host stands, and other areas where maintaining physical distance of six feet is difficult.
- Any area where guests or employees queue should also be clearly marked for appropriate physical distancing. This includes check-stands and terminals, deli counters and lines, restrooms, elevator lobbies, host stands and waiting areas, valet drop off and pickup, and any other area where customers congregate.
- Physical distancing protocols should be used in any office areas, kitchens, pantries, walk-in freezers, or other high-density, high-traffic employee areas. Face coverings are required where employees cannot maintain physical distancing including in kitchens, storage areas, etc.
- Employee pre-shift meetings and trainings should be conducted virtually or in areas that allow for appropriate physical distancing between employees. Food, beverages, food ware, etc., should not be shared.
- Stagger employee breaks, in compliance with wage and hour regulations, to maintain physical distancing protocols.
- Consider offering workers who request modified duties options that minimize their contact with customers and other employees (e.g., managing inventory rather than working as a cashier or managing administrative needs through telework).
- Reconfigure office spaces, lobbies, beverage bars, kitchens and workstations, host stand areas, and other spaces wherever possible to allow for at least six feet of distance between people dining, working, and passing through areas for entry and exit.
- Remove tables and chairs from dining areas so that six feet of physical distance can be maintained for customers and employees. If tables, chairs, booths, etc., cannot be moved, use visual cues to show that they are not available for use or install Plexiglas or other types of impermeable physical barriers to minimize exposure between customers.
- Bar areas should remain closed to customers.
- Discontinue seating of customers where customers cannot maintain six feet of distance from employee work and food and drink preparation areas.
- Adjust maximum occupancy rules inside the establishment based on its size to limit the number of people inside and/or use impermeable barriers between service tables to protect customers from each other and employees. For outdoor seating, maintain physical distancing standards outlined above.
- Limit the number of patrons at a single table to a household unit or patrons who have asked to be seated together. People in the same

party seated at the same table do not have to be six feet apart. All members of the party must be present before seating and hosts must bring the entire party to the table at one time.

- Limit the number of employees serving individual parties, in compliance with wage and hour regulations.
- Face coverings are strongly encouraged for all employees, however, they are required for any employee (e.g., server, manager, busser, food runner, etc.) who must be within six feet of customers. All restaurant workers should minimize the amount of time spent within six feet of guests.
- Close breakrooms, use barriers, or increase distance between tables/chairs to separate workers and discourage congregating during breaks. Where possible, create outdoor break areas with shade covers and seating that ensures physical distancing.
- Reconfigure kitchens to maintain physical distancing in those areas where practical and if not practical staggers shifts if possible to do work ahead of time.
- Discourage food preparation employees from changing or entering others' work stations during shifts.
- Discourage employees from congregating in high traffic areas such as bathrooms, hallways, bar areas, reservation and credit card terminals, etc.
- Establish directional hallways and passageways for foot traffic, if possible, to eliminate employees from passing by one another.
- Require employees to avoid handshakes and similar greetings that break physical distance.
- Eliminate person-to-person contact for delivery of goods whenever possible. Designate drop-off locations to receive deliveries away from high traffic areas. Maintain physical distance of at least six feet with delivery drivers.
- Guests should enter through doors that are propped open or automated, if possible. Hand sanitizer should be available for guests who must touch door handles.
- Implement peak period queueing procedures, including a host to remind guests to queue with at least six feet of distance between parties outside or in waiting areas.
- Employees should not open the doors of cars or taxis.
- Takeout food items should be made available using contactless pick-up and delivery protocols.

- Avoid touching others' pens and clipboards. If possible, install transfer-aiding materials, such as shelving and bulletin boards, to reduce person-to-person hand-offs.



Considerations for Restaurants

- Display a set of clearly visible rules for customers and restaurant personnel at the restaurant entrance(s) that are to be a condition of entry. The rules could include instructions to use hand sanitizer, maintain physical distance from other customers, avoid unnecessary touching of restaurant surfaces, contact information for the local health department, and changes to restaurant services. Whenever possible, the rules should be available digitally, include pictograms, and included on/with menus.
- Guests and visitors should be screened for symptoms upon arrival, asked to use hand sanitizer, and to bring and wear a face covering when not eating or drinking. Appropriate signage should also be prominently displayed outlining proper face covering usage and current physical distancing practices in use at all entrances and throughout the property.
- Licensed restaurants may sell "to-go" alcoholic beverages, prepared drinks, and pre-mixed cocktails provided they are sold and delivered to customers in conjunction with the sale and delivery of a meal/meals.

¹Additional requirements must be considered for vulnerable populations. Dine-in restaurants, breweries, brewpubs, craft distilleries, and wineries that provide meals must comply with all [Cal/OSHA](#) standards and be prepared to adhere to its guidance as well as guidance from the [Centers for Disease Control and Prevention \(CDC\)](#) and the [California Department of Public Health \(CDPH\)](#). Additionally, employers should be prepared to alter their operations as those guidelines change.



ARTICLE 6. TEMPORARY USE PERMITS

9-7.601 Purpose.

This Article establishes a process for review and approval of uses that are intended to have a limited duration and will not permanently alter the character or physical facilities of the property where they occur.

9-7.602 Applicability.

Except as specified in Section 9-7.603, all temporary uses, as defined in Section 9-2.104(b), require the approval of a Temporary Use Permit, including, but not limited to, carnivals, Halloween pumpkin lots, Christmas tree lots, farmers markets on private or public property, mobile food vendors on private or public property, and other vendors, peddlers, solicitors, or events on private or public property.

9-7.603 Exemptions.

The following temporary uses shall be exempt from the requirement for a Temporary Use Permit:

- (a) On-site temporary construction offices and on-site contractors' storage yards, including debris containers.
- (b) On-site offices for real estate sales or rental.
- (c) Garage and yard sales operated by a resident of the premises where such sales operate for a period of less than two days per quarter per year.
- (d) Any use operating on a public street or sidewalk, including, but not limited to, farmers markets as regulated by Chapter 35 of Title 5, and mobile food vendors and other vendors, peddlers, and solicitors as regulated by Chapter 27 of Title 5.
- (e) Any other temporary uses otherwise regulated by the Emeryville Municipal Code, including, but not limited to, community events regulated by Chapter 23 of Title 5.

9-7.604 Procedures.

An application for a temporary use permit shall be filed and processed in accordance with the provisions of Article 2, Common Procedures. Applications for temporary use permits shall be considered by the Planning and Building Director, in consultation with the Public Works Director, Chief Building Official, Fire Marshal, Police Chief, and other City staff as deemed appropriate. The application shall be submitted at least 14 days before the temporary use is intended to begin. It shall include a site plan of the proposed use that shows any electrical or plumbing connections, the relation of the temporary use to existing buildings, parking spaces, landscaping, and other features of the site; a description of operating characteristics, including dates, hours, number of employees, expected visitors, and security if appropriate; and any other information deemed necessary by the Director. The Director, at his or her discretion, may give such notice as is deemed appropriate to adjacent property owners or other interested parties. The Director may approve or disapprove an application or require changes or conditions of approval which, in his or her judgment, are necessary to ensure conformity with the provisions of this Article. The Director's decision may be appealed to the Planning Commission.

9-7.605 Findings.

To grant a temporary use permit, all of the following findings must be made:

- (a) The proposed use will not adversely affect adjacent properties, their owners and occupants, or the surrounding neighborhood.
- (b) The proposed use will not interfere with pedestrian or vehicular traffic or circulation in the area surrounding the proposed use.
- (c) The proposed use will not create a demand for additional parking that cannot be safely and efficiently accommodated by existing parking areas.
- (d) The proposed use will not conflict with the intent or requirements of any design review permit, conditional use permit, variance, or planned unit development applicable to the subject property.
- (e) Appropriate controls are in place that will ensure that the premises will be kept clean, sanitary, and free of litter.

9-7.606 Duration.

Temporary use permits shall be approved for no longer than the following initial time periods and may be renewed for subsequent time periods of the same duration or less. Each renewal shall require a new application and fee.

- (a) **One Time Temporary Uses** (as defined in Section 9-2.104(b)(1)):
 - (1) Mobile Food Vendors located on private or public property (i.e. not on a public sidewalk or public street): one year.
 - (2) All other One-Time Temporary Uses: 60 days.
- (b) **Recurring Temporary Uses** (as defined in Section 9-2.104(b)(2)): one year.

9-7.607 Conditions of Approval.

Unless waived by the Director, the following conditions of approval shall apply to all temporary use permits. In approving a temporary use permit, the Director may impose any additional conditions that are deemed necessary to make the findings required by Section 9-7.605.

- (a) Any construction or other work shall conform to all applicable codes.
- (b) Fire protection and access for fire vehicles shall be maintained, as specified by the Fire Marshal.
- (c) All signage shall comply with the Sign Regulations in Article 16 of Chapter 5.
- (d) The site of the temporary use shall be maintained free of weeds, litter, and debris for the duration of the temporary use.
- (e) The site of the temporary use shall be completely cleaned and all trash, debris, signs, sign supports, and temporary structures and electrical and/or plumbing service shall be removed, within three days following the date specified for termination of the temporary use.

9-7.608 Revocation.

A temporary use permit issued pursuant to this Article shall be subject to suspension, revocation, or modification for the violation of any provisions of this code or for any grounds which would warrant the denial of the issuance of such original permit. The Director may issue a notice of violation for any failure to comply with any requirement of this Article or any condition of the permit. Such notice shall set forth the action necessary to come into compliance and a time frame for compliance. If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may revoke, suspend, or modify the permit, upon 30 days' notice. If the Director decides to revoke or suspend the permit, the temporary use shall be removed within 30 days of the Director's decision unless appealed pursuant to Section 9-7.609.

9-7.609 Appeals.

The Director's decision on a temporary use permit application or revocation may be appealed to the Planning Commission pursuant to Article 14.

9-2.104 Permanent and Temporary Uses.

Except as otherwise provided in this Title, any use may be permanent or temporary, as defined in this Section. Temporary uses shall be subject to the applicable provisions for Temporary Use Permits in Article 6 of Chapter 7.

- (a) **Permanent Use.** A use that is intended to be continuously ongoing at the same location for more than 60 days.
- (b) **Temporary Use.** A use that is either not intended to be ongoing for more than 60 days, or that is not intended to be continuously ongoing.
 - (1) **One-Time Temporary Use.** A use that is intended to be ongoing at the same location for 60 days or less. Typical uses include carnivals, Halloween pumpkin lots, and Christmas tree lots.
 - (2) **Recurring Temporary Use.** A use that is intended to recur at the same location at regular or irregular intervals, where each occurrence lasts for seven days or less, the interval between occurrences is at least twice the length of each occurrence, and the total number of occurrences may or may not be limited. The lengths of individual occurrences and the intervals between them shall be measured in whole days. Typical uses include farmers markets and similar recurring events. If an occurrence lasts for more than seven days, each such occurrence shall be considered a separate One-Time Temporary Use pursuant to subsection (b)(1) above. If the interval between occurrences is less than twice the length of each occurrence, the use shall be considered a Permanent Use pursuant to subsection (a) above.

9-2.105 Regulations and Standards for Specific Uses and Activities.

The descriptions of use classifications in this Chapter do not include any regulatory provisions. See Chapter 5 for regulations and standards that apply to specific uses and activities. Regulatory provisions are referenced as appropriate following various use classification descriptions in this Chapter.

ARTICLE 15. SIDEWALK CAFES

9-5.1501 Purpose.

This Article establishes the sidewalk cafe regulations. The purpose of these provisions is:

- (a) To encourage and promote the establishment of sidewalk cafes as visual amenities which in turn intensify pedestrian activity and make the street life more attractive, while protecting the public health, safety, and general welfare;
- (b) To ensure that all persons, including those with disabilities, may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference or hazard;
- (c) To avoid obstruction of views of traffic signs and pedestrians;
- (d) To ensure that damage to sidewalks is minimized and repaired;
- (e) To maintain the good appearance of public streets, sidewalks, and adjacent private property;
- (f) To allow the healthy growth of street trees and other landscaping;
- (g) To maintain access by emergency vehicles and personnel; and
- (h) To protect ingress and egress to properties adjoining the public right-of-way.

9-5.1502 Permit Required.

No person shall establish, operate, or maintain a sidewalk cafe without first obtaining a valid sidewalk cafe permit pursuant to this Article.

9-5.1503 Where Permitted.

Sidewalk cafes shall be permitted in any zoning district in which Restaurants are permitted or conditionally permitted. Parklets shall be permitted in any zoning district.

9-5.1504 Standards.

All sidewalk cafes shall conform to the following standards:

- (a) The sidewalk cafe shall adjoin and be operated in conjunction with a Restaurant licensed to sell food and beverages for consumption on the premises.
- (b) The permittee shall at all times comply with all federal, state, and local laws regarding the operation of the sidewalk cafe and the associated Restaurant.
- (c) The sidewalk cafe permit shall be posted in plain view within the Restaurant for which the permit has been issued.
- (d) The hours of operation of the sidewalk cafe shall not exceed the hours of operation of the associated Restaurant.
- (e) There shall be no food preparation or storage in the sidewalk cafe area.
- (f) All furniture and equipment associated with the sidewalk cafe shall be confined at all times to the sidewalk cafe area as shown on the approved site plan, and shall be removed

from the sidewalk cafe area at the end of each business day, except for semi-permanent barriers such as railings, fences, or planters, which are not required to be removed.

- (g) At least four feet of clear sidewalk width, or a greater width if deemed appropriate by the City, shall be maintained adjacent to the sidewalk cafe at all times. Such clear sidewalk width shall be free of any and all obstructions, including but not limited to street trees, tree wells and grates, street lights, signs, utility poles, fire hydrants, trash containers, kiosks, planters, benches, and news racks, and shall comply with any and all requirements for disabled access.
- (h) The sidewalk cafe shall be maintained in a clean, sanitary, and attractive condition at all times, free of dirt, grease, trash, and litter. Tables shall be bussed regularly. If disposable plates, cups, and utensils are used, a trash container shall be provided for the use of patrons. A final cleanup shall be conducted at the end of each business day, including litter removal from the sidewalk cafe area, adjacent sidewalk, and roadway gutter within 100 feet in each direction on the same side of the street. The sidewalk cafe area and adjacent sidewalk shall be swept clean at least daily, and shall be steam cleaned annually if required by the Public Works Director.
- (i) Amplified sound shall be prohibited in the sidewalk cafe.
- (j) Smoking shall be prohibited in the sidewalk cafe and within 25 feet of all entrances, windows, and vents of the associated Restaurant.
- (k) No changes to the layout, design, or operation of the sidewalk cafe shall be allowed without prior approval of the Planning Director.

9-5.1505 Alcoholic Beverages.

Alcoholic beverages may be served and consumed in a sidewalk cafe, provided that:

- (a) A valid license from the California Department of Alcoholic Beverage Control has been obtained and all requirements imposed by said Department have been met.
- (b) The permittee shall at all times comply with all federal, state, and local laws regarding the sale, service, and consumption of alcohol.
- (c) The sidewalk cafe shall be separated from the adjacent sidewalk by a substantial physical barrier, such as a railing, fence, or planter, that is at least 30 inches high and with openings no more than four feet wide.
- (d) Alcoholic beverages shall be consumed only within the sidewalk cafe area and associated Restaurant. The permittee shall not allow patrons to leave the confines of the sidewalk cafe with any alcoholic beverage and shall not allow patrons to give or sell alcoholic beverages to any person outside the sidewalk cafe.
- (e) The sidewalk cafe shall maintain full food service and shall operate as a bona fide eating place at all times that it is in operation. No sidewalk cafe may function as a bar, tavern, or cocktail lounge, and no sidewalk café shall be associated with a Bar/Nightclub/Lounge, as defined in Section 9-2.319(a).

9-5.1506 Application.

Application for a sidewalk cafe permit shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by the fee as set forth in the Master Fee Schedule and application materials as determined necessary by the Director, including but not limited to the following:

- (a) A site plan, dimensioned, clearly labeled, and drawn to a standard architectural or engineering scale, showing the entire area between the curb and the building containing the Restaurant, and adjacent properties, sidewalk areas, and public right-of-way within ten feet in all directions. The site plan shall clearly indicate:
 - (1) The proposed sidewalk cafe area, including its length, width, and square footage, and the adjacent sidewalk including the curb;
 - (2) The number and arrangement of tables and chairs, and any other proposed features including but not limited to umbrellas, heaters, trash containers, railings, planters and fencing;
 - (3) The relationship of the proposed sidewalk cafe to the Restaurant and adjacent businesses, including doors and windows;
 - (4) The location of any and all other features in the public right-of-way, including but not limited to street trees, tree wells and grates, street lights, signs, utility poles, fire hydrants, trash containers, kiosks, planters, benches, news racks, driveways, disabled access ramps, crosswalks, bus stops and shelters, loading zones, and on-street parking spaces, and indicating the clear sidewalk width required by Section 9-5.1504(g).
 - (5) The pedestrian circulation and disabled access path of travel through the proposed sidewalk cafe between the public sidewalk and the Restaurant.
- (b) Specifications for the design of all tables and chairs, and any other proposed features including but not limited to umbrellas, heaters, trash containers, railings, planters and fencing. Such specifications shall provide sufficient information for the Director to be able to ascertain the color, material, design, and general quality of these features, and may include actual color and material samples, manufacturer's specification sheets, color photographs, catalog entries, or other information as deemed appropriate by the Director.
- (c) Color photographs of the Restaurant, sidewalk area, and adjacent businesses and public right-of-way sufficient to illustrate conditions prior to establishment of the sidewalk cafe.
- (d) Proof of comprehensive liability insurance covering the sidewalk cafe area and the adjacent property on which the Restaurant is located in an amount of not less than one million dollars as a combined single limit for personal injury (including death) and property damage; an endorsement naming the City of Emeryville as an additional insured; a copy of the declarations or information page(s) for the policy; and a statement by the insurance carrier that 30 days' notice will be given to the City before any cancellation. The policy of liability insurance shall be kept in force during such time as the sidewalk cafe is maintained under the terms of this Article.
- (e) A statement in a form acceptable to the City Attorney that the permittee shall defend, indemnify, and hold harmless the City of Emeryville its agents, officers, and employees

from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Emeryville, its agents, officers or employees from any loss, liability, damage, or cost sustained by any person or property, arising from the operation, use, or maintenance of the sidewalk cafe as provided by this Article.

9-5.1507 Approval Procedure.

Applications for sidewalk cafe permits shall be considered by the Planning and Building Director, in consultation with the Public Works Director, Chief Building Official, Fire Marshal, and Police Chief. The Director, at his/her discretion, may give such notice as is deemed appropriate to adjacent property owners or other interested parties. However, the Director may, instead, refer any application to the Planning Commission for consideration. If considered by the Commission, the application shall be heard at a public hearing noticed by types C, D, and E and optionally by types A and F, as these notice types are defined in Section 9-7.208(b). The Director or Commission, as the case may be, may approve or disapprove an application or require changes or conditions of approval which, in his/her/its judgment, are necessary to ensure conformity with the provisions of this Article. The Director's decision may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7. If the Director refers the application to the Planning Commission for consideration, the Commission's decision may be appealed to the City Council pursuant to Article 14 of Chapter 7.

9-5.1508 Required Findings.

In order to approve a sidewalk cafe permit, all of the following findings shall be made:

- (a) The location, size, design and operating characteristics of the proposed sidewalk cafe will be compatible with and will not adversely affect or be materially detrimental to neighborhood character, with consideration given to the convenience and safety of pedestrians, property owners, occupants, customers, residents, and tenants of offices, stores, shops, and dwellings in the vicinity; harmony in design with nearby uses, buildings and structures; and the capacity and physical character of surrounding streets and sidewalks.
- (b) The proposed sidewalk cafe conforms to the standards in Section 9-5.1504.
- (c) If alcoholic beverages are to be served, the proposed sidewalk cafe conforms to the provisions of Section 9-5.1505.
- (d) The proposed sidewalk cafe conforms to the applicable provisions of the Emeryville Design Guidelines, including but not limited to the General Guidelines pertaining to Sidewalks and Landscaping, and the Area Specific Guidelines pertaining to the area in which the proposed sidewalk café is to be located; and to all other design guidelines applicable to the area in which the proposed sidewalk café is to be located.
- (e) The proposed sidewalk cafe is consistent with the General Plan.
- (f) The proposed sidewalk cafe complies with all applicable standards and requirements of this Title, the Emeryville Municipal Code, and local, state, and federal regulations.
- (g) The proposed sidewalk cafe conforms with the requirements of all applicable City departments, including but not limited to Planning and Building, Public Works, Fire, and Police.

9-5.1509 Renewal.

A sidewalk cafe permit shall expire on December 31st of the calendar year in which it was issued or renewed. A valid permit which has not been surrendered, suspended or revoked may be renewed for respective periods of not longer than one year upon the following terms and conditions:

- (a) All annual sidewalk cafe permits issued under this Article, except the first permit issued for a newly established sidewalk cafe, shall be considered to be issued on January 1st of each year and shall expire on December 31st of the same year.
- (b) The annual renewal application for an existing sidewalk cafe is hereby declared delinquent if not filed on or before March 1st of each year.
- (c) The City is not required to send a renewal, delinquency or other notice to any person subject to the provisions of this Article.
- (d) Every person subject to a sidewalk cafe permit shall, before the renewal application becomes delinquent, file with the Director a renewal application except as provided in subsection (h).
- (e) Application for renewal of a sidewalk cafe permit shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by a statement indicating whether any information required by Section 9-5.1506 has changed; and proof of comprehensive liability insurance, as detailed in Section 9-5.1506(d), for the renewal period.
- (f) The Director shall review the renewal application in consultation with the Public Works Director, Chief Building Official, Fire Marshal, and Police Chief, to ensure the sidewalk cafe's continued compliance with the provisions of this Article and any conditions of approval, and to assess any outstanding violations or complaints. The Director may request additional information in order to complete his/her review.
- (g) Upon completion of the review, the Director shall make a determination whether to renew the application, and shall promptly inform the permittee of his/her decision. If the permit is renewed, the Planning Director shall provide the permittee with a new permit for the renewal period, to be posted in the Restaurant as required by Section 9-5.1504(c). In renewing the sidewalk cafe permit, the Director may modify or delete any existing conditions of approval, and impose any new conditions of approval, as he/she deems appropriate. If the permit is not renewed, the Director shall provide a written explanation to the permittee detailing the reasons for the non-renewal. If the permit is not renewed, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Director's decision, unless appealed pursuant to Section 9-5.1511(c).
- (h) In the absence of any action by the City or the permittee to renew a sidewalk cafe permit prior to the delinquency date specified in subsection (b), the permit shall be deemed to be renewed for one year.

9-5.1510 Revocation.

A permit issued pursuant to this Article shall be subject to suspension, revocation, or modification for the violation of any provisions of this code or for any grounds which would warrant the denial of the issuance of such original permit. The Director may issue a notice of violation for any failure to comply with any requirement of this Article or any condition of the permit. Such notice shall set forth the action necessary to come into compliance and a time frame for compliance. If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may revoke, suspend, or modify the permit, upon 30 days' notice. If the Director decides to revoke or suspend the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Director's decision unless appealed pursuant to Section 9-5.1511(d).

9-5.1511 Appeals.

- (a) A decision of the Director on a new sidewalk cafe permit pursuant to Section 9-5.1507 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final.
- (b) If the Director refers a new sidewalk cafe permit application to the Planning Commission for consideration pursuant to Section 9-5.1507, the decision of the Planning Commission may be appealed to the City Council as provided in Article 14 of Chapter 7.
- (c) A decision of the Director on the renewal of a sidewalk cafe permit pursuant to Section 9-5.1509 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final. If the Commission decides not to renew the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Commission's decision.
- (d) A decision of the Director to revoke, suspend, or modify a sidewalk cafe permit pursuant to Section 9-5.1510 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final. If the Commission decides to revoke or suspend the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Commission's decision.

9-5.1512 Restoration of Sidewalk.

Upon cessation of the operations of a sidewalk cafe, the permittee shall restore the sidewalk to its original condition, including but not limited to the refilling of any holes drilled into the sidewalk. Any damage or alteration to the sidewalk caused by the use of the sidewalk cafe shall be repaired to the satisfaction of the Director of Public Works by the permittee at the permittee's sole expense.

9-5.1513 Amortization.

Any existing sidewalk cafe which does not comply with the provisions of this Article shall be removed or otherwise brought into conformance within six months of the effective date of this Article.

9-5.1514 Parklets.

Parklets shall require a sidewalk cafe permit and shall be subject to all of the regulations and procedures set forth in this Article for sidewalk cafes except that they are not required to be built and operated in conjunction with a Restaurant. In addition, parklets shall be subject to the following regulations:

- (a) A parklet shall require the approval of the City Council, upon the recommendation of the Transportation Committee, prior to the approval of a sidewalk cafe permit. Any conditions and requirements designated by the City Council in its approval shall become conditions of approval of the sidewalk cafe permit.
- (b) A parklet shall be available for use by the general public and shall not be reserved for the exclusive use an adjacent Restaurant or other use, even if built and operated in conjunction with that Restaurant or other use, nor for the exclusive use of any other private enterprise.
- (c) Table service shall not be permitted in a parklet.
- (d) Commercial signage and advertising shall not be permitted in a parklet.
- (e) Service and consumption of alcoholic beverages shall not be permitted in a parklet.
- (f) Design criteria for parklets may be issued administratively by the Director.
- (g) A building permit shall not be required for a parklet, but its design and construction shall comply with all applicable building regulations, including but not limited to disabled access, and any design criteria issued by the Director.

9-5.1515 Definitions.

As used in this Article:

- (a) “Parklet” shall mean the temporary use of space in the roadway, adjacent to the curb and typically located in a parking space, unused bus stop, or other vehicular zone, with or without a platform to extend the grade of the sidewalk into the roadway. A parklet may feature tables and chairs for public use, benches, planters and landscaping features, bicycle parking, and other public amenities, and may be built and operated in conjunction with an adjacent street-level Restaurant or other use. A parklet may also function as a “bicycle corral” with bicycle racks in the roadway for the on-street parking of bicycles.
- (b) “Person” shall mean and include individual, firm, association, partnership, joint venture or corporation (whether for-profit or nonprofit).
- (c) “Public right-of-way” shall mean the area dedicated to public use for public street purposes including but not limited to roadways, parkways, alleys and sidewalks.
- (d) “Restaurant” shall mean the use type defined in Section 9-2.319(b).
- (e) “Roadway” shall mean that portion of a public right-of-way improved, designed and ordinarily used for vehicular traffic and/or parking, including drainage gutters and curbs.
- (f) “Sidewalk” shall mean either:

- (1) That portion of a public right-of-way provided for the exclusive use of pedestrians, including planting areas or parkways, between the roadway and adjacent property lines; or
- (2) Any other publicly-accessible pedestrian area owned or controlled by the City of Emeryville including, but not limited to, greenways and parks.
- (g) “Sidewalk cafe” shall mean an area of the sidewalk used exclusively for eating, drinking, and related pedestrian circulation and located adjacent to, and operated in conjunction with, a street-level Restaurant.
- (h) “Sidewalk cafe permit” shall mean a permit to establish, operate, and maintain a sidewalk cafe or parklet issued pursuant to this Article. A sidewalk cafe permit may not be transferred or assigned, does not constitute a deed or grant of an easement by the City, shall be valid for one calendar year, and is revocable at any time.