

TEMPORARY COVID-19 OUTDOOR ACTIVITIES AND ENCROACHMENT
SAMPLE AGREEMENT

Outdoor Activities and Encroachment Agreement
Between City of Pacifica and [Business Name]

The City of Pacifica (“City”) and [Business Name], (“Permittee”) enter into this Outdoor Activities and Encroachment Agreement (“Agreement”) on this [Date]

WHEREAS, the City desires to allow Permittee to conduct certain outdoor activities in conjunction with its business located at [Business Address] (“Property”) on a temporary basis until such time as the City rescinds Order No. 2020-02 or terminates the local emergency regarding COVID-19; and

WHEREAS, the parties desire to set forth the terms and conditions so as to allow the conduct of such outdoor activities on the Property.

NOW THEREFORE, the parties do hereby agree as follows:

- A. The following outdoor activities will be allowed to occur on the Property:
[Explanation of outdoor activities] (Collectively referred to as “Outdoor Activities”)

The Outdoor Activities are more fully described in the attached description which is hereinafter incorporated by reference as Exhibit A.

- B. All Outdoor Activities shall be subject to the following conditions:

1. The Outdoor Activity use area shall be contiguous to commercial structures or walkways immediately adjacent to structures. Businesses on private property shall utilize outdoor space contiguous to their tenant space unless authorized by the landlord to use other space contiguous to commercial structures or walkways immediately adjacent to structures. Notwithstanding the foregoing, a landlord may designate an alternative location for consolidated outdoor dining of take-away meals provided all provisions of the County Health Orders are followed.
2. The Outdoor Activity area must remain clear of drive aisles and fire lanes necessary to provide adequate vehicular circulation and access by public safety vehicles in the event of a fire, medical, or other emergency.
3. A temporary accessible ramp from curb to Outdoor Activity area is required if a permanent ramp is not already available.
4. Accessible parking stalls, accessible van loading areas, and associated paths of travel shall not be impeded by Outdoor Activity.
5. Restaurants shall not be permitted to expand beyond pre-Covid-19 seating capacity.
6. No permanent item or structures shall be installed on the Outdoor Activities area.

7. The Outdoor Activities area must be sufficiently clear for ingress and egress and sufficient drive aisles and fire lanes as necessary to provide adequate vehicular circulation and access by public safety personnel and vehicles to the Outdoor Activities area in the event of a fire, medical, or other emergency.
8. All walkways and sidewalks shall maintain a four-foot clear path of travel at all times.
9. All Outdoor Activities conducted on private property must be done with written consent of property owner.
10. Permittee shall, at all times, comply with the following terms in operating the Outdoor Activities:
 - a) All Outdoor Activities shall be consistent with applicable State Guidelines, Executive Orders and County Health Requirements issued by the State and County in response to COVID-19 ("State and County Orders"). Outdoor Activities must, at all times, be operated in accordance with State, and County Orders, including but not limited to, health guidelines regarding number of patrons, disinfectants, table spacing, use of shared materials, staff hygiene, and social distancing.
 - b) All Outdoor Activities shall be done in compliance with all applicable, local, state and federal laws, including Americans with Disabilities Act. Any outdoor alcohol consumption shall be in compliance with the rules and regulations of the Department of Alcoholic Beverage Control and County Health Orders.
 - c) Hours of operation for Outdoor Activities shall not exceed the normal hours of operation for the corresponding business with which the outdoor use is associated.
 - d) Outdoor Activity use areas shall be maintained free of trash and debris.
 - e) No outdoor music or entertainment is permitted where the sound from the music or entertainment is amplified.
 - f) Outdoor, low volume, acoustic performances, entertainment and cultural events, which may be permitted as part of the Outdoor Activity and shall be reviewed on a case by case basis in accordance with the then applicable City, State and County Health Orders and Guidelines. Any outdoor, low volume, acoustic performances, entertainment or cultural events, which are permitted as part of the Outdoor Activity shall terminate by 8:00 p.m.
 - g) No permanent item or structures shall be installed on City of Pacifica property. No permanent or temporary signage shall be affixed to any publicly owned structure,

including but not limited to streetlights, benches, bus shelters, or similar appurtenances. Signage erected in violation of this provision is subject to immediate removal by the City of Pacifica.

- h) The City of Pacific reserves the right to inspect all Outdoor Activities locations and require that operations cease or stipulate modifications to operations if found to not be in compliance with the requirements of this Agreement.
- i) Temporary fencing not exceeding three (3) feet tall shall be placed in a safe manner around the Outdoor Activity use area, but shall not be located in a "clear vision triangle" or otherwise restrict visibility of pedestrians or vehicles.
- j) If temporary canopies or tents are being utilized for Outdoor Activities, they must comply with fire requirements. Permits from the North County Fire Department are required for canopies or tents over 400 Sq Ft.
- k) Outdoor cooking or grilling is not permitted.

C. Permittee agrees to accept all responsibility for loss, including personal injury, wrongful death or damage to any person or entity and shall indemnify, hold harmless, and defend and release the City of Pacifica, its agents, employees and officials from and against any and all liability actions, claims, damages, costs, or expenses (collectively "Claims") which may be asserted by any person or entity, including Permittee, arising out of or in connection with the subject approval and Agreement, including without limitation the Permittee's outdoor activities. The City may, but is not obligated to, defend such Claims as City, in its sole discretion, determines appropriate, all at Permittee's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses of the City in connection with such proceeding. If the Permittee is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Permittee of any proceeding and shall cooperate fully in the defense.

D. The City reserves the right to order the removal or relocation of the improvements made to conduct the Outdoor Activities in the public right-of-way and/or public easement area, at any time at Permittee's cost in the event same is required by the City and/or a Utility. Whether or not said removal or relocation is required shall be left to the unfettered discretion of the City and/or a Utility. Permittee hereby grants to the City the right to remove or relocate said improvements and to come upon Permittee's land to effect said removal or relocation if deemed necessary by the City and/or a Utility. Permittee waives any claim or right he/she/it may have for inverse condemnation, damages, or loss of income or business resulting from said removal. However, the City will be responsible for repairing any physical damage caused to Permittee's property by the City's but not a Utility's removal or relocation of said improvements. Upon removal or relocation of said improvements, all rights of Permittee under this agreement and the permit itself shall terminate.

E. Permittee shall comply with all applicable local, State, and Federal laws and regulations at all times during the effective period of this agreement, including but not limited

to laws regarding the obstruction of vehicular traffic, the Americans with Disabilities Act and County health laws regarding provision of food services, noise ordinances, alcoholic beverage sales and any orders issued by the Director of Emergency Services, including but not limited to Order No 2020-02.

- F. If Permittee's Outdoor Activities encroach into public right-of-way and/or a public easement, Permittee shall procure and maintain for the duration of this Agreement, and furnish proof of along with this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement, as set forth in this section. The cost of such insurance shall be borne by Permittee. A Permittee whose activities do not encroach into public right-of-way and/or a public easement, shall not be required to obtain said insurance.

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

- (a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (b) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Permittees with employees).
- (c) Property insurance against all risks of loss to any tenant improvements or betterments.
- (d) Permittee shall maintain limits no less than:
 - (i) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - (ii) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
 - (iii) Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions.

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

Other Insurance Provisions.

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

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

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

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

Acceptability of Insurers.

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

Liquor Liability Coverage.

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

- G. Violation of Agreement. Any violation of this Agreement or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such; violations of this Agreement and/or Resolution No. 35-2020 (ratifying Emergency Order No. 2020-02) may result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement and Resolution No. 35-2020.
- H. No Vested or Ongoing Rights Conferred. Permittee understands and agrees that this Agreement and Order No. 2020-02 and Resolution No. 35-2020 confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement are temporary in nature and granted solely to enable businesses to operate in compliance with State and local orders regarding social distancing and COVID-19. All improvements, structures and installments approved pursuant to this Agreement shall be removed in their entirety upon expiration of this Agreement.
- I. Non-Transferable. This Agreement is non-transferable. Only the permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.
- J. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any

oral representations of modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

- K. Termination. This Agreement may be terminated by the City or Permittee at any time, upon written notice to the other party of the termination

THE UNDERSIGNED AGREES THAT THE PROPOSED OUTDOOR ACTIVITIES DESCRIBED ABOVE SHALL BE IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT'S TERMS AND CONDITIONS AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO STATE AND COUNTY EMERGENCY ORDERS REGARDING THE COVID-19 PANDEMIC.

Permittee

Date

City Manager, City of Pacifica

Date

Attest:

Sarah Coffey, City Clerk

Approved as to Form

Michelle Marchetta Kenyon, City Attorney

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

[This form must be completed if proposed Outdoor Activity requires the use of private property which is neither owned nor leased by Permittee]

_____, declare that:

1. I am the record title owner of the property located at: _____
Pacifica, California,
2. I am aware that the Permittee (Business name) is _____
in the process of entering into a Temporary COVID-19 Outdoor Activities and
Encroachment Agreement with the City of Pacifica to use my property, described in
paragraph 1, for certain Outdoor Activities described in the Agreement.
3. I consent and agree to use of my property for the Outdoor Activities described in the
Agreement.

Signed this _____ day of _____, 20

(Landowner Signature)

Print:

EXHIBIT A – SITE PLAN/DIAGRAM