



Standard Conditions of Approval for
Temporary Encroachment Permits for
Outdoor Seating in the Public Way

1. **Permit Validity.** A Temporary Encroachment Permit (“Permit”) for outdoor seating in the public way is limited to full-line restaurants, specialty restaurants, wine tasting shops and drinking places and are valid until **April 30, 2021** or until indoor food and drink operations return to normal capacity, whichever occurs first. The Permit shall be displayed on-site in plain view to City of Carmel-by-the-Sea (City) personnel and the general public.
2. **Liability Insurance.** A certificate of insurance with endorsement is required to be maintained for the term of the encroachment in the amount of **\$2,000,000** in combined single limit insurance for personal injury and/or property damage per occurrence and **\$4,000,000** in aggregate naming *“The City of Carmel-By-The-Sea, its elected officials, officers, agents and employees are additionally insured under the policy.”* Coverage shall be as broad as:
 - a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (Insurance Services Office Form CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - b. Liquor Liability: Permittee agrees that if it proposes to sell or serve alcohol as part of its outdoor activities, Permittee shall furnish, along with this Agreement, proof of liquor liability coverage.
 - c. Workers’ Compensation: Workers’ Compensation insurance as required by the State of California, with Statutory Limits and Employers’ Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

If the Permittee maintains broader coverage or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage or higher limits maintained by the Permittee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions:

- a. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - i. Additional Insured Status: *The City of Carmel-By-The-Sea, its elected officials, officers, agents and employees are additionally insured under the policy* are to be covered as additional insureds on the CGL policy with respect to liability arising out of the use, occupancy, operations or maintenance of the leased premises, including work or operations performed by or on behalf of Permittee. CGL coverage can be provided in the form of an endorsement to the Permittee’s insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85, or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37).

- ii. Primary Coverage: For any claims related to this Agreement, the Permittee's insurance shall be primary coverage as least as broad as Insurance Services Office Form CG 20 01 04 13 as respects *The City of Carmel-By-The-Sea, its elected officials, officers, agents and employees are additionally insured under the policy*. Any insurance or self-insurance maintained by *The City of Carmel-By-The-Sea, its elected officials, officers, agents and employees are additionally insured under the policy* shall be in excess of the Permittee's insurance and shall not contribute with it.
- iii. Notice of Cancellation: Each insurance policy required herein shall state that coverage shall not be cancelled except after notice has been given to the City.
- iv. Waiver of Subrogation: Permittee hereby grants to the City a waiver of any right of subrogation which any insurer of said Permittee may acquire against the City by virtue of payment of any loss. Permittee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City ea has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Permittee, its employees, agents and subcontractors.

Failure to maintain the required insurance will result in revocation of the Permit.

- 3. **Taxes and Assessments.** Applicants shall remain current on all taxes and assessments during the term of the Permit.
- 4. **Safety Protocols.** It is the Applicant's responsibility to be informed of, and fully comply with, all industry guidance for food and drink establishments published by all applicable agencies, including but not limited to, the Center for Disease Control (CDC), State of California Governor's Office, California Department of Public Health, Alcoholic Beverage Control (ABC), Monterey County Health Officer, and Monterey Fire Department as amended throughout the term of the Permit. Any unsafe or unsanitary condition shall be corrected immediately upon request by the City.
- 5. **Alcohol Service.** Alcohol may be served to patrons dining within approved outdoor seating areas in the public way so long as,
 - a. The outdoor seating area is in compliance with all of the City's requirements including with these Conditions of Approval.
 - b. The proper ABC license is obtained and displayed on-site in plain view to City personnel and the general public.
 - c. Alcohol may only be consumed within the boundaries of the permitted outdoor seating area.
 - d. Alcohol shall not be served in disposable or to-go cups.
- 6. **Outdoor Seating Maintenance.** The Permit holder is responsible for,
 - a. Sanitizing and disinfecting the outdoor seating area after each customer.
 - b. Providing a trash receptacle for use by patrons (separate from City's trash receptacles).
 - c. Cleaning up food and/or drink spills immediately.
 - d. Keeping the outdoor seating area clean and free of trash and debris at all times.
 - e. Thoroughly cleaning outdoor seating areas at the end of each day, properly disposing of trash, and cleaning up any food spills.

- f. Removing any trash and debris that may get trapped by the barriers on the far side (street side) of the outdoor seating area.
7. **Outdoor Seating – Parking Spaces.** Up to two (2) parking spaces may be used for outdoor seating with no more than eight (8) seats per space (16 seats total) so long as social distancing protocols are met. Outdoor seating shall not be located in any loading zone or obstruct any Americans with Disabilities Act (ADA) path of travel.
8. **Outdoor Seating – Parking Space Barriers.** Three (3) sides of the seating area shall be enclosed with barriers that meet the following criteria:
 - a. Must be between 3-feet and 4-feet tall, unless otherwise approved by the City.
 - b. Must be entirely contained within the curb side of the parking “t”s.
 - c. Must be set back at least 4 feet from intersections, unless otherwise approved by the City.
 - d. Each individual barrier must weigh at least 50 pounds.
 - e. Shall not contain gaps large enough for persons to walk in between barriers.
 - f. Shall not contain flower pots as a primary barrier.
 - g. Shall not be used for sitting or dining.
 - h. Must allow for the free passage of rain water.
9. **Outdoor Seating – Parking Space Platforms.** A platform may be installed following review and approval by the City. Any platform obstructing the flow of rain water shall be removed immediately upon request by the City.
10. **Outdoor Seating - Sidewalk.** Sidewalk seating shall be limited to two (2) seats at a single table. The total number of tables that may be located along a sidewalk, if any, is subject to review and approval by the City based on actual site conditions. Sidewalk seating shall provide adequate space for patrons, servers, passing pedestrians, and continuous accessibility access. Sidewalk seating shall be removed immediately upon request by the City.
11. **Outdoor Seating Layout.** The outdoor seating layout for both configuration and barriers shall be established, and remain consistent with, the approved Permit. At no time shall the entry/exit to any tenant space, nor any public sidewalk, nor any path of travel providing emergency egress, be blocked by outdoor seating.
12. **Seating Area Use Regulations.**
 - a. The outdoor seating area may be used for waiting for take-out orders and/or table service.
 - b. All take-out orders shall be provided in biodegradable/compostable or recyclable food packaging. Beverage straws and utensils shall only be provided on request.
 - c. At no time shall employees providing service to the tables obstruct or otherwise block the public sidewalk.
 - d. Music (live or amplified), lighting, and/or signage of any type is subject to review and approval by the City.
 - e. Smoking is prohibited at all times within outdoor seating areas.
 - f. Plastic tables and/or chairs are not permitted.
 - g. Umbrellas may be allowed subject to the following standards, i) shall have a neutral/earth tone color fabric; ii) shall not extend into the vehicle travel lane, cause damage to any trees or branches, or pose a safety risk to pedestrians on the sidewalk; and, iii) shall have a secure, heavy base to prevent it from tipping over.

- h. Propane heaters (if used) may remain within the parking space(s) overnight so long as all propane tanks are removed and safely stored in a secure location on private property. When in use, propane heaters shall maintain a 10' distance between flammable objects including, but not limited to, umbrellas and trees. Open flame fire pits are prohibited.
- i. Umbrellas and tablecloths (if used) shall be removed at the end of each day and stored on private property out of public view.

13. Public Infrastructure. Permanent attachments to public infrastructure including, but not limited to, streets, sidewalks, curbs, gutters, trash cans, light poles, traffic signs, trees, bike racks, fire hydrants, etc. are not permitted. Damage to public infrastructure as a result of the outdoor seating may result in revocation of the Permit and shall be repaired at the Applicant's expense to the satisfaction of the City.

14. Modifications. After a Permit is issued, any proposed modifications to the outdoor seating area shall be submitted to the Community Planning & Building Department for approval.

15. Other Permits and Approvals. Applicants are responsible for securing any and all applicable permits and/or approvals from other agencies including, but not limited to, Alcoholic Beverage Control (ABC), Monterey County Health Department, and the Monterey Peninsula Water Management District (MPWMD).

16. Permit Revocation. The City reserves the right to revoke this Permit if it is determined the seating area poses a risk to public safety or if any term of the Permit is violated.

17. Indemnification. The Applicant agrees, at his or her sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any Permit approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any Permit approval. The City shall promptly notify the Applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the Applicant of any obligation under this condition. Should any party bring any legal action in connection with this Permit, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.

*Acknowledgement and acceptance of these Standard Conditions of Approval.

Applicant Signature _____ Print Name _____ Date _____

Once signed, please email to mwaffle@ci.carmel.ca.us.