

MARIPOSA COUNTY TEMPORARY OUTDOOR OPERATIONS APPLICATION (COVID-19)

(Resolution No. 2020-480)

A Temporary Outdoor Operations Application is required to authorize restaurants, wineries and other businesses to operate outdoors in areas they are not otherwise allowed to during the State and local COVID-19 emergencies. To operate under these provisions, the temporary outdoor business operations must fully comply with Mariposa County Resolution No. 2020-480 and all applicable State and local statutes, rules, and regulations, including but not limited to State and County COVID-19 rules, mandates, and guidelines—including any applicable State industry-specific COVID-19 guidance. The Planning Director may approve an application directly or, depending on the information provided below, may require an additional approval from another County department. The Planning application and approval will be free of charge. Unless outdoor seating or operations are already authorized to the extent such use is intended, this Application must be completed and approved before outdoor seating can be located on any street, sidewalk or parking area within the County. Approval of this application shall not result in a legal right or entitlement to continue such operations when the State and local COVID-19 emergencies have ended, and the permission granted through this application shall terminate automatically at that time.

Assessor Parcel No. (APN) _____

Property Owner: _____ Work Phone _____ Home Phone _____

Mailing Address _____ Zip _____

Email _____

Business Name: _____

Applicant/Business Contact: _____

Work Phone _____ Home Phone _____

Street Address _____ Zip _____

Email _____

Physical Address of Outdoor Area:

Please describe the proposed use and location of the temporary outdoor area and seating area. Attach a diagram, showing seating area (if applicable), dimensions, and any parking spaces being utilized:

Date of Placement: _____ **Approximate Duration:** _____

Is the outdoor area located within a public right-of-way? Yes No If yes, contact Mariposa County Public Works or Caltrans (if in Caltrans right-of-way)

Is tent/shade structure (other than umbrella table) proposed? Yes No If yes, contact Building Department

Alcoholic Beverages Sales & Consumption

Pursuant to California of Alcoholic Beverage Control, alcohol is allowed to be served outdoors only if accompanied by food and in full compliance with ABC licensure requirements and State and local COVID-19 mandates and guidance.

I understand the rules, regulations, and industry guidance for Alcoholic Beverages.

Applicant's Initials _____

Indemnification/Hold Harmless Agreement

Permittee shall indemnify, defend, and hold harmless the County, its officers, employees, agents and volunteers ("County Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable attorneys' fees and all costs of litigation arising out of the Permittee's performance of its obligations under this Agreement or out of operations conducted by Permittee, except for such loss or damage arising from the sole negligence or willful misconduct of the County. In the event the County Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Permittee's performance of this Agreement, the Permittee shall provide a complete defense to the County Indemnitees, or at the County's option, reimburse the County Indemnitees their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

I/we hereby certify that all of the information provided on this Application is complete and accurate. I/we have read Resolution No. 2020-480, for Temporary Outdoor Operations and fully understand the content including the Indemnification /Hold Harmless provisions. I/we do hereby certify that I/we am/are duly authorized to enter into this Agreement by both the business and land owner(s) and that the activity fully meets the conditions set forth herein and I/we agree to observe all rules and procedures as stated.

Print Name(s) _____

Signature(s) _____ Date _____

If property owner is different than applicant, the property owner must sign the application.

By signing, the property owner/s authorize(s) the temporary outdoor business activities proposed in this application and attests that they have the legal authority to authorize this business to engage in the applied for activities:

Print Name(s) _____

Signature(s) _____ Date _____

-----**FOR OFFICIAL USE ONLY**-----

If checked, approval must be obtained from the following agencies/departments prior to authorization.

___ Public Works _____	___ Building Department _____
___ County Fire _____	___ Caltrans _____
___ Sherriff _____	___ Environmental Health Unit _____
___ CALFIRE _____	

Conditions of Approval, if any:

County Planning Department Signature

Date

**STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS**

Resolution
No 2020-480

**A Resolution Establishing Temporary Measures to Authorize and
Maintain Safe Outdoor Dining and Other Outdoor Business Practices
During the State and Local Covid-19 Emergency**

WHEREAS, on March 4, 2020, pursuant to Government Code §8625, the Governor of California proclaimed a State of Emergency to exist in California due to the threat of the novel coronavirus known as COVID-19; and

WHEREAS, on March 17, 2020, pursuant to Health and Safety Code §101080, the Mariposa County Board of Supervisors adopted Resolution No. 2020-144 ratifying the March 13, 2020 Mariposa County Health Officer's declaration of a local public health emergency due to COVID-19; and

WHEREAS this ratification was most recently reaffirmed on July 28, 2020 and the local public health emergency proclamation remains in effect; and

WHEREAS, on March 17, 2020, pursuant to Government Code §8630 and County Code Chapter 2.80, the Director of Emergency Services declared a local emergency due to COVID-19 in Mariposa County; and

WHEREAS, on March 24, 2020, the Mariposa County Board of Supervisors adopted Resolution No. 2020-157 ratifying the March 17, 2020 declaration of a local emergency by the Director of Emergency Services; and

WHEREAS, on March 19, 2020, in accordance with Executive Order N-33-20, the Governor of California and the State Public Health Officer directed all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors along with other specified essential services; and

WHEREAS, on May 4, 2020, the Governor of California issued Executive Order N-60-20 directing the State Public Health Officer to establish criteria and procedures to determine whether and how particular local jurisdictions may implement public health measures that depart from statewide directives; and

WHEREAS, on May 7, 2020, the State Public Health Officer set forth criteria that would allow local jurisdictions to move through Stage 2 of California's Pandemic Resilience Road Map more quickly than the State as a whole and reopen additional lower-risk businesses; and

WHEREAS, as a result of the conditions in Mariposa County, the County was in a position to, on May 12, 2020, submit a letter and attestation to the Governor of California notifying him that Mariposa County has the ability to meet, exceed or plan to achieve the criteria needed to accelerate through Stage 2.5 of the economic expansion plan and is ready to cautiously and safely reopen more businesses; and

WHEREAS, on May 13, 2020, the State of California approved the County of Mariposa's readiness to move to the accelerated Stage 2.5 of California's Pandemic Resilience Road Map by accepting and posting the County's local attestation; and

WHEREAS, on June 18, 2020, the Governor of California mandated the use of face coverings by most California residents in most circumstances when in the presence of individuals not from within their household, including when outdoors in public spaces and six or less feet apart; and

WHEREAS, on July 13, 2020, the Governor of California, in response to a statewide uptick in the rate of new COVID-19 cases and evidence that COVID-19 spreads more easily indoors, restricted restaurants and similar food service establishments, wineries and tasting rooms, movie theaters, and family entertainment businesses to outdoor operations only; and

WHEREAS, businesses allowed to reopen and/or operate under the provisions of accelerated Stage 2 are required to comply with all physical distancing requirements as set forth in the State of California's Health Order and any applicable statewide industry guidance to reduce risk as set forth by the State; and

WHEREAS, those businesses authorized to remain open, but which are impacted by the physical distancing and/or outdoor-only requirements and any applicable statewide industry guidance imposed in response to the COVID-19 emergency, are in immediate need of alternative temporary facilities in which to safely accommodate their dining, visitation, retail sales, and other legally established activities in order to maintain those business activities which were permitted in Mariposa County prior to the COVID-19 emergency, to avoid greater economic loss, to allow employees to return to work, and to incentivize compliance with State and local health and safety standards; and

WHEREAS, to provide relief to businesses experiencing economic impacts caused by the physical distancing required to protect the public health and safety during the COVID-19 pandemic, and to help ensure that the relief provided itself meets basic health and safety requirements, the Board of Supervisors desires to provide a means for businesses that do not already have an outdoor component to their operations to quickly implement one in order to help them maintain their operations to the extent permitted prior to the COVID-19 emergency; and

WHEREAS, the purpose of allowing temporary outdoor business operations is to increase the total area available for legal pre-existing businesses to operate within, as a means of accommodating the physical distancing requirements mandated by the COVID-19 emergency and to help reduce the risk of COVID-19 transmission when businesses are constrained to indoor-only activities; and it is not the purpose of this resolution to authorize new uses, development, capacity, or businesses that were not already lawfully permitted and undertaken prior to the COVID-19 emergency, nor to create a legal right to continue operating out-of-doors in the manner prescribed herein after the COVID-19 emergency has passed; and

WHEREAS, the Board of Supervisors believes the temporary provisions contained herein are necessary to the health, safety, and welfare of the residents and businesses of Mariposa County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Mariposa:

1. Pursuant to Government Code §8634, during a local emergency the Board of Supervisors may promulgate orders and regulations necessary to provide for the protection and life and property.

2. Pursuant to Health and Safety Code §101025, the Board of Supervisors shall take measures as may be necessary to preserve and protect the public health in the County, including the adoption of ordinances, regulations, and orders not in conflict with general laws.
3. As provided in this resolution, businesses that comply with and are allowed to continue operating under the State laws and mandates related to COVID-19 and that comply with all related State-issued industry guidance may apply free-of-charge to conduct their business activities within ready-to-use, lawfully possessed outdoor areas as needed to accommodate the physical distancing and other disease prevention requirements resulting from the COVID-19 emergency. Shared off-site areas may also be considered and must meet all requirements contained in this resolution.
4. Businesses wishing to establish a temporary outdoor area within which to conduct business activities during the COVID-19 emergency shall submit an application, including a site plan for the new outdoor area and an indemnification agreement, to the Mariposa County Planning Department, which shall determine whether additional written approval is required (as described below) by the Mariposa County Public Works Department, the Mariposa County Building Department, the Mariposa County Sheriff's Office, Caltrans, Mariposa County Fire, CALFIRE, and/or the Mariposa County Environmental Health Unit. The Mariposa County Planning Department shall make its application requirements and forms available on its departmental website and shall include links to other departmental forms that may be required as described below.
5. Businesses shall not expand or intensify their land uses, activities, or hours beyond what was authorized prior to the COVID-19 emergency.
6. Temporary outdoor areas shall be used as-is, without being further developed, prepared or altered in any permanent manner, and no vegetation shall be removed.
7. Businesses currently operating under an approved land use permit such as (but not limited to) an administrative or conditional use permit must comply with all non-conflicting conditions of their permits and may not change or expand the approved land use(s) or increase or expand the intensity of the approved land use(s).
8. Business activities conducted outdoors pursuant to this resolution shall at all times comply with all applicable State laws and regulations including but not limited to the American Disabilities Act, the California Disabled Persons Act, California Fire Code, the Alcoholic Beverage Control Act, the California Retail Food Code, and all other applicable State laws, conditions, and ordinances governing the business and site, including State public health social distancing and related mandates.
9. Business activities conducted outdoors pursuant to this resolution shall comply with all local ordinances, regulations, rules, and permit conditions other than those that would otherwise prohibit the business from conducting outdoor activities as authorized by this resolution.
10. Temporary outdoor areas shall only be established pursuant to this resolution, on lawfully possessed areas on such surfaces as parking lots, hardscape, decomposed granite, lawns, or other similar areas. In no event shall such areas be established within any environmentally sensitive area as established by State or federal law or as established by any environmental

document prepared and adopted as a pre-condition to authorizing the business activity on the property.

11. Where existing parking areas are utilized to establish temporary outdoor areas, the affected businesses shall not be permitted or required to offset the loss of parking spaces elsewhere.
12. No disabled or fire access areas shall be blocked.
13. No business activities encroaching on the public right-of-way shall take place without the prior written approval of the Mariposa County Public Works Department, which shall be reviewed expeditiously and free-of-charge. No business activities encroaching within the Caltrans right-of-way shall take place without the prior written approval of Caltrans. Any applications and costs required by Caltrans shall be the responsibility of the applicant.
14. All tents and other shade structures must comply with the requirements of the California Fire Code 2019.
15. While State requirements for outdoor dining and beverage service still apply, a restaurant, winery, or other dining establishment may use the temporary outdoor area for outdoor seating without additional written approval from Mariposa County.
16. New or additional outdoor food preparation areas and serving stations are prohibited; all food and beverage preparation must take place within the pre-existing business premises.
17. While this resolution remains in effect, the County of Mariposa shall not undertake enforcement action concerning business activities conducted within the temporary outdoor areas so long as they are conducted in compliance with this resolution and all other applicable laws.
18. The authority to use any temporary outdoor area established pursuant to this resolution shall terminate automatically and as a matter of law twenty-four (24) hours after both the local and State emergencies related to COVID-19 have been terminated, or otherwise upon action of the Board of Supervisors.
19. Within thirty (30) days of the termination of both the local and State emergencies related to COVID-19, all temporary outdoor areas established pursuant to this resolution shall be fully restored to their prior condition. If the applicant fails to comply with said instructions, the County may cause the removal, relocation, or restoration of the outdoor area at the expense of the applicant.
20. No business establishing a temporary outdoor area pursuant to this resolution shall obtain a right to rely on this resolution remaining constant as originally adopted for the duration of the local and/or State COVID-19 emergencies, and the Board of Supervisors shall retain the right to amend or terminate the provisions of this resolution at any time; and no business establishing a temporary outdoor area pursuant to this resolution shall obtain a right, vested or otherwise, to continue operating in this area after the State and/or local COVID-19 emergencies have been terminated.

BE IT FURTHER RESOLVED that the Board of Supervisors finds that the provisions of this resolution are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to 14 C.C.R. 15304(e), which exempts minor public or private alterations in the condition

of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees—including the “(m)inor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.” This temporary resolution authorizing dining establishments and other businesses to temporarily utilize outdoor areas during the COVID-19 emergency to reduce the risk of disease transmission prohibits further development or site preparation, requiring the businesses to utilize outdoor areas as-is. The resolution requires the use of disturbed areas such as hardscapes, parking lots, and lawns; prohibits vegetation removal; and prohibits the use of environmentally sensitive lands.

BE IT THEREFORE FINALLY RESOLVED that this resolution shall take effect immediately upon its adoption.

ON MOTION BY Supervisor Jones, seconded by Supervisor Smallcombe, this resolution duly passed and adopted this 4th day of August 2020 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE



Kevin Cann, Chair
Mariposa County Board of Supervisors

Attest:



René LaRoche
Clerk of the Board of Supervisors

Approved as to Legal Form:



Steven W. Dahlem
County Counsel