|  |  |
| --- | --- |
| \\cnb.lcl\data\temp\City Seal-Official Approved-2014\CNB-Seal Greyscale-2014.jpg | COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION  100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  949-644-3200  [www.newportbeachca.gov](http://www.newportbeachca.gov) |
|  | **COMMUNITY DEVELOPMENT DIRECTOR EMERGENCY TEMPORARY USE PERMIT ACTION** |

|  |  |
| --- | --- |
| **Subject:** | **<BUSINESS/TENANT NAME HERE> (PA2020-###)** |
|  | * Emergency Temporary Use Permit No. UP2020-### * Emergency Coastal Development Permit No. CD2020-### |
|  |  |
| **Site Location** | **<LOCATION ADDRESS HERE>** |
|  |  |
| **Applicant** | **<APPLICANT HERE>** |
|  |  |
| **Property Owner** | **<PROPERTY OWNER HERE>** |
|  |  |

On **<INSERT TODAY’S DATE>,** the Community Development Director approved Emergency Temporary Use Permit No. UP2020-### and Emergency Coastal Development Permit No. CD2020-078. This approval is based on the following findings and subject to the following conditions.

1. **SUMMARY OF PROPOSED OPERATION**

An emergency temporary use permit and emergency coastal development permit to allow an additional outdoor dining patio (approximately 1,584 square feet) within the sidewalk/parking area of \_\_\_\_\_ (# of parking spaces utilized if applicable).

<BRIEFLY SUMMARIZE PROPOSED MODIFIED OPERATIONS HERE>

1. “curbside” pick-up.

2. take-out windows

3. Outdoor dining (sq.ft.)

4. Seating Areas (sq.ft.)

5. Retail display (sq.ft.)

6. Banners for modified operations

7. Other uses or physical modifications that may be necessary to assist uses as they reopen.

1. **CEQA DETERMINATION**

The proposed operation is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15269 (c) (the activity is necessary to prevent or mitigate an emergency), Section 15301 Class 1 (Existing Facilities), and Section 15303 Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Section 15269 allows specific actions necessary to prevent or mitigate an emergency. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The project includes a 1,584-square-foot outdoor dining patio area expansion to an existing restaurant and is within the parameters noted for these exemptions and will not have a significant effect on the environment. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

1. **EMERGENCY TEMPORARY USE PERMIT FINDINGS**

In this case the Community Development Director has found that the temporary use would not create a hazard to the health, safety, or welfare of the community for the following reasons:

1. The operation authorized by this Emergency Temporary Use Permit and Emergency Coastal Development Permit is temporary and only valid during the emergency order established by Emergency Ordinance No. 2020-005.
2. The project, based upon the applicant’s project description, approved site plan, and implementation of all conditions of approval, will be operated safely thereby helping reduce the spread of COVID-19. The proposed operation is necessary to provide adequate space to allow for appropriate social distancing.
3. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
4. The proposed operation has been reviewed by and is acceptable to the Building Division, Fire & Life Safety Division, and the Public Works Department. Conditions of Approval are included to help ensure this operation is not detrimental;
5. The proposed operation does not constitute an increase in the overall occupant load beyond what the existing Use Permit and/or Certificate of Occupancy allow;
6. An adequate supply of parking is available to serve the subject business and surrounding uses.
7. The proposed operation does not extend any hours of operation beyond those currently permitted by Use Permit No. \_\_\_\_\_\_\_ (8:30 a.m. to 11:30 p.m., daily).
8. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
9. The overall plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.
10. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).

**EMERGENCY COASTAL DEVELOPMENT PERMIT FINDINGS**

1. The COVID-19 global pandemic has created a National, State and Local emergency that is more fully described in Emergency Ordinance No. 2020-005. The COVID-19 outbreak is an emergency pursuant to Newport Beach Municipal Code (NBMC) Section 21.52.025 because immediate action is necessary to allow commercial business and institutional uses to re-open consistent with State and local public health guidelines designed to reduce the spread of COVID-19. If immediate action is not taken to properly regulate the re-opening of commercial business and institutional uses, the spread of COVID-19 will likely be more severe thereby exacerbating the existing public health emergency.
2. Development authorized is temporary and will only be in place during the described emergency consistent with Emergency Ordinance No. 2020-005. All development authorized by this permit must be removed after the state of emergency is lifted.
3. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to once again visit the coastal areas.
4. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.
5. **CONDITIONS OF APPROVAL**
6. Only that specifically described above and depicted in the attached site plan is authorized, subject to the conditions set forth below. Any additional changes require separate review and may necessitate separate authorization from the Director. The expanded dining area shall be in substantial conformance with the site plan and seating layout provided in Attachment No. CD #.
7. As long as this Emergency Temporary Use Permit is in effect, all NBMC provisions and any restrictions set forth in an applicable discretionary permit regulating uses, nonconforming uses, development standards, parking and permit procedures that regulate the use and development of private or public property operations are suspended only to the extent that the these provisions or restrictions set forth in a discretionary permit conflict with the terms of this Emergency Temporary Use Permit.
8. If the proposed operation is using any portion of the public right-of-way, the Applicant shall obtain and maintain liability insurance for not less than $1,000,000 per occurrence and as specified by the City’s Risk Manager. All liability insurance policies shall specifically include the City, the City Council, its employees, and agents as additional insureds and shall be issued by an agent or representative of an insurance company licensed to do business in the State of California, which has one of the three highest or best ratings from the Alfred M. Best company. All insurance policies shall contain an endorsement obligating the insurance company to furnish the Community Development Director with at least thirty (30) days written notice in advance of the cancellation of the policy.
9. The expanded outdoor dining patio shall not exceed \_\_\_\_ square feet (## seats).
10. The existing allowed hours of operation of the establishment shall not be extended. The hours of hours of operation of the area modified as part of this Emergency Temporary Use Permit shall not extend beyond 9 p.m.
11. The use of amplified sound within the temporary area shall be prohibited.

1. All dining tables shall be separated from other dining tables and/or waiting areas by a minimum distance of seven (7) feet to ensure proper social distancing is maintained.
2. The applicant shall install and maintain a physical barrier (BARRIER TYPE) between any area used and adjacent pedestrian walkways.
3. The applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
4. The sale of alcohol “to go” to patrons that dine within the restaurant or expanded outdoor patios shall be prohibited.
5. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
6. Establishments that provide food service, shall abide by the COVID-19 Industry Guidance: Dine-In Restaurants provided by the California Department of Public Health and Department of Industrial Health.
7. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

Building

1. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
   1. An accessible path to all functional areas shall be provided.
   2. Access to restrooms shall be provided at all times.
   3. Accessible parking stalls shall not be used for seating areas when on-site parking is provided.
   4. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.
2. Accessible seating at tables or counters shall provide knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.
3. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.
4. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Fire

1. Fire lane(s) shall be identified on the plan.
2. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
3. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
4. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
5. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
6. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.

Public Works

1. The applicant shall install and maintain a substantial physical barrier between any area used and adjacent to any street, driveway or parking area.
2. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
3. Seating or structures below overhead conductors and/or under the ‘drip line’ shall be prohibited.
4. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
5. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. CD #.
6. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
7. The Community Development Director may immediately revoke this permit if the Director determines that there has been a violation of any condition of approval. Any revocation of an Emergency Temporary Use permit shall be deemed effective upon the posting of a notice of revocation at the site of the business granted the emergency temporary permit.
8. The Community Development Director may modify this Emergency Temporary Use Permit. The Director shall notify the applicant of any proposed modification and a decision to modify this permit shall be deemed effective upon the posting of a notice of modification at the site of the business granted the emergency temporary use permit
9. This temporary authorization shall expire fourteen (14) days after the emergency order established by Emergency Ordinance No. 2020-005 is terminated or repealed, or 60 days from the date of authorization, whichever is sooner. The Director may extend this approval for an additional 60 days for good cause.
10. Upon termination or repeal of Emergency Ordinance No. 2020-005, the Applicant shall immediately work to remove the temporary improvements in a timely manner and shall restore the expanded area back to its original use and improvements.
11. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of this Emergency Temporary Use Permit and Coastal Development Permit for BUSINESS NAME. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding.  The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition.  The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
12. **APPEAL**

This decision may be appealed by the applicant/permittee to the City Manager by notifying the City Manager of the appeal within three (3) calendar days of the decision. The City Manager shall have authority to sustain, reverse or modify the decision of the Community Development Director and the City Manager's decision shall be final.

|  |  |
| --- | --- |
| On behalf of Seimone Jurjis, Community Development Director.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  <PLANNER NAME, TITLE> |  |

SUPERVISOR/author

|  |  |
| --- | --- |
| Attachments: | CD 1 Filed Application  CD 2 Written Description  CD 3 SCE Project Decals  CD 4 Site Plan Layout |
|  |  |

**Applicant and Permit Recipient Acknowledgement and Agreement**

# I hereby acknowledge that I have received a copy of this permit and that I have read and understand the permit and all conditions. I hereby agree to operate the authorized use consistent with this permit including the project description, approved site plan diagram, findings, and conditions of approval. This is an approved and executed permit and it constitutes a contract between the City and Permittee for all purposes.

Insert applicant name and title

Signature Date

**Attachment No. CD 1**

Filed Application

**Attachment No. CD 2**

Written Description

**Attachment No. CD 3**

SCE Clearance Decals

**Attachment No. CD 4**

Site Plan Layout