



Supplemental Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Assistant to the City Manager

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: June 3, 2020 Meeting date: June 8, 2020

Subject: Temporary Restaurant Recovery Program During COVID-19 Pandemic

RECOMMENDED ACTION: Adopt Ordinance No. 465U enacting a temporary restaurant recovery program to expand outdoor seating, finding the same exempt from the California Environmental Quality Act and setting forth the facts constituting such urgency; a four-fifths vote of the City Council is required and, if approved, it will take effect immediately.

FISCAL IMPACT: There is no significant fiscal impact associated with the recommended action. If the temporary restaurant recovery program is implemented, restaurants in Malibu will be able to offer more dining options than they otherwise would under Los Angeles County's Public Health Orders which could increase the City's sales tax revenue. The City's Sales Tax revenue has been negatively impacted by the COVID-19 pandemic and the Stay at Home orders.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal year 2019-2020. This project is part of emergency staff operations.

BACKGROUND: On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency in response to the increased spread of COVID-19. Additionally, on March 4, 2020, the Los Angeles County Board of Supervisors and the Department of Public Health all declared a local and public health emergency in response to increased spread of COVID-19 across the country and in Los Angeles County. The President of the United States declared a major disaster for California for the COVID-19 pandemic on March 22, 2020.

The City activated its Emergency Operations Center on March 12, 2020. The City's Director of Emergency Services, in accordance with Malibu Municipal Code Section 2.52.060, proclaimed the existence of a local emergency on March 14, 2020. On March 16, the City Council adopted resolution 20-14 ratifying the Director's Proclamation of Existence of a Local Emergency issued on March 14, 2020. The resolution established the powers, functions, and duties of the Director of Emergency Services shall be those prescribed by State law and by the ordinances and resolutions of the City.

On March 19, 2020, the Governor issued Executive Order N-33-20 ordering all residents of California to stay home except as needed to maintain the operations of critical infrastructure sectors.

The Los Angeles County Health Officer issued a series of orders that mirrored and expanded on this Order, including on March 21, 2020, that (1) prohibit all public and private group events and gatherings, (2) orders all persons to remain in their homes except to travel to and from Essential Businesses, to work at a Healthcare Operation or Essential Infrastructure, to engage in Essential Activities, or to participate in an individual or family outdoor activity, while practicing social distancing. All of the following were ordered closed immediately: (1) Non-Essential Retail Businesses, (2) Indoor Malls and Shopping Centers (including both Essential and Non-Essential Businesses within, except Essential Businesses that can be accessed from the exterior of the building), (3) Indoor and Outdoor Playgrounds, Flea Markets and Swap Meets, and (4) bars and nightclubs that do not serve food, gyms and fitness centers, movie theaters, live performance theaters, concert halls, arenas, stadiums, bowling alleys, arcades, and wineries, breweries, and tap rooms that provide tastings. On-site dining was prohibited at restaurants and other food facilities. The City is subject to the orders of the County Health Official.

On April 14, 2020, the State presented its Resilience Roadmap, a four-stage plan for modifying the State Public Health Officer's stay-at-home order.

On May 4, 2020, the Governor issued Executive Order N-60-20 which informed local health jurisdictions and industry sectors that they may gradually reopen under new modifications and guidance provided by the state per the May 7, 2020 Public Health Order. The announcement provided a new framework to allow counties to move more quickly through Stage 2 if they attest that they meet the State's readiness criteria.

The May 7, 2020 Public Health Order described an attestation opportunity for counties to move through Stage 2, opening additional sectors of their economy at their own pace. To qualify, counties must attest that hospitalization and test positivity rates are stable or declining; that they have a significant level of preparedness with testing, contact tracing, PPE and hospital surge; and that they have adequate plans related to county-wide containment. Allowing this initial approach to move forward for approximately 10-14 days allowed the state and counties to see the early impact of these modifications to the

statewide Stay-at-Home order. To date, one county has retracted their attestation for one week following an increase in new cases.

On May 18, 2020, State public health leaders announced a new attestation process, which includes criteria important for larger, more densely populated counties such as the County of Los Angeles. To qualify, counties must attest that hospitalization and test positivity rates are stable or declining; that they have a significant level of preparedness with testing, contact tracing, PPE and hospital surge; and that they have adequate plans related to county-wide containment.

The County of Los Angeles has also established a roadmap to recovery from the coronavirus pandemic which includes a phased approach for the safe reopening of Los Angeles County. On May 26, 2020, as part of this phased reopening strategy, the County of Los Angeles issued a new Health Order easing restrictions on certain activities including in-person faith-based services and retail shopping with certain safety protocols including capacity limitations while continuing to encourage all County residents to remain in their residences whenever practicable and for people 65 years old or older and anyone with underlying health conditions to remain in their residences as much as possible, leaving their residences only when necessary to seek medical care, exercise, or obtain food or other necessities.

On May 29, 2020, the State approved the County's application to move into advanced Stage 2, which allows for the reopening of retail stores and in-person dining with limited seating capacity and social distancing.

DISCUSSION: While social distancing and the abovementioned measures are necessary to fight the global pandemic, they have had, and are expected to continue to have, extreme economic impacts. The local business community has experienced a rapid and sharp decline in business activity due to the pandemic and accompanying change in consumer behavior.

Restrictions are being eased and will continue to change in the coming weeks and months ahead in accordance with the County's roadmap to economic recovery, including the reopening of restaurants for in-person dining, which is now permitted with restrictions, as of May 29, 2020. Due to the ongoing risks of COVID-19, restaurant indoor capacity will be reduced as a condition of reopening, and consumers may not feel confident dining inside an enclosed area. Capacity limitations and physical distancing requirements have had, and will continue to have, a significant impact on businesses' ability to operate and generate sufficient revenue. Many are already struggling financially in the wake of the stay at home orders and as well as the 2018 Woolsey Fire.

The development of expedient, creative, collaborative, and flexible processes, policies, and programs is of paramount importance to help businesses keep their doors open.

Various regulatory agencies have made modifications to specific rules and regulations to allow for the reopening of dine-in restaurant opportunities, while also ensuring social distancing. The Department of Alcohol and Beverage Control (ABC) recently announced the implementation of a temporary catering authorization, which allows a current licensee to sell alcohol on property adjacent to the licensed premises and under control of the licensee, and where bona fide meals are being served. Other cities in California, including the cities of Thousand Oaks, Agoura Hills, San Jose, and Long Beach have approved, or are considering, similar urgency measures.

Permitting certain temporary changes to operating conditions and expanding outdoor dining seating to allow dining service in a way that is compliant with applicable social distancing requirements and other public health orders during the period of local emergency declared in response to COVID-19 allows businesses an opportunity to remain viable without compromising the public health or resulting in unacceptable adverse impacts to the surrounding areas. The City wishes to support local businesses and make it easier for them to reopen within the guidelines of the State and County Orders.

The attached urgency ordinance is for a Temporary Restaurant Recovery Program to support the financial recovery of the local food service business community and provide space for community residents and visitors to safely dine onsite. Under the proposed ordinance, outdoor dining limitations, areas for dining service, seating arrangements, and previously approved operating conditions may be temporarily suspended or altered to allow restaurants to increase outdoor dining areas and social distancing if authorized by a Temporary Restaurant Recovery Permit.

Staff has developed a Draft Temporary Restaurant Recovery Permit Application, provided as Attachment 2. A restaurant owner, shopping center or restaurant property owner, or manager of any restaurant or shopping center may apply for a Temporary Restaurant Recovery Permit that would allow the following: (1) temporary use of Temporary Restaurant Seating Area to allow greater physical distancing; and (2) temporary changes to other approved operating conditions or restrictions to facilitate physical distancing.

For purposes of this ordinance, "Temporary Restaurant Seating Area" means:

- The following areas of the property that are not currently permitted for restaurant service use but may be safely be converted to seating for guests:
 - o Indoor areas that are within the tenant space;
 - o Outdoor areas adjacent to the restaurant use including parking spaces, but excluding areas where the use could negatively impact coastal resources or prevent coastal access; and
 - o Common areas of shopping malls that are accessible from, and within 100 feet of, the subject restaurant.
- Sidewalks and other public right-of-ways that are closed to public

access during the period of service. A separate encroachment permit may be required for use of the public right-of-way.

The Temporary Restaurant Recovery Program does not relieve the applicant from any conditions of approval included in existing entitlements other than those which are directly addressed by the Temporary Restaurant Recovery Permit. The level of impact from the use of parking spaces as temporary seating areas is expected to be minimal due to the reduced demand on parking from both the subject business itself, as well as the continued closure of other businesses, such as gyms, which may share a parking lot.

The Planning Director may issue a Temporary Restaurant Recovery Permit upon making the following findings:

- Adverse impacts from any use authorized by the Temporary Restaurant Recovery Permit are minimal and not significant;
- The resulting restaurant use will not exceed the previously legally established or permitted use.
- The use will include a maximum of seats that does not exceed the current number of authorized seats. City staff shall determine the number of authorized seats based on staff's evaluation of existing permits, available parking, onsite wastewater treatment system (OWTS) approval, the number of seats allowed in restaurants with similar seating areas, and/or other available information;
- Temporary Restaurant Seating Area fully complies with all California COVID-19 Industry Guidance, California Department of Public Health and Los Angeles County Department of Public Health codes and requirements. A Temporary Catering Authorization from California ABC will be required for any business proposing to serve alcohol within a Temporary Restaurant Seating Area;
- The restaurant and shopping center is not currently subject to open code enforcement action and is not in violation of any compliance agreement.

The Planning Director may impose any conditions required to prevent use of the restaurant from exceeding the impacts and use of the restaurant that existed prior to the issuance of a Temporary Restaurant Recovery Permit. Such conditions may include, but are not limited to, modifying hours of operation of the Temporary Restaurant Seating Area, measures to limit noise impacts, measures to facilitate parking, drop-off, pickup, lighting restrictions, temporary protective barriers, circulation requirements for employees, customers, vehicles, health/safety measures, and restrictions on the locations and numbers of seats and tables inside and outside the restaurant.

The area must be vacated and returned to its original state within 72 hours following the termination of this ordinance or the termination of the issued Temporary Restaurant

Recovery Permit. The permit may be terminated by the City for any of the following reasons:

- Violation of any applicable law, rule, ordinance, or order;
- Disturbance of the quiet enjoyment of nearby residents;
- Objection by law enforcement agencies;
- If operation of the Temporary Restaurant Seating Area is inconsistent with State or local public health directives, including social distancing directives or guidance; or
- If, in the discretion of the Planning Director, continuance of the activity permitted by the Temporary Restaurant Recovery Permit will negatively impact the public's health, safety, or welfare.

Should a Temporary Restaurant Recovery Permit be modified or terminated, the permit holder shall be provided notice of the reason for modification or termination by: (1) mailing notice to the address of the restaurant, (2) delivering notice to the restaurant manager or staff on duty at the restaurant, or (3) mailing or delivering the notice to the permit holder or property owner.

Conclusion

In addition to the City's general police power under article XI, section 7 of the California Constitution to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, during a local emergency, Government Code, § 8634 (and Chapter 2.52 of the Malibu Municipal Code) also authorize the city to promulgate orders and regulations necessary to provide for the protection of life and property. The COVID-19 outbreak presents a health and financial crisis to all and this situation is unprecedented and constantly evolving.

This urgency measure will provide assistance to local food service establishments which reopen through the implementation of a Temporary Restaurant Recovery Program. In recognition of the fact that physically distanced outdoor activities are considered to create a lower risk of spreading the virus than indoor activities, the program is designed to help food service businesses expand their outdoor dining capacity in order to allow them to serve more people in a safe and physically distanced manner in accordance with public health guidelines.

If Council approves the recommended action, staff will finalize the application process and coordinate with local food service business and shopping center owners. The ordinance will go into effect immediately, as the Los Angeles County Variance for Attestation form has been approved by the California Department of Public Health and will remain in effect until the period of local emergency has subsided. In order to prevent inconsistencies in the law, the City Manager as the Director of Emergency Services may also suspend the ordinance if a similar federal or State law is adopted.

ATTACHMENTS:

1. Ordinance No. 465U
2. Draft Temporary Restaurant Recovery Permit Application

ORDINANCE NO. 465U

AN URGENCY ORDINANCE OF THE CITY OF MALIBU IMPLEMENTING A TEMPORARY RESTAURANT RECOVERY PROGRAM TO ALLOW RESTAURANTS TO ALTER OPERATIONS TO ADD SEATING AREA TO AID PHYSICAL DISTANCING DURING THE COVID-19 EMERGENCY, FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

The City Council of the Malibu does ordain as follows:

SECTION 1. Purpose and Findings.

- A. International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19, (COVID-19).
- B. On March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19.
- C. On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for the spread of COVID-19.
- D. On March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread, and addressing the effects, of COVID-19.
- E. On March 14, 2020, the Director of Emergency Services proclaimed the existence of a local emergency pursuant to Malibu Municipal Code section 2.52.060.
- F. On March 16, 2020, the City Council ratified the proclamation of the Director of Emergency Services and declared the existence of a local emergency to ensure the availability of mutual aid and aid the City’s response to COVID-19.
- G. On March 19, 2020, Governor Newsom issued Executive Order N-33-20 which ordered all individuals living in the State to stay home or at their place of residence, except as needed to maintain continuity of operations of the federal critical infrastructure sectors.
- H. The Los Angeles County Health Officer issued a series of orders that mirrored and expanded on this Order, including on March 21, 2020, that (1) prohibit all public

and private group events and gatherings, (2) orders all persons to remain in their homes except to travel to and from Essential Businesses, to work at a Healthcare Operation or Essential Infrastructure, to engage in Essential Activities, or to participate in an individual or family outdoor activity, while practicing physical distancing. All of the following were ordered closed immediately: (1) Non-Essential Retail Businesses, (2) Indoor Malls and Shopping Centers (including both Essential and Non-Essential Businesses within, except Essential Businesses that can be accessed from the exterior of the building), (3) Indoor and Outdoor Playgrounds, Flea Markets and Swap Meets, and (4) bars and nightclubs that do not serve food, gyms and fitness centers, movie theaters, live performance theaters, concert halls, arenas, stadiums, bowling alleys, arcades, and wineries, breweries, and tap rooms that provide tastings. On-site dining was prohibited at restaurants and other food facilities. The City is subject to the orders of the County Health Official.

- I. On April 14, 2020, the State presented its Resilience Roadmap (Roadmap), a four-stage plan for modifying the State Public Health Officer's stay-at-home order.
- J. On May 4, 2020, the Governor issued Executive Order N-60-20 which informed local health jurisdictions and industry sectors that they may gradually reopen under new modifications and guidance provided by the state per the May 7, 2020 Public Health Order. The announcement provided a new framework to allow counties to move more quickly through Stage 2 if they attest that they meet the State's readiness criteria.
- K. On May 7, 2020, the Public Health Order described an attestation opportunity for counties to move through Stage 2, opening additional sectors of their economy at their own pace. To qualify, counties must attest that hospitalization and test positivity rates are stable or declining; that they have a significant level of preparedness with testing, contact tracing, PPE and hospital surge; and that they have adequate plans related to county-wide containment. Allowing this initial approach to move forward for approximately 10-14 days allowed the state and counties to see the early impact of these modifications to the statewide Stay-at-Home order. To date, one county has retracted their attestation for one week following an increase in new cases.
- L. On May 18, 2020, State public health leaders announced a new attestation process, which includes criteria important for larger, more densely populated counties such as the County of Los Angeles. To qualify, counties must attest that hospitalization and test positivity rates are stable or declining; that they have a significant level of preparedness with testing, contact tracing, PPE and hospital surge; and that they have adequate plans related to county-wide containment.
- M. On May 26, 2020, the County of Los Angeles issued a new Health Order easing restrictions on certain activities including in-person faith-based services and retail shopping with certain safety protocols including capacity limitations while

continuing to encourage all County residents to remain in their residences whenever practicable and for people 65 years old or older and anyone with underlying health conditions to remain in their residences as much as possible, leaving their residences only when necessary to seek medical care, exercise, or obtain food or other necessities.

- N. On May 29, 2020, the State approved the County's application to move into advanced Stage 2 which allows for the reopening of retail stores and in-person dining with limited seating capacity and physical distancing.
- O. The Centers for Disease Control and Prevention, the California Department of Health, and the Los Angeles County Department of Public Health have all issued recommendations including but not limited to physical distancing, canceling or postponing group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus.
- P. This ordinance is temporary in nature and only intended to promote health, safety, stability and expeditious recovery within the local business community in the City during the COVID-19 pandemic outbreak, and to prevent avoidable business closures, thereby serving the public peace, health, safety, and public welfare.
- Q. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this ordinance related to the protection of life and property, to support the financial recovery of the local food service business community, and provide space for community residents and visitors to safely dine-out. During the COVID-19 pandemic outbreak, capacity limitations and/or physical distancing requirements have had, and will continue to have, a significant impact on businesses' ability to operate and generate revenue at a time when many are already struggling financially in the wake of the stay at home orders and 2018 Woolsey Fire.
- R. Promoting stability and financial recovery amongst commercial tenancies is conducive to public health, allowing businesses to follow the advice and directives of public health officials to limit indoor seating capacity in order to allow for physical distancing, with reduced fear of more significant hardship.
- S. Permitting certain temporary changes to the operating conditions and expanding outdoor dining seating to allow dining service in a way that is compliant with applicable physical distancing requirements and other public health orders during the period of local emergency declared in response to COVID-19 allows businesses an opportunity to remain viable without compromising the public health or resulting in unacceptable adverse impacts to the surrounding areas.
- T. This ordinance is adopted pursuant to the City's police powers and powers afforded to the City in time of national, state, county and local emergency during an

unprecedented health pandemic, such powers being afforded by the State Constitution, State law and section 2.52 of the Malibu Municipal Code to protect the peace, health, and safety of the public. The Malibu City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and financial stability of the local business community and finds urgency to approve this ordinance immediately based on the facts described herein and detailed in the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for the protection of life and property.

SECTION 2. Temporary Restaurant Recovery Program.

A. Temporary Restaurant Recovery Permit

1. During the period of local city emergency declared in response to COVID-19, outdoor dining limitations, areas for dining service, seating arrangements, and previously approved operating conditions may be temporarily suspended or altered to allow restaurants to increase outdoor dining areas and physical distancing if authorized by a Temporary Restaurant Recovery Permit.
2. A Restaurant owner, shopping center or Restaurant property owner, or manager of any Restaurant or shopping center may apply for a Temporary Restaurant Recovery Permit that would allow the following (in the event of conflicting applications, the property owner's application, if granted, shall be the operative application and permit):
 - a. Temporary use of Temporary Restaurant Seating Area to allow greater physical distancing;
 - b. Temporary changes to other approved operating conditions or restrictions to facilitate physical distancing.

B. Eligible Areas. "Temporary Restaurant Seating Area" means:

1. The following areas of the property that are not currently permitted for restaurant service use but may be safely be converted to seating for guests:
 - a. Indoor areas that are within the tenant space
 - b. Outdoor areas adjacent to the Restaurant use including parking spaces, but excluding areas where the use could negatively impact coastal resources or prevent coastal access
 - c. Common areas of shopping malls that are accessible from, and within 100 feet of, the subject Restaurant
2. Sidewalks and other public rights-of-way that are closed to public access during the period of service. A separate encroachment permit may be required for use of the public right-of-way;

C. Permit Approval.

1. The Planning Director may issue a Temporary Restaurant Recovery Permit upon making the following findings:
 - a. Adverse impacts from any use authorized by the Temporary Restaurant Recovery Permit are minimal and not significant;
 - b. The resulting Restaurant use will not exceed the previously legally established or permitted use.
 - c. The use will include a maximum of seats that does not exceed the current number of authorized seats. City staff shall determine the number of authorized seats based on staff's evaluation of existing permits, available parking, onsite wastewater treatment system (OWTS) approval, the number of seats allowed in Restaurants with similar seating areas, and/or other available information;
 - d. Temporary Restaurant Seating Area fully complies with all California COVID-19 Industry Guidance, California Department of Public Health and Los Angeles County Department of Public Health codes and requirements. A Temporary Catering Authorization from California Alcohol Beverage Control (ABC) will be required for any business proposing to serve alcohol within a Temporary Restaurant Seating Area;
 - e. The Restaurant and shopping center is not currently subject to open code enforcement action and is not in violation of any compliance agreement.

2. The Planning Director may impose any conditions required to prevent use of the Restaurant from exceeding the impacts and use of the Restaurant that existed prior to the issuance of a Temporary Restaurant Recovery Permit. Such conditions may include, but are not limited to, modifying hours of operation of the Temporary Restaurant Seating Area, measures to limit noise impacts, measures to facilitate parking, drop-off , pickup, lighting restrictions, temporary protective barriers, circulation requirements for employees, customers, vehicles, health/safety measures, and restrictions on the locations and numbers of seats and tables inside and outside the Restaurant. The property owner shall agree to indemnify and defend the City in any action related to the issuance of the Temporary Restaurant Recovery Permit and/or the use allowed by the permit as a condition of receiving the permit.

D. Existing Operational Requirements and Termination.

1. The Temporary Restaurant Recovery Program does not relieve the applicant from any conditions of approval included in existing entitlements other than those which are directly addressed by the Temporary Restaurant Recovery Permit.

2. The Temporary Restaurant Seating Area must be vacated and returned to its original state within 72 hours of the termination of this ordinance or the

termination of the issued Temporary Restaurant Recovery Permit. Use of the Temporary Restaurant Seating Area must cease immediately upon termination of this ordinance or a Temporary Restaurant Recovery Permit.

E. Violations

1. In addition to all other remedies, violations of a Temporary Restaurant Recovery Program Permit or this ordinance are subject to the Administrative fine provisions of the Malibu Municipal Code located in Chapter 1.10 et. seq.
2. A Temporary Restaurant Recovery Permit may be modified or terminated by the City for any of the following reasons:
 - a. Violation of any applicable law, rule, ordinance, or order;
 - b. Disturbance of the quiet enjoyment of nearby residents;
 - c. Objection by law enforcement agencies;
 - d. If operation of the Temporary Restaurant Seating Area is inconsistent with State or local public health directives, including physical distancing directives or guidance; or
 - e. If, in the discretion of the Planning Director, continuance of the activity permitted by the Temporary Restaurant Recovery Permit will negatively impact the public's health, safety, or welfare.
3. Should a Temporary Restaurant Recovery Permit be modified or terminated per subsection (2) of this Section, the permit holder shall be provided notice of the reason for modification or termination by: (1) mailing notice to the address of the Restaurant, (2) delivering notice to the Restaurant manager or staff on duty at the Restaurant, or (3) mailing or delivering the notice to the permit holder or property owner. The permit holder may request reconsideration of the modification or termination by providing written evidence or argument to the City Clerk at cityclerk@malibucity.org within five days of the mailing or delivery of the notice by the City, whichever is earlier in time. The permit holder must immediately comply with the modification or termination, except that if a request for consideration is timely delivered to the City the Temporary Restaurant Seating Area need not be returned to its original condition until 10 days after the date notice of the modification or termination was mailed or delivered by the City, whichever is earlier in time.

SECTION 3. In order to prevent inconsistencies, the Director of Emergency Services may suspend the effectiveness of any provision in this ordinance in the event that the President of the United States, Congress, Governor of the State of California or California State Legislature or other body with jurisdiction adopts a similar order or legislation.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is found to be

unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this ordinance.

SECTION 5. Environmental Review.

The City Council finds that adoption and implementation of this ordinance is categorically exempt per Section 15304(e) of the California Environmental Quality Act (CEQA) guidelines regarding minor temporary uses of land. The City Council also alternatively finds that the adoption and implementation of this ordinance is exempt from the provisions of CEQA as an administrative activity by the City of Malibu, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic regulations). Further, the City Council finds that the adoption and implementation of this ordinance is categorically exempt per Section 15269 of the CEQA guidelines regarding emergency projects as this action is necessary to prevent or mitigate an emergency by allowing for greater physical distancing to limit the spread of COVID-19.

SECTION 6. Urgency Declaration; Effective Date.

The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above. Provision of outdoor seating areas protects public health by providing the ability to increase physical distance between patrons and prevents upheaval to the extent restaurants are forced to close and move out due to the financial impact of COVID-19 related impacts. During this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to support the local business community with flexible processes, policies, and programs in order to help businesses keep their doors open in a safer manner and in compliance with the advice and directives of public health officials to their fullest extent. Under Government Code Section 8634 and Malibu Municipal Code section 2.52, this ordinance is necessary to provide for the protection of life and property for the reasons set out herein. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety, and protection of life and property, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 7. Certification.

The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this 8th day of June 2020.

KAREN FARRER, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney



City of Malibu

TR No. ____ -

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TEMPORARY RESTAURANT RECOVERY PROGRAM APPLICATION

A Restaurant owner, shopping center or Restaurant property owner, or manager of any Restaurant or shopping center may apply for a Temporary Restaurant Recovery Permit that would allow the following¹:

1. Temporary use of Temporary Restaurant Seating Area to allow greater physical distancing;
2. Temporary changes to other approved operating conditions or restrictions to facilitate physical distancing.

“Temporary Restaurant Seating Area” means:

1. The following areas of the property that are not currently permitted for restaurant service use but may be safely be converted to seating for guests:
 - a. Indoor areas that are within the tenant space;
 - b. Outdoor areas adjacent to the Restaurant use including parking spaces but excluding areas where the use could negatively impact coastal resources or prevent coastal access;
 - c. Common areas of shopping malls that are accessible from, and within 100 feet of, the subject Restaurant.
2. Sidewalks and other public rights-of-way that are closed to public access during the period of service. A separate encroachment permit may be required for use of the public right-of-way.

All Temporary Restaurant Recovery Areas must be designed to fully comply with all California COVID-19 Guidance. Please read the application below for additional requirements.

¹ In the event of conflicting applications, the property owner’s application, if granted, shall be the operative application and permit.

Submittal Checklist

NOTE: During evaluation and inspection, additional information may be requested.

1. _____ **TEMPORARY RESTAURANT RECOVERY APPLICATION**

This form completed and signed by the Applicant, Business Owner, and Property Owner, as applicable.

2. _____ **SEATING AREA DOCUMENTATION**

Please provide at least one of the following so that City staff may determine the number of authorized seats:

- Existing permits
- Available parking
- Onsite wastewater treatment system (OWTS) approval
- Documentation of the number of seats allowed in Restaurants with similar seating areas
- Other

3. _____ **SITE PLAN WITH RESTAURANT USE DIAGRAM**

- Show lot dimensions, access to site, parking areas, and permanent structures.
 - Compliance with the Americans with Disability Act (ADA) and other agency regulations is required. Paths of travel shall be a minimum of 5 feet to allow for two people to walk comfortably side by side and accommodate ADA accessibility.
- Show the previously established or permitted seating area and number of seats. Please provide dimensions and list the number of seats.
- Clearly mark the proposed temporary restaurant seating area, **which may not exceed the previously legally established or permitted maximum of number of authorized seats.**
 - Include pickup/ take out queuing area, table/chair locations, other seating areas, separation between seating areas, canopy covers, location within a sidewalk area, outdoor heaters, parking spaces used, and location and type of enclosure around designated dining area. A barrier/ area delineation is not required if the temporary restaurant use area is not within a parking area or if no alcohol is served or consumed.
- Show location of all temporary structures, including staff stations, utensil and hand washing stations, temporary barriers, shade structures, trash cans and recycling bins, valet stand, etc. **No new outdoor food preparation is allowed outside.**

General Information

PROPERTY ADDRESS: _____

DEVELOPMENT TYPE: SINGLE BUILDING MULTI-TENANT (SHOPPING CENTER)
 OTHER:

UNIT #: _____ APN: _____

BUSINESS NAME: _____

BUSINESS ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

BUSINESS PHONE #: _____ BUSINESS EMAIL: _____

APPLICANT: First: _____ Last: _____

APPLICANT ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

APPLICANT PHONE #: _____ APPLICANT EMAIL: _____

PROPERTY OWNER: _____

COVID-19 OPERATIONAL POINT PERSON: First: _____ Last: _____

PHONE #: _____ EMAIL: _____

Business Information

HOURS OF OPERATION: _____

ALCOHOL: NONE ONSITE CONSUMPTION OFF-SITE CONSUMPTION

CUSTOMER QUEUEING AREAS*:

DOES THIS BUSINESS OFFER CURBSIDE PICKUP/ TAKEOUT? YES NO

DOES THIS BUSINESS TAKE RESERVATIONS? YES NO

DOES THIS BUSINESS DELIVER? YES NO

If "Yes" was selected for any of the questions above, please ensure that there is adequate space(s) for customer/ delivery person queueing.

Project Information

PROPOSED PROJECT DESCRIPTION (PROVIDE ADDITIONAL PAGES IF NECESSARY):

1. PROPOSED TEMPORARY RESTAURANT USE AREA:

PARKING SIDEWALK COMMON SPACE OTHER: _____

2. PROPOSED TEMPORARY RESTAURANT USE AREA:

SQUARE FOOTAGE: _____ SQ. FT.

SEATS FOR CUSTOMERS (NUMBER): INDOOR _____ OUTDOOR _____

3. TOTAL RESTAURANT USE AREA:

SQUARE FOOTAGE: _____ SQ. FT.

SEATS FOR CUSTOMERS: INDOOR _____ OUTDOOR _____

4. TEMPORARY STRUCTURES:

TEMPORARY BARRIERS (#) _____ (TYPE): _____ (HEIGHT): _____

TEMPORARY SHADE STRUCTURES (#) _____ (TYPE): _____ (HEIGHT): _____

OTHER TEMPORARY STRUCTURES: (DESCRIBE NUMBER AND SIZE): _____

TEMPORARY LIGHTING: No Yes, Describe: _____

5. PARKING*:

PARKING AFFECTED: No _____ Yes, No. of Spaces Impacted: _____

Department Reviews

INITIALS: CE _____ EH _____ PW _____ ESD _____ On-site Inspection* _____

**An inspection may be conducted any time and result in additional safety requirements*

Staff Use Only

1. The Restaurant and shopping center are not currently subject to open code enforcement action and is not in violation of any compliance agreement.
 No Yes
2. The Temporary Restaurant Use Area and its associated activities or access requirements will result in no adverse impact on opportunities for public use of or access to the area due to the proposed location.
 No Yes
3. There will be no direct or indirect impacts from the approval of the proposed Temporary Restaurant Use Area and its associated activities or access requirements on environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources.
 No Yes

EXISTING SQUARE FOOTAGE:

EXISTING SEATS FOR CUSTOMERS (NUMBER): _____ INDOOR _____ OUTDOOR

Document used to assess the above? _____

Approved for permit: _____
Planning Staff

Date: _____

NOT Approved for permit: _____
Planning Staff

Date: _____

Reason not approved or additional information required:

TEMPORARY RESTAURANT RECOVERY APPLICATION CONDITIONS OF APPROVAL

1. General

- a. Approval of this application does not eliminate the need for other permits, licenses, or certificates required. Additional permits may include, but not be limited to Alcohol Beverage Control ([COVID-19 Temporary Catering Authorization Application \(Form ABC-218 CV19\)](#)), LA County Fire Dept., LA County Dept. of Public Health (food).
- b. This permit shall be kept on site and produced to any agent or employee of the City of Malibu on request. Applicant shall not deviate from this permit without prior written approval.
- c. All operations and service conducted within the Temporary Restaurant Seating Areas will be consistent and in accordance with CA Department of Public Health and Los Angeles County Department of Public Health codes and requirements.
- d. An approved worksite-specific COVID-19 prevention plan will be posted at the Temporary Restaurant Seating Areas at all time.
- e. The approval of this Temporary Restaurant Recovery Program Application is for the use described in the application; no development is permitted as part of this approval.
- f. The Temporary Restaurant Recovery Program does not relieve the applicant from any conditions of approval included in existing entitlements other than those which are directly addressed by the Temporary Restaurant Recovery Permit.
- g. A Temporary Restaurant Recovery Program approval does not allow any changes exceeding existing permitted hours or established hours of the subject business.
- h. The Planning Director may impose any conditions required to prevent use of the Restaurant from exceeding the impacts and use of the Restaurant that existed prior to the issuance of a Temporary Restaurant Recovery Permit. Such conditions may include, but are not limited to, modifying hours of operation of the Temporary Restaurant Seating Area, measures to limit noise impacts, measures to facilitate parking/drop-off/pickup, lighting restrictions, temporary protective barriers, circulation requirements for employees/customers/vehicles, health/safety measures, and restrictions on the locations and numbers of seats and tables inside and outside the Restaurant. The property owner shall agree to indemnify and defend the City in any action related to the issuance of the Temporary Restaurant Recovery Permit and/or the use allowed by the permit as a condition of receiving the permit.
- i. In addition to all other remedies, violations of a Temporary Restaurant Recovery Program Permit or this Ordinance are subject to the Administrative fine provisions of the Malibu Municipal Code located in Chapter 1.10 et. seq

2. Construction Hours

- a. Per Malibu Municipal Code (MMC) Section 4.2.04(G), construction may take place from 7:00 a.m. to 7:00 p.m. weekdays and 8:00 a.m. to 5:00 p.m. on Saturdays. Construction is not permitted on Sundays or the following City observed holidays: New Year's Day, Martin Luther King Jr. Day,

President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.

3. Noise

- a. Must comply with noise ordinance and all noise related conditions of existing approvals.
- b. All noise is subject to the City's Noise Ordinance found in MMC Chapter 8.24. The project applicant and property owner acknowledge receipt of the City's Noise Ordinance and agree to comply with the provisions at all times. Violation of the Noise Ordinance shall be cause for revocation of the permit and may result in denial of any Special Event Permits requested for the subject property in the future.
- c. If any agent of the City requests that the noise level be reduced, applicant shall ensure immediate compliance.
- d. Noise from this event shall not emanate or interfere with the peace and comfort of the residences or their guests, or the operators or customers in places of business in the vicinity.
- e. Noise shall not be plainly audible at a distance of five feet of any residential dwelling unit after 10:00 p.m.

4. Lighting

- a. Exterior lighting shall be minimized, restricted to low intensity features, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from sensitive public viewing areas. Traffic lights, navigational lights, and other similar safety lighting are exempt from this requirement.

5. Parking and Access

- a. Applicant shall assure that guest vehicles do not at any time block any public or private street or driveway.
- b. Fire Department emergency vehicle access shall be maintained at all times.
- c. A minimum of one opening shall be provided on a dining enclosure on the public sidewalk side of the space. Enclosed outdoor dining areas shall maintain an opening of 36" minimum. Access openings shall be kept clear of furnishings. Gates, while not preferred, shall not open outwards into path of travel or walk zone.
- d. Fire code compliance is required for egress purposes within the permit area. A minimum five (5) foot clear path of travel shall be provided and the number of seats provided shall not exceed 1 seat per 15 square feet within the permit area.

6. Temporary Structures and Structure Placement

- a. Shade structures shall be ground mounted and shall not be attached to the building (per Fire Code requirements).
- b. All materials and structures should be easily movable and temporary.

7. Smoking

- a. Smoking is prohibited in all outdoor dining areas located on private or public property, including the public right-of-way. Smoking is also prohibited within 20 feet of an outdoor dining area, except while actively passing by on the way to another destination. The MMC defines “smoking” as inhaling, exhaling, burning, or carrying any lighted cigarette, cigar or pipe. (Ord. No. 337, § 1, 7-13-2009)
- b. Any business with an area subject to the prohibition set forth in MMC Section 9.32.020 shall post or cause to be posted and shall maintain “no smoking” signs in conspicuous locations within said area. All such signs shall: (1) be no greater than one square foot in size; (2) be prominently displayed; (3) clearly state “no smoking” and/or use the international “no smoking” symbol; and (4) reference MMC Section 9.34.020. Any business with an area subject to the prohibition set forth in MMC Section 9.34.020 shall also provide a smoker’s waste receptacle 20 feet from the entry way or, where that distance is not possible, at the farthest possible point away from the entry way.

8. Plastic Bags

- a. Per MMC Chapter 9.28 no retail, restaurant, vendor, or nonprofit vendor shall provide plastic bags of compostable plastic bags to customers.

9. Polystyrene Food Packaging (Styrofoam)

- a. Per MMC Chapter 9.24, no restaurant, food packager, retail food vendor, vendor, or nonprofit food provider shall provide prepared food to its customers in any food packaging that utilizes expanded polystyrene.

10. Sandbags

- a. Per MMC Chapter 9.30, no affected retail establishment, governmental agency, vendor or nonprofit vendor shall provide plastic sandbags to customers. No person shall distribute or use plastic sandbags at any City facility or any event held on city property. No person, entity, business, homeowner, nonprofit, contractor, subcontractor or employee shall install for any purpose, whether temporary or permanent, plastic sandbags.

11. Termination

- a. The Temporary Restaurant Seating Area must be vacated and returned to its original state within 72 hours of the termination of this ordinance or the termination of the issued Temporary Restaurant Recovery Permit. Use of the Temporary Restaurant Seating Area must cease immediately upon termination of this ordinance or a Temporary Restaurant Recovery Permit.
- b. A Temporary Restaurant Recovery Permit may be modified or terminated by the City for any of the following reasons:
 - i. Violation of any applicable law, rule, ordinance, or order;
 - ii. Disturbance of the quiet enjoyment of nearby residents;
 - iii. Objection by law enforcement agencies;
 - iv. If operation of the Temporary Restaurant Seating Area is inconsistent with State or local public health directives, including social distancing directives or guidance; or
 - v. If, in the discretion of the Planning Director, continuance of the activity permitted by the Temporary Restaurant Recovery Permit will negatively impact the public’s health, safety, or welfare.

- c. Should a Temporary Restaurant Recovery Permit be modified or terminated per Condition 11, the permit holder shall be provided notice of the reason for modification or termination by: (1) mailing notice to the address of the Restaurant, (2) delivering notice to the Restaurant manager or staff on duty at the Restaurant, or (3) mailing or delivering the notice to the permit holder or property owner. The permit holder may request reconsideration of the modification or termination by providing written evidence or argument to the City Clerk at cityclerk@malibucity.org within 5 days of the mailing or delivery of the notice by the City, whichever is earlier in time. The permit holder must immediately comply with the modification or termination, except that if a request for consideration is timely delivered to the City the Temporary Restaurant Seating Area need not be returned to its original condition until 10 days after the date notice of the modification or termination was mailed or delivered by the City, whichever is earlier in time

12. Special Conditions

- a. _____

- b. _____

- c. _____

- d. _____

DRAFT

INDEMNIFICATION CLAUSE

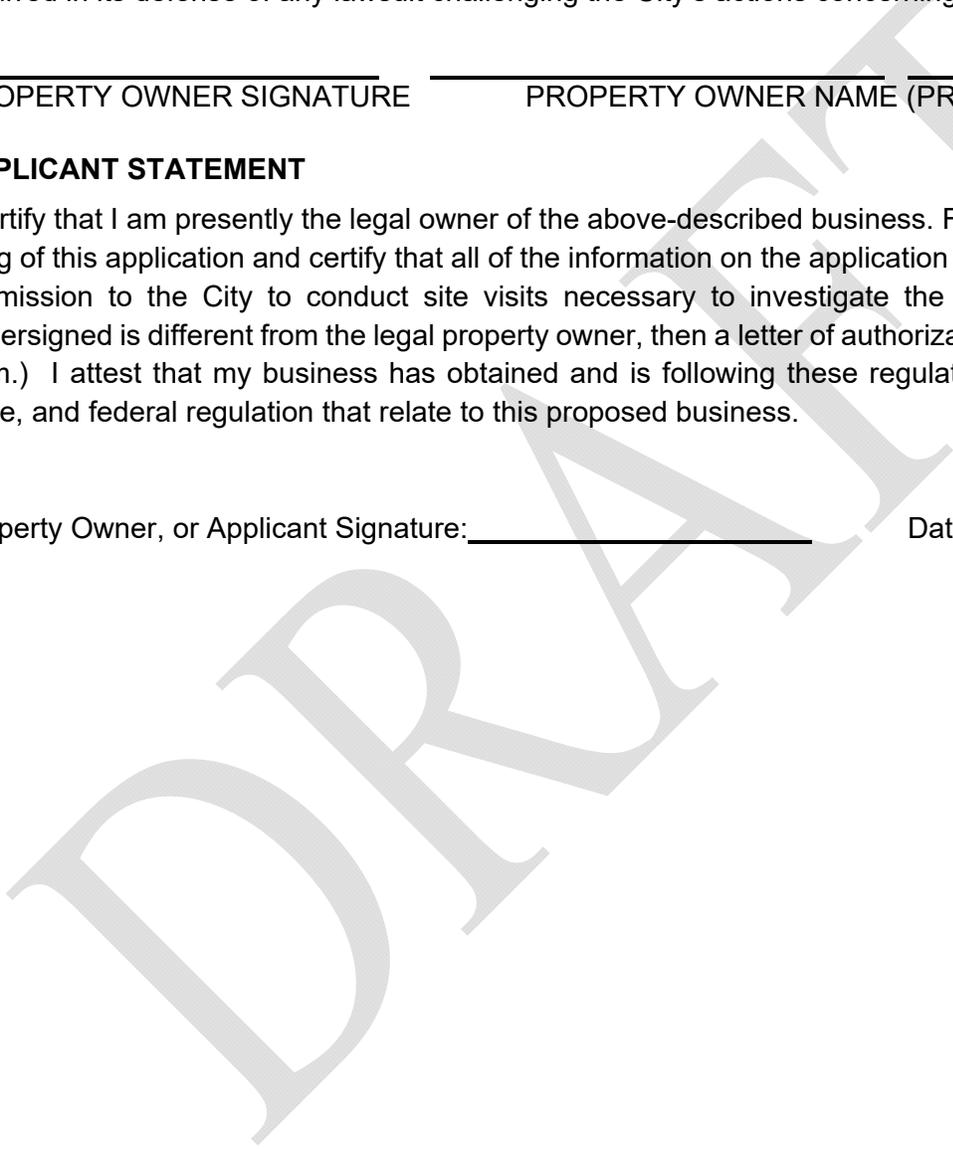
The applicant, property owners, and their successors in interest, shall protect, defend, indemnify, and hold harmless the City of Malibu, its officers, employees, and agents from any claim, action, proceeding, liability and costs relating to or concerning the City’s actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City’s actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners and/or applicant shall reimburse the City’s expenses incurred in its defense of any lawsuit challenging the City’s actions concerning this project.

PROPERTY OWNER SIGNATURE PROPERTY OWNER NAME (PRINT) DATE

APPLICANT STATEMENT

I certify that I am presently the legal owner of the above-described business. Further, I acknowledge the filing of this application and certify that all of the information on the application is true and correct. I grant permission to the City to conduct site visits necessary to investigate the proposed project. (If the undersigned is different from the legal property owner, then a letter of authorization must accompany this form.) I attest that my business has obtained and is following these regulations and any other local, state, and federal regulation that relate to this proposed business.

Property Owner, or Applicant Signature: _____ Date: _____



ACCEPTANCE OF CONDITIONS AFFIDAVIT

The undersigned applicant(s) and property owner(s) acknowledge and agree to abide by all terms and conditions of **Temporary Recovery Number** _____ for the business located at _____.

Date

Signature of Applicant

Print Applicant's Name

Date

Signature of Property Owner/Manager

Print Property Owner/ Manager's Name

