



CITY OF MODESTO
OPENAIR INITIATIVE
FOR OUTDOOR DINE-IN RESTAURANTS & COMMERCIAL BUSINESSES

GUIDELINES AND PROCEDURE

VERSION: 9/30/20

Contents

Requirements to Expand All Outdoor Commercial Operations:.....	3
Additional Requirements to Expand on Private Parking Lots:	3
Additional Requirements to Expand on Sidewalks:	3
Standards for Tents and Shade Structures:	3
How do I Start?	3
Special Temporary Outdoor OpenAir Initiative	4
MoCertified Standards.....	4
Temporary Outdoor Dining and Commercial Activity on Private Property	4
Private Parking Lots.....	4
Temporary Outdoor Dining and Commercial Activity in Public Rights-of-Way	4
Sidewalks.....	5
Physical Modifications/Signage; Lighting and Umbrellas	6
Alcoholic Beverages	6
Tents or Shade Structures on Sidewalks, On-Street Parking Spaces, or Closed Street.....	7

Overview

To the extent this guidance conflicts with any existing permit policies and procedures regarding encroachments for outdoor dining activity, this OpenAir Initiative temporarily supersedes or amends such policies and procedures under the City of Modesto's emergency powers. This initiative is subject to change, and expires when the local emergency declaration is lifted or if stricter shelter in place orders become effective.

Requirements to Expand All Outdoor Commercial Operations:

- 1. Follow State and local dine-in best practices and physical distancing standards:**
 - a. **State Issued Dine-In guidance:** <https://files.covid19.ca.gov/pdf/guidance-dine-in-restaurants.pdf> and Checklist, <https://files.covid19.ca.gov/pdf/checklist-dine-in-restaurants.pdf>
 - b. **Retail and Commercial Businesses:** <https://covid19.ca.gov/industry-guidance/#county-attest>
 - c. **Encouraged to follow local best practices:** <https://visitmodesto.com/certified/>
- 2. Follow requirements of the American Disabilities Act (ADA)**
 - a. <https://www.dor.ca.gov/Home/Title24>
- 3. Follow requirements of Alcohol Beverage Control (ABC)**
 - a. <https://www.abc.ca.gov/fifth-notice-of-regulatory-relief/>

Additional Requirements to Expand on Private Parking Lots:

- 1. Follow all requirements above**
- 2. Get Property Owner Consent**

Additional Requirements to Expand on Sidewalks:

- 1. Follow all requirements for all expand outdoor commercial operations**
- 2. Follow the standards detailed beginning on Page 5 of this document**
- 3. Sign Indemnification Agreement and provide evidence of insurance.**

Standards for Tents and Shade Structures:

- 1. Follow all requirements detailed on Page 7 of this document**

How do I Start?

- 1. Complete and submit applications (attached)**
Electronic: mtucker@modestogov.com or Hard Copies to Community & Economic Development located on the third floor at 1010 10th street Suite 3300.
- 2. Applications will be returned to the applicant indicating approval or denial.**

Special Temporary Outdoor OpenAir Initiative

The City of Modesto's OpenAir Initiative has been established to ensure businesses have the greatest ability to operate successfully through Phases 2 and 3 of the Governor's Roadmap to Recovery¹. This guidance temporarily supersedes existing permit policies and procedures regarding outdoor activities.

MoCertified Standards

To promote public safety, businesses must comply with state and local dine-in best practices², and encouraged to make the appropriate modifications meeting MoCertified standards for dine-in restaurants³.



Temporary Outdoor Dining and Commercial Activity on Private Property

Restaurant and commercial businesses with access to private sidewalks or private parking may utilize these areas for dining activities in accordance with guidelines identified in the previous section.

Private Parking Lots

With property owner consent, private parking spaces within 25 feet of a restaurant or commercial business may be converted to outdoor dining space. The proposed converted parking space to dining use must comply with public safety standards for emergency rescue, building access, and physical distancing requirements. Additionally, no parking for disabled persons may be repurposed for restaurant or commercial use and there should not be any congestion of vehicular and pedestrian traffic.

Temporary Outdoor Dining and Commercial Activity in Public Rights-of-Way

The City of Modesto will allow restaurant and commercial businesses to expand operating space in designated portions of the public rights-of-way. These areas are limited to sidewalks, and with the appropriate City approvals, on adjacent street parking spaces or on City roadways.

To participate in the program, minimum requirements within the Americans with Disability Acts (ADA) must still be met.

¹ <https://covid19.ca.gov/roadmap/>

² <https://files.covid19.ca.gov/pdf/guidance-dine-in-restaurants.pdf>;

Checklist: <https://files.covid19.ca.gov/pdf/checklist-dine-in-restaurants.pdf>

³ <https://visitmodesto.com/certified/>

Sidewalks

General Requirements

Outdoor dining and commercial activities within sidewalks shall maintain:

- Adequate pedestrian flow of at least 6 feet.
- Unobstructed access to public utilities, building entrances, crosswalks, bus stops and transit entrances;
- Pedestrian and traffic safety; and
- Aesthetic compatibility with surrounding area

Location Requirements

1. The width of the extended outdoor premise is restricted as follows:
 - a. Shall not exceed the width of the sidewalk frontage of the applying property.
 - i. Maintaining the minimum physical distance of six (6) feet from individuals occupying a neighboring outdoor space.
2. A clearly marked, unobstructed, and durable pedestrian right-of-way, also known as a “pedestrian path”, that meets required accessibility standards, of no less than six (6) feet shall be maintained for each sidewalk outdoor dining area shall adhere to the following standards:
 - a. The minimum distance of the pedestrian path shall be measured from the portion of the sidewalk dining space boundary which is nearest either the nearest curb or the nearest obstruction.
 - b. Sidewalk dining areas shall maintain a clearance of six (6) feet around the edge of other sidewalk dining or commercial areas measured in radius.
3. The pedestrian path shall maintain a minimum of six (6) feet from large obstructions. No tables, or chairs, umbrellas or other fixtures shall be permitted within six (6) feet of a pedestrian crosswalk or any curb cut. For the purposes of this section, large obstructions shall be bus stops shelters, newsstands, existing planters or any other object greater than fifteen (15) square feet in area.
4. Access to fire hydrants, fire hose connections for sprinkler systems, and entrances and exits of all buildings shall not be obstructed at any time by barriers or seating. The twenty (20) foot fire lane shall not be obstructed at any time. There shall be a minimum of forty (40) inches in distance separating the edge of a table or chair to a fire department connection.

Physical Modifications/Signage; Lighting and Umbrellas

1. Appropriate lighting of the sidewalk dining or commercial space is required if operating outside of daytime hours.
2. Use of landscaping and planters as a buffer is permissible, however these materials should not be permanently affixed to any public rights-of-way.
3. Use of removable barriers to define the sidewalk dining space is permissible.
4. No heating, cooking or open flames are permitted in the sidewalk dining area. However, space heaters are permitted provided that they are an outdoor approved type, are located in accordance with the manufacturer's recommendations, and are located at least two (2) feet from the edge of any umbrella canvas, any foliage, or any other flammable object or material.
5. No food preparation, plastic food displays, food storage, or refrigeration apparatus shall be allowed on the public right-of-way.
6. Umbrellas and other decorative material shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. No portion of an umbrella shall be less than six (6) feet, eight (8) inches (eighty (80) inches) above the sidewalk.

City of Modesto Right to Clear Right-of-Way

The City reserves the right to remove dining space in public right-of-way that (i) creates an obstruction to, or causes congestion of, pedestrian or vehicular traffic due to existing conditions on the surrounding public right-of-way if it finds the installation represents a danger to the health, safety or general welfare of the public (ii) a business violates the requirements of these Guidelines or State and Local orders.

The City may require the removal, temporary or permanent, of the sidewalk dining space when redevelopment or improvements of the street or sidewalk, or utility repairs necessitates such action, or the business fails to comply with the criteria set forth in existing City ordinances. Any costs incurred by the City for removal or storage of sidewalk tables, chairs and other equipment shall be the responsibility of the business. The city is not responsible for any damages or loss of equipment removed pursuant to this subsection.

Alcoholic Beverages

Restaurants and food establishments licensed by the State of California will be permitted to sell and allow on-premise consumption of alcoholic beverages within expanded dining areas on private property, on immediately adjacent sidewalks, and dining areas that have been closed to traffic by the City of Modesto. Establishments that serve alcoholic beverages in the outdoor dining area shall provide a physical barrier that meets the requirements of the Alcoholic Beverage Control Board. The business owner

is responsible for managing these barriers and removing them when necessary. For revised ABC regulations, visit: <https://www.abc.ca.gov/fourth-notice-of-regulatory-relief/>.

Restaurants utilizing public rights-of-way for outdoor dining shall comply with the following closing times:

- Thursday through Saturday – close at 12:00 AM
- Sunday through Wednesday – close at 10:00 PM

Entertainment

Restaurants utilizing outdoor dining for entertainment shall comply with the following conditions:

- Businesses shall not have music or entertainment audible beyond the control of the business.
- The sound generated shall be controlled so that its volume level, duration, or character does not annoy, disturb, injure, or endanger the comfort of reasonable persons of ordinary sensibility within the City of Modesto.
- The Business shall remain in compliance with all applicable sections of the Modesto Noise ordinance (MMC Section 4-9.101 et. seq.). If complaints are received due to the sound generated, the business may be required to lower the volume or stop the sound completely.

Businesses shall comply with the following entertainment hours:

- Thursday through Saturday – cease entertainment at 11:00 PM
- Sunday through Wednesday – cease entertainment at 10:00 PM

Additional conditions may be assigned as part of the permit approval on a case-by-case basis.

Tents or Shade Structures on Sidewalks, On-Street Parking Spaces, or Closed Street

1. The following requirements shall apply to use of non-flammable tents or shade structures within public spaces:
 - a. The maximum size tents that may be placed within sidewalks and parking spaces will be 10-foot by 10-foot.
 - b. No staking of tents is permitted in public rights-of-way.
 - c. All tent legs must be weighted at each leg by a minimum of 40lbs.
 - d. Weights must be securely attached to canopy roof and canopy leg separately

- i. Ropes and straps should be high quality
 - ii. Bungee or rubber straps are prohibited
- e. Weights must be on the ground and not dangling
- f. Weights and lines must not pose a hazard and be clearly visible
- g. For maximum safety, tents should be secured as soon as they are put up, and brought down as soon as weight is removed.
 - i. Do not leave unsecured tents at any time.
- h. Heaters of any kind shall not be used under tents or umbrellas.
- i. Smoking is prohibited under tents and shade structures.
- j. Tents must not have closed walls in place while open to the public, and all sides should be open for air flow.
- k. Items that make acceptable weights:
 - i. 5-gallon bucket full of water, sand, or concrete
 - ii. 4" PVC pipe at least 36" long filled with concrete
 - iii. Large commercially available tent weights
 - iv. Sandbags or salt bags 40lbs or heavier
 - v. Requirements for tents larger than 100 square feet or groups of tents/canopies less than 400 square feet.
 - 1. Shall only be placed on private property or city parks (not sidewalks or streets) and adhere to
 - 2. Must comply with IFIA (Industrial Fabrics Association International) Tent Handbook⁴
 - vi. For tents/canopies or groups of tents/canopies larger than 400 square feet, please contact the Fire Prevention Division at (209) 571-5553 prior to setup.

⁴A digital copy can be made available by contacting the Community & Economic Development at (209) 571-5585

