Temporary Outdoor Dining Program for Restaurants and Bars

About the program

- Denver created a temporary program to expand options for restaurants and bars to operate in outdoor patio settings adjacent to their businesses.
- The program's goal is to allow for greater social distancing and safety for bar and restaurant-goers now that public health orders allow restaurants and bars to resume sit-down service.
- Denver created a webpage where businesses can submit a proposal for the city to review at www.denvergov.org/restaurantpermits. After the initial proposal is submitted, it is likely that additional documentation and information will be required.
- Under this program, Denver is allowing businesses to expand existing patio space or establish new patio areas, potentially including parking lots, sidewalks, street parking spaces, and possibly closing select streets to expand outdoor operating areas.
- Also, under this program, two or more on-premises liquor licensees and retail food establishments may also choose to create a Communal Outdoor Dining Area as outlined in the Colorado Liquor Enforcement Division's Emergency Regulation 47-1103. Additional information regarding Communal Outdoor Dining Areas can be found below. Any restaurants interested in a Communal Outdoor Dining Area can send an email of their interest to tempexpand@denvergov.org.
- We are implementing this program with input and guidance from public health experts.
- As part of Denver's dedicated customer service approach, the city offers process navigators to help answer questions and navigate applicable rules and regulations.
- The city started the application process before state orders allowed restaurants and bars to reopen to better manage the volume of applications received citywide.
- This initiative is developed in collaboration with the Mayor's Economic Relief & Recovery Council, a private-sector led advisory group supporting Denver's economic recovery.

FAQs

General Program Information

1. **Where do I go to apply or find more information?**
   www.denvergov.org/restaurantpermits or contact TempExpand@denvergov.org for questions

2. **What is this program about?**
   Denver's temporary outdoor dining program offers restaurant and bar establishments in the city an opportunity to expand their footprints to create more social distancing. The program has a streamlined permitting process, while ensuring that mobility and safety remain top priorities.

3. **Who is eligible?**
   Restaurants, cafes, fast food outlets, coffee shops, bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, and other similar places of public accommodation offering food, beverages, or alcoholic beverages for on-premises consumption.

   All current rules during the pandemic still apply to food trucks and other mobile food establishments. While this program doesn't apply to these, they have been able to continue to operate and serve to-go food while following recommended guidelines for social distancing, sanitary and hygiene practices.

4. **Can *retail* businesses apply to expand their pre-existing outdoor space?**
   Denver's zoning codes already allow for temporary outdoor retail sales on private property. The temporary use requires a zoning permit, which may have conditions or limitations depending on the retail business's specific zoning. Visit www.denvergov.org/commercialzoning for permit applications and instructions.

5. **How long will this program last?**
   Businesses will now be able to use the temporary outdoor space for the public, to the extent provided by state law, until October of 2022. If the expansion involves a city right of way, a permit is required from Denver's Department of Transportation and Infrastructure (DOTI) and will be evaluated for renewal in 90-day extensions. Businesses will have one week following the conclusion of the program to remove the fixtures from their outdoor area. Participants must notify the neighborhood of the dates the patio will operate every 90-days via a public posting. Language for a new posting will be provided to businesses by the Denver Department of Excise and Licenses.

6. **What are the allowed hours of operation for the temporary outdoor expansion?**
   Sunday through Thursday, temporary outdoor patios are required to close by 10 p.m.
   Friday, Saturday, and federal holidays, temporary outdoor patios are required to close by 11 p.m.

7. **Is there an application fee?**
   Beginning November 1, 2021, DOTI permits will have a $50 issuance & inspection fee. These permits will need to be renewed on a 3-month cycle.
   Businesses with liquor licenses will have a fee to amend their liquor license with the State of Colorado.

8. Is the application available in other languages?
Default browser translators used by most people for their language of choice will translate the application. Denver has process navigators to assist those who do not speak English as their primary language.

9. Can we use our existing patio as is without an application?
Yes, if the patio will be used for food service only. If the patio will be used for alcohol service as well, it may also be used as is without application, as long as it is included in the liquor-licensed premises before alcohol service begins. All food and beverage service must comply with applicable public health orders.
Businesses can contact DOTI Permit Operations to check if their existing patio permit is current on fees (Table Chair Railing permit).

10. How far from the business can the outdoor area go?
It depends. Each proposal may have unique circumstances to consider. Generally, for businesses that have a liquor license, the outdoor area must be within line of sight of the existing premises and can only cross a public thoroughfare that is closed to vehicular traffic. There is more flexibility for restaurants that just serve food and non-alcoholic beverages; however, food and beverages must be protected from contamination during service. An approved Communal Outdoor Dining Area must be within 1,000 feet of the permanent licensed premises of each of the establishments associated with the Communal Outdoor Dining Area.

11. Can I share an expanded patio or outdoor space with another restaurant/bar?
Two or more on-premises liquor licenses and retail food establishments may share a Communal Outdoor Dining Area, which shall be subject to the rules outlined in the Colorado Liquor Enforcement Division's Emergency Regulation 47-1103 and governed by a security and control plan agreed to by all licensees associated with the Communal Outdoor Dining Area. All customers at a table may only purchase or consume food and alcohol from a single licensee associated with the Communal Outdoor Dining Area. Licensees associated with the Communal Outdoor Dining Area must have a method of identifying which licensee is selling or serving food and alcohol beverages to a particular table at any given time. One or more licensees associated with outdoor dining area must supervise the outdoor dining area during all hours of operation and all licensees are jointly responsible for controlling the premises.

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12. Can I erect/build/install furniture, tents, railings, etc.?
Requests to expand in the public right-of-way will be handled on a case by case basis. (See more information below in the "Right-of-Way Closures" section.) The outdoor area may include temporary tables, benches, chairs, tents and shade devices, as well as temporary railings and other means of containment and separation between patrons and the public. All furnishings and lighting must be easily removed at the end of the program period. Items in city right-of-way must be placed in areas that do not inhibit drainage or block ADA access or access to utility and storm vaults.
Depending on what you are installing, electrical, building, or fire permits may be needed. Download a guide with step-by-step instructions for applying for building or fire permits.

Additionally, if the outdoor area includes public right-of-way, safety measures (such as signage, traffic control, barricades, and barriers) may be required to ensure mobility and safety for both patrons and the public. DOTI will also require information documenting that structures in the right-of-way can withstand Denver's snow and wind loads and are being used consistent with the manufacturer's

specifications. Businesses with liquor licenses must demonstrate they can control their premise in accordance with state statue and rules; however, they are not required to mark the liquor-licensed premise by installing railings or any other furniture.

13. Can customers bring their own lawn chairs, etc.?

No, the business must provide (and limit, based on social distancing) the seating.

14. Can these patios be used for standing areas, games, movies, broadcast sports, etc.?

Outdoor patios established or expanded under this program can be used only for the following activities:

- Sit-down dining at properly distanced tables;
- Customer pick-up/carry-out service;
- Recorded ambient music, background music and televisions if in compliance with Denver's noise ordinance (see additional information in #16 below).

The following are **prohibited** in premises established or expanded under this program:

- "Standing areas" for guests or drink rails;
- Outdoor games such as cornhole or any activity where customers are sharing equipment;
- Live music, dancing, shows or entertainment
- Loudspeaker call systems; and
- Animals are not permitted on the expanded outdoor premises except as provided in the Americans with Disabilities Act.

They cannot be used for "standing areas" or drink rails, as these would promote congregating. They cannot be used for yard games or other similar activities that would encourage people to congregate or share equipment. Businesses cannot provide live music or other forms of live entertainment. Pets are not permitted on the expanded outdoor premises except as provided in the Americans with Disabilities Act.

15. Are there any requirements for businesses that allow recorded or ambient music or televised sports on the expanded outdoor patio?

If a business would like to provide recorded music or televisions on the extended patio, they must ensure the neighborhood was notified through a five-day posting. If a business was previously approved for an expanded patio and the posting did not indicate they would be having recorded or ambient music or televised sports, they must re-post for five days before playing music or using TVs. The language for an updated posting will be provided to businesses by Denver Excise and Licenses.

Note: These restrictions apply to the new, temporary outdoor patio space only. Existing permanent patios or indoor spaces may have different allowances.

16. Can I offer live entertainment, amplified sound, or other types of entertainment in my original space?

Yes, but performers must adhere to the following requirements:

- Performers whose performance includes forced exhalation that increases the potential to aerosolize respiratory droplets, such as speaking or shouting, singing, playing some instruments, or physical exertion, must maintain at least a 25-foot distance from attendees or patrons at all times during their performance;
- Performers must maintain at least a six-foot distance from each other and other employees at all times during their performance;
  Performers at indoor venues must wear a face covering at all times; and
- Performers should use a separate entrance and exit from spectators or patrons.

- Any noise emitted from the premises that crosses a property line and enters onto any other premises must not exceed the noise level limits specified in Table A of the Noise Ordinance.

17. Is smoking allowed in the new outdoor area?
No.

18. Would businesses have to add outdoor bathroom units if they didn't want to open their in-restaurant bathrooms?
The indoor restrooms with plumbed water would need to be available in accordance with the state's requirements for social distancing inside multi-stall restrooms and frequent cleaning protocols. Restrooms should must be cleaned and disinfected every hour. State guidance for restaurants can be found here.

19. Can a business district (BID) or shopping center be the applicant, or would each tenant need to apply separately?
BIDs and shopping centers can apply jointly for a street closure or for a Communal Outdoor Dining Area; however, each tenant must apply separately when requesting to expand their operations outdoors. Tenants are encouraged to work with their landlords and neighboring businesses to ensure multiple establishments are not applying for the same physical space, unless it is for a Communal Outdoor Dining Area. Likewise, establishments are encouraged to coordinate when requesting street closures. Under the Governor's Executive Order D 2020 093, two or more on-premises liquor licensees and retail food establishments may share a Communal Outdoor Dining Area, which shall be subject to the rules outlined in LED's Emergency Regulation 47-1103 and governed by a security and control plan agreed to by all licensees associated with the Communal Outdoor Dining Area. All customers at a table may only purchase or consume food and alcohol from a single licensee associated with the Communal Outdoor Dining Area.

20. How will enforcement be handled?
Residents can call 3-1-1 to report concerns about how an expanded patio space is operating. The city's Zoning & Neighborhood Inspections Service (ZNIS) inspectors, Right-of-Way inspectors, Public Health inspectors, and Excise & Licenses inspectors will investigate complaints received from the public about the location or operation of an outdoor area. If an inspector finds a violation of these guidelines, or any other applicable provision of Denver's municipal codes, the eligible business and property owner will be responsible for resolving the issue and paying any enforcement-related fines or penalties.

21. Are businesses required to post a public notice of intention to expand or add a patio area?
Yes, Businesses with liquor licenses that have applied for the program are initially required to post notice 5 days prior to opening their patio areas for onsite consumption. Thereafter, participants **will be required** to repost their intent to maintain their patio every 90 days if their patio is on the right-of-way or 120 days if located on private property. The Department will email participants posting requirements and instructions in advance of the required posting.

22. Why are public postings required?
Liquor licenses are issued based upon the 'needs and desires' of neighbors within the vicinity of a liquor licensed establishment. If the Department of Excise and Licenses receives 15 written protests via U.S. mail or email to **EXLapplications@Denvergov.org**, a public hearing may be required for the business to expand or add a patio area. This fulfills the requirements to secure neighborhood input on the modification of liquor licensed establishments.

23. Can I modify my approved application as things change over time?
Yes, just submit a new application that outlines the changes.

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Public Health Questions

24. What are the public health requirements? (e.g., how many tables allowed, minimum spacing, number of occupants, face coverings)
Face coverings are required for employees and customers when not seated at a table. Please consult the most recent public health order and the State of Colorado's restaurant guidance for additional requirements: https://covid19.colorado.gov/safer-at-home/restaurants-food-services.

25. Is risk of transmission lower for outdoor dining compared to indoor dining?
Outbreak trends suggest risk outdoors may be lower. This does not diminish the need for physical distancing and tables effectively spaced outdoors. However, people do not need to wear face coverings when moving through outdoor restaurant patio spaces. We will closely evaluate disease trends as more restrictions are lifted.

26. What if public health guidelines for COVID-19 change? Can this approval be revoked?
Requirements may evolve to reflect new public health guidelines, and the city can revoke approvals at any time, particularly if there is an increase in COVID-19 cases tied to any of these locations.

RIGHT-OF-WAY CLOSURES

27. What will the Department of Transportation and Infrastructure (DOTI) consider when reviewing a proposal to use or close the public right of way?
Upon receipt of a right of way permit request, a right of way inspector will visit the business location and consider the closure proposal from a mobility and safety perspective. An inspector may be able to approve a simple inspection in the field and issue the permit within a couple of business days, pending the layout of the site. . More complex requests will be reviewed for:

- Safety: ensuring any closure of the public right of way is done safely.
- Mobility: considering impacts to people's ability to get around the closure by foot, bike, wheelchair and car and how the proposal mitigates impacts with a traffic control plan, if necessary.
- Local and emergency access: local access to adjacent homes and businesses must be maintained.
- Potential conflicts with other planned projects including special events and impact to utility and stormwater conveyance systems.

Following implementation of any right of way closure, DOTI will do a final inspection to ensure the closure is meeting the permit requirements.

Please note the right of way permit request is different from the initial proposal submittal. After initial submittal, if the request includes expanding onto the public right of way, the applicant will receive instructions for how to apply for the DOTI right of way permit.

28. What types of right of way will restaurants and bars be able to use?
Restaurants and bars may request closure of sidewalks and streets, including parking lanes and travel lanes. Requests to close the public right-of-way are evaluated on a case by case basis. Please reference question 27 regarding more complex requests.

29. Will the city provide barriers for street closure or would businesses need to rent them?
Businesses will need to provide and maintain all necessary barricades for street closures. Additional barricades may be required in the winter in order to safely protect the public during changing weather

conditions.

30. What will the right of way permit cost?
Beginning November 1, 2021, there will be a $50 issuance & inspection fee for Right of Way permits. A business that is proposing to close the public right of way may have costs related to securing barricades, developing a traffic control plan and creating seating areas in the new space.

31. What are the insurance requirements for businesses expanding onto public property?
Applicants must maintain insurance coverage for the full term of the street occupancy permit through the end of this program and use of the public space. The insurance policy must name the City and County of Denver, its elected and appointed officials, employees and volunteers as an additional insured, with minimum limits of coverage of $250,000/$500,000 for bodily injury and $10,000 for property damage, naming the location/address of the encroachment on public property for which permit is issued, or the physical address. This requirement is further detailed in Chapter 49 of the Denver Revised Municipal Code, Section 49-357 and/or Section 49-463.

32. Can I request a temporary loading area on an adjacent public street to facilitate customer pick up of food orders?
The city is currently evaluating common loading zones and may issues these upon request at no charge. Please contact the City Curbside and Parking team at parking.operations@denvergov.org to request a loading zone.

33. How will you handle it if a city project or private development project has already pulled a right of way permit for a particular area or location?
Work that DOTI is already aware of and that may be moving through city processes would take priority over a newly received request; both may be accommodated, depending on the actual proposal and timing of the closures.

PARKING LOTS and PRIVATE PROPERTY

34. Are zoning permits required?
No.

35. Can I close a parking lot, or use some spaces in a parking lot, for this program?
It depends.

There are two zoning codes in effect in Denver. Most private property in Denver is zoned under the Denver Zoning Code. If your property is zoned under the Denver Zoning Code (DZC), you can use outdoor space on your own zone lot (private property) or outdoor space on a neighboring property. This can include using any number of off-street parking spaces located on your own or on a neighboring zone lot (private property) for the outdoor expansion. Creation of an outdoor space on a different private property other than the one where your business is located requires the other property owner's consent.

If your property is zoned under the Former Chapter 59 zoning code (FC59), you can only use outdoor area located on your own zone lot and you can only occupy off-street parking spaces that are above and beyond the minimum number of parking spaces required by the zoning code. Examples of FC59 zone districts include B-3, B-4, R-MU-20, C-MU-10, C-MU-20, I-1.

Zoning by property address can be found here: www.denvergov.org/zoning.

36. I don't have any outdoor space to use. Can I use a neighbor's parking lot or open area?
It depends. See answer above.
Two or more on-premises liquor licensees and retail food establishments may share a Communal Outdoor Dining Area, which shall be subject to the rules outlined in the Colorado Liquor Enforcement Division's Emergency Regulation 47-1103 and governed by a security and control plan agreed to by all licensees associated with the Communal Outdoor Dining Area. All customers at a table may only purchase or consume food and alcohol from a single licensee associated with the Communal Outdoor Dining Area.

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37. Can I use a neighboring restaurant's patio, if that restaurant isn't open?
Yes, if you have that property owner's permission and the neighboring restaurant does not have a liquor license. Alcohol service may be extended if they also have a liquor license and if they apply for a Communal Outdoor Dining Area. All customers at a table may only purchase or consume food and alcohol from a single licensee associated with the Communal Outdoor Dining Area.

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38. Do I need to provide additional parking for the new expanded outdoor area of my restaurant/bar?
No.

39. What zone districts are allowed?

a. Denver Zoning Code: Mixed-Use Commercial Zone Districts, and all PUD zone districts that allow an eligible business use. "Mixed-Use Commercial Zone Districts" are defined and listed in DZC, Article 13, Division 13.3, Definitions. DZC may be found at: www.denvergov.org/zoning
b. Former Chapter 59: All B, MS, H, C-MU, R-MU, T-MU, PRV, Gateway, H, and I zone districts, and all PUD zone districts that allow an eligible business use.

BUILDING AND FIRE PERMITS

40. What can I set up without a permit?
If being erected on a temporary basis only (180 days or less):

- Tents under 200 square feet in size do not need permits.
- Other structures (including greenhouses, personal domes, etc.) under 120 square feet in size do not need permits.

"Tents" are made of fabric or other pliable materials, with or without sidewalls. Other material types (glass, steel bases, etc.) would not be considered a tent.

Permits are not needed for lights and heat plugged into an outdoor outlet.

41. What would need a permit?
A permit from the Denver Fire Department is necessary for your outdoor expansion if you plan to install:

- Tents that are 200 sq. ft. or more
- Propane or gas-fired heat

A permit from Community Planning and Development is necessary if you plan to install...

- Structures (e.g., igloos, bubbles, greenhouses) over 120 square feet in size that are not made of fabric or another pliable material
- Raised decks
- Fences, barriers or partitions over 5’ 9” in height
- Patio coverings
- Building-mounted awnings
- Natural gas heaters tied into the building’s utilities
- New electrical installations
- Generators

Download a guide with step-by-step instructions for applying for building or fire permits.

42. Where do I find permit help?
Denver Fire Department Captain Steven Holtz, Steven.Holtz@denvergov.org or (720) 913-3448
Or denfpb@denvergov.org.
Commercial construction permits: ArchStruc.Review@denvergov.org
Electrical permits: Electrical.Review@denvergov.org
Mechanical and plumbing permits: MechPlumb.Review@denvergov.org
Permanent patios, restaurant remodels, and more: www.denvergov.org/restaurantpermits

BUSINESS/LIQUOR LICENSING and PUBLIC POSTINGS

43. Do I need state approval?
Yes, Excise and Licenses will submit your application to the state for expedited concurrent review. State guidance for outdoor restaurants and events can be found here.

44. How can I submit my application if I am waiting on my Right-of-Way permit?
You can submit a *Right of Possession Waiver* at the point of initial application. The applicant must have the approved right of way permit on hand before the license will be issued.

45. We are still waiting on our liquor license hearing. Can we apply for extra space in the meantime?
Yes.

46. Does my cabaret license extend to the new outdoor area?
No.

47. If we decide to use a self-seating/fast casual model, will it be possible for alcohol sales to occur at a counter/window and then brought to the expanded patio?
Yes, provided your patio is part of your liquor license.

48. What is the 5-day notification posting?
It is a posting to notify the neighborhood of the change of the liquor license and provide an opportunity for feedback. No hearing is required unless there are 15 signatures collected or 15 notices sent to the Denver Department of Excise and Licenses. This is only required for businesses with a liquor license. Businesses are required to post notification allowing the public to request a hearing every 120 days.

WINTERIZING YOUR OUTDOOR EXPANSION

49. What kind of outdoor structures are allowed that provide shelter for outdoor dining in Denver?
- Temporary structures, including tents and patio coverings, are allowed, though permits may be

required. Small tents under 200 square feet and other structures (e.g., greenhouses) under 120 square feet can be erected without permits, as long as these are for temporary use for less than 180 days. (Extensions may be considered on a case-by-case basis.)

- Tents over 200 square feet require an operational permit from Denver Fire. Other built patio coverings or shade structures attached to an existing building need a commercial construction permit, which typically has a fast, two-day review time, and a final inspection. Instructions on how to apply for permits is in this downloadable guide.
- Tents have a maximum duration of 180 days in a 12-month period. Extensions may be evaluated on a case-by-case basis. **A few notes on tents:**
    - If you are purchasing a tent, please make sure the manufacturer's information confirms the tent meets NFPA 701's flame propagation testing requirements for flammability. The Denver Fire Department requires a certification that a tent used for the program meets the NFPA 701's flame propagation testing requirements for flammability.
    - Check the tent manufacturer's specifications for how much snow the tent can withstand. If the snow load on the tent in winter exceeds this amount, the tent will need to be cleared of snow or it cannot be occupied on those days.
    - Tents/canopies cannot impede access, egress or Denver Fire Department connections (FDC).
    - If the occupant load of the space exceeds 49 persons, 2 remote egress openings are required.
    - Exits from the building to the public way cannot be blocked by tables/chairs or by the outdoor seating area barrier.
    - The Denver Fire Department does not allow propane or gas-fired heating sources under tents or canopies; however, these can be placed outside of the tent to blow hot air into the tented area.
- Single party structures (igloos, bubbles, greenhouses): Regardless of the number of walls, if the structure can be aired out in between parties it is considered an outdoor setting. This functions as a private room for a single party outdoors. State orders currently limit the maximum number of individuals in a party to 10 people. Additionally, occupancy limitations and construction permits may apply depending on the type and size of the structure.

50. What is allowed for heating outdoor dining areas and what is the required inspection from the Denver Fire Department?

Temporary heating (propane heater, fire pits. etc.) is allowed with an operational permit from Denver Fire. Tying into existing gas or electric lines is allowed with a mechanical/plumbing or electrical permit from Community Planning and Development. Electric heaters are also allowed if the electricity source is connected to an outdoor building outlet, there is mitigation to prevent tripping hazards to extension cords and the electrical extension is designed and approved for outdoor use. Running an extension cord from an indoor outlet to a temporary outdoor expansion structure is prohibited, with some exceptions possible on a case-by-case basis from the Denver Fire Department.

51. What is the requirement for snow removal in an outdoor dining area in a right of way or street?

Each establishment is responsible for clearing the sidewalk, tree lawn and parking lanes of snow and ice after each snowfall. Additionally, the city's snowplows throw snow. Each applicant under this program is responsible for removing and protecting any items in or adjacent to the public right-of-way that might be damaged by the city's snow removal operations. This includes but is not limited to tables, chairs, umbrellas, planters, carpet, and barriers.

DOTI snow removal operations may be initiated even during light snow events and can continue for several days pending weather conditions. The city assumes no responsibility for any damage to private property in

the expanded outdoor dining area, and permittee expressly releases City from all liability, damage, and cost for any damage to private property in the permit area.