

GUIDANCE FOR PERMITTING TEMPORARY USE OF SIDEWALKS AND CURBSIDE PARKING AREAS ON STATE HIGHWAY SYSTEM FOR COVID-19 RELATED NON-TRANSPORTATION USE

On March 19, 2020, Governor Newsom issued a stay-at-home order (Executive Order N-33-20) to address the State of Emergency related to the spread of COVID-19 in the State of California. After continuously monitoring the situation, the stay-at-home order is being relaxed by the Governor in a phased manner. However, several restrictions are placed on businesses as they reopen to the public. Some of these restrictions include requiring physical distancing and curbside pickup. With the impact of the stay-at-home order on businesses and the need to maintain physical distancing as recommended by the CDC, especially for businesses such as restaurants, there have been inquiries about the possibility of temporarily using sidewalks and other California Department of Transportation (Caltrans) right-of-way for business during the declared State of Emergency. Below is a sample of inquiries received.

- Inquiry about installing markings on sidewalks at 6 feet intervals to ensure people maintain physical distance.
- Inquiry about reserving curbside parking space in front of restaurants for curbside pickup.
- Inquiry about providing chairs or shade structures for customers waiting to pick up their orders.
- Inquiry about using sidewalk and/or on-street parking to expand restaurant seating capacity and providing outdoor dining by placing tables and chairs.
- Inquiry about expanding business onto the roadway by closing the roadway to vehicular traffic.

The California Division of the Federal Highway Administration (FHWA) indicated that a decision has been made by FHWA HQ in Washington D.C., to allow approval of short-term fair market value (FMV) exceptions on a case-by-case basis, for the temporary use of sidewalks and parking areas in the federally funded highway right-of-way for additional restaurant seating/standing (seating) and/or retail space, due to the COVID-19 public health emergency, and subsequent efforts to reopen local economies/businesses. The exceptions will only be granted for the limited purpose of safely reopening the economy for an initial period of 120 days. This may still require submitting the requests to FHWA for evaluation and exemptions.

Vending (Streets and Highways Code 731, California Vehicle Code 22520.5) and Advertising (23 CFR Part 750 and California Business & Professions Code 5403) are prohibited within State Highway System right-of-way.

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Considering the urgent needs of our local partners and communities, some activities and temporary installations on **sidewalks and curbside parking areas** within the State Highway System right-of-way can be facilitated quickly during the declared State of Emergency regarding COVID-19.

GENERAL CRITERIA:

- A permit may be issued to cities and/or counties only. A permit may not be issued to businesses, private organizations (including non-profit organizations) or others.
- The locations are limited to conventional highways with existing sidewalks.
- All installations allowed must be above ground installations only. No excavation or ground disturbance is allowed. Attachments, anchoring, and other stabilizing systems to Caltrans facilities (sidewalks, pavement) by intrusive mechanical means (bolts, pins, etc.) are prohibited, unless specifically authorized by the permit.
- The permittee must ensure all public areas are properly maintained and kept free of trash or nuisance.
- Full closure of a travel lane(s) or sidewalk(s) are not allowed for curbside pickup or public seating.

Markings on Sidewalks for Physical Distancing:

- Only non-permanent removable tape may be used to mark the 6-foot social distancing spacing on the sidewalk.
- Size of the markings must be no larger than 12 inches by 12 inches.
- Permanent markings using paint or other means are prohibited.
- Markings must not be a tripping or slipping hazard.
- When the markings are no longer required or when the State of Emergency ends, the markings must be removed.
- Markings must not interfere with traffic control devices. Markings must not resemble any traffic control devices.
- Markings must be of plain solid color and must not include any messages, advertising, symbols etc.

Canopy or Other Temporary Facilities to Provide Shade Over Sidewalks:

- Temporary canopies or other temporary facilities to provide shade can be installed over sidewalks. They must comply with the requirements for "Arcades" established in Section 501.3b of the Encroachment Permit Manual in addition to the following conditions:
 - Conform to local building code.
 - Structurally adequate.
 - Overhang may not extend closer than 24 inches horizontally from the curb face. Exceptions are in historical districts where overhangs are permissible to the curb face.

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- Preferred minimum vertical clearance from the sidewalk is 12 feet. A minimum 8 feet clearance is acceptable when local codes are satisfied.
- Must not interfere with or obscure any traffic control devices or part thereof such as a traffic signal or a traffic sign.

Designating Parking Spaces for Curbside Pickup:

- Existing curbside parking spaces can be designated for curbside pickup use of general public visiting the local businesses.
- Parking spaces can be cordoned off or reserved by cones or other non-permanent methods but must not include anything that would constitute a fixed object.
- Parking spaces designated for ADA access cannot be blocked or used for curbside pickup.
- Installations to designate curbside parking spaces as curbside pickup locations (posting temporary traffic control signs etc.) must be handled by the permittee or the permittee's licensed traffic control company and cannot be sub-delegated (ex. no sub-delegation to the restaurant adjacent to the curbside pickup area).
- Parking spaces cannot be designated for a specific business or entity.

Temporary Restaurant Seating and/or Retail Purposes:

- The permittee may install temporary public seating to serve the public visiting the businesses in the area, when compliant with all applicable Caltrans policies and local codes.
- Public seating area must be open for use by the general public and support the needs of local communities. Public seating area must include signage designating the area for use by the general public and not reserved for patrons of any specific businesses.
- Public seating area is only allowed where wide sidewalks with excess space are available beyond required ADA clearance for pedestrians and in existing curbside parking spaces.
- Vending, sales, transactions, table service and similar activities in the public seating area are strictly prohibited. No portion of a transaction may take place within the State Highway System right-of-way. For example, a customer may purchase takeout/ "to-go" food at a restaurant and use the public seating area to consume the food, but the restaurant's employee may not collect payment from the customer while in the public seating area.
- Public seating area may include temporary benches, tables, bike racks, and planting areas, but must not include any fixed object. Temporary tables and chairs/benches must be distinct from those of nearby

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businesses and must not include the same or similar color scheme, marking, logo, symbol, or any other identifier of any particular business. All installations must be heavy enough or other measures be implemented to ensure they do not move onto the travel lanes, highways users or business properties.

- Public seating area must be installed to conform with the Americans with Disabilities Act Accessibility Guidelines available at

<https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>.

- Public seating area may include a sign identifying the local public entity permittee. All forms of advertising are prohibited in the public seating area.
- The permittee must ensure that no fee is being charged for the use of the public seating areas.

INSTRUCTIONS, ROLES AND RESPONSIBILITIES:

District Permit Engineer:

- The permittee may only be a city and/or county. Permit code "MC" must be used for these permits. These permits are "Fee Exempt".
- Double permits are not required. Permit applicant shall provide a list of all contractors and authorized agents with the permit application.
- Maintenance Agreements or Right-of-Way Use Agreements are not required. These requests will be managed as temporary encroachment activities and installations.
- Parklets design guidance available in Section 500.3I of the Encroachment Permit Manual shall be used for temporary public seating in the parking area.
- Travel lanes and sidewalks must serve the transportation needs and full closure of such facilities are not allowed for facilitating public seating or curbside pickup. Only wide sidewalks where excess space is available beyond required ADA clearance for pedestrians and existing curbside parking spaces can be considered for the authorized activities addressed in this guidance.
- The locations must be evaluated for ADA clearance to serve the pedestrian users through the corridor. Based on the evaluation by Caltrans staff, an ADA Certification may be required.
- Canopies or other means of shade proposed must be compliant with all applicable policies and requirements.

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- The curbside parking modifications must be evaluated to ensure they do not negatively impact maintenance, operations and safety on the State Highway System.
- Vending, business services, purchases, sales transactions, seating customers in the public seating area or other uses of State Highway System right-of-way for private use/gain are prohibited by Streets and Highways Code 731 and California Vehicle Code 22520.5.
- Consumption of alcohol on State Highway right-of-way is prohibited.
- Advertising in any form is prohibited on the State Highway System by 23 Code of Federal Regulations Part 750, and by California Business & Professions Code 5400 et seq. This includes sandwich boards, signs, posters or other form of advertising within the State Highway System right-of-way.
- Permits may be issued for an initial duration of **120 days or until the declared State of Emergency has ended, whichever comes first**. If the temporary operations have been free of concerns or if any concerns identified are addressed to the satisfaction of the Caltrans representative, an **extension** can be issued for additional time but in no event to extend past **the end of the declared State of Emergency**.
- If temporary seating is proposed in areas adjacent to travel lanes, adequate safety measures must be required and installed.

Applicant:

- Submit completed and signed permit application with all supporting documentation (Google maps identifying the curbside parking spots being reserved for curbside pickup; traffic management devices/measures being implemented to enable curbside pickup operations without impacting highway operations or safety, public seating plan etc.).
- Provide locations (Route and limits) where installations are proposed.
- Provide ADA Certification form if required by the District Permit Engineer.
- Install, maintain and manage the installations as well as monitor and ensure compliance from businesses.
- Assign a liaison to coordinate and oversee the authorized activities under this permit. The liaison shall always be available to address any and all issues/requests associated with the temporary facilities.
- Ensure that no prohibited activities occur within the State Highway System right-of-way.
- Notify Caltrans representative at least 72 hours before installing the authorized temporary installation.
- Remove all temporary installations on the State Highway System within 2 calendar days after the end of the declared State of Emergency or earlier if deemed necessary by the Caltrans representative.