

Temporary Outdoor Expansions for Restaurant and Bars

About the program

- Denver is creating a temporary program to expand options for restaurants and bars to operate in outdoor patio settings adjacent to their businesses.
- The intent of the program is to allow for greater social distancing and safety for bar and restaurant-goers when public health orders allow restaurants and bars to resume sit-down service.
- To gauge interest, Denver has created a webpage where businesses can submit a proposal for the city to review: www.denvergov.org/restaurantpermits
- Final rules and regulations are in development. Under this program, Denver would consider 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.
- We are implementing this program with input and guidance from public health experts.
- As part of Denver's dedicated customer service approach, the city will offer process navigators to help answer questions and navigate applicable rules and regulations.
- Although the state has not set a reopening date for restaurants and bars, the city is starting the application process now so that we can better manage the volume of applications that are expected to be received citywide.
- This initiative is being 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 expansion program offers restaurant and bar establishments in the city an opportunity to expand their footprints to create more social distancing. The goal is to create 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. When will people be able to apply for a temporary outdoor expansion?

Restaurants and bars can apply starting today. Proposals will be reviewed and considered upon receipt; however, approvals will not be issued until restaurants are allowed to open per State of Colorado order.

5. How long does this program last?

Businesses will be able to use the temporary outdoor space for the public through September 7, 2020, which is typically viewed as the tail end of the outdoor dining season in Colorado. Businesses will have one week (through September 14, 2020) to remove the fixtures from their outdoor area.

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.

Note: These hours apply to the new, temporary outdoor patio space only. Existing permanent patios may have different hours.

7. Who are the process navigators?

Process navigators will be staffed from Excise & Licenses, Community Planning and Development, and the Department of Transportation and Infrastructure. Process navigators will help answer questions and help restaurant operators navigate applicable rules and regulations.

8. Can I erect/build/install furniture, tents, railings, etc.?

In most cases, yes. The outdoor area may include temporary tables, benches, chairs, 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. Depending

on what you are installing, electrical, building, or fire permits may be needed (see questions #26 and #27 for more detail). 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.

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

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

No, outdoor patios established or expanded under this program can only be used for sit-down dining or customer pick-up and carry-out service.

They cannot be used for "standing areas," 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 offer entertainment on their temporary outdoor patios, including but not limited to live entertainment, outdoor games, amplified sound or entertainment such as music over speakers, movies or broadcast sports, or loudspeaker call systems. Pets are not permitted on the expanded outdoor premises except as provided in the Americans with Disabilities Act.

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

10. 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; 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. Likewise, establishments are encouraged to coordinate when requesting street closures. However, businesses may not share outdoor premises, and must maintain control of all operations and food and beverage service within their outdoor premises.

11. 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.

12. Are businesses required to post a public notice of intention to expand or add a patio area?

Businesses with liquor licenses that have applied for the program are required to post notice 5 days prior to opening their patio areas for onsite consumption. 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.

Public Health Questions

13. What are the public health requirements? (e.g., how many tables allowed, minimum spacing, number of occupants, face coverings while eating)

More detailed guidance for both indoor and outdoor dining from the city and the state is under development. The City and County of Denver is committed to working with the state and will release details as we have them.

14. Is risk of transmission lower for outdoor dining compared to indoor dining?

Outbreak trends suggests risk outdoors may be lower, however this does not diminish the need for physical distancing and continued use of face coverings. People from different households are discouraged from dining together to reduce risk of transmission. Outdoor seating and congregating should follow the same guidelines as indoor dining, to the extent possible, including tables effectively spaced. Because there is much still unknown about COVID-19 and transmission, we will closely evaluate disease trends as restrictions are lifted.

More detailed guidance for both indoor and outdoor dining from the city and the state is under development. The City and County of Denver is committed to working with the state and will release details as we have them.

15. 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 these approvals at any time, particularly if there is an increase in COVID-19 cases tied to any of these locations.

RIGHT-OF-WAY and STREET CLOSURES (Department of Transportation and Infrastructure)

16. 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 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 the following business day. 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.

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

17. 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.

18. What will the right of way permit cost?

There will be no cost for most right of way permits. However, an expansion proposal that requires new construction may require a construction permit that comes with a fee. 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.

19. 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
(Community Planning and Development)****20. Are zoning permits required?**

No.

21. 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.

Look up zoning by property address: denvergov.org/zoning

22. I don't have any outdoor space to use. Can I use a neighbor's parking lot or open area?

It depends. See same answer above.

23. Can I share outdoor space with another restaurant/bar?

No, this is not allowed because it will make performing contact tracing very difficult. Businesses must maintain control of all operations and food and beverage service within their outdoor premises.

24. Do I need to provide additional parking for the new expanded outdoor area of my restaurant/bar?

No.

25. What zone districts are allowed?

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.

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 PERMITS (Community Planning and Development)

26. Do I need electrical permits?

Yes, if the outdoor space will have lighting or electric heat installed. Electrical installations of 20 amps or less only need a quick permit and an inspection; installations of circuits over 20 amps will require electrical plan review before permits can be issued.

Gas-fired temporary heating will require a fire permit.

27. Are building permits required?

In most cases, no.

Special cases that *would* require building permits:

- Installing a fence or barrier that is over 5 feet 9 inches in height
- Installing a patio covering
- Increasing the restaurant's current occupant load by more than 20%

BUSINESS/LIQUOR LICENSING and PUBLIC POSTINGS (Excise and Licenses)

28. Do I need state approval?

Yes, Excise and Licenses will submit your application to the state for expedited concurrent review.

29. 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 Right-of-Way permit on hand before the license will be issued.



30. Does my cabaret license extend to the new outdoor area?

No.

31. What is the 5-day notification posting?

It is a modification posting to notify the neighborhood of the change of the liquor license and provide an opportunity to provide 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 that have a liquor license.