



ORDINANCE NO. 5139

**AN URGENCY ORDINANCE OF THE EL DORADO COUNTY BOARD OF SUPERVISORS
ADOPTING AMENDMENTS TO THE ZONING CODE TO TEMPORARILY EASE RESTRICTIONS
ON OUTDOOR DINING AND OUTDOOR RETAIL SALES AREAS**

WHEREAS, On January 30, 2020, the World Health Organization declared the outbreak of COVID-19 a “public health emergency of international concern”; and

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar declared a public health emergency for the United States to aid the nation’s healthcare community in responding to COVID-19; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom issued a proclamation of a State of Emergency for the State of California due to COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic; and

WHEREAS, on March 12, 2020, the County’s Public Health Officer declared a state of emergency in El Dorado County due to COVID-19 health and safety impacts and on March 17, 2020, the Board of Supervisors adopted Resolution 051-2020 ratifying the Sheriff’s proclamation of a local emergency due to an imminent and proximate threat to the public health from introduction of COVID-19; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all residents “to immediately heed the current State public health directives,” which included a Department of Public Health directive that people who leave their homes or places of residences “should at all times practice social distancing”; and

WHEREAS, on May 4, 2020, Governor Newsom issued Executive Order N-60-20, which “orders” that “[a]ll residents are directed to continue to obey State public health directives ... as the State Public Health Officer may provide;” and

WHEREAS, effective July 13, 2020, the State Public Health Officer directed the closure of indoor operations for various business sectors, including dine-in restaurants, wineries, and tasting rooms; and

WHEREAS, effective November 21, 2020, the Limited Stay Home Order and its Supplement (effective December 22, 2020) required that in counties in the Widespread (purple) tier, Californians stay home between 10:00pm and 5:00am, with some exceptions; and

WHEREAS, on December 3, 2020, the Regional Stay at Home Order triggered additional restrictions after a region was announced to have less than 15% Intensive Care Unit (ICU) availability. It prohibited private gatherings of any size, closed sector operations except for critical infrastructure and retail, and required 100% masking (with certain exceptions as indicated in guidance for use of face coverings) and physical distancing; and

WHEREAS, the COVID-19 pandemic and the corresponding executive orders are directly affecting retail operations within El Dorado County since social distancing recommendations for the creation of physical space between individuals significantly reduces the ability of retail businesses to operate at financially viable levels; and

WHEREAS, easing restrictions on outdoor retail space and dining areas will preserve the health and safety of residents by protecting their health and safety while also allowing retail operations in accordance with the social distancing recommendations; and

WHEREAS, the COVID-19 pandemic, the corresponding executive orders, and social distancing measures have also resulted in reduced business operations within the County, a loss of revenue, lost employment, and impacts to the livelihood of County residents; and

WHEREAS, immediate action is necessary to ease requirements regarding outdoor eating and retail sales in an effort to facilitate compliance with the Governor’s orders and protect the health and safety of patrons of those businesses while at the same time providing opportunities for businesses to continue to operate and, thus, reverse declining revenues and reduce unemployment of County residents; and

WHEREAS, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction and Government Code section 25123 makes such an urgency ordinance effective immediately; and

WHEREAS, while many of the aforementioned executive orders recently expired and are no longer in effect throughout the State, the health emergency from COVID-19 remains and the extension of the Zoning Ordinance amendments under this Urgency Ordinance will further allow for County businesses to continue to operate in a safe manner, thereby preserving the health and safety of County residents while also lessening the adverse economic impacts as a result of COVID-19.

NOW, THEREFORE, the Board of Supervisors of the County of El Dorado ordains as follows:

Section 1. The Board of Supervisors finds and declares that the above recitals are true and correct and are incorporated herein.

Section 2. The County of El Dorado Board of Supervisors wishes to provide clarity regarding outdoor dining regulations for the duration of this Ordinance. The Board finds that outdoor dining can be considered an accessory approved use to a legally permitted existing restaurant. The Board directs that for the duration of this Ordinance, existing restaurants that wish to expand their outdoor dining opportunities must comply with the El Dorado County Temporary Outdoor Program (the “Program”) (**Exhibit A**), which is incorporated as if set forth in full herein. The Program specifies development standards and identifies best practices to ensure social distancing during the COVID-19 pandemic and to ensure that outdoor dining and retail sales areas function in a safe way.

Section 3. The Board of Supervisors finds that minor text edits to the County’s zoning code are necessary to implement the Program and to provide clarity on increased outdoor eating and retail sales opportunities. Therefore, the following Sections of Title 130 of the El Dorado County Zoning Ordinance shall be amended as shown on an interim uncodified basis for the effective period of this Ordinance:

Sec. 130.40.220 - Outdoor Retail Sales.

A. Content. This Section regulates the operation of permanent and temporary outdoor retail.

B. Permanent Outdoor Retail Sales. Areas of commercial development intended to be used for outdoor retail sales on a permanent or ongoing basis shall be allowed where shown in the use matrices for the zone. Outdoor retail sales areas may be conducted as a primary use, such as a vehicle sales lot or plant nursery, or as an accessory use, such as a sales yard, nursery area, or vending machine in conjunction with a building materials or other retail store. Outdoor seating at a restaurant, whether conducted as a primary or accessory use, shall also be subject to the standards of this Subsection. The following standards shall apply:

1. A permanent outdoor retail sales area shall be distinct and separate from parking and loading areas, walkways, and landscaping areas and outdoor dining areas shall be in compliance with the County of El Dorado Temporary Outdoor Program.
2. Sales areas shall be included in square footage calculations when determining parking requirements under Section 130.35.030 (Parking and Loading) in Article 3 (Site Planning and Project Design Standards) of this Title. Outdoor dining areas shall be in compliance with the County of El Dorado Temporary Outdoor Program.
3. All development standards under the specific zone shall apply, as well as those general standards applicable to the site plan, such as landscaping, lighting, signs, and noise (See Chapters 130.33 (Landscaping Standards), 130.34 (Outdoor Lighting), 130.36 (Signs), and 130.37 (Noise Standards) in Article 3 (Site Planning and Project Design Standards) of this Title. Outdoor dining areas shall be in compliance with the County of El Dorado Temporary Outdoor Program.
4. A permanent outdoor retail sales area shall be screened from the side and rear property lines adjacent to residentially zoned property.
5. Surfacing requirements of the outdoor sales area shall consist of concrete or asphalt pavement, chip seal, gravel, or other material that can be maintained in a dust-free condition. Vehicle access and parking areas shall be surfaced in compliance with County design standards.

C. Temporary Outdoor Retail Sales. Temporary outdoor retail sales such as farmers' markets, arts and craft fairs, seasonal sales, swap meets/flea markets, sidewalk sales, and mobile food vendors are allowed subject to compliance with the County of El Dorado Temporary Outdoor Program. The following standards shall apply:

1. Location. The temporary sales area shall not block any emergency access route or otherwise disrupt general vehicular or pedestrian circulation of the shopping center or public street on which the retail business is located.
2. Hours of Operation. The temporary sales area shall be conducted during the hours of operation identified in the County of El Dorado Temporary Outdoor Program.
3. Parking Requirements. Parking requirements shall be in conformance with Table 130.35.030.1 (Schedule of Off-Street Vehicle Parking Requirements) in Chapter 130.35 (Parking and Loading) in Article 3 (Site Planning and Project Design Standards) of this Title for each specific use. As specified in the County of El Dorado Temporary Outdoor Program, up to 50% of private parking spaces counted for required parking may be converted to outdoor dining space or retail space, when the lot is immediately adjacent to the parent property. This reduction in off-street parking requirements will be in effect for the period of time specified in the County of El Dorado Temporary Outdoor Program.

4. Surfacing. Surfacing materials shall comply with Subsection B.5 (Permanent Outdoor Retail Sales) above in this Section.
5. Signs. Signs allowed in conjunction with temporary outdoor retail sales are subject to provisions of Chapter 130.36 (Signs) in Article 3 (Site Planning and Project Design Standards) of this Title for size and placement standards. Sign placement shall be allowed for the period of time specified in the County of El Dorado Temporary Outdoor Program.
6. Duration. Unless otherwise stated in Subsections D through H (Certified Farmers' Markets; Garage Sales; Seasonal Sales; Swap Meets/Flea Markets; Itinerant Sales, respectively) below in this Section, a sales event may run for the duration of time specified in the County of El Dorado Temporary Outdoor Program.

Sec. 130.35.030 - Off-street Parking and Loading Requirements.

- A. Off-street parking shall be provided in accordance with Table 130.35.030.1 (Schedule of Off-Street Vehicle Parking Requirements) below in this Section, unless otherwise provided in this Chapter. As specified in the County of El Dorado Temporary Outdoor Program, up to 50% of private parking spaces counted for required parking may be converted to outdoor dining space or retail space, when the lot is immediately adjacent to the parent property. This reduction in off-street parking requirements will be in effect for the period of time specified in the County of El Dorado Temporary Outdoor Program. Where a parking requirement results in a fraction of a space, the number of parking spaces required shall be rounded to the nearest whole number.

Sec. 130.36.050 - Temporary Signs.

Temporary signs may include, but are not limited to, commercial signs (including sign twirlers) for grand openings, products/services, sales, special events, and new apartments/multi-family units. All temporary signs must comply with the standards listed in Table 130.36.050.1 (Allowed Temporary On-Site Sign Standards) below in this Section and are subject to the conditions herein.

- A. Time Duration. Display periods for temporary on-site signs shall be limited to the period of time specified in the County of El Dorado Temporary Outdoor Program, unless otherwise specified below.
 1. Apartment Signs. Signs at new or substantially renovated apartments shall be removed 6 months from opening.
 2. Banner Signs. All banner signs (including feather banners) utilized for grand opening events shall be limited to a maximum of 30 consecutive days per establishment per calendar year.
 3. A-Frame Signs, Feather Banners and Sign Twirlers. When allowed, A-frame signs, feather banners and sign twirlers shall be allowed only on-site during daylight hours and shall be removed from dusk to dawn and during all times when the establishment is closed or event is over.
- B. Illumination. Temporary signs shall not be illuminated.
- C. Message. Temporary signs displaying a commercial message shall be limited to on-site signage only. Off-site signage displaying a commercial message shall not be allowed, except as noted in Section 130.36.030.B.9 (Exempt Signs With Limitations) above in this Chapter.
- D. Illegal Signs. Illegal temporary signs shall be removed immediately.

Section 4. The provisions of this Ordinance are separate and severable. If any provision of this Ordinance is for any reason held by a court to be invalid, the Board declares that it would have passed this Ordinance irrespective

of the invalidity of the provision held to be invalid and such invalidity shall therefore not affect the remaining provisions of this Ordinance or the validity of its application to other persons or circumstances.

Section 5. The Board hereby declares, based on the findings set for the above, that there is an immediate need to preserve the public peace, health, and safety constituting the urgency for adoption of this ordinance pursuant to Government Code section 25123(d). Accordingly, this ordinance is adopted as an urgency ordinance and shall take effect and be in force immediately upon adoption by the Board of Supervisors. This Ordinance shall remain in effect from the date of its adoption until rescinded by the Board of Supervisors or December 31, 2021, whichever occurs first.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 23rd day of March, 2021, by the following vote of said Board:

Attest:

Kim Dawson

Clerk of the Board of Supervisors


By: 

Deputy Clerk

Ayes: Hidahl, Turnboo, Thomas, Parlin, Novasel

Noes: None

Absent: None


John Hidahl
Chair, Board of Supervisors

APPROVED AS TO FORM
DAVID LIVINGSTON
COUNTY COUNSEL

By: 



COUNTY OF EL DORADO

TEMPORARY OUTDOOR PROGRAM

Preface

On January 30, 2020, the World Health Organization declared the outbreak of COVID-19 a "public health emergency of international concern". On March 12, 2020, the County's Public Health Officer declared a state of emergency in El Dorado County due to COVID-19 health and safety impacts. On March 17, 2020, the Board of Supervisors adopted Resolution 051-2020 ratifying the Declaration of a Local Health Emergency by the Public Health Officer due to an imminent and proximate threat to the public health from introduction of COVID-19. On March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all residents "to immediately heed the current State public health directives. These health directives are intended to help open businesses in a safe and practicable way and to protect the public while the COVID-19 crisis abates.

Program Overview

This outdoor dining/retail program has been established to ensure restaurants and retailers have the greatest ability to operate successfully through the recovery process. Restaurants and retail establishments with access to private walkways or private parking may utilize these areas for dining activities in accordance with guidelines published by California Department of Public Health:

<https://covid19.ca.gov/pdf/guidance-dine-in-restaurants.pdf> (Dine-in Restaurants)

With property owner consent, up to 50% of private parking spaces counted for required parking may be converted to outdoor dining space or retail space when the lot is immediately adjacent to the parent property. The proposed converted 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 use unless the site has additional disabled parking spaces sufficient to meet minimum requirements and receives approval from the County's Building Official. Landscaping and required buffer areas for the off-site parking spaces shall not be used as expanded converted use for restaurants operations. There shall be no parking or outside seating in these areas.

To participate in the program, the business must have a valid El Dorado County General Business License. For questions regarding this program, please contact the Planning Department at (530) 621-5355 or by emailing: planning@edcgov.us.

Property Owner Approval

Businesses should consult with the property owner in advance of utilizing outdoor space. The use of the outdoor space shall be authorized by the property owner and be in compliance with owner's requirements.

General Requirements

While no permit from the County of El Dorado is required to utilize these temporary guidelines, the use of the outdoor space shall meet the requirements listed below.

Outdoor activities shall:

1. Maintain the minimum accessibility requirements of the Americans with Disability Act (ADA).
2. Provide adequate pedestrian flow with 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. The minimum distance of the pedestrian path shall be measured from the boundary of the dining or sales area to the nearest obstruction i.e., tables, chairs, bus stop shelters, newsstands, existing planters, or similar. No tables, chairs, umbrellas or other fixtures shall be permitted within six (6) feet of a pedestrian crosswalk.
3. Maintain unobstructed access to fire lanes, fire hydrants, fire hose connections for sprinkler systems, bike paths and entrances and exits of all building. There shall be a minimum of 40 inches in distance separating the edge of a table or chair to a fire department connection.

Operation and appearance

1. Outdoor area shall be aesthetically compatible with surrounding area.
2. Patron safety shall be considered when designing outdoor spaces and set-up within travel lanes or shall be prohibited.
3. Appropriate lighting of the outdoor space and any associated walkways is required if operating outside of daytime hours.
4. Use of removable barriers (planters, fencing, etc.) to define the dining space or retail space is permissible but should not be permanently affixed in such a manner that the site could not be restored to its original condition. At no time shall any barriers be within the public rights-of-way, including the public sidewalks.
5. No heating, cooking or open flames are permitted in the outdoor 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.
6. No food preparation, plastic food displays, food storage, or refrigeration apparatus shall be allowed on the public right-of-way, including the public sidewalks.
7. Umbrellas shall be no less than six (6) feet, eight (8) inches (80 inches) above the ground.
8. Temporary signs are allowed for the duration of this program in compliance with County Zoning Code Section Sec. 130.36.050 (Temporary Signs). Allowed temporary signs for restaurants and retailers are summarized in Table 130.36.050.1 of the Zoning Code:

Table 130.36.050.1 Allowed Temporary On-Site Sign Standards

Sign Type	Number Allowed	Max. Area	Max Height	Minimum Setback from Right-of-Way
Banner	1 Sign (any type) per establishment per street frontage	50 sf	Roofline	5 feet behind face of curb, outside of right-of-way
Feather Banner		30 sf	12 feet	
A-Frame		8 sf	4 feet	
Sign Twirler	1 per establishment, on legal parcel establishment	12 sf	8 feet	5 feet

Use of Tents, Shade Structures or Umbrellas

1. The following requirements shall apply to use of tents, umbrellas or shade structures ("Shade Structures"):
 - A property may have more than one Shade Structure but each Shade Structure must adhere to social distancing requirements between and within the structures
 - No part of a Shade Structure shall encroach into the public rights-of-way, including public sidewalks, or designated path of travel.
 - All legs must be weighted to a minimum of 40lbs and meet the following:
 - Weights must be securely attached to canopy roof and canopy leg separately.
 - Ropes and straps should be high quality.
 - Bungee or rubber straps are prohibited.
 - Weights must be on the ground and not dangling.
 - Weights and lines must not pose a hazard and be clearly visible. Items that make acceptable weights:
 1. 5-gallon bucket full of water, sand, or concrete
 2. 4" PVC pipe at least 36" long filled with concrete
 3. Large commercially available tent weights
 4. Sandbags or salt bags 40lbs or heavier

Operation Hours

Establishments utilizing temporary outdoor dining or retail sales shall comply with the following closing times:

- Friday through Saturday – close by 11:00 PM
- Sunday through Thursday – close by 10:00 PM

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 and on immediately adjacent private walkways, in accordance with the terms of their license from the California Department of Alcoholic Beverage Control. 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 applicant is responsible for managing these barriers and removing them when necessary.

Other Agency Approval

Each business is responsible for obtaining any additional regulatory approvals necessary to allow outdoor dining or retail sales. Prior to implementing this program at your business location, please contact, at a minimum, the following agencies for information regarding any necessary permits:

- El Dorado County Fire District: (530) 644-9630, or appropriate Fire District
- Sheriff's Department: (530) 621-5655
- Environmental Management: (530) 573-5300
- Planning and Building Ombudsman: (530) 621-5352
- Health and Human Services: (530) 642-7300

Businesses located within the Tahoe basin must adhere to the **Tahoe Regional Planning Agency Guidance Memo Regarding Temporarily Expanding Restaurant Outdoor Seating in Response to COVID-19 Social Distancing Requirements.**

Program Period

Unless extended by the County of El Dorado, this program will terminate on April 1, 2021. Businesses desiring to continue with outdoor dining beyond April 1, 2021, will be required to obtain any required permits from the County of El Dorado and servicing agencies. At the conclusion of the program, the outdoor space shall be restored to its original condition.

Date: May 27, 2020

To: MOU Partners

From: Brandy McMahan, AICP, Local Government Coordinator

Tahoe Regional Planning Agency Guidance Memo Regarding Temporarily Expanding Restaurant Outdoor Seating in Response to COVID-19 Social Distancing Requirements

In response to Social Distancing Requirements put in place by the States of Nevada and California to stop the spread of COVID-19, Tahoe Regional Planning Agency (TRPA) staff has prepared this memo to provide guidance when working with restaurant owners/managers seeking to add additional outdoor seating to meet social distancing requirements.

In the Tahoe Region, restaurants may temporarily add additional tables outdoors to meet social distancing requirements and protect public health and safety. Outdoor tables shall first be located on existing hard coverage (patios, decks, parking lots, walkways, etc.) and then if additional area is required placed on lawns. Restaurant owners/managers shall ensure that parking is not negatively impacted if tables are placed in parking lots and shall make sure adequate access remains for ingress/egress and adequate pedestrian and bike/vehicle circulation is maintained. The total number of tables temporarily relocated outside cannot exceed the number of previously permitted tables (the number of tables reasonably accommodated within existing indoor and outdoor dining areas with Commercial Floor Area). Thus, if 10 tables are removed from a dining area to meet social distancing requirements, a maximum of 10 tables may be temporarily relocated outside. Temporary signage that addresses social distancing requirements may also be located at a restaurant. Temporary signage shall be an appropriate size and scale to the restaurant use.

Once social distancing requirements are lifted by the States of California and Nevada, or within two years of the date of this memo (May 27, 2022), whichever occurs first, restaurants in the Tahoe Region must come back into conformance with TRPA regulations.

The Agency shares the community's concerns for the health and safety of the public and staff during this health crisis and appreciates the opportunity to work through the issues.

If you have questions regarding this memo, please contact Brandy McMahan, AICP, Local Government Coordinator, at (775) 589-6274 or bmcMahon@trpa.org.