

Newsletter



Issue 114 - August 2021

RE: MEMBERS

Managing Risk Al Fresco: Risk Management Recommendations for Outdoor Dining

Last July, in the newsletter article [Temporary Use of Member Property for Private Business Operations](#), the Authority advised members on effectively managing risk associated with the movement of business operations from private property into public spaces due to the COVID-19 pandemic.



Once it became clear that the pandemic could have a potentially devastating effect on local economies, many members took swift action to support their local business communities. The City of Paramount's program, [Paramount Al Fresco](#), streamlined requirements and approvals for outdoor dining at the intersection of private property and public rights-of-way, such as sidewalks and parking lots so that local restaurants could accommodate state and county public health guidelines. The City of Solvang, which closed a two-block area of its downtown, [established guidelines](#) for businesses to obtain encroachment permits to use public spaces. It also implemented safety features such as obstruction-free paths and marked, enclosed street seating.

Almost one year later, cities throughout California continue to allow dining, retail sales, and other private business operations to occur on sidewalks, roadways, and other public property. The City of Los Angeles, which has extended temporary operations through September 1, [plans to establish a permanent outdoor dining program by this fall](#).

"The rapid rise of outdoor dining locations has increased the frequency of incidents involving vehicles and temporary and permanent outdoor dining locations, both on sidewalks and at curbside and parklet locations, from four or six incidents per year to more than 100 incidents between March 2020 and August 2021," said Rob Reiter, co-founder of the [Storefront Safety Council](#) and a national expert on protection from vehicle incursions into public and pedestrian areas. "Many, if not most, of these incidents were preventable and foreseeable."

Choices related to pedestrian-vehicle interfaces often involve high risk and serious consequences. After a July 2003 incident at the Santa Monica Farmers Market, during which a motorist bypassed barricades, killing ten pedestrians and injuring 63 others, the City of Santa Monica and other defendants paid [\\$21 million](#) to settle dozens of civil lawsuits.

While some municipalities are making responsible choices, others are prioritizing expediency and economic revitalization over public safety. The result, in some cases, is that diners are sharing roadways with vehicles traveling just feet from where they are enjoying a meal, without effective safety barriers.

The Authority strongly recommends that member agencies install (or require affected restaurants and other businesses to install) safety barriers rated to protect diners and pedestrians from moving vehicles. While the exact solution will vary depending upon the characteristics of each specific location, it is recommended that products be selected that conform to recognized standards for protective devices subject to vehicle impact, such as [American Society for Testing and Materials \(ASTM\) F3016](#) and [ASTM F2656](#).

While this approach will go a long way toward avoiding a potentially tragic accident, members that formally adopt and require installation of products conforming to recognized standards are also more likely to be successful in asserting a design immunity defense. This reduces the likelihood that members will be held financially responsible for a vehicle vs. pedestrian incident.

Whether your agency is allowing on-street dining temporarily or permanently, solutions are available. Two Authority members have installed modular safety barriers to protect pedestrians and upgrade traffic control measures at entry points to their local farmers' markets: The City of Claremont opted for [crash-rated and removable security bollards](#), while the City of San Luis Obispo [implemented three different types of barriers](#), including inground barricades that can be manually lifted and retracted when roads are to be closed and reopened, decorative bollards that limit vehicle access, and an attenuator truck/trailer for placement over the bridge deck. The City of Malibu, with assistance from Reiter, also has installed crash-tested bollards at a number of commercial locations, in accordance with an [ordinance requiring vehicle impact protection devices](#) in existing and future parking lots for head-in spaces within 75 feet of outdoor seating areas.

"There are solutions from California-based manufacturers, as well as consulting and engineering services from both large firms and small offices, that can help California JPIA members evaluate sites and implement protective measures and policies that may prevent simple accidents and reduce the threat and effect of deliberate vehicle attacks on outdoor dining areas," said Reiter. "As a result, public liability will decrease, and safety of the public will increase."

If you have questions or would like additional information, please contact your regional [Risk](#)