

Outdoor Restaurant and Retail Permit Regulations

Outdoor dining and retail areas of appropriate design, configuration and appearance can be an attractive amenity. Outdoor Restaurant and Retail (ORR) permit applications will be reviewed by City staff for compliance with these guidelines and will be forwarded to the appropriate office for administrative approval in the case of installations that have no public parking impacts. For applications that involve installations in public parking spaces, which are only available for use between April 1 and November 30 annually (subject to change at the discretion of the City Manager), the City Council will review the application to analyze the parking impacts of such an installation.

ORR permits must be reapplied for annually to assure that they remain in compliance with terms of the original approval and are adequately maintained from year-to-year.

1) SUBMISSION AND APPROVAL OF APPLICATIONS

- a. Applications for ORR permits shall be submitted to the Development Services Department.
- b. The Development Services office will review applications and use their discretion to notify appropriate departments including but not limited to the Licensing Board, Economic Development, Historic Board, and Health Departments of the application. Staff may also refer the application to the Department of Public Works or the Fire Department if the application contains elements that warrant their review, such as parklet barriers, accessible ramps, or outdoor heaters.
- c. If the outdoor seating plan is approved by staff in each of the aforementioned departments, they will forward it to the Development Services office for administrative approval within ten business days of receipt by department staff. If additional information is needed or a revision to the seating plan is required, City staff will contact the applicant.
- d. If the application involves public parking impacts, it will be forwarded to the City Council after staff review to go before the Council for their review. Applications shall be submitted on the attached form along with a site plan for the outdoor seating area and insurance certificates as described below.
 - i. Fee for installations that have no public parking impacts: Annual permit fee of \$50.00 payable to the City of Lowell must be filed with Development Services.
 - ii. Fee for installations in public parking spaces: Annual permit fee of \$250.00 payable to the City of Lowell filed with Development Services
- e. A neatly drawn, scaled site plan depicting the precise area of the proposed outdoor dining or retail area, the arrangement of outdoor furniture, perimeter fencing, umbrellas, outdoor heaters, and any other equipment is required. The application must also include a picture or photograph of the proposed furniture. Areas designated for picking up take-out food shall also be shown on the plan. Smoking is prohibited in all outdoor dining and retail areas. If an applicant will be utilizing an existing private parking lot or yard area, a site plan meeting the criteria outlined above is required. Outdoor installations proposed for a private parking lot shall not occupy more than 50% of the parking in the lot.

- f. Upon approval of an outdoor dining or retail area by the Development Services office, the owner and operator of the business and Development Services staff will sign the permit.
 - i. No person or entity shall cause to be placed within the public ways any furniture without applying for a permit and receiving approval from the City. This permit shall be considered separate and distinct from other permits and licenses issued by the City, including those for common victuallers.
 - ii. The location of the outdoor dining or retail installation must be directly in front of the business operating the installation and may not extend beyond the side property lines. Tables, chairs, benches, food equipment shall be located so that they do not impede, endanger, or interfere with pedestrian traffic, with a minimum width of four (4) feet of unobstructed passage for pedestrian traffic. In some cases, with prior approval from Development Services and the Department of Public Works (DPW), the applicant can erect temporary barriers on the street to allow for the passage of pedestrians and wheelchairs around the portion of sidewalks devoted to outdoor installations, in compliance with Americans with Disabilities Act standards.
 - iii. No installation of furniture or other infrastructure shall be affixed, erected, installed, placed, used, or maintained within five (5) feet of any marked or unmarked crosswalk or handicapped ramp; or within five (5) feet of any fire hydrant, fire lane, call box, or bus stop.
 - iv. Unlicensed furniture within the public ways of the City will be subject to removal with the cost thereof to be borne entirely by the owner. In addition, fines may be imposed by the City Council not to exceed \$300 per day for removal, storage, or destruction.
 - v. No fixtures or devices on which food or beverages are sold or consumed shall be attached to the sidewalk or other public area. The property owner is responsible for the restoration of the sidewalk or public right-of-way if any damage is caused by the sidewalk café.
 - vi. Lighting for outdoor installations is subject to approval during the permitting process. Tabletop lighting may include candles and battery-operated fixtures. Seating capacity must not exceed the maximum number of allowed seats per accessible restroom according to the Massachusetts State Building Code—780 CMR.
 - vii. Physical barricades surrounding/framing sidewalk cafés are required. Appropriate perimeter materials include but are not limited to demountable wrought-iron fences, wood or terra cotta planters, or other fencing deemed acceptable by City staff. The public sidewalk or street may not be damaged by the installation of any perimeter treatment. Cafe umbrellas and furniture should be of a design appropriate to the character of the building. Trash receptacles are the responsibility of the applicant to empty and maintain and should be integrated in the design and materials with other outdoor cafe elements.
- g. Insurance: The Business Owner shall carry Workers' Compensation Insurance for all employees and those of its contractors and/or subcontractors engaged in work at the

outdoor dining or retail installation, in accordance with the State Workers' Compensation Laws. In addition, the Business Owner shall carry Comprehensive Public Liability and Property Damage Liability Insurance with limits hereinafter set forth to cover the Business Owner and its contractors and subcontractors against claims due to accidents which may occur or result from operations under this Agreement. Such insurance shall cover the use of all equipment related to the provision of outdoor dining or retail services. The Comprehensive Public Liability and Property Damage Liability Insurance shall insure against all claims and demands for personal injury and property damage with respect to the permitted outdoor facilities and services, with limits of One Million Dollars (\$1,000,000) for property damage, One Million Dollars (\$1,000,000) for injury or death to one (1) person, and Two Million Dollars (\$2,000,000) for injury or death of more than one (1) person in a single accident. If such limits are not commercially available at a reasonable cost to the Business Owner, such insurance may be maintained at such lower limits that are commercially available at a reasonable cost; provided, however, that the Business shall notify the City in advance of the effective date of any such lower limits. The City shall be named as an "additional insured" in all policies for such insurance and the Business Owner shall furnish a certificate of insurance to the City prior to commencing provision of the facilities and services authorized under these regulations. Where such insurance is renewed or replaced the Business Owner shall furnish the City with a certificate of insurance evidencing the same.

2) COMPLIANCE REQUIREMENTS

- a. By signing this application, the Applicant agrees to accept and comply with the following requirements:
 - i. All services and customer activity must occur within the designated outdoor dining or retail area.
 - ii. Permit holder is responsible for proper supervision of the outdoor dining or retail area to ensure the requirements of this section are met.
 - iii. Permit holders must ensure that the requirements for operation are met. Patrons must always wear shoes and shirts.
 - iv. All outdoor installations must always maintain at least one opening for ingress and egress. All outdoor installations shall abide by all requirements of the currently adopted International Building Code and the Americans with Disabilities Act.
 - v. To the extent applicable, outdoor installations must adhere to all regulations pertaining to food and beverage enforced by the Board of Health and Licensing Board. Outdoor food preparation is not allowed unless specifically authorized by the Health Department. Approval of an outdoor dining area shall not be construed as an approval for the alteration or extension of premises where alcoholic beverages are served. The serving or consumption of alcohol outside of the premises of a duly licensed establishment to serve alcohol must be approved by the Licensing Board on a case-by-case basis. Interested establishments with alcohol licenses should submit an additional request for a temporarily amended alcohol license to the Licensing Board. The only change

permitted is to the description of the premises providing that alcohol may be served in outdoor seating that was added or re-configured pursuant to these regulations.

- vi. All areas within and surrounding an outdoor dining or retail area must be maintained in a clean, neat, and sanitary condition.
- vii. All permit holders shall be required to abide by all federal, state, and local laws. In no event shall the overall number of seated customers exceed the number of seats available.
- b. Revocation: ORR permits may be revoked for failure to maintain the standards required for the initial permit. A notice of intent to revoke an ORR permit shall be given in writing days prior to actual revocation and shall specify the area or areas of failure to meet requirements and maintain conditions the City may have imposed. If, during that period, proof of compliance is made to the satisfaction of designated City Inspectors by the holder of the permit, the permit shall be continued in force.
- c. Applicant certifies that all current property taxes due on its licensed premises are paid if property is owned by the Applicant.
- d. Applicant agrees to permit the City to periodically verify the accuracy of information contained in this Application and agrees to provide information requested to verify the accuracy of the information and the Certifications contained in this Application.

I have read and fully understand the above rules and regulations applying to the approval of this permit.

Signature: _____

Date: _____

Print Name and Address: _____