

COMMONWEALTH OF MASSACHUSETTS
CITY OF LOWELL

In City Council

ORDINANCE

An Ordinance Amending the "Code of Ordinances City of Lowell, Massachusetts," as amended, Chapter 243 entitled "Streets and Sidewalks," by deleting in its entirety §243-23 entitled "Sidewalk Seating Outside Restaurants" and inserting in its place a new §243-23 entitled "Outdoor Restaurant and Retail Areas."

NOW, THEREFORE; BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

"The Code of Ordinance City of Lowell, Massachusetts" hereinafter called the "Code", adopted by the City Council on December 23, 2008, as amended with respect to Chapter 243 entitled "Streets and Sidewalks, specifically §243-23 entitled "Outdoor Restaurant and Retail Areas", as follows:

1. Strike ARTICLE IV § 23 SIDEWALK SEATING OUTSIDE RESTAURANTS, and replace it with:

§243-23 Outdoor restaurant and retail areas.

- A. It shall be unlawful for any person to place installations for food and retail business on sidewalks or parking spaces appurtenant and contiguous to said person's restaurant or retail facility without first obtaining an Outdoor Restaurant and Retail ("ORR") permit in compliance with the provisions of this chapter.
- B. Such an ORR permit shall allow outdoor restaurant and retail areas between April 1 and November 30 annually. The period of time may be extended at the discretion of the City Manager.
- C. Applicants for an ORR permit under this chapter must file with the Department of Developmental Services ("DDS") an application in writing, on a form to be furnished by the DDS, which shall give the following information:
 1. 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 that is required, photographs of any proposed furniture, and areas designated for picking up take-out food;
 2. A certification that all current property taxes due on the applicant's licensed premises are paid if the property is owned by the applicant;
 3. An agreement to permit the City to periodically verify the accuracy of information contained in the application and an agreement to provide information requested to

verify the accuracy of the information and the certifications contained in the application.

D. Requirements for licensing of ORR permits under this chapter shall be as follows:

1. All services and customer activity must occur within the designated outdoor dining or retail area;
2. Patrons must always wear shoes and shirts;
3. Smoking is prohibited in all outdoor dining and retail areas;
4. All outdoor installations must maintain at least one opening for ingress and egress;
5. All outdoor installations shall abide by all requirements of the currently adopted International Building Code;
6. All outdoor installations shall abide by all applicable federal, state and local laws and regulations, including but not limited to the Americans with Disabilities Act;
7. To the extent applicable, outdoor installations must adhere to all regulations pertaining to food and beverage enforced by the Board of Health and License Commission. Outdoor food preparation is not allowed unless specifically authorized by the Health Department. Approval of an outdoor dining area shall not be construed as approval for the alteration or extension of the premises where alcoholic beverages are served. The serving or consumption of alcohol outside the premises of a duly licensed establishment to serve alcohol must be approved by the License Commission on a case-by-case basis. Establishments with alcohol licenses may submit an additional request for a temporarily amended alcohol license to the License Commission. 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 this section;
8. All areas within and surrounding an outdoor dining or retail area must be maintained in a clean, neat, and sanitary condition;
9. In no event shall the overall number of seated customers exceed the number of seats available; and
10. Outdoor installations proposed for a private parking lot shall not occupy more than 50% of the parking in the private lot.

E. The permit holder is responsible for proper supervision of the outdoor dining or retail area to ensure the requirements of this chapter are met.

- F. For every ORR permit granted under this chapter there shall be paid to the DDS a fee set by said Department.
- G. The DDS shall have aesthetic review responsibility for seating enclosures, tables, chairs, and accessories and may establish standards for the same.
- H. The Department of Developmental Services (“DDS”) shall, upon written application and payment of any required fees, review said applications and use their discretion to notify appropriate departments including but not limited to the License Commission, Economic Development, Historic Board, and Health Department of the application. The DDS shall also refer the application to the Department of Public Works for the Fire Department of the application contains elements that warrant their review, including but not limited to parklet barriers, accessible ramps, or outdoor heaters. If the outdoor seating plan is approved by each of the aforementioned departments, each said department shall forward said approval to the DDS for administrative approval. If the application for ORR permit involves the installation of outdoor dining or retail areas in public parking spaces, the DDS shall forward the application to the City Council for their review.
- I. Provided that the applicant submits evidence of compliance with the requirements of this chapter, the DDS shall issue an ORR permit. Upon approval of an ORR permit, the owner and operator of the business and DDS shall sign the permit. One the DDS provides an ORR permit, the permit holder shall abide by the following additional requirements:
1. No person or entity shall cause to be placed within the City’s public ways any furniture without applying for a permit to the DDS and receiving approval from the City. Such a permit shall be considered separate and distinct from other permits and licenses issued by the City, including those for a common victualler license;
 2. 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.
 3. 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 4 feet of unobstructed passage for pedestrian traffic. The permit holder may, with prior approval from the DDS and the Department of Public Works (“DPW”), erect temporary barriers on the street to allow for the passage of pedestrians around the portion of sidewalks devoted to outdoor dining or retail, provided said temporary barriers are in compliance with all applicable federal, state and local laws and regulations, including but not limited to the Americans with Disabilities Act;
 4. No installation of furniture or other infrastructure shall be affixed, erected, installed, placed, used, or maintained within 5 feet of any marked or unmarked crosswalk or handicapped ramp; or within 5 feet of any fire hydrant, fire lane, call box, or bus stop;

5. 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. Fines may be imposed by the City Council not to exceed \$300 per day for removal, storage, or destruction;
6. 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 any such fixtures or devices attached;
7. Lighting for outdoor installations is subject to approval during the permitting process. Tabletop lighting may include candles and battery-operated fixtures. Seating capacity may not exceed the maximum number of allowed seats per accessible room according to the Massachusetts State Building Code; and
8. Physical barricades surrounding sidewalk dining or retail 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 the DDS. 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.

J. Insurance Required: The permit holder shall carry the following forms of insurance:

1. 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 Commonwealth of Massachusetts' Workers' Compensation laws;
2. Comprehensive public liability and property damage liability insurance with limits hereinafter set forth to cover the permit holder and its contractors and/or subcontractors against claims due to accidents which may occur or result from operations regarding outdoor dining or retail installation; and
3. Comprehensive public liability and property damage liability insurance 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 person, and Two Million Dollars (\$2,000,000) for injury or death of more than one person in a single accident.
4. If such limits are not commercially available at a reasonable cost to the permit holder, such insurance may be maintained at such lower limits that are commercially available at a reasonable cost; provided; however, that the permit holder shall notify the DDS in advance of the effective date of any such lower

limits. The DDS shall name as an “additional insured” in all policies for such insurance and the permit holder 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.

- K. The DDS may revoke ORR permits for failure to maintain the standards set forth in this chapter. Before such revocation, the DDS shall issue a notice of intent to revoke an ORR permit, which shall be given seven (7) days prior to actual revocation and shall specify the 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 permit holder, the permit shall be continued in force.

All ORR permits issued under the provisions of this chapter/section shall be valid for a period of one year from the date of issue. The fee for each renewal ORR permit shall be as provided by the DDS.

All provisions of the Code of the City of Lowell, as amended, which are consistent with this Ordinance, shall continue in effect, but all provisions of said Code inconsistent herewith, are repealed.

This Ordinance shall take effect upon its passage in accordance with the provisions of Chapter 43 of Massachusetts General Laws.

APPROVED AS TO FORM

/s/Corey Williams
Corey Williams
City Solicitor

In City Council March 12, 2024, Given 1st Reading and hearing ordered for 7PM on March 26, 2024 at 7PM. So Voted. /s/Michael Q. Geary, City Clerk

In City Council March 26, 2024, Given 2nd Reading and hearing held. Hearing Closed. No Remonstrates. Adopted on roll call vote 10 yeas, 1 absent (C. Chau). So Voted. /s/Michael Q. Geary, City Clerk

Approved by City Manager Thomas A. Golden, Jr. March 27, 2023.

A true copy
ATTEST:

Michael Q. Geary, City Clerk
Ordinance/amend ch.243-23/OutdoorRestaurant