

Town of Wellesley Select Board

Outdoor Dining Regulations for Temporary On-Street Town-Owned Public Parking Spaces

April 21, 2023

Section 1. Purpose

The purpose of this policy is to establish a process and application criteria for licensing local businesses to use public, on-street parking spaces for outdoor dining. The Select Board will consider these guiding principles for outdoor dining in on-street parking spaces:

- Create quality public spaces that contribute to people's health, happiness, and sense of connection to Wellesley and with each other.
- Support small businesses through added vibrancy and engagement in our business districts.
- Maintain safe and accessible access for all users.
- Balance the needs of other business district activities, including adequate parking infrastructure.

Section 2. Policy

- 2.1 No individual shall place outdoor furnishings, including but not limited to tables, chairs, serving equipment, planters, and umbrellas (hereinafter “Outdoor Furnishings”), within on-street parking spaces without prior authorization from the Select Board.
- 2.2 The Select Board may authorize the placement of seasonal, temporary Outdoor Furnishings within on-street parking spaces for restaurants if the following conditions are satisfied:
 - 2.2.1 The establishment possesses a Common Victualler License.
 - 2.2.2 Operation of the outdoor seating area occurs when the main place of business is open only.
 - 2.2.3 The outdoor seating area is located within no more than two public parking spaces per establishment, including area occupied by safety barriers.
 - 2.2.4 The outdoor seating area is located within the area abutting the front, rear, or side of the establishment’s owned or leased property.
 - 2.2.5 Use of the outdoor seating area is clearly related to the operations conducted inside the principal building.

- 2.2.6 Unless otherwise permitted by law, a minimum sidewalk width of 60 inches (60”) of unobstructed pedestrian paths is continuously maintained, as shown on the plan provided to the Select Board.
- 2.2.7 Use of the outdoor seating area does not obstruct or otherwise interfere with visibility.
- 2.2.8 If a designated disabled parking space is to be used for the outdoor dining area, a suitable alternative location for disabled parking is identified.
- 2.2.9 Service of alcoholic beverages complies with all state and local requirements.
- 2.2.10 The Restaurant Task Force finds that the proposed plans adhere to all health, safety, access, and operational requirements established by the Town, as outlined in Appendix A: Outdoor Dining Requirements. The Executive Director is authorized to update Appendix A:Outdoor Dining Requirements as needed, and will ensure the application form reflects any changes.
- 2.2.11 The Traffic & Parking Committee finds that pedestrian and vehicular circulation, the safety of restaurant patrons and the public, and parking for patrons of restaurants, retail establishments, and service establishments in the vicinity of the outdoor seating is adequately provided for.
- 2.2.12 The Design Review Board (DRB) provides general design guidance and recommendations for the applicants consideration, as part of the application.
- 2.2.13 In its sole discretion, the Select Board may waive provisions of Section 2.2 to accommodate special events.
- 2.3 Two or more restaurants may apply jointly for a shared outdoor seating area, subject to all requirements in Section 2.2 that apply to individual applicants.
- 2.4 The outdoor dining season shall begin after the running of the Boston Marathon or April 25th (whichever comes first) through November 15 of each year. Applicants should specify the requested start and end date for their outdoor seating area in their application. Board consideration shall be given to snow removal operations, roadway and sidewalk construction schedules, and other needs of the Town.
- 2.5 Outdoor dining permits for the use of public parking spaces must be renewed annually. A license may be renewed without a public hearing, but cannot be denied without a public hearing. For those applications seeking a renewal from the prior year, the Executive Director will determine whether a public hearing is required,

taking into consideration any compliance issues, resident or abutter complaints, and safety concerns in the prior year. Renewals will be reviewed subject to the criteria above and to the operational needs of the Town, including but not limited to anticipated roadway or sidewalk construction, potential changes in use of the public property, and changes in the Town's overall parking infrastructure.

Section 3. Procedures

- 3.1 Timing. Applicants are encouraged to apply in late fall/early winter prior to the next outdoor dining season. Applicants may need approval from multiple local boards depending on the specifics of the application. Applicants with liquor licenses may also require approval from the Alcoholic Beverages Control Commission, after local approval is received. The Town will work diligently to process all applications within 30 days.
- 3.2 Application:
 - 3.2.1 The applicant shall file an application for outdoor dining using the Temporary Outdoor Seating in Town-Owned Parking Spaces Application, including all requisite plans, photographs, and information listed on the application form, with the Select Board.
 - 3.2.2 The applicant shall submit a copy of the plans to the Design Review Board.
 - 3.2.3 Applicants must provide a certificate of liability insurance covering the outdoor seating area and naming the Town of Wellesley as an additionally insured party in the amount of \$500,000/\$1 million. If such certificate is not provided at the time of the application's submittal, the license shall be withheld until production of such certificate.
 - 3.2.4 Upon receipt of an application, the Executive Director or designee, will review the application for completeness, request any missing documentation, and circulate the completed application to the Restaurant Task Force for review and comments. The Restaurant Task Force consists of Select Board, Health, Building, Fire, Planning, and Police staff.
- 3.2 Alcohol. If an applicant currently has a liquor license that allows consumption on premises and intends to extend that service to the outdoor seating area, the applicant must file an Alcoholic Beverages Control Commission's Alteration of Premises form with the Select Board.
- 3.3 Notice. The applicant and all owners of property immediately abutting the premises to be licensed will be notified by the Select Board Office of any Board meeting or

- public hearing at least seven (7) days prior to the scheduled date. If the applicant holds an alcohol license, notifications will be sent in accordance with Town alcohol rules and regulations, and the ABCC regulation.
- 3.4 Hearing. For the initial license granted to an applicant for a particular outdoor seating area, the Select Board shall hold a public hearing, during which it may consider recommendations from Select Board Staff, the Restaurant Task Force, the Traffic & Parking Committee, abutters, residents and business owners.
- 3.5 License Agreement. Applicants who are approved by the Board will be required to sign a license agreement with the Town of Wellesley for the use of the public on-street parking spaces. The license agreement shall be approved as to form by Town Counsel and include, but not be limited to, the following requirements:
- 3.5.1 The Licensee shall install safety barriers, as approved by the Traffic & Parking Committee, before Outdoor Furnishings can be installed or used.
- 3.5.2 The outdoor seating area must be kept clean, including clearing of all tables and removal of all trash.
- 3.5.3 The license agreement may be modified or terminated by the Select Board, in its sole discretion, at any time without any recourse to the Town. Upon termination, the licensee shall be responsible for removing all its property from the designated area, including all Outdoor Furnishings.
- 3.6 Additional Approvals. Approved applicants may be required to obtain additional permits, subject to the specific Outdoor Furnishings. For example, tents and outdoor structures with roofs require a permit from the Building Department. Outdoor electrical wiring and lighting require an electrical permit from the Building Department. Outdoor heaters require a permit from the Fire Department. Further, permission to use Town on-street parking spaces does not modify or amend any applicable state or local rules, requirements, permits, licenses, or approvals. To the extent that modifications of any existing permits, licenses, or approvals may be necessary, they should be applied for separately by the applicant with the appropriate public body.
- 3.7 Renewal. Outdoor dining licenses must be renewed annually. The Executive Director will determine whether a public hearing is required for renewal, taking into consideration any compliance issues, resident or abutter complaints, and safety concerns in the prior year. Renewals will be reviewed subject to the criteria stated herein, and to the operational needs of the Town, including but not limited to

anticipated roadway or sidewalk construction, potential changes in use of the public property, and changes in the Town's overall parking infrastructure.

Section 4. Fees

- 4.1 There shall be an application fee of \$50.
- 4.2 For all approved applications, there shall be an additional licensing fee at the rate of \$250 per public parking space.

Section 5. Exceptions

- 5.1 The Select Board reserves the right to make exceptions to this policy if it determines that it is in the best interest of the Town to do so.

Appendix A. Outdoor Dining Requirements

All outdoor dining applications will be reviewed by the relevant Town Department(s) to ensure compliance with the following requirements:

Public Safety & Accessibility

1. The plan submitted must show a minimum sidewalk width of 60" (or as otherwise prescribed by law) is maintained and unobstructed from the sidewalk or entrances into the building or any other designated walkways or pedestrian paths. The table and chairs must be placed within the outdoor seating area in such a manner as to allow free and safe passage of pedestrian traffic and wheelchair access/passage.
2. The outdoor seating arrangement may not further inhibit visibility and must not impede Police or Fire access.
3. The outdoor seating arrangement may not obstruct any fire exit, fire escape or other required ingress or egress.
4. The outdoor seating arrangement may not obstruct any Fire Department Connection (FDC) or fire hydrant.
5. The outdoor seating area must be accessible to people with disabilities and the applicant must at all times comply with all applicable laws, ordinances and regulations concerning accessibility and non-discrimination in the providing of services.
6. Outdoor seating placed on sidewalks or in outdoor areas should maintain a 36" clear path between and around all tables and chairs.
7. Seating placed near or adjacent to public ways or parking lots that vehicles can pull up to or travel by must have crash protection, such as concrete barriers.

Public Health

8. All entrances and exit doors through the kitchen used by food service personnel and customers must be screened and provided with air curtains meeting National Sanitation Foundation standards. All windows or openings through the kitchen used for the transfer of food must also be screened and provided with air curtains. (If your entrance and exit or service opening to the outdoor seating area is through the kitchen, you must get Health Department approval.)
9. All food must be prepared inside the facility's kitchen and kept inside until served. No food nor drinks may be prepared outside.
10. A system for cleaning and sanitizing the outside seating area must be provided.
11. Food service personnel may not serve patrons beyond the outdoor seating area as shown on the plan approved by the licensing authority.
12. Food service personnel must constantly monitor the outdoor seating area for wastepaper, garbage, and other trash. Covered trash receptacles should be provided and must be emptied as needed to prevent overflowing. They must also be emptied at the end of each evening's service.
13. If dumpsters are located near these proposed seating areas, need to ensure that areas around dumpsters are clean and sanitary, and no public health nuisance issues with odors or attraction of pests exist.

14. During the operating hours and thereafter, strict clean-up practices must be adhered to. Food service personnel must turn over tables between each patron by removing all trash and soiled food service wares. Tables must be cleaned and sanitized between patrons.
15. Outdoor food service personnel must have a dedicated server station that has sanitizer solution at the proper concentration strength available and easily accessible for use.
16. Outdoor seating areas shall be considered as part of the restaurant and shall comply with Board of Health regulations, including a prohibition of smoking or vaping in seasonal outdoor dining areas.
17. Pets are prohibited in outdoor seating areas. Only service animals are permitted.

Furniture, Fixtures, Lighting & Heating

18. Tents and outdoor structures with roofs will require a permit from the Building Department.
19. Electrical wiring and lighting for outdoor seating will require an electrical permit from the Building Department.
20. Outdoor heaters require a permit from the Fire Department.
21. The applicant shall be responsible for the maintenance and upkeep of the public right-of-way used for the outdoor seating area and the replacement of damaged public property, including brick pavers. No furniture or furnishings may be permanently attached by any means to the public sidewalk or any other public property.
22. Planters may be used to provide added visual interest and create a more attractive and welcoming atmosphere. Planters may not be used to define the area of outdoor seating where the service of alcohol is involved, unless they are planters that provide a safety barrier, approved by the Traffic & Parking Committee.
23. If a patio is constructed, the patio or other ground surface must be constructed of material readily cleanable and not susceptible to dust, mud, or debris. (Brick, bluestone, tile, and concrete are examples of acceptable materials.)
24. Outdoor dining furniture and fixtures must be maintained in good visual appearance and in clean condition. Tabletops must be easily cleanable, durable and maintained in a clean and sanitary condition.
25. Umbrellas may be used but must be, when extended, at least 7 feet above the sidewalk or patio level and contained within the outdoor seating area. Umbrellas should be closed when the restaurant is not open for business.
26. Furniture and fixtures must be removed or safely secured when inclement weather is forecasted.
27. At the end of each outdoor dining season, all furniture, umbrellas, and trash receptacles must be removed.
28. All outdoor seating, furnishings and obstructions must be removed from November 15 through the Tuesday following the running of the Boston Marathon or April 25, whichever comes first, unless you have received written approval from the Town extending your outdoor dining license beyond those dates.
29. Electrical or lighting used in or around outdoor seating needs to be UL listed for outdoor continuous use, such as power outlets, lighting and cords or cables. Exterior feeds for lighting or power should not be laid on the ground and installed overhead without code

compliant cable and supporting hardware. Electrical wiring for lighting and power shall require a permit and inspection, this work shall be installed by a licensed electrician.

30. Tents, membrane structures and their accessories such as sidewalls, drops, tarpaulins, floor coverings, bunting and combustible decorations shall be certified by an approved testing laboratory meeting the design criteria of NFPA 701. Each Membrane structure or tent shall have a permanently affixed label bearing the size, fabric, and material type, testing agency and standard that fabric was tested under.
31. Portable fire extinguishers are required for each tent or membrane structure.
32. Open or exposed flame or other devices emitting flame, fire or heat or any other flammable or combustible liquids, gas, charcoal, or other cooking device or any other unapproved devices shall not be permitted inside or located within 20 feet of the tent or membrane structure while open to the public unless approved by the Fire Code Official.
33. LP Gas containers shall be located on the outside. Containers of 500 gallons or less shall have a minimum separation distance of 10 feet between the container and the structure. Storage of over 500 gallons shall have a minimum distance of 25 feet between the container and the structure.
34. Portable LP Gas containers, piping, valves, and fittings located outside and are being used to fuel equipment inside the tent or membrane structure shall be adequately protected to prevent tampering, damage by vehicles or other hazards and shall be in an approved location. Portable LP Gas containers shall be securely fastened in place to prevent unauthorized movement.

Licensing Authority

35. A restaurant requesting outdoor seating must possess a Common Victuallers License.
36. The outdoor seating area must be clearly related to the restaurant conducted in the principal building.
37. Operation of outdoor restaurant seating areas is permitted only when the main place of business is open.
38. If an applicant currently has an alcoholic license and intends to extend that service to the Outdoor Seating area, it must file an Alteration of Premises ABCC form with the Select Board.