

MUNICIPAL ORDINANCE CHAPTER 222

AN ORDINANCE RELATING TO OUTDOOR DINING

EMERGENCY PREAMBLE:

WHEREAS, a special emergency involving the health and/or safety of the people exists within the City of Haverhill as a result of the grave threat that the spread of COVID19 presents to the public health;

WHEREAS, on March 19, 2020 the Mayor of the City of Haverhill and in conjunction with the Haverhill Board of Health declared a State of Emergency to respond to the spread of COVID-19;

WHEREAS, on March 23, 2020 Governor Charles D. Baker issued an Order entitled "Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces and Prohibiting Gatherings of More than 10 People.", along with subsequent related Orders;

WHEREAS, restaurants and on-premises food service establishments have been severely impacted by the closing of their businesses, except for take-out service, since March, 2020;

WHEREAS, restaurants and on-premises food service establishments comprise a vital sector of the economy of the City of Haverhill and are a major source of employments for its citizens;

WHEREAS, the Commonwealth is expected to issue Orders allowing restaurants and on-premises food service establishments to resume operations with certain restrictions and encouraging the use of outdoor spaces for service, and, legislation is expected to be passed which will quickly facilitate the service of food, beverages and alcoholic beverages in outdoor settings;

WHEREAS, in order to take all steps necessary to allow restaurants and on premises food service establishments to commence on-premise service as quickly as possible, while mitigating the spread of COVID-19 in order to protect the health and welfare of the people of the City of Haverhill, provisions are necessary for the

establishment of revised outdoor dining; therefore,

BE IT ORDAINED by the City Council of the City of Haverhill that Chapter 222 of the Code of the City of Haverhill, as amended, be further amended by adding the following:

**ARTICLE XVI
TEMPORARY OUTDOOR DINING**

222-98 Temporary Provisions.

Notwithstanding any other provisions of the Code of the City of Haverhill, including Article XII Outdoor Dining and Article XIV Parklets of Chapter 222, the following temporary program to allow restaurants, cafes, fast food outlets, coffee shops, and other similar places of public accommodation offering food and beverages, including alcoholic beverages, ("establishments") for on-premises consumption to operate safely in outdoor settings. Any provision of existing Ordinances which is inconsistent with this Ordinance, such provisions shall be temporarily suspended.

222-99 Purpose.

The intent of the program is to allow for greater physical distancing and safety for customers when the Commonwealth's public health orders allow restaurants to resume sitdown service, as outlined in Phase 2 of reopening Massachusetts. This is a temporary program to support our local eateries and residents. It will be available for the duration of the outdoor summer/fall dining season through November 1, 2020, at which time the City may evaluate a potential expansion of the program. The City reserves the right to require the user to remove the street seating if and when it determines it to be necessary, for any reason and at any time. All furnishings and lighting must be easily removed at the end of the program period.

222-100 Eligible Outdoor Areas.

Under this program, eligible businesses may be able to temporarily expand into the following types of outdoor areas:

Private property, including off-street parking lots with the property owner's consent.

Public right-of-way, including sidewalks, street parking spaces, public parking lots, boardwalks, public parks and any other public areas with the permission of the Mayor, and, possibly closing select streets.

222-101 Limitations.

Private Property - These properties can expand outdoors on their own property or on a

neighboring property (with permission from the other property owner), including using any number of off-street parking spaces.

Public Right-of-Way - Proposals to expand into the public right-of-way will require that a right-of-way inspector, designated by the Director of Inspectional Services, visit the business location and consider the closure proposal from a mobility and safety perspective. An inspector may be able to approve a simple inspection in the field and issue an approval no later than the following business day. More complex requests will be reviewed for:

- Safety: ensuring any closure of the public right of way is done safely;
- Mobility: considering impacts to people's ability to get around the closure by foot, bike, wheelchair and car and how the proposal mitigates impacts with a traffic control plan, if necessary;
- Local and emergency access: local access to adjacent homes and businesses must be maintained.

Once a temporary patio is established, a right-of-way inspector will do a final inspection.

222-102 Conditions and Restrictions.

All conditions and restrictions below apply to the new, temporary outdoor patio space only.

All establishments must provide food service in order to be eligible for outdoor dining.

Unless these provisions are renewed or expanded, businesses will have one week (through November 9, 2020) to remove any fixtures from their outdoor area.

Hours of Operation: Outdoor patios opened under this program must close by 10 p.m. on Sundays - Thursdays and by 11 p.m. on Fridays and Saturdays.

Allowed Uses of the Patio: Outdoor patios established under this program can only be used for sit-down food and beverage service or customer pick-up and carry-out service.

All seating areas must comply with all applicable federal, state, and local laws and regulations, including the Americans with Disabilities Act, and, any state recommended or mandated COVID 19 distancing and restaurant service policies.

To prevent additional encroachment onto public space and to contain the sale of alcohol within the establishment's public right-of way seating area, the area must be separated

from any pedestrian walk space with system of enclosure, such as decorative fencing with removable bollards. Establishments using public right-of way areas that do not serve alcohol do not need this system of enclosure.

Total seating shall not exceed the restaurant's maximum occupancy if the establishment is serving alcoholic beverages without the express permission of the License Commission.

Only movable tables, chairs, umbrellas and heat lamps shall be placed on public right-of way areas. Temporary awnings or tents over the public right-of-way areas may be used, provided they are approved by the right-of-way inspector.

Permitted outdoor areas cannot be used for activities that would promote congregating, involve shared equipment, or amplify sound, including but not limited to:

Standing areas

Live music

Outdoor games

Music over speakers

Movies

Broadcast sports

Loudspeaker call systems

Pets, except as provided in the Americans with Disabilities Act.

Any outdoor area in which alcoholic beverages are served must be contiguous to the licensed premises with either (a) a clear view of the area from the inside of the premises, or, alternatively (b) the licensee may commit to providing management personnel dedicated to the area.

Tents should be located such that a minimum fire break of 12 ft. is designated between structures. These fire breaks shall not contain guy ropes or other obstructions such as heating apparatus or fuel storage in accordance with 780 CMR IFC: 3103.8.6.

Outdoor table service may be provided under awnings or table umbrellas or other cover from the elements, provided, however, that at least 50 percent of the perimeter of any covered dining space must remain open and unobstructed by any form of siding or barriers at all times.

222-103 Parking.

Because of the reduced capacity of any establishment due to safe distancing practices, off-street parking spaces that are required by the Code to meet a minimum number of spaces may be utilized for outdoor patio space provided the right-of-way inspector approves the temporary reduction.

222-104 Permits and Licenses.

Establishments seeking to institute outdoor dining during this period to serve food and beverages shall apply for and obtain a permit to be issued by the Director of Inspectional Services. No other permit or license shall from any other board, department or officer of the City shall be required, except that an establishment serving alcoholic beverages in an outdoor area for which they are not currently licensed by the License Commission, must request approval by the Commission. No public hearing and no other notice or hearing other than what is specifically required by this ordinance or by state law shall be required; however, any permit application shall be sent to the Police Chief, Fire Chief and Department of Public Works Director, or their designees, who shall review and comment on the application within 2 business days of receipt of the application.

The online permit application shall request: 1. description and diagram of the area where service will be provided, include the number and type of tables, chairs, umbrellas, tents, awnings, heat lamps and any barriers, railings or other temporary dividers to be used; 2. contact information for the restaurant owner, and if any expansion is planned in public areas or onto the property of adjacent owners contact information for the adjacent owner. 3. The number of tables and occupancy of each proposed table and what services will be required in the expanded area and whether the applicant wishes to provide table service, and whether alcohol or food will be served. Applicants shall also provide a certificate of insurance and a sidewalk bond, both of which shall name the City as an insured.

If the establishment is seeking to serve alcoholic beverages in the outdoor dining area, the application shall also be referred to the License Commission for compliance with any requirements of the Massachusetts Alcoholic Beverages Control Commission (ABCC). In the event that approval is required by the License Commission, a meeting shall be held within as soon as practical, but in no event more than five business days. No fee of any type shall be required unless required by state law. The application shall be allowed if the License Commission deems the request to alter the licensee's premises to expand for outdoor seating to be reasonable and proper. The license commission shall be able to set reasonable terms and conditions regarding the serving of alcohol if allowed by law, however, the License Commission shall not in any way contradict the intent or purposes of these provisions.

Any requests to close streets or vehicle accessible alleys for the purpose of on-premises consumption in outdoor settings shall be acted on by the Director of Inspectional Services, after consultation with the Police Chief, Fire Chief and Department of Public Works Director, or their designees.

222-105 Fees.

No fees shall be charged for any permits or licenses required to establish outdoor dining facilities during the effective period of these provisions, including, but not limited to, the License Commission, Building Inspector and Board of Health.

222-106 Sharing Patio Space.

Establishments may not share the same outdoor premises while providing food and beverage service, because it will make performing contact tracing very difficult. Each establishment must maintain control of its operations and food and beverage service within its own outdoor premises at all times while providing food and beverage services.

Establishments may share private or public right-of-way areas at alternate times of the day, provided they do not do so within ½ hour of the others' service and all tables, chairs and other equipment are cleaned and disinfected by both establishments before and after service is completed. In addition, when sharing serving space at alternate times the establishment utilizing the space at any given time must post the establishment's name at the entryway of the area so that it is clearly visible to customers.

Establishments may share private or public right-of-way areas at the same time provided that establishments do not share serving spaces and maintain control of its operations and food and beverage service within its own clearly designated outdoor area. When multiple establishments are sharing outdoor spaces the serving spaces must be clearly designated by a system of enclosure with at least six feet of non-utilized space between all establishment. Establishments must post the establishment's name at the entryway of the area so that it is clearly visible to customers.

Any establishment seeking to share private or public right-of-way areas at alternating times of the day and/or at the same time, as provided above, who will be serving alcoholic beverages must also receive permission from the License Commission.

222-107 Temporary Signs.

For the duration of this ordinance, eligible businesses may install temporary signs in excess of the allowed size or number permitted by Chapter 255 Zoning of this Code. Temporary signs must be made of fabric, vinyl, paper, or corrugated plastic, and, must be affixed to the eligible business' building or property or within a permitted use of public right-of-way space. Signs must allow for at least four feet of clearance for pedestrians, although at least six feet is preferred. Temporary signs that adhere to these requirements do not need a

building permit.

222-108 Parklets.

Parklets, as defined by 222-84 of the Code, shall be permitted and established according to the provisions of this Article during this temporary period.

City Solicitor

222-108 Assistance Grants.

Assistance grants shall be available through the Community Development Office to assist establishments with the costs and expenses of setting up outdoor dining, including parklets.

This Ordinance is temporary and shall terminate November 1, 2020, unless renewed by Order of the City Council and Mayor prior thereto.

APPROVED AS TO LEGALITY

City Solicitor