



CITY OF SALEM

In City Council, December 7, 2023

Ordered:

There is hereby established a City of Salem Outdoor Dining Policy, as set forth below, created for the purpose of permitting restaurants to use public space, streets, sidewalks and parking spaces, to build outdoor dining areas within the limitations and procedures defined in the Policy.

CITY OF SALEM OUTDOOR DINING POLICY

I. Applicability

The City of Salem Outdoor Dining Policy (the “Policy”) applies to restaurant businesses that are seeking to extend their licensed premises to an outdoor public area including sidewalks, streets and parking spaces, but shall not include a sidewalk in the city’s urban renewal districts for which a permit from the Salem Redevelopment Authority (“SRA”) shall be required.

II. City’s Right to Revoke

Obtaining approval from the City and all relevant permitting departments of the City to operate an outdoor dining area does not create a contractual or property right or interest. Any business receiving such approval shall be deemed a “Licensee” of the City and must ensure they are operating in a safe and responsible manner and must understand that any violations of state, federal, municipal laws, rules and regulations, this Policy or of any agreement with the City may result in the immediate revocation of the license or other approval issued to operate the outdoor dining area.

The City may require a Licensee to remove their patio at the expense of the Licensee upon demand.

III. Requirements for All Outdoor Dining Areas

- a. Permits and Licenses.** Food and/or alcoholic beverages may not be served outside of licensed premises, even on a temporary basis, without an approved Outdoor Dining Area License and the written approval of the Salem Licensing Board expanding the licensed premises. All Outdoor Dining Areas shall maintain all necessary permits to remain active. The initial applications shall commence online no later than February 1st. Most licenses and permits must be renewed annually. The local permits and licenses necessary may include:

 - i. Outdoor Dining Area License
 - ii. Building Commissioner Approval
 - iii. Licensing Board Approval
 - iv. Salem Redevelopment Authority Approval (includes Design Review Bd)
 - v. Salem Board of Health Approval
 - vi. Disability Commission Review and Recommendation to Licensing Board
 - vii. Additional licenses, permits or permissions may be required in special cases.
- b. Codes.** All applicants and outdoor dining areas must comply with all state and municipal codes and Americans with Disabilities Act (ADA) requirements.
- c. Location of Outdoor Premises.** The outdoor area where a business may extend its premises for outdoor dining must be contiguous to the brick-and-mortar licensed premise. Contiguousness is defined as adjacent, and may be separated by a public sidewalk, and there is either (a) a clear view of outdoor seating from inside the premises, or alternatively (b) the licensee may commit to providing management personnel dedicated to the area. For the latter, the area is still physically contiguous to the licensed premises, but not visible, i.e., there are no windows or the brick-and-mortar is in the basement and the outdoor area is on a public way, such as a sidewalk or on parking spaces. A patio that is on the curbside of a sidewalk and/or in a parking/travel lane is contiguous. Parking lots or back areas may also be considered contiguous. The outdoor dining area may not extend beyond the storefront of the restaurant unless all adjacent property owners in which the area extends have submitted a letter to the City Council stating their acceptance of the use of the space for the proposed dining area and any proposed

conditions or concerns related to such use. This shall include the city of Salem if it is an adjacent property owner.

d. Design Requirements.

- i. Restaurants must ensure that outdoor seating areas remain accessible to the public in accordance with the ADA, Public Right-of-Way Accessibility Guidelines (PROWAG), and Massachusetts Architectural Access Board's regulations <https://www.mass.gov/doc/521-cmr-1700-restaurants/download>. These include requirements both for the layout of outdoor dining area, the preservation of the public realm, and the actual furniture utilized in the outdoor dining areas.
- ii. All outdoor dining area/patio designs within the urban renewal districts must go through the Salem Redevelopment Authority (SRA) design process, including the Design Review Board (DRB), and be approved by the SRA.

e. Smoking. No smoking of any kind, including the use of electronic cigarettes, is allowed in any designated dining area.

f. Dogs. No dogs are allowed in the designated dining areas, with the exception of service dogs, or if the establishment has received variance from the Board of Health to allow dogs in the outdoor dining area. If dogs are allowed, a sign at the entrance of the outdoor dining must be posted indicating dogs are allowed.

g. Trash, Recycling, and Compost. Businesses must use their own trash, recycling and composting receptacles.

h. Signage. A sign must be posted at the exit to the outdoor dining stating "No Alcohol Beyond this Point."

i. The City may require that the licensed outdoor dining include lighting or other feature or equipment to improve public safety. The removal of such features or equipment at the end of the season must be coordinated with the Department of Public Services.

IV. Additional Requirements for Outdoor Dining Area on Public Property

a. City Review. When considering a request for outdoor dining in a public area, the City/Redevelopment Authority shall review and determine the health and safety risk to the public, public benefit, as well as pedestrian and ADA accessibility

- i. The City may revoke a grant of the use of a public way and require immediate removal of the dining setup if it is later deemed unsafe,

inaccessible, an emergency situation arises, or if the business is not operating in accordance with all permits and licenses.

- ii. The use of two parking spaces for outdoor dining shall generally be allowed if all requirements set forth herein are met, however, requests to occupy more than two parking spaces shall be considered on a case-by-case basis by the City Council.

V. **Indemnification Agreement.** Restaurants seeking to serve alcohol in the public way will be required to enter into a Maintenance and Indemnification Agreement (“Indemnification Agreement”) and to maintain certain insurance coverage as required by the City Solicitor.

VI. **Fees. There is a charge for the use of the public way**

- a. For businesses with outdoor dining areas on a sidewalk, there is an annual fee of \$1.50 per square foot, in addition to related licensing and permits fees due to the City of Salem.
- b. For the use of a parking space (20’ x 8’), there shall be a fee of \$1000.00 paid annually to the City of Salem per parking space. For street closure or use of a city street not set aside as a parking space, a calculation of the fee will be based on the length of the street occupied at the rate of \$1000 per 20 feet.
- c. Businesses using jersey barriers in their outdoor dining setup will be charged a fee of \$100 per barrier used per year. The City of Salem will place and remove barriers at the beginning and end of each patio season.
- d. The fees set forth above shall not be prorated and shall be due in full for any portion of a season.

VII. **Season.** The outdoor dining season on public property extends from the first Friday in May through the first Monday in November. Licensees are responsible for removing and storing any outdoor dining equipment in the off-season. Applicants may request a waiver from the City Council to keep their outdoor dining area open year-round, provided they take reasonable steps to prevent obstruction of snow removal.

VIII. **Outdoor Dining Time Restrictions**

- a. Outdoor Dining Areas will be allowed to operate during the business’s approved business hours unless otherwise directed by the Licensing Board
- b. The City Council or Licensing Board may limit late night hours for those businesses not able to keep sound levels within a reasonable limit.

IX. **Entertainment.** Live entertainment, piped-in music or television is not permitted in an outdoor dining area unless approved by the City’s Licensing Board.

X. Design Requirements

- a. Outdoor dining areas in the public way that are set up on the sidewalk or on the sidewalk in combination with seating in parking spaces must be curbside and access to utilities, utility access points, catch basins and manholes must be maintained throughout the seating area. In the parking lane, the gutter must be free of debris.
- b. Any outdoor area in the parking lane may be required to protect all sides of the patio facing travel, particularly in the line of travel, with jersey barriers or similar material deemed appropriate by the Police Traffic Division.
- c. The set up of the outdoor dining shall not interfere with existing pedestrian crosswalks. Any outdoor dining area adjacent to a crosswalk shall require that the crosswalk be lit and/or another method to improve visibility in the evening to aid pedestrians and drivers.
- d. Other design requirements will be determined by the appropriate City departments.

XI. **Inclement Weather.** Licensees should exercise sound judgment in suspending outdoor dining during bad weather such as high winds, thunderstorms, or snow. Licensees shall secure and anchor all equipment or bring it inside the restaurant during inclement weather and, in the event of a snow emergency, ensure the boundaries of the outdoor dining area are visible to plow drivers.

XII. **Removal of Area.** If an approved licensee intends to remove their outdoor dining furnishings prior to the end date of the season, the licensee shall notify the City's Licensing Board no less than 10 days prior to removing the dining furnishings. Also, if the licensee plans to close its business for more than 30 days within the season, they must immediately notify the Licensing Board. Furnishings must be removed from the outdoor dining area at the end of the season unless permitted in writing by the City. Any furnishings left on public property following the end of the seasons may be deemed abandoned and the City may remove and store it at the owner's expense. The City shall make every attempt to notify the licensee 48 hours prior to such removal unless public safety is a concern. The City may impose a penalty, equal to the pro-rata share of the seasonal fee, for the failure to remove furnishings.

XIII. **Maintenance.** Licensees are required to pick up debris and clean the designated dining area at the end of each business day. In addition, plates with uneaten food must be promptly removed from outdoor dining areas to prevent rodent issues.

XIV. **Outdoor Dining Area License**

- a. **All Applicants** must enter into an Outdoor Dining Area License Agreement with the City of Salem's Licensing Board.
- b. **All Applicants** must meet the following criteria to be eligible:
 - i. **Possess a valid common victualler's license**
 - ii. **Be in good standing with the Licensing Board**
 - iii. **Be in good standing with the Board of Health**
- c. The application for an Outdoor Dining Area Agreement with the City of Salem will require plans, photographs and other materials deemed necessary by the City Solicitor.