



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Worcester License Commission's Outdoor Table Service Applications

BY MARK A. BORENSTEIN • JUNE 20, 2020

Pursuant to the Governor's Executive Order No. 35 issued June 1, 2020 and the Worcester City Manager's Executive Order issued June 3, 2020, the Worcester License Commission is accepting applications to temporarily allow food establishments to add or expand outdoor table dining on an expedited basis to combat the negative impact of COVID-19 on Worcester food service businesses.

A general overview of the Worcester License Commission's Outdoor Table Service applications with references to certain applicable local and state laws and regulations is provided below. It is important to note that the applications referenced herein are only for the 2020 dining season and the applicable requirements, laws and regulations provided herein may change as circumstances, conditions, orders and legislation related to COVID-19 change.

Furthermore, any food establishment that previously provided outdoor dining will be required submit a COVID-19 Control Plan and a sketch of the outdoor seating to the Worcester License Commission in order to demonstrate compliance with the Massachusetts Mandatory Safety Standards for Restaurants prior to providing outdoor dining. Information regarding the COVID-19 Control Plan and the Massachusetts Mandatory Safety Standards is provided below.

WHO IS ELIGIBLE TO APPLY FOR OUTDOOR TABLE SERVICE?

Food establishments in Worcester with a retail food permit and governed by 105 CMR 590.000 ("Worcester Food Establishments") may apply to add to or extend their premises to provide seated outdoor table dining ("Outdoor Table Service") for food prepared on-site.

Worcester Food Establishments that desire to provide Outdoor Table Service will be required to meet the following criteria:

- Food must be prepared on-site under a retail food permit issued by the City of Worcester Department of Inspectional Services for the premises;
- Patrons must be seated (pre-arranged tables and chairs are required to be shown on the sketch provided to the Worcester License Commission); and
- Food must be served by staff to seated patrons (buffet or other self-service is not permitted).

Worcester Food Establishments eligible to apply for Outdoor Table Service include restaurants, beer gardens, wineries, and/or distilleries that meet all of the above criteria. Worcester Food Establishments must confirm that any other permits related to the operation of the business are still current or are obtained prior to reopening and/or providing Outdoor Table Service.

Worcester Food Establishments holding a license for the sale and consumption of alcoholic beverages on-premises may apply for Outdoor Table Service of alcoholic beverages, subject to applicable local and state laws and regulations (See Section 3 below for additional information). Worcester Food Establishments that do not currently hold a license for the sale and consumption of alcoholic beverages on-premises may not apply for Outdoor Table Service of alcoholic beverages.

WHICH WORCESTER LICENSE COMMISSION APPLICATIONS NEED TO BE COMPLETED? WHAT NEEDS TO BE INCLUDED?

Application for Temporary Extension of Premises for Outdoor Dining (With or Without Alcohol): This is the [required application](#) for Outdoor Table Service if the Worcester License Commission has not previously approved the service of food or alcoholic beverages in the proposed outside area.

- **Section 1 – Applicant and Restaurant Information:** Applicants are required to provide general contact information for the Worcester Food Establishment and the representative (e.g., owner, manager, etc.) applying for Outdoor Table Service.
- **Section 2 – Location of Outdoor Dining Area(s):** Applicants are required to provide: (i) the address and the property owner of the area in which Outdoor Table Service will take place; and (ii) specify the locations of the outdoor dining areas (i.e., deck, lawn, parking lot, patio, sidewalk, or other areas). **If Outdoor Table Service will occur on a public sidewalk, the Supplemental Sidewalk Dining Application will also be required (See Part B for additional information).**
- **Section 3 – Alcohol Sales and Consumption (On-Premises):** Applicants are required to state whether the Worcester Food Establishment is currently licensed for the sale and consumption of alcoholic beverages on-premises. Applicants must also provide a detailed description of the protocols they will employ to confine alcohol consumption on-premises. Here is the [Massachusetts Alcoholic Beverages Control Commission's \(ABCC\) advisory](#) regarding restaurants commencing outdoor table service of alcohol. Outdoor Table Service with the sale and consumption of alcoholic beverages is subject to the [ABCC's 2015 guidelines for outdoor seating](#).
- **Section 4 – Description of Outdoor Seating Area(s) and Premises Alterations:** Applicants are required to provide:
 - (i) the outdoor occupancy (number of seats and tables);
 - (ii) the number of on-site parking spaces (if parking areas are to be utilized for outdoor dining the applicant must provide the current number and the number of usable spaces remaining after the proposed alteration);
 - (iii) a description of the changes to the premises with photos and a sketch to show the proposed outdoor areas depicting compliance with the State's Mandatory Safety Standards for Restaurants (See Section 7 below for a link to State's Mandatory Safety Standards for Restaurants); and
 - (iv) plans for accommodating patrons during inclement weather. The sketch must show:
 - (i) table locations and identify the number of seats per table (not to exceed six seats per table), perimeter fences;
 - (ii) barriers between tables;
 - (iii) locations of directional signage;
 - (iv) signage posted to employ social distancing and hygiene protocols;
 - (v) accessible routes and seating areas, and all other physical features in the extended premises area (e.g. tents, etc.). If outdoor dining is proposed within parking areas, the sketch must also show the parking spaces and circulation aisles that remain available for parking as well as ingress and egress to the dining area and parking lot. The City Manager's Executive Order issued June 3, 2020 temporarily eliminated the off-street parking requirements under the City of Worcester Zoning Ordinance applicable to Worcester Food Establishments to facilitate Outdoor Table Service. Notwithstanding the foregoing, applicants will be required to demonstrate to the Worcester License Commission that the parking areas with Outdoor Table Service will remain safe and functional with particular attention paid to the ingress and egress from the outdoor dining area and compliance with ADA/AAB requirements. ADA-compliant parking spaces should remain or be relocated, and clear, accessible routes should be provided around tables on the sidewalk or other areas that lead to ingress/egress.
- **Section 5 – Hours of Operation for Outdoor Dining Area(s):** Applicants are required to provide the proposed hours of operation for outdoor dining Sunday through Saturday. **Tip:** Applicants should apply for Outdoor Table Service hours that are reasonable for the area in which they are located. The Worcester License Commission has provided guidelines for closing times which vary depending on the zoning district in which the Worcester Food Establishment is located:
 - Business General/Manufacturing General: Sunday – Wednesday – 10:00 pm
Thursday – Saturday – 11:00 pm
 - Business Limited: Sunday – Saturday – 10:00 pm
 - Other Districts: Sunday – Saturday – 9:30 pm
- **Section 6 – Good Neighbor Practices:** Applicants are required to provide: (i) transportation options for customer access to the Worcester Food Establishment if on-site parking is reduced; and (ii) identify nearby residences or businesses that may be disturbed by noise or other aspects of the proposed outdoor dining and describe how the Worcester Food Establishment can monitor and minimize such disruptions.
- **Section 7 – Applicant's Certification:** Applicants will need to review and certify their understanding and compliance with certain requirements including, but not limited to, applicable Massachusetts Mandatory Safety Standards (i.e., workplace and restaurants) related to COVID-19, the Governor's Executive Order No. 35 issued June 1, 2020, and the City Manager's Executive Order issued June 3, 2020 (Links are provided below). [Massachusetts Mandatory Safety Standards for Restaurants](#)

[Governor's Executive Order No. 35 issued June 1, 2020](#)
[City Manager's Executive Order issued June 3, 2020](#)
- **Section 8 – Supplemental Documentation:** Applicants are required to provide the following documentation: **Proof of ownership, lease or license rights to utilize the area proposed for Outdoor Table Service:** Applicants will need to provide documentation to demonstrate that they have the right to utilize the proposed Outdoor Table Service area. For example, an applicant that leases its premises should contact its landlord to obtain documentation to demonstrate that the use of the Outdoor Table Service area(s) is permitted, if not already allowed under the lease. (See Part B below if the Outdoor Table Service area(s) include public sidewalks). **COVID-19 Control Plan:** Applicants will need to complete the [Massachusetts COVID-19 Control Plan](#).

Photos of proposed outdoor dining areas.

Plan of proposed outdoor dining areas: Applicants will need to have a neatly drawn sketch of the outdoor dining areas prepared with sufficient detail for the Worcester License Commission to understand the layout of the area.

Proof of Insurance: Applicants will need to provide evidence of Workers' Compensation Insurance or affidavit that the Worcester Food Establishment does not have any employees.

Proof of Liquor Liability Insurance: Applicants will need to show that the liquor liability coverage extends to the proposed outdoor dining areas, if applicable.

Sidewalk Dining: Applicants will need to complete the Sidewalk Dining Supplemental Application if dining on public sidewalks is proposed (See Part B below). A separate permit from Worcester Department of Public Works & Parks is not required.

- **Submission:** Applicants are required to send the compiled application to OutdoorDining@worcesterma.gov

Sidewalk Dining Supplemental Application: Applicants seeking to use public sidewalks as part of the Outdoor Table Service are required to complete the [supplemental application](#) in addition to the Temporary Extension of Premises for Outdoor Dining (With or Without Alcohol) Application described above in Part A.

- **Section 1 – Applicant Information:** Applicants must provide the general contact information for the Worcester Food Establishment and its representative (e.g., owner, manager, etc.) applying for Outdoor Table Service.
- **Section 2 – Supplemental Documentation:**

Sketch or Diagram: Applicants are required to provide a modified version of the sketch or diagram required for the Temporary Extension of Premises for Outdoor Dining (With or Without Alcohol) Application showing: (i) the proposed outdoor dining area(s) including the proposed number and location of tables, chairs and other equipment; (ii) pedestrian access points to the dining area; (iii) how the dining area will be separated from the rest of the sidewalk; (iv) all physical features in the immediate vicinity of the outdoor dining area(s) including driveways, wheelchair ramps, fire hydrants, trees, poles, etc.; (v) streets names; (vi) width of sidewalk; (vii) length and width of sidewalks being utilized for outdoor dining; (viii) any additional information needed to demonstrate compliance with the City of Worcester Department of Public Works & Park's requirements. Applicants are required to review the City of Worcester Department of Public Works & Parks' regulations pertaining to Outdoor Dining on Public Sidewalks provided on Page 3 of the Sidewalk Dining Supplemental Application and ensure compliance when providing Outdoor Table Service. **Certificate of Insurance:** Applicants will be required to have general commercial liability insurance in amounts of \$1,000,000 per occurrence, \$2,000,000 in aggregate and name the City of Worcester (455 Main Street, Worcester, MA 01608) as the certificate holder. Applicants will be required to provide updated insurance certificates to the Worcester License Commission if the policy requires renewal prior to November 30, 2020.
- **Section 3 – Applicant's Certification:** Applicants will be required to review and certify their understanding and compliance with certain requirements for the use of public sidewalks for Outdoor Table Service.
- No separate application to the City of Worcester Department of Public Works & Parks is required for the 2020 dining season.
- **Submission:** Applicants are required to send the compiled application to OutdoorDining@worcesterma.gov.

WHEN WILL THE COMPLETED APPLICATIONS BE HEARD BY THE WORCESTER LICENSE COMMISSION?

Completed applications will be heard in the order received by the Worcester License Commission. The Worcester License Commission is scheduling multiple meetings throughout June 2020 to review and approve these applications. Once again, applicants should confirm that any other permits related to the operation of the Worcester Food Establishment are still current or are obtained before re-opening and/or providing Outdoor Table Service. Applicants should make sure all necessary attachments are provided and requirements are satisfied; otherwise, their approvals may be delayed.

WHAT IS THE FILING FEE FOR THESE APPLICATIONS?

There is no fee for these applications.

HOW LONG WILL THE TEMPORARY EXTENSION OF PREMISES REMAIN IN EFFECT?

The Governor's June 1, 2020 Executive Order and the City Manager's June 3, 2020 Executive Order currently allow for the temporary extension of premises through November 1, 2020. However, this could change if either is rescinded. Also, the Worcester License Commission retains the authority to revoke an approval.