

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

ORDINANCE

An Ordinance Amending the "Code of Ordinances City of Lowell, Massachusetts", as amended, by amending Chapter 243, Article IV Sidewalks Generally by suspending §243-23 entitled "Sidewalk seating outside restaurants" in its entirety and temporarily replacing it with new language entitled "Street Seats in the Public Space".

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

"The Code of Ordinances of the City of Lowell, Massachusetts", adopted by the City Council on December 23, 2008, is hereby amended with respect to Chapter 243 by suspending §243-23 "Sidewalk seating outside restaurants" in its entirety and temporarily replacing it with "Street Seats in the Public Space".

§243-23 Street Seats in the Public Space.

Purpose.

The City of Lowell is creating a temporary program to allow restaurants to operate in outdoor settings. 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 sit-down 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 dining season through October 31, 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 seat 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.

This temporary program does not apply to mobile food trucks/carts. These businesses have been able to serve, and continue serving, to-go food while following social distancing, sanitary, and hygiene practices.

1. Definitions:

SIDEWALK CAFÉ: an outdoor dining space located in the public ROW on a designated portion of the sidewalk adjacent to the participating restaurant.

STREATERY: a private seating area located in the public ROW that converts curbside parking spaces into an outdoor dining space for customers of the adjacent, participating restaurant.

2. Requirements

During the business hours of the participating restaurant, no portion of the sidewalk café or streatory seating may be used for any purpose other than dining or circulation. Restaurants with sidewalk café or streatory seating areas must serve food. No one shall be seated in a sidewalk café or streatory seating area for the sole purpose of drinking alcohol. Each establishment must maintain control of its operations and food and beverage service within its own outdoor premises. To prevent additional encroachment onto public space and to contain the sale of alcohol within the sidewalk café or streatory seating area, the area must be separated from the pedestrian walk space with a non-movable system of enclosure, such as decorative fencing with removable bollards. Sidewalk cafés or streateries that do not serve alcohol do not need this non-movable system of enclosure.

Business may not share outdoor premises, because it will make performing contact tracing difficult. Requirements may evolve to reflect new public health guidelines and the City reserves the right to revoke these approvals at any time.

All seating areas must comply with all applicable federal, state, and local laws and regulations, including the Americans with Disabilities Act.

Subject to other restrictions, sidewalk cafes and streateries in City right-of-way (ROW) are permissible in four zoning districts: Neighborhood Business (NB), Traditional Mixed-Use (TMU), Urban Mixed-Use (UMU), and Downtown Mixed-Use (DMU). Outdoor dining on private property is permissible in all zoning districts with eligible businesses.

A sidewalk café may be contiguous to the frontage of the restaurant or contiguous to the sidewalk curb parallel to that frontage. To provide safe, adequate circulation for patrons and pedestrians on the sidewalk, a minimum of four feet is required, but six feet is optimal, of sidewalk shall be available at all times. If a restaurant would like to operate a streatory and a sidewalk café, the two seating areas shall be contiguous.

Total seating shall not exceed the restaurant's maximum occupancy.

Businesses must use their own trash and recycling receptacles. Businesses will be responsible for clearing sidewalks and streateries of all debris after close of business each day. Outdoor dining shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers or other City infrastructure.

3. Eligible Businesses: restaurants, cafes, coffee shops, and other similar places of public accommodation offering food, beverages, or alcoholic beverages for on-premises consumption.

4. Hours of Operation: Outdoor patios opened under this program must close by 10PM on Sundays – Thursdays and by 11PM on Fridays and Saturdays. In the event that this temporary ordinance is terminated, or the Commonwealth of Massachusetts allows indoor seating, the hours of operation of those establishments licensed to sell alcoholic beverages shall be determined by the License Commission of the City of Lowell and will be incorporated into the license agreement for the use of the sidewalk café or streaterie.

5. Temporary Signs: For the duration of this ordinance, eligible businesses may install temporary signs in excess of the allowed size or number permitted by Section 6.3 of the Zoning Ordinance and the Article IV § 243-23.1. Sidewalk signs and/or sandwich boards. Temporary signs must be made of fabric, vinyl, paper, or corrugated plastic. These signs cannot be internally illuminated, but they may have lights shining onto them when the eligible business is open. Eligible signs are wall, window, feather, yard, and menu/sandwich board. Signs must be affixed to the eligible business' building or property or within a permitted sidewalk café or streaterie. 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.

6. Eligible Outdoor area: Under this program, eligible businesses may be able to temporarily expand into these types of outdoor areas:

1. Private property, including off-street parking lots with the Property Owner's consent.
2. Public ROW, including sidewalk, street parking spaces, and motor vehicle lanes (if designated by the City)

7. Tents: The installation of temporary tents will be permitted as part of this application if the tent is secure and no greater than 400 SQ FT. Tents larger than 400 SQ FT, or if they include sides or flaps, may be installed but will require additional approval by the Lowell Fire Department and Division of Development Services.

8. Application Requirements: Proposals to expand into the public right-of-way will require:

- a. Rough sketch of expanded area; and of barriers to be installed along ROW; include proposed number of outdoor tables, chairs, and umbrellas.
- b. Proof of liability insurance for the period covered by the license in at least the amount of \$500,000 combined limit for bodily injury and property damage. The

restaurant's ability to operate a street seat shall be conditioned upon the restaurant obtaining and maintaining this insurance.

c. Restaurant needs to be in good standing with the City of Lowell License Commission and Division of Development of Services.

d. Provide property owner consent if proposed outdoor seating area is on private property or expands along the frontage of an adjacent storefront area.

e. Specs and dimensions of installation of proposed tent no greater than 400 SQ FT.

9. Allowed Uses: Sidewalk cafés and streatory seating established under this program can only be used for sit-down dining. Without obtaining all other necessary approvals under existing licensing programs, they cannot be used for activities that would promote congregating, involved 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

That any other provision of existing Ordinances which is inconsistent with this Ordinance, such provisions shall be temporarily suspended.

This Ordinance is temporary and shall terminate October 31, 2020.

It is intended that this Ordinance is divisible and, if any enumerated Section of this Ordinance to add to or amend the Code, is stricken from this Ordinance, then the Code as it read prior to this Ordinance shall remain in full force and effect.

This Ordinance shall take effect immediately upon its passage in accordance with the provisions of Chapter 43 and Chapter 44 of Massachusetts General Laws.

APPROVED AS TO FORM:

Christine P. O'Connor
City Solicitor