

**OFFICE OF THE MANAGING DIRECTOR
SUPERSEDING REGULATION ON THE OPERATION OF TEMPORARY SIDEWALK
CAFÉS AND STREETERIES DURING THE COVID-19 EMERGENCY 2021**

WHEREAS, Bill No. 200351 (approved August 24, 2020) as amended by Bill No. 200497 (approved December 1, 2020) permits the temporary licensing and expansion of Sidewalk Cafés through December 31, 2021 due to the COVID-19 emergency;

WHEREAS, Bill No. 200352 (approved June 26, 2020) as amended by Bill No. 200498 (adopted December 1, 2020) permits partial or total street closures for the expansion of businesses that cannot operate indoors, due to the COVID-19 emergency, through December 31, 2021; and

WHEREAS, on August 29, 2020, the Office of the Managing Director adopted Regulation on the Operation of Temporary Sidewalk Cafes and Streeteries During the COVID-19 Emergency to implement the authorizations set forth in Bill Nos. 200351 and 200352 regarding the temporary operation of sidewalk cafes and streeteries which expires December 31, 2020;

NOW THEREFORE, to implement these ordinances, the Office of the Managing Director hereby adopts the following regulation regarding the granting of Temporary Sidewalk Café Licenses and the granting of temporary Streeteries Licenses.

Section 1. Definitions.

- A. Abut – To touch or share a contiguous boundary or border. Properties that are separated by a street, alley, shared driveway are not abutting.
- B. Adjoin – To lie next to or to be in contact with. If there is a bicycle lane or similar separation between the parking lane and the sidewalk, the two do not adjoin.
- C. Extension – Expansion of a sidewalk café or streeteries to a property abutting a property where a sidewalk café (regular or temporary) or streeteries is licensed.
- D. Neighborhood Group – A Registered Community Organization as defined by 14-203(259).
- E. Outdoor – an open-air space, a tent or structure with an overhead covering and no more than two (2) walls or other nonpermeable sides, or a tent or structure that otherwise meets standards established by the Department of Health to qualify as an outdoor location.
- F. Prohibited Street – Any street upon the City Right-of-Way that is designated by the Streets Department (“Streets”) as ineligible for operation of a streeteries.

- G. Right-of-Way (ROW) – Right-of-Way shall have the meaning provided by Section 11-701(dd) of the Philadelphia Code.
- H. Sidewalk Café – An open-air space on the public sidewalk directly abutting a restaurant where food is served at tables and chairs.
- I. Sidewalk Café License – A license to operate a sidewalk café issued pursuant to Section 9-208 of the Philadelphia Code.
- J. Streeterly – A street-level or platform area that occupies one or more spaces in a parking lane adjoining to the sidewalk abutting a restaurant used to provide dining space for the restaurant, and is licensed pursuant to the authorization in Bill No. 200352 (approved June 26, 2020) as amended by Bill No. 200498 (adopted December 1, 2020) and the regulations promulgated thereunder.
- K. Temporary Sidewalk Café – a sidewalk café that is licensed pursuant to the authorization in Bill No. 200351 (approved August 24, 2020) as amended by Bill No. 200497 (approved December 1, 2020) and the regulations promulgated thereunder.

Section 2. Applicability.

These regulations shall apply to any Temporary Sidewalk Café/Streeterly License, including Extensions, issued January 1, 2021 through December 31, 2021.

Subject to limitations provided herein, all Temporary Sidewalk Café/Streeterly Licenses issued as of December 31, 2020 will be automatically renewed and remain valid until December 31, 2021.

All Extensions recognized as part of a license issued prior to January 1, 2021 expire as of that date. To continue to operate an Extension after that date, a new Extension approval must be issued. Current license holders may apply for a new extension by submitting an amendment to their current license.

Operation of a temporary sidewalk café, streeterly, or extension after December 31, 2020 constitutes agreement to the provisions of these regulations, including all requirements and waivers. Any licensee who does not agree to the terms of these regulations must cease their dining operations in the right-of-way and close out the establishment’s license. If the establishment wishes to resume operations a new license application will need to be submitted.

These Regulations can be terminated by the Managing Director’s Office by issuance of an emergency regulation upon a determination that there is no longer a need for an expansion of dining in the right-of-way.

Section 3. Application Requirements. To receive a license for a Temporary Sidewalk Café/Streeterly License and/or an Extension, the following must be submitted to the Department of Licenses and Inspections (L&I):

A. Application. All applications must be submitted using the official application form. The application for a Temporary Sidewalk Café License, an Extension, and/or a Streeterly is a combined application form. The application materials required and application process may differ, however, based on what is being sought. All applications must be submitted to L&I through the eCclipse system at eclipse.phila.gov or at the Permit and License Center using the official application form. The application requires the applicant attest to an understanding of the operational requirements contained in these regulations and all applicable Philadelphia Code sections and governmental orders.

B. Application Materials.

1. *Temporary Sidewalk Café License*:

- a. The application form;
- b. A valid Food Preparing and Serving license for the business location; and
- c. Proof of a general insurance policy with at least \$1 million coverage minimum.

2. *Streeterly*:

- a. The application form;
- b. A valid Food Preparing and Serving license for the business location; and
- c. Proof of a general insurance policy with at least \$1 million coverage minimum.
- d. Additional materials may need to be supplied if the streeterly includes a platform.

3. *Extension*:

- a. The application form;
- b. A valid Food Preparing and Serving license for the business location;
- c. Proof of a general insurance policy with at least \$1 million coverage minimum; and
- d. An Owner's Authorization form for each property for which the extension is sought.

C. Application Standards and Review.

1. *Temporary Sidewalk Café*

- a. Upon receipt of the application, L&I will do a completeness review.
- b. For Sidewalk Cafés, the sidewalk adjacent to the food establishment must be a minimum of 10 feet wide.
- c. L&I will daily transmit a list of applications received to City Council offices and the Registered Community Organization ("RCO") distribution list.
- d. The District Council member representing the District of the applicant and any RCO covering the location of the application may submit a Statement of Community Concern to L&I.
- e. All statements must be on the form provided by L&I and should be returned via email within one business day.

- f. Concerns shall be limited to those impacting health, safety, or quality of life of the surrounding community, including complaints regarding noise, litter, and building safety.
 - g. If a Statement of Community Concern is received, L&I will review 3-1-1 and L&I Nuisance Business Units records for the last two years. If the records indicate substantial complaints or violations related to the expressed concerns, the license will be denied.
 - h. If no Statement of Community Concern is received within the allotted timeframe or the stated concerns are not substantiated based on the record review, the application form is complete, all application materials are properly provided and show compliance with all applicable requirements of these regulations, and no additional information is required, L&I will issue the license.
2. *Streeter*
- a. Upon receipt of the application, L&I will do a completeness review.
 - b. A streeter may only be installed in a parking lane with a minimum width of seven (7) feet.
 - c. A streeter may not be installed on any street designated as a “Prohibited Street.”
 - d. A streeter may only be installed on a State or Federal route where the proposed streeter complies with these regulations, and where the Pennsylvania Department of Transportation (“PennDOT”) has delegated authority to the City to permit such activity on the street identified.
 - e. If the application seeks a streeter with platform construction, or the frontage is located on a Federal Route, State Route, or a route designated for detailed review on Streets’ Streeter Review Map, the application will be referred to Streets for additional review.
 - f. Additional review will also be conducted by Streets, which will determine whether to approve or deny the license. No streeter shall be approved as-of-right.
 - i. Platform construction will be approved where the spacing requirements are met and the proposed structure of the platform is structurally sound and crashworthy to the satisfaction of Streets.
 - ii. The platform must be no more than 6 inches from grade. If there is a built-in guardrail, the platform structure may be no more than 48 inches from grade.
 - iii. Pursuant to the Americans With Disabilities Act (“ADA”), egress, ingress and pedestrian space must be at least 36 inches in width. Any ramp up or down into the streeter shall have a maximum rise of 30 inches.
 - iv. Additional review will also consider obstacles that may require additional measures, design changes for safety purposes (including barriers), utility access, and the free-flow of traffic in travel lanes.

3. *Extension*

- a. Permission for operation of an extension of sidewalk café or streeterly may be obtained only in connection with a licensed operation of that use.
- b. Extensions follow the same application review path as the use in connection with which the extension is sought.
- c. An extension may be authorized only for properties with frontage that directly abuts the frontage of the food establishment and such extension may occupy the sidewalk of no more than two properties abutting the licensed property.
- d. An extension shall be permitted upon written proof of authorization from the owner or legal occupant of the property to be used for the extension.
- e. Permission to operate an extension is limited. The granting of an extension as part of a Temporary Sidewalk Café/Streeterly License does not constitute absolute permission to operate in those locations. Actual authority/permission must still be obtained from the property owner.
- f. An extension may be revoked upon written notice from the abutting property owner that permission for such use was not granted or has expired.

D. Application Approval. An application which seeks approval for more than one operational activity/use may be denied in whole or in part; the decision notice issued by the City will indicate which activity(ies)/uses are approved.

E. Appeals. The decision to approve or deny a license may be appealed to the Board of Licenses and Inspections within 30 days of the decision in accordance with A-800, *et seq.*, of The Philadelphia Code.

1. If a license was granted, the food establishment may continue to operate pursuant to the license while the appeal is pending.
2. If a license is denied, the food establishment may not conduct any unlicensed or unpermitted outdoor dining activities.

Section 4. License Addendums

A. License Amendment—Additional Use.

1. Only one license will be issued per establishment. However, each license can permit a temporary sidewalk café, streeterly, and/or extension if the use is applied for and all requirements are met.
2. If an establishment already has a license and wants to extend the permissible uses beyond the use(s) currently approved, then a license amendment must be applied for. This includes all extensions for 2021.
3. The amendment requires filling out the appropriate sections of the application form and submitting any additional application materials for the new use or extension being sought.

4. Applications for a new use through amendment of an existing license are subject to all the same requirements for that use.

B. License Amendment—Shelter in the Right-of-Way.

1. To ensure that your shelter approval is tied to your Temporary Sidewalk Café/Streeterly License you must amend your license to register the shelter use.
2. Fill out the “Amendment to Outdoor Dining” form and upload copies of the applicable plan(s) or permit(s) online.
3. An approval or denial will then be issued and documented as part of the Temporary Sidewalk Café/Streeterly License.

C. License Closure. To close a Temporary Sidewalk Café/Streeterly License a request must be submitted to 311 (215-686-8686 outside the City). The license number and property address should be included in the request.

Section 5. Operating Requirements.

- A. Agreement. Operation of a temporary sidewalk café, streeterly, and/or extension on or after January 1, 2021 constitutes agreement to the provisions of these regulations. Operation includes but is not limited to dining operations, maintaining an active license, and/or placement of a shelter, platform, furniture or crash barriers in the right-of way. If an establishment wishes to cease operations, so that it is not bound by the requirements of these regulations, then the license must be closed. Once a licensed is closed a new license must be obtained before any dining in the right-of-way may resume.
- B. General Requirement. No temporary sidewalk café, streeterly, or extension may operate without a license issued under these regulations. All activities licensed pursuant to these regulations must adhere to all applicable provisions of The Philadelphia Code, any other applicable City regulations, and all business activity, health, and/or safety order requirements issued by the Mayor, Health Commissioner, and/or the Board of Health and/or the Commonwealth.
- C. Insurance. The licensee must maintain a general liability insurance policy with a minimum of \$1,000,000.00 at all times while operating pursuant to a Temporary Sidewalk Café/Streeterly License, including any extension.
- D. Posting of the License. A copy of the license shall be posted at the establishment in a conspicuous place so that it is clearly visible to the public from the exterior and shall be readily available for inspection by the City.

- E. Time of Operation. Temporary Sidewalk Cafés, Streeteries, and any extension may only operate Monday through Sunday between 8 a.m. and 12 a.m. the following day. Last call for all dining orders will be at 11 p.m. and establishments will be required to be closed for service by midnight. All patrons must be vacated by no later than 12:30 a.m. All other laws and regulations apply. Nothing in this regulation shall restrict hours of operation for otherwise permitted operations.
- F. Extension. Use of the extension is subject to all the requirements of this regulation pertaining to the underlying operation (sidewalk café or streeteries), including but not limited to degree of occupation of the sidewalk, hours of operation and all applicable health and safety requirements
- G. Streeteries Crash Barriers
1. A streeteries must be protected from a travel lane for bicycles or motor vehicles. An application for a streeteries shall be subject to Streets review and approval, or denial with comments.
 2. Approved barrier types, conditioned upon their proposed use, include water-filled trash cans (filled, with a minimum capacity of fifty (50) gallons), construction barrels, gates, cones (min. 36 inches high), sawhorses, and Jersey barriers.
 3. Destroyed, damaged, or otherwise compromised barriers shall be replaced, and the approved barrier layout restored, immediately upon such damage.
 4. Barriers must be placed without impediment to the travel-lane or sidewalk.
 5. All barriers must be secured to avoid tampering or movement of the barriers from their set placement.
- H. General Operations:
1. Seating capacity of interior and exterior dining combined may not exceed the capacity of the existing business.
 2. Access to bathrooms and hand washing facilities must be provided.
 3. Each establishment is permitted to have one portable accessory sign not to exceed 10 sq. feet in area and not to exceed 5 feet in height.
 4. No heating, cooking, fire pits, or open flames are permitted except as follows:
 - a. Heaters approved for outdoor use, installed in accordance with manufacturer's installation instructions and in compliance with the Philadelphia Fire Code may be used.

5. No food preparation, plastic food displays, food storage, or refrigeration apparatus shall be permitted in the public right-of-way.
6. Trash storage must comply with Section PM-308 of the Philadelphia Code; if a dumpster is utilized, a dumpster license is required.
7. Adequate lighting is required at night. The food establishment and adjacent right-of-way must be illuminated to allow clear passage within and through the sidewalk areas, and oriented to prevent glare on surrounding areas.
8. A streetery must be posted by the license holder with temporary “No Parking” signs provided by the City.

I. Space Requirements:

1. A clear path of pedestrian travel at least 6 feet wide must be maintained, except pre-existing constraints between fixed objects. The pedestrian path shall be ADA accessible.
2. Tables and chairs may not protrude into a travel lane for bicycles or motor vehicles.
3. Tables and chairs may not obstruct pedestrian crosswalks or driveways.
4. No table may obstruct a building entrance.
5. No furniture, including tables and chairs, may be placed within 6 feet of a crosswalk, corner curb cut, or large street furniture, which include but not limited to a bus stop shelter, newsstand, or bike share kiosk.
6. All furniture must be at least 10 feet from a fire hydrant.
7. No furniture or apparatus may be placed within 40 inches of a Fire Department connection.
8. All tables must be at least 2 feet from cellar doors.
9. All tables must be at least 15 feet from a transit stop.
10. The spacing of all tables and chairs must comply with current Philadelphia Department of Public Health guidelines on safe operations.

J. Furniture Operations/Placement:

1. Tables, chairs, umbrellas, and other moveable furniture must be placed indoors or secured to the ground during non-operating hours.

2. Moveable furniture must be labeled with the food establishment/business name in a place where it is easily readable/identifiable.
3. Umbrellas shall be of fire-retardant material and canopy shall be a max of 6 feet in diameter.
4. Planters or other furniture demarcating the boundaries of the Sidewalk Café and the cartway may not be affixed to the public right of way or unreasonably impede the flow of pedestrian traffic.

K. Electrical and Heating Operations:

1. *Prohibitions*

- a. No open flames (even if covered) are allowed in the Right-of-Way.
- b. No solid fuels (such as but not limited to wood and coal) are allowed to be used in the right-of-way.
- c. No kerosene is allowed to be used in the right-of-way.
- d. No cooking is allowed in the right-of-way.
- e. No heating or fuel equipment may be stored in the right-of-way when not in use.
- f. No private gas lines are allowed to extend into the right-of-way.
- g. Do not exceed circuit amperage with electric connections.
- h. Do not change your heating set-up once it is established, particularly after it was verified by City inspection. If an adjustment is needed please arrange for an inspection prior to the change.

2. *General Heater Guidance*

- a. Make sure to read and understand the manufacturer's instructions on installation and operation of all equipment.
- b. Request a professional inspection wherever you are in doubt.
- c. Create a fire safety plan to ensure that equipment and fire safety is maintained.
- d. Check your set-up routinely.

3. *Propane and Natural Gas Heaters*

- a. Must be placed a minimum five (5) feet from the building and all combustibles.
- b. Equipment must be listed and labeled for outside use.
- c. Equipment must comply with all provisions of The Philadelphia Code Fire Code Section 603.4.2.
- d. Containers (attached or detached from device) may not be stored indoors.
- e. Ensure that proper exhaust ventilation is maintained.
- f. Secure any propane tank placed in the right-of-way.

4. *Electric Heaters*

- a. Must be placed a minimum three (3) feet from combustibles

- b. Equipment must be listed and labeled for outside use.
- c. Cords must be secured to prevent tripping hazards.
- d. Extension cords are not permitted.

5. *Lighting/Temporary Electrical Connections*

- a. Temporary installations are acceptable only if approved based on the conditions of use and any special requirements of temporary installation.
- b. For operations licensed pursuant to these regulations, the requirements under the National Electric Code Section 590.3(B) are suspended for temporary decorative lighting.
- c. All temporary wiring must be ground fault protected.
- d. Temporary wiring and/or lighting should be secured to avoid impediment to users of the right-of-way.
- e. Luminaires for temporary circuits have special requirements. Including but not limited to, that lighting elements must be enclosed or have similar protection against accidental contact or breakage.
- f. Any utility connection must come from an existing building.
 - i. No gas connection is permitted.
 - ii. There may be no tie-in to PECO services, street light, or light post.
- g. A licensed electrician should verify that no circuits tapped are subject to being overdrawn.
- h. All outlets must be located on the exterior of a structure. Electrical cords cannot run from the interior to the exterior.

L. Erection/Construction of Tents, Shelters, and/or other Structures

1. *Permits/City Approval*

- a. The Temporary Sidewalk Café/Streeterly License does not authorize the placement of anything in the right-of-way aside from tables, chairs, umbrellas, heaters, and crash barriers.
- b. To place anything else in the right-of-way, such as but not limited to a platform or tent or other shelter, further permits and City approval is needed.
- c. Approval is needed prior to erecting anything in the right-of-way.

2. *Right-of-Way Permit*

- a. Required for anything being erected in the right-of-way that does not require a tent or building permit. This includes, but may not be limited to, a streeterly platform, a canopy, or a tent that is unheated and is less than or equal to 400 sq. ft.
- b. These approvals can be obtained through the temporary sidewalk café/streeterly application process or by amending a current license.

3. *Tent Permit*

- a. Required for a tent which is larger than 400 sq. feet or a smaller tent which is heated (has heaters placed under it).

- b. Applications are to be submitted to the City through eClipse following the normal procedure to obtain a tent permit.
- c. The application must be submitted with plans including: size and location, exits, proposed occupant load, arrangement of the seating and locations, type of heating and electrical equipment, and anchoring, if applicable. The application must also include documentation that shows tents, membrane structure, and their accessories meet the flame propagation performance criteria of NFPA 701.
- d. A tent permit is only valid for up to six (6) months. After that time, to continue to use the tent, a new permit must be applied for and obtained.
- e. Once you are issued a tent permit you must amend your Temporary Sidewalk Café/Streeterly License.

4. *Building Permit*

- a. A building permit is required for any rigid overhead covering/framing or if the structure has walls over four (4) feet in height.
- b. Applications for a building permit must follow the normal application procedure for a building permit and can be submitted through eClipse.
 - i. Applications should be submitted as Commercial Alterations or Commercial Addition (not New Construction or Shelter Platform).
 - ii. When applying, the applicant should identify if the structure is built in the right-of-way to trigger the Streets Department review.
- c. The application must be submitted with plans that provide enough information to confirm compliance with all applicable Building Codes:
 - i. A site plan indicating the size and location of the structure;
 - ii. A framing plan and anchoring detail; and
 - iii. Details of all building materials and roof/wall coverings.
- d. Once you are issued a tent permit you must amend your Temporary Sidewalk Café/Streeterly License.

5. *Electrical or Mechanical Permit*

- a. Applications are to be submitted to the City through eClipse following the normal procedure to obtain an electrical and/or mechanical permit.
- b. An electrical permit is needed for any new electrical connection.
- c. A mechanical permit is required for any HVAC and/or ventilation system.
- d. You do not need to amend your Temporary Sidewalk Café/Streeterly License upon issuance of an electrical or mechanical permit.

6. *Tent/Shelter Placement*

- a. Do not place any shelter (tent, canopy, structure, etc.) within fifteen (15) feet of a fire hydrant.
- b. Ten (10) feet of emergency access must be maintained in the street.
- c. Clear access to public utilities, manholes, building entrances, crosswalks, and transit stops must be maintained.

- d. Shelter placements must not exceed the business frontage allowed under your Temporary Sidewalk Café/Streeterly License.

M. Emergency Health and Safety Operating Requirements. Holders of a Temporary Sidewalk Café/Streeterly License, including Extensions, must keep themselves apprised of and follow all emergency health orders from the City of Philadelphia related to business operations and the COVID-19 emergency, including occupancy limits for outdoor gatherings, and all applicable guidance incorporated and referenced therein. Ongoing compliance with such requirements shall be a condition of ongoing maintenance of the license and repeat violations shall result in license suspension or revocation.

Section 6. Additional Obligations and Waivers

- A. To maintain the functions of city infrastructure, all utility work, any snow removal, and the collection of trash and/or recycling take precedent over right-of-way dining options. You may be asked to remove your right-of-way setup for these or other City purposes with reasonable notice.
- B. The City may, temporarily or permanently, revise, terminate, or suspend right-of-way use prior to December 31, 2021 with reasonable notice where it is in the best interest of the City or for the health, safety, or welfare of the public.
- C. Submitting an application is an acknowledgement that the applicant understands and agrees to all provisions of these regulations, The Philadelphia Code, and other applicable law.
- D. The applicant/licensee agrees to defend, indemnify, protect, and hold harmless the City and its officers, agents, and employees from and against any and all suits, demands, claims, loss, damage, charges, or expense, whether direct or indirect, to which they may be subjected by reason of any damage, loss, or injury to persons or property caused by or resulting from the use of the right-of-way dining space, any structures or objects placed in that space, or any wrongful or negligent act by the licensee, its employees, and/or contractor.
- E. No authorization granted under or subject to these regulations, including any permitted modifications to a structure or lot, shall constitute a permanent use approval.

Section 7. Penalties.

Failure to follow any of the requirements of this regulation shall constitute a violation of the Philadelphia Code and may lead to fines as set forth in law, a cease operations order, suspension or revocation of the Temporary Sidewalk Café/Streeterly License or Extension, and any other remedy available at law.

Section 8. Superseding Regulation and Effective Date.

This regulation supersedes the Office of Managing Director Regulation on the Operation of Temporary Sidewalk Cafes and Streeteries During the COVID-19 Emergency. This regulation is issued subject to the Mayor's Declaration of Emergency Circumstances, such that it shall become law immediately upon submission to the Department of Records, and shall be effective starting January 1, 2021.