

**OFFICE OF THE MANAGING DIRECTOR
REGULATION ON THE OPERATION OF TEMPORARY SIDEWALK CAFÉS
DURING THE COVID-19 EMERGENCY 2022**

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; and

WHEREAS, Bill No. 210798 (approved December 2, 2021) permits an extension of the temporary licensing of Sidewalk Cafes through December 31, 2022; 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 expired on December 31, 2020; and

WHEREAS, on December 30, 2020, the Office of the Managing Director adopted the Superseding Regulation on the Operation of Temporary Sidewalk Cafes and Streeteries During the COVID-19 Emergency 2021 which became effective on January 1, 2021;

WHEREAS, Bill No. 200351, extended by Bill No. 210798, authorizes the Office of the Managing Director to continue regulating the licensing, implementation, and use of Temporary Sidewalk Cafes;

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 operation of such.

Section 1. Definitions.

- A. Abut – To touch or share a contiguous boundary or border. Properties that are separated by a street, alley, and/or 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. Cartway – The portion of the street reserved for vehicular use and contained between the curb lines.
- D. Extension – Expansion of a sidewalk café to a property abutting a property where a sidewalk café (regular or temporary) is licensed.
- E. Neighborhood Group – A Registered Community Organization as defined by 14-203(259).

- F. Right-of-Way (ROW) – Right-of-Way shall have the meaning provided by Section 11-701(dd) of the Philadelphia Code.
- G. Shelter – Any construction designed to shield patrons from the elements, including but not limited to tents, canopies, and other walled structures, but not including a horizontal awning.
- 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. Temporary Sidewalk Café – a Sidewalk Café that is licensed pursuant to the authorization in Bill No. 200351 (approved August 24, 2020) as amended by Bills No. 200497 (approved December 1, 2020) and 210798 (approved December 2, 2021), and the regulations promulgated thereunder.

Section 2. Applicability.

A. General Applicability.

These regulations shall apply to new Temporary Sidewalk Cafes and to any Temporary Sidewalk Café Licenses, including Extensions, issued before December 31, 2021. Operation of a Temporary Sidewalk Café after December 31, 2021 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.

B. Automatic Renewal of Temporary Licenses

Subject to limitations provided herein, all Temporary Sidewalk Café Licenses, including Extensions, issued as of December 31, 2021 will be automatically renewed, and will remain valid until December 31, 2022.

C. Termination.

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. Otherwise, they shall terminate upon the expiration of the Temporary Sidewalk Café authorization.

Section 3. Application Requirements. To receive a license for a Temporary Sidewalk Café 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 and/or an Extension is a combined application form. All applications must be submitted to L&I through the eEclipse 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 for 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.
- C. Application Materials for a New Extension of a Temporary Sidewalk Café
 - 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.
- D. Application Standards and Review for Temporary Sidewalk Café.
 - a. Upon receipt of the application, L&I will do a completeness review.
 - b. The sidewalk adjacent to the food establishment must be a minimum of ten (10) feet wide.
 - c. L&I will daily, if applicable, 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.
- E. Application Standards and Review for Extension
- a. Permission for operation of an extension of sidewalk café 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 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.
- F. Application Approval. An application will be approved or denied in whole via a decision notice issued by the City to the applicant.
- G. Appeals. The decision to approve or deny a license may be appealed to the Board of Licenses and Inspections within thirty (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 while the appeal is pending.

Section 4. License Addendums

- A. License Closure. To close a Temporary Sidewalk Café 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 on or after January 1, 2022 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 or furniture 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 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 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 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, including but not limited to degree of occupation of the sidewalk, hours of operation and all applicable health and safety requirements.
- G. General Operations:
1. Seating capacity of interior and exterior dining combined may not exceed the approved 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. *See Section J, infra.*
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.

H. Space Requirements/Pedestrian and Emergency Access:

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 includes but is not limited to a bus stop shelter, newsstand, or bike share kiosk or station.
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.

I. 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 maximum of 6 feet in diameter when open.
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.

J. Electrical and Heating Operations:

1. *Prohibitions*

- a. No open flames (even if covered) are allowed on the sidewalk.
- 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 propane is allowed to be placed in the cartway.
- f. No heating or fuel equipment may be stored in the Right-of-Way when not in use.
- 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 an establishment should, arrange for an inspection prior to and after 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, including but not limited to roofs, canopies, tents, and umbrellas, and in accordance with manufacturer instructions.
- 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 while in use.
 - g. Propane and natural gas heaters may only be placed on the sidewalk.
 - h. Propane may not be stored on the Right-of-Way, indoors, against a building, or within five (5) feet of a building or property line; even if in a cage.
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.
- K. Other City Approval for Erection/Construction of Tents, Shelters, and/or other Structures
1. *Permits/City Approval*
- a. The Temporary Sidewalk Café License does not authorize the placement of anything in the Right-of-Way aside from tables, chairs, umbrellas, heaters.
 - b. To place anything else in the Right-of-Way, such as but not limited to a tent, awning, canopy, shelter or other encroachment, further permits and City approval(s) are needed.
 - c. Approval is needed prior to erecting anything in the Right-of-Way. All requirements as set forth in the applicable Philadelphia Code Sections and regulations must be met. Nothing in these regulations guarantees approval for an encroachment in the Right-of-Way.

2. *Right-of-Way Permit*

- a. A Right-of Way Permit is 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 canopy or a tent that is unheated and is less than or equal to 400 sq. ft.

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.

4. *Building Permit*

- a. A building permit is required for any rigid overhead covering/framing or anything tied into or connected to the structure.
- b. Streets Department approval is required for the issuance of a building permit related to any structure in the Right-of-Way.
 - i. The Streets Department will evaluate placement of the structure related to traffic controls, utility access, traffic flow, and other safety considerations.
- c. 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 shall identify if the structure is located and/or built in the Right-of-Way to trigger Streets Department review.
- d. 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 encroachment;
 - ii. A framing plan and anchoring detail; and
 - iii. Details of all building materials and roof/wall coverings.

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.
- L. Emergency Health and Safety Operating Requirements. Holders of a Temporary Sidewalk Café License 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, proof of vaccination requirements, 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 precedence 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, 2022 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 License, 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, 2022.