



Town of Brookline

Massachusetts

Outdoor Dining Program Regulations and Guidelines

Effective April 1, 2021 through December 31, 2021

(Voted: 3/16/2021)

Due to the success of Brookline's temporary expanded outdoor dining program during the COVID-19 pandemic in 2020, the Town of Brookline is taking steps that may permit the continuation of this program indefinitely.

At a minimum, the Town anticipates continuing the temporary expanded outdoor dining program as permitted by the Governor's COVID-19 emergency orders, which currently permit this temporary outdoor dining program through 60 days after the end of the State of Emergency.

Additionally, the Town's Planning & Community Development Department recently filed several warrant articles for the May 2021 Annual Town Meeting proposing zoning and general by-law changes that would permit licensing for permanent year-round outdoor seating. (The Town's by-laws currently permit licensing for permanent seasonal outdoor seating only.) If approved by Town Meeting, restaurants that are not currently licensed for seasonal permanent outdoor seating and offer outdoor seating through the Town's temporary COVID-era expanded outdoor dining program would be able to apply for permanent licensing extensions of premises for outdoor seating. Restaurants currently licensed for permanent outdoor seasonal seating would be able to apply for year-round permanent outdoor seating.

These Outdoor Dining Program Regulations and Guidelines are issued as conditions for restaurants' outdoor seating. These Outdoor Dining Program Regulations and Guidelines are issued as the conditions for all outdoor seating effective April 1, 2021 and will sunset on December 31, 2021 unless amended earlier or extended by further vote of the Select Board. They are applicable to existing licensed seasonal outdoor seating (which may be extended indefinitely, see above) and to temporary extensions of premises for outdoor seating pursuant to the Governor's COVID-19 emergency orders.

PROGRAM ELIGIBILITY REQUIREMENTS:

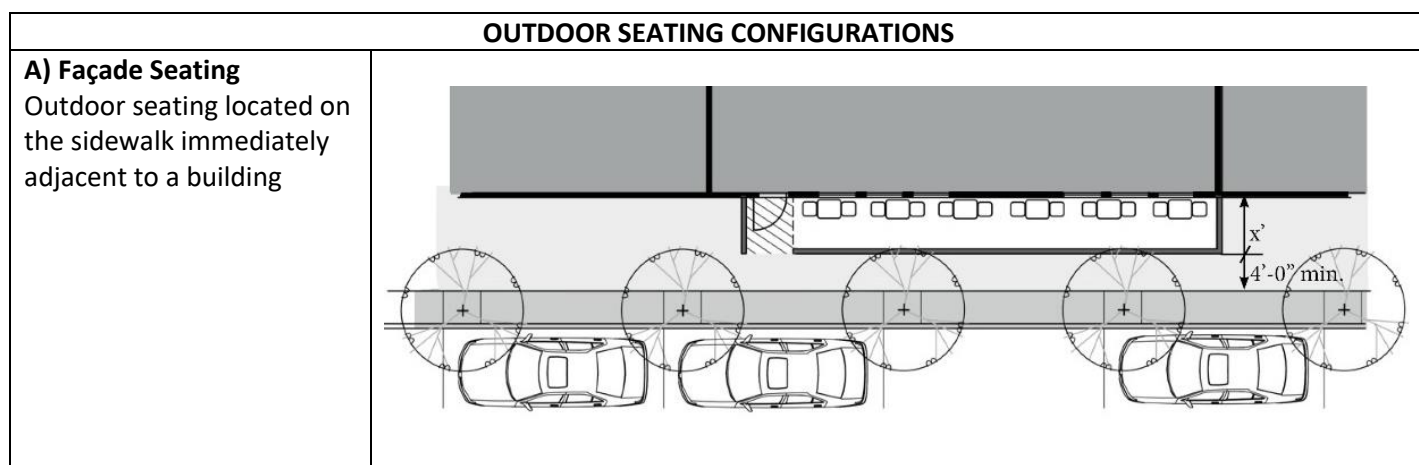
- Must be a ground-floor brick-and-mortar food establishment with a common victuallers license.
- Must have adequate adjacent parking space or sidewalk space to comply with the outdoor dining program's placement, design, and accessibility criteria.
- Must comply with all applicable State and local law and Town policy, including, but not limited to, the Select Board's Amended Approval Procedure for the Temporary Extensions of Licensed Premises for Outdoor Seating, the Commonwealth of Massachusetts Covid-19 orders and applicable sector-specific guidelines, the Town of Brookline's Prepared Food Regulations, the Town of Brookline's Sales of Alcoholic Beverages Regulations, the ABCC's Patio Guidelines, and all laws governing access by people with disabilities.

- Contact the Licensing Clerk, Tiffany Souza, tsouza@brooklinema.gov, with any questions regarding your eligibility.

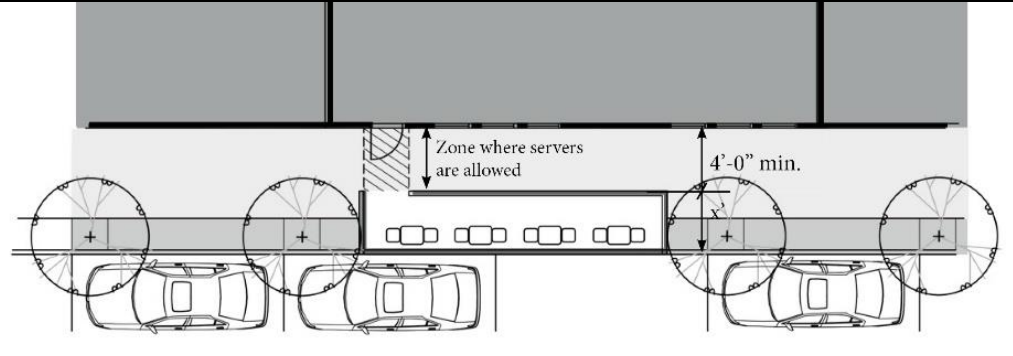
OUTDOOR DINING DESIGN GUIDELINES:

Outdoor Seating Area Placement Guidance:

- Seating is generally limited to the area immediately adjacent to a business' storefront.
 - In some circumstances, outdoor seating areas can extend in front of adjacent businesses. Adjacent property owners and tenants must provide a letter supporting this use with the application submitted to the Select Board.
- Curbside seating (see Outdoor Seating Configuration B below) is generally preferred for outdoor seating on the sidewalk, as it maintains the primary sidewalk area for pedestrians. Outdoor dining adjacent to the building will be considered where it would not negatively impact the pedestrian route of travel.
- Outdoor dining areas on the sidewalk must retain:
 - A 4' minimum but 5' preferred sidewalk width that is clear of any obstructions.
 - Previously approved setups may require modifications to maintain the sidewalk width.
- Outdoor dining areas in the parking lane must:
 - Be limited to 2 usable curbside parking spaces. (Note: A 3rd parking space will be used to accommodate a transition barrier. See Outdoor Seating Configurations C-E for reference.)
 - Be installed 2 feet to the right of the edge line (as measured from the inside edge of the white parking space markers) and not obstruct adjacent Bike/LIT or motor vehicle travel lanes.
 - Accommodate the placement of 2-ft-wide jersey barriers, which will be installed by the Town.
 - Meet PROWAG and MAAB accessibility requirements with either a proposed ramp or a platform constructed to be sidewalk level.
 - Maintain access to utilities and curbside drainage.

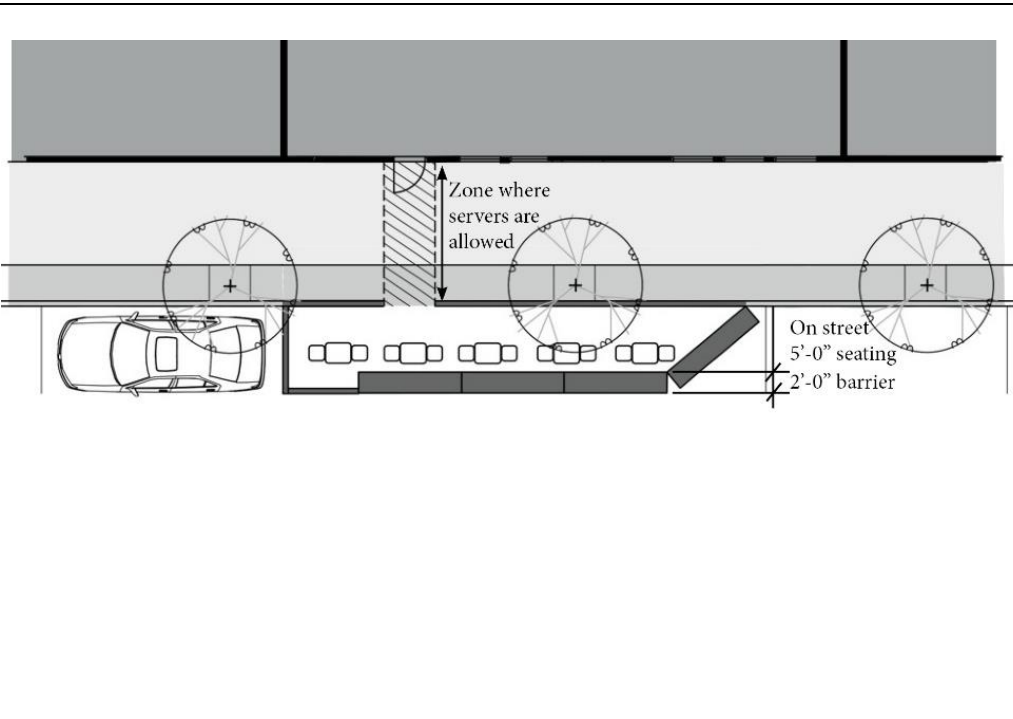


B) Curbside Seating
 Outdoor seating located on the sidewalk along the curb

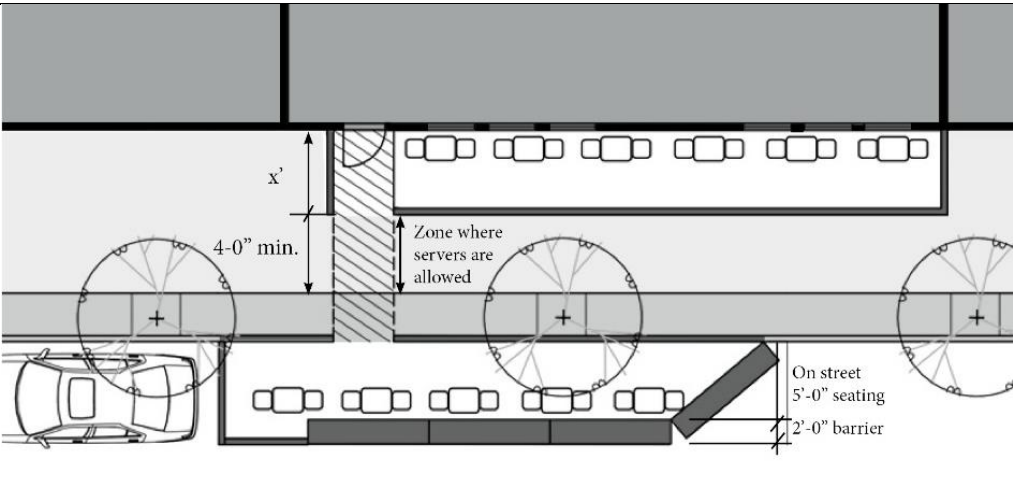


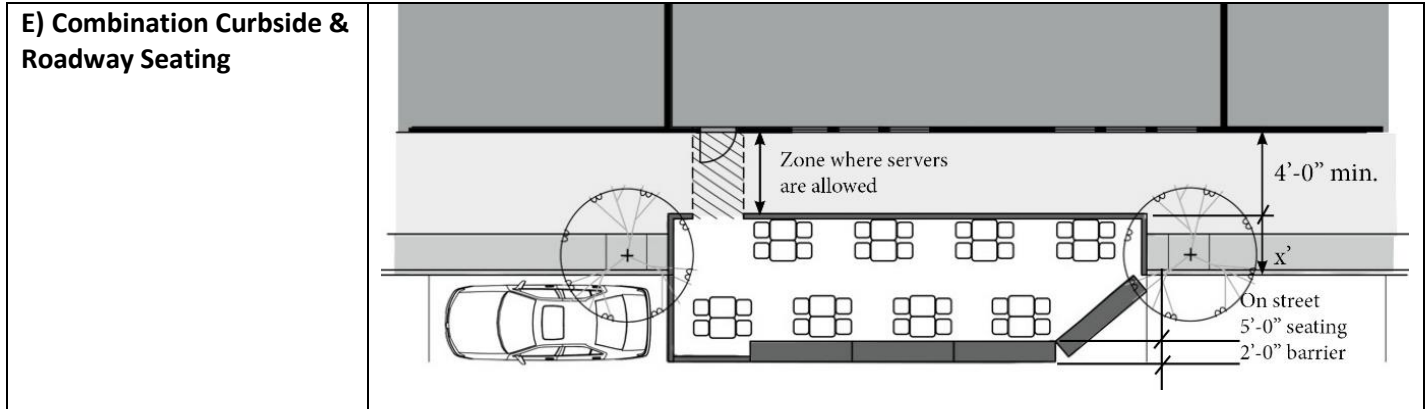
C) On-Street Seating
 Outdoor seating located in parking spaces in front of a restaurant storefront. Cannot exceed more than two parking spaces. Must be fortified by concrete jersey barriers, which the Town will provide and install as part of an on-street dining occupancy fee.

Contact Todd Kirrane,
 Transportation Administrator,
tkirrane@brooklinema.gov,
 to request review of your location and installation of concrete jersey barriers.



D) Combination Façade & Roadway Seating





Outdoor Seating Area Design Guidance:

- Walls along the sidewalk should be attractive, inviting, and maintain sightlines into and out of the outdoor dining area.
 - May consist of fences, railing or planters and should be self-supporting and easily removed from the sidewalk or parking area.
 - Height Limit: 36 inches to 42 inches. Restaurants with existing non-conforming structures may submit a plan to bring structures into compliance by January 1, 2022, if necessary, in lieu of immediate compliance.
 - Enclosures are required if alcohol is served. (See Compliance with Liquor License Service and Consumption Requirements in the General Outdoor Seating Requirements section below.)
 - Non-moveable enclosures may be required in areas where the outdoor dining has a tendency to expand beyond its permitted area.

- Walls/railings along the roadway should be attractive, inviting, and made of solid materials.
 - May consist of fences, railing or planters and should be self-supporting and easily removed from the sidewalk or parking area.
 - Height Limit: 36 inches to 42 inches. Restaurants with existing non-conforming structures may submit a plan to bring structures into compliance by January 1, 2022, if necessary, in lieu of immediate compliance.
 - Enclosures are required if alcohol is served. (See Compliance with Liquor License Service and Consumption Requirements in the General Outdoor Seating Requirements section below.)
 - Non-moveable enclosures may be required in areas where the outdoor dining has a tendency to expand beyond its permitted area.

- Outdoor structures with roofs will require a permit from the Building Department and will be approved on a case-by-case basis. Roof heights on outdoor seating structures must be a minimum of 7 ft and a maximum of 8 ft.

- Outdoor tents 120 square feet or less are allowed.
 - Those in excess of 120 square feet require a permit from the Building Department.

- Electrical wiring for outdoor seating areas must:
 - Be run overhead.
 - Not obstruct the pedestrian path of travel.

- Obtain an electrical permit for the installation of exterior/weatherproof outlets or for the hardwiring of an electrical device per Mass Electrical Code - 527 CMR 12.00 (amended).
- Outdoor propane heaters require a permit from the Fire Department. (See the Outdoor Heating Elements Safety Requirements section in the General Outdoor Seating Requirements below.)
- No promotional signage or logos shall be allowed on any outdoor dining elements (umbrellas, enclosures, etc.). (See the Signage and Advertising Restrictions section in the General Outdoor Seating Requirements below.)

Accessible Seating Requirements:

Restaurants must ensure that outdoor seating areas remain accessible to the public in accordance with the Americans with Disabilities Act (ADA) requirements. This may be accomplished with temporary ramps, access at ground level at the rear of the outdoor seating area, or with an elevated platform flush with the sidewalk. Restaurant owners must submit a seating plan that will meet PROWAG and MAAB accessibility compliance to those using wheelchairs and then demonstrate that they have achieved and sustained compliance if the plan is approved.

Outdoor dining must be accessible and meet PROWAG and Massachusetts Architectural Access Board's regulations (available at <https://www.mass.gov/doc/521-cmr-1700-restaurants/download>):

521 CMR 17.00: RESTAURANTS

17.2 SEATING

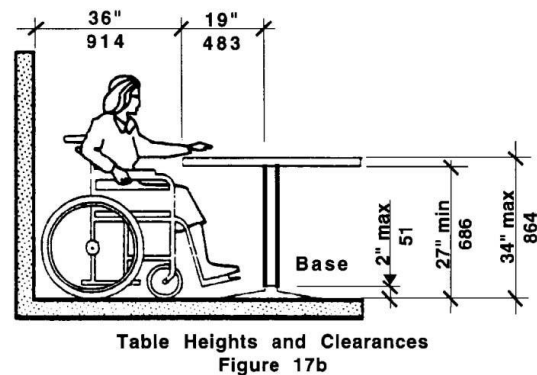
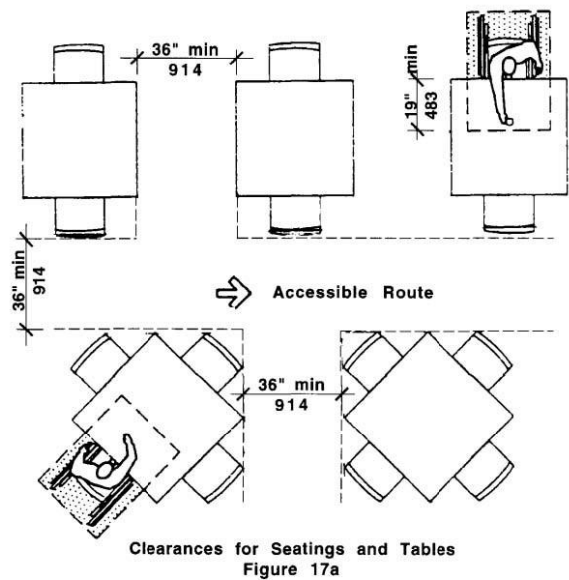
At least 5% but not less than one, of the tables shall be accessible, be on an accessible route, and in compliance with the following:

17.2.2 A 36 inch (36" = 914mm) access aisle shall be provided between all accessible tables. No seating shall overlap the access aisle. See Fig. 17a.

17.2.3 Clear floor space as defined in 521 CMR 5.00: DEFINITIONS shall be provided at each seating space. Such clear floor space shall not overlap knee space by more than 19 inches (19" = 483mm). See Fig. 17a.

17.2.4 Knee Clearances: If seating for people in wheelchairs is provided at tables or counters, knee spaces at least 27 inches (27" = 686mm) high, 30 inches (30" = 762mm) wide, and 19 inches (19" = 483mm) deep shall be provided. See Fig. 17b.

17.2.5 Height of Tables or Counters: The tops of accessible tables and counters shall be from 28 inches to 34 inches (28" to 34" = 711mm to 864mm) above the finish floor or ground. See Fig 17b.



GENERAL OUTDOOR SEATING REQUIREMENTS: Violation of these requirements will result in steps to revoke your outdoor seating permit.

<p>Adequate Maintenance of the Public Right of Way</p>	<p>A minimum of 48” but 60” preferred of sidewalk clearance must be maintained to always ensure ADA accessibility and a clear pedestrian path.</p> <p>Outdoor dining areas cannot obstruct other street furniture, lamp posts, mailboxes, plantings, signage, etc. unless permitted.</p> <p>Electrical cord crossing sidewalks at grade are not permitted. All electrical devices crossing sidewalks overhead must have a minimum 10 ft. clearance (use of trees and vegetation is not permitted).</p>
<p>Assembly and Disassembly</p>	<p>Outdoor seating areas must be easy to assemble on site and dismantle for storage or in case of emergency hazard situations (e.g. emergency access to sewer drains or manhole covers).</p> <p>Outdoor seating structures may not be bolted to the public sidewalk, street area, or any other infrastructure owned by the Town without prior approval by the Department of Public Works.</p>
<p>Signage and Advertising Restrictions</p>	<p>While beautification of outdoor seating areas is encouraged (e.g. with flower planters and brightly colored umbrellas), signs and corporate logos (including that of the restaurant utilizing the outdoor dining space) may not be displayed in the outdoor seating area.</p>
<p>Use and Beautification of Concrete Jersey Barriers</p>	<p>The concrete jersey barriers provided by the Town may be painted to beautify the outdoor seating area. Proposed designs must be submitted to the Department of Public Works for approval. Proposals with advertising, logos, etc. will not be approved.</p> <p>If restaurants opt to remove the concrete jersey barriers during the winter, the Town cannot guarantee that restaurants will receive the same jersey barriers for the following outdoor dining season.</p>
<p>Outdoor Seating Area Enclosure</p>	<p>An outdoor dining area must be enclosed on all sides to separate it from the public right-of-way. Different types of enclosures can be used, such as fencing, bollards, or plant containers, but they must provide visibility between the seating area and the sidewalk.</p> <p>The enclosure must be cane-detectable.</p>
<p>Compliance with Liquor License Service and Consumption Requirements</p>	<p>Alcohol service and consumption in approved outdoor seating areas must comply with all Alcoholic Beverages Control Commission (ABCC) requirements.</p> <p>Outdoor seating areas must be enclosed by a fence, rope, or other means to prevent access from a public walkway.</p> <p>The licensee should have a view of the outside premises from inside the premises, or alternatively the licensee may commit to providing management personnel dedicated to the area.</p>

	<p>Egress from the inside to the outside must be clearly established to assure safe, uninterrupted service of alcoholic beverages.</p> <p>No alcoholic beverages shall be served or consumed in any areas of the premises that are not included in the approved description of the licensed premises or temporary extension of premises.</p>
<p>Properly Secured Furniture</p>	<p>Furniture should be secured together with cable and locks. Furniture should not be stacked or locked to other objects, such as streetlights, street trees, or the enclosure.</p>
<p>Properly Secured Tents, Canopies, and Umbrellas</p>	<p>All tents and canopies must be less than 120 square feet and fit within the outdoor seating space authorized by the Town. All tent and canopy legs must be weighted down with a minimum of 40 lbs., such that they do not move, blow over, or cause damage in severe weather or high winds. Tent and canopy weights and lines must be clearly visible and not pose a hazard. Restaurants are responsible to take down tents and secure loose items in advance of weather incidents. Anyone seeking to use tents or canopies exceeding 120 square feet must obtain a permit from the Building Department.</p> <p>Tents and canopies must be free and clear of all ignition sources.</p> <p>To avoid damage, in the event of high winds, ice or snow, tents and canopies shall be removed promptly when requested by the Department of Public Works. Restaurants must be aware that tents, canopies, and umbrellas do not have designated snow loads and should not be used if there is snow accumulation. Prior to use, all tents, canopies, and umbrellas should be cleared of accumulated snow.</p> <p>Only utilize umbrellas with a weighted base. Such umbrellas may not extend past the outdoor dining area barriers or obstruct access to or ventilation of utility covers.</p>
<p>Outdoor Heating Elements Safety Requirements</p>	<p>All outdoor heating devices must be Underwriters Laboratory (UL) listed.</p> <p>Propane Heaters: Restaurants that have secured Fire Department approval for temporary use of propane patio heaters through the Liquid Propane Outdoor Heating Pilot Program may use patio heaters in approved outdoor dining areas. Through the Town’s Liquid Propane (LP) Outdoor Patio Heating Appliance Use and Storage Pilot Program, propane heaters shall be allowed on the public way (i.e. sidewalks or parking spaces), subject to securing a permit through the Brookline Fire Department and compliance with the Fire Department’s <u>Liquid Propane (LP) Outdoor Patio Heating Appliance Use and Storage Pilot Program Requirements</u>. Permitting fees for this pilot program have been waived.</p> <p>Electric Heaters: The use of hardwired electrical heating appliances for outdoor seating areas must be permitted by the Town of Brookline’s Electrical Inspector. Plug-in electrical heating elements will be permitted in the public way on a case-by-case basis. Plug-in electrical heating elements must meet the following requirements:</p>

	<ul style="list-style-type: none"> ▪ Must be used and located per the owner's manual, manufacturer's installation instructions and specifications. ▪ Must be located on the ground at grade. ▪ Shall be rated for outdoor use. ▪ Shall be rated for damp or wet locations. ▪ Cannot be located under a tent or canopy. ▪ Maintain all clearances to combustibles. ▪ Wires may not cross the public sidewalk at-grade. ▪ All electrical devices crossing sidewalks overhead must be a min 10ft clearance (use of trees and vegetation not permitted). ▪ All electric heaters shall be equipped with an automatic shut-off safety feature. ▪ Outdoor rated extension cords shall be used if allowed by manufacturer. <p>Location of Outdoor Heating Elements: No heating elements are permitted under tents, canopies, or awnings. All heating elements must be located at a safe distance from tents, canopies, awnings, and other combustible materials per the manufacturer's technical specifications and in compliance with the Fire Department's <u>Liquid Propane (LP) Outdoor Patio Heating Appliance Use and Storage Pilot Program Requirements</u>. Additionally, all heating elements and associated equipment shall be placed in such a way that they do not create a safety hazard for the general public in utilizing the space or passing on the public way.</p>
<p>Lighting and Other Outdoor Electrical Elements Safety Requirements</p>	<p>Outdoor lighting elements must be used and located per the owner's manual and manufacturer's installation instructions and specifications.</p> <p>Building permits must be obtained for the installation of exterior/weatherproof outlets or for the hardwiring of an electrical device per <i>Mass Electrical Code - 527 CMR 12.00 (amended)</i>.</p> <p>Outdoor rated extension cords may be used if allowed by manufacturer.</p> <p>All electrical cords crossing sidewalks at grade are not permitted. All electrical devices crossing sidewalks overhead must have a minimum 10 ft. clearance (use of trees and vegetation is not permitted).</p> <p>Types of lighting that could blind or significantly distract drivers are not permitted.</p>
<p>Night-time Visibility Requirements</p>	<p>On-street seating areas must be marked with high intensity retro-reflective tape or reflectors to ensure the visibility of patrons and barriers at night.</p>
<p>Public Utilities</p>	<p>Outdoor dining areas must not block fire hydrants or cover any utility or manhole covers.</p>
<p>Water Drainage</p>	<p>Outdoor dining areas must not be installed over street drains unless accommodations for water flow are made.</p>
<p>Paving Schedule</p>	<p>Outdoor dining areas should not be installed in locations scheduled for resurfacing or utility work within 8 months of installation.</p>

Restaurant Health and Safety Standards	Outdoor seating areas must comply with Restaurant Health and Safety Standards Outlined in the State’s Reopening Plan. These safety standards include but not limited to: face coverings, social distancing, size of party per table, distance between tables, as well as the frequent cleaning of all tables and chairs.
Winter Maintenance Requirements	<p>Restaurants with on-street outdoor dining areas that do not intend to provide outdoor dining service through the winter months must notify the Town and arrange for the removal of the concrete barriers with the Department of Public Works no later than November 1, 2021.</p> <p>In the event of ice or snow, the sidewalk must be kept free and clear of all outdoor furniture so that the Town can treat or plow commercial area sidewalks safely and unimpeded by obstructions.</p> <p>Restaurants remain responsible to maintain a minimum of 48”, but preferably 60”, of sidewalk clearance in accordance with ADA accessibility requirements, the Winter Guide for Brookline Property Owners, Businesses, and Residents, and the Town’s Snow Removal By-Law.</p> <p>In addition, restaurants are responsible for maintaining their outdoor seating areas and access to those areas, including sidewalks narrowed to less than 6 feet by outdoor seating furniture.</p> <p>The Town encourages restaurants to engage a qualified contractor to ensure that snow is removed in a timely manner.</p> <p>DPW will strive to preserve any outdoor seating materials encountered during treatment and clearance of the public way but cannot guarantee that outdoor seating materials will not be damaged in the snow and ice removal process.</p>

APPLICATION PROCESS:

Submit the following plans and documentation to the Town Licensing Clerk and appropriate Town departments for review and approval:

- **A description of the proposed plans and a diagram showing the street, sidewalk, or private property area to be used in relation to the restaurant, conforming to the requirements outlined in the *Outdoor Dining Program Regulations and Guidelines (effective April 1, 2021)* and detailing:**
 - Eye-level photos of the proposed location.
 - Points of access and egress.
 - How the seating area will meet PROWAG and MAAB accessibility compliance including a demonstration that tables will be PROWAG and MAAB accessible to those using wheelchairs.
 - Materials and design for walls separating the outdoor dining between the pedestrians and the outdoor dining area for those on the sidewalk.

- Professionally designed plans showing proposed heights, dimensions, etc. for applicants seeking to build structures in on-street outdoor seating areas.
 - Size/type of tables, seats, service stations, and any other items proposed to be placed in the proposed premises extension, such as barriers, planters, fans and heaters; fencing or other barriers to separate patrons from high traffic areas including public sidewalks, if 6' separation is not possible.
 - Existing signs, streetlights, parking meters, street furniture and other items in the proposed extended premises.
 - Property line between Town and private property; and location of buildings in relation to property line, along the entire façade of the building.
- **For outdoor seating proposed on public property:**
 - **License Agreement Form**, unless waived by Select Board's Office.
 - **Certificate of Liability Insurance:** Restaurants with outdoor seating on public property must provide certificate of liability insurance naming the Town of Brookline as an additionally insured party in the amount of \$500,000/\$1 million or in an amount otherwise specified by the Select Board's Office through December 31, 2021.
 - **Certificate of Liquor Liability Insurance:** A certificate of liquor liability insurance in the amount required by Mass. Gen. Laws Ch. 138, s. 12 and Section B(7) of the Town's Sales of Alcoholic Beverages Regulations listing the Town as an additional insured, demonstrating coverage of the extended outdoor premises through December 31, 2021.
 - **DPW Occupancy permit** for the installation of any permanent or semi-permanent item on public property
 - **Emergency Notification Contact:** Restaurants must provide the Town with a valid and reliable email address to receive emergency notifications from the Town, such as snow removal, high wind advisory notifications, etc.
 - **Proof of consent by third parties:** Restaurants with proposed outdoor seating on the private property of third parties must submit proof of consent by the third party to for such use, such as a lease or other agreement.
 - **Fire Department permit** for any proposed propane heating lamps.
 - **Building Department permit** for any tents exceeding 120 sq. ft., on-street structures with roofs, etc.

RESTAURANT OWNER RESPONSIBILITIES:

Permit Fees	On March 23, 2021, the Select Board waived a one-time licensing fee of \$600 for restaurants occupying parking spaces to provide outdoor seating for the 2021 temporary expanded outdoor dining program.
Regular Maintenance	<ul style="list-style-type: none"> ▪ Cleaning ▪ Trash removal ▪ Plant watering
Day-to-Day Management	<ul style="list-style-type: none"> ▪ Daily setup and breakdown of any items that cannot be left out overnight are the responsibility of the owner. ▪ Furniture should be secured together with cable and locks; furniture should not be stacked or locked to other objects, such as streetlights, street trees, or the enclosure.
Temporary Removal	<ul style="list-style-type: none"> ▪ Outdoor seating areas may be required to be removed for construction, repair, or utility work.
Winter Maintenance	<ul style="list-style-type: none"> ▪ Restaurants with approved sidewalk and on-street outdoor seating must provide the Town Licensing Clerk with a valid and reliable email address to receive prompt snow removal and hazardous weather warning notifications. ▪ In the event of ice or snow, the sidewalk must be kept free and clear of all outdoor furniture so that the Town can treat or plow commercial area sidewalks safely and unimpeded by obstructions. The Town is not responsible for any damaged caused to or by outdoor seating areas in the public way. ▪ Restaurants remain responsible to maintain a minimum of 48”, but preferably 60”, of sidewalk clearance in accordance with ADA accessibility requirements, the Winter Guide for Brookline Property Owners, Businesses, and Residents, and the Town’s Snow Removal By-Law. ▪ In addition, restaurants are responsible for maintaining their outdoor seating areas and access to those areas, including sidewalks narrowed to less than 6 feet by outdoor seating furniture. ▪ The Town encourages restaurants to engage a qualified contractor to ensure that snow is removed in a timely manner. ▪ Restaurants with on-street outdoor dining areas that do not intend to provide outdoor dining service through the winter months must notify the Town and arrange for the removal of the concrete barriers with the Department of Public Works no later than November 1, 2021.