



ORDER NO. 2021-089-003
REQUEST OF THE PLANNING & ZONING SUBCOMMITTEE

UPON THE REQUEST OF THE PLANNING & ZONING SUBCOMMITTEE, THE CITY OF FRAMINGHAM, THROUGH THE FRAMINGHAM CITY COUNCIL, IT IS SO ORDERED:

Pursuant to M.G.L. c. 40A, § 5, the Framingham City Council voted to approve the zoning amendment to the Framingham Zoning Ordinance by adding a **new Section II.G. 1. RESTAURANT OUTDOOR DINING REGULATIONS** and other associated amendments to provide permanent regulations for restaurant outdoor dining as presented below:

New Section II.G. 1. RESTAURANT OUTDOOR DINING REGULATIONS

a. Purpose and Intent

The 2020 COVID-19 pandemic has resulted in a spontaneous change to our economic environment, locally, nationally, and internationally. These regulations are in response to the need to allow additional seating for the restaurant community in order to optimize the utility of each respective site. Public health requirements have placed new burdens and challenges on the business community to provide more physical space between customers and staff. Restaurants have been the most affected by this change. These regulations are intended to continue to allow local restaurants to maintain currently established temporary outdoor seating on sidewalks, parking lots, on-street parking spaces, or landscaped yard areas around their restaurants to provide more space for seating their patrons and picking up take-out orders.

These regulations are intended to provide more physical space between customers and staff while maintaining the allowed number of seats permitted per site. Since restaurants have been the most affected by this change, these regulations will continue to allow local restaurants to maintain currently established temporary outdoor seating on sidewalks, parking lots, on-street parking spaces, or landscaped yard areas around their restaurants to provide a permanent solution to add more space for seating their patrons and picking up take-out orders.

This ordinance provides a means for those restaurants currently permitted and those seeking permits in the future by Site Plan Review or Special Permit by the Planning Board as indicated

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in Section II. B. Table of Uses Section 5. J., to apply for Accessory Use of parking areas for permanent allowance of outdoor table service, in-vehicle “car hop” service or “tailgate style” services, whereby a server delivers food and beverage to patrons seated in a parked vehicle.

These regulations will apply to by-right and special permit restaurants in existence as of June 1, 2020 and future special permits approved by the Planning Board for outdoor seating. These regulations shall permanently suspend the requirements of the City of Framingham Zoning Ordinance Section II.G. Accessory Uses for this use only.

- (i) Building Permit applications shall be reviewed and determined by the Building Commissioner, acting in lieu of the SPGA, who is authorized to refer such application for approval of the Licensing Commission.
- (ii) Outdoor dining areas shall be of an appropriate design, configuration and appearance in conformity with paragraph b below.

b. Parking Design Standards

Outdoor dining areas must be distinguished from their surroundings by some form of perimeter treatments such as a fence or barrier. Appropriate perimeter materials include, but are not limited to, demountable wrought-iron fences, bollards and chains, or individual planters of wood, masonry, or terra cotta. The public way, i.e., sidewalk and street, may not be damaged by the installation of any perimeter treatment. Café umbrellas are allowed; umbrellas and furniture should be of a design appropriate to the character of the building. Perimeter treatments, umbrellas, furniture and trash receptacles shall be supplied by the applicant and shall be maintained in a safe and sanitary manner by the applicant. In cases where sidewalk use is permitted, existing public trash receptacles may not be utilized in the plan unless applicant takes full responsibility for the disposal of the waste in such public trash receptacles on a daily basis. All furniture must be secured during the hours not in use. The outdoor seating plan must meet Fire Department standards, including points of egress, access to fire extinguishers, and tent and awning ratings, if applicable. If a tent or canopy is to be used it must be fire rated and the fire rating for the tent must be approved. Certain size or configuration tents will require a separate tent permit as deemed necessary by the Building Commissioner and/or Fire Department.

c. Pedestrian and Wheelchair Passage

Tables and other elements of the outdoor setup shall not block sidewalks, entrances, exits, fire lanes, hydrants, sprinkler connection points, drive aisles, back-up areas, pedestrian or handicapped access. In some cases, the Department of Public Services (DPS) may erect temporary barriers on the street to allow for the passage of pedestrian and wheelchair traffic

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around the portion of sidewalks devoted to outdoor seating. The cost associated with the acquisition of the barriers shall be borne by the applicant.

d. Outdoor Food Preparation

Outdoor food preparation is not allowed unless specifically authorized by the City's Board of Health.

e. Alcoholic Beverages

Approval of an outdoor dining area shall not to be construed as an approval for the alteration or extension of premises where alcoholic beverages are served. The serving or consumption of alcohol outside of the premises of a duly licensed establishment to serve alcohol must be approved by the Framingham Licensing Board and Alcoholic Beverages Control Commission on a case-by-case basis.

f. Entertainment

Approval of an outdoor dining area shall not to be construed as an approval for the alteration or extension of premises with respect to live or non-live entertainment.

g. Temporary Seating & Parking Relief

Due to the seasonal and temporary nature of an outdoor dining area and reduced occupancy loads required by emergency regulations, the seating within an outdoor dining area cannot be used to increase the number of seats serving a restaurant or eating establishment, and will not be counted towards any off-street parking requirement.

h. Application Procedure

(i) Applicants shall submit an Application to Amend an Existing Building permit to allow for a permanent outdoor dining license to the Inspectional Services Department for review and approval. Applications may be submitted in electronic format by thumb drive, compact disc or internet drive files such as Dropbox. In cases where the applicant's plan involves the use of the sidewalk in the CB district or any other district, a copy of the application will also be provided to the City Councilor in which the subject property is located. All plans must comply with any applicable Massachusetts Governor's orders, Massachusetts Department of Public Health orders and guidance documents for social distancing and for food services establishments.

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(ii) Where the outdoor seating plan is acceptable and the application form is complete, it will be forwarded to the Board of License Commissioners for approval. Outdoor seating permits may include conditions of approval such as daily cleaning and maintenance of the outdoor seating area.

(iii) The expansion of restaurant outdoor dining area shall require an Integrated Pest Management plan to encompass the outdoor seating area. If additional information is needed or a revision to the seating plan is required, the Inspectional Services Department will contact the applicant.

(iv) An original Application to Amend an Existing Building Permit shall be submitted along with a plan for the outdoor seating area and an insurance certificate covering such outdoor seating area. Plan submittal shall be either full or half size architectural drawings prepared, signed and stamped, by either a licensed professional architect or professional engineer in the Commonwealth of Massachusetts unless otherwise exempted from this provision under MGL Chapter 1443 Sec. 54A.

v. Any other supporting documentation as may be specified by the SPGA Rules and Regulations.

vi. Once the Application has been deemed complete by the Building Commissioner, a copy of the Application shall be filed with the City Clerk.

vii. The Technical Review Team shall be consulted to review all applications under this section and may issue an administrative approval of the Special Permit for Accessory Use of parking areas for temporary outdoor table service.

i. Plan Requirements

a. A revised site plan shall be submitted detailing the proposed outdoor dining area, the arrangement of outdoor dining furniture, perimeter fencing, café umbrellas, outdoor heaters and any other equipment or furnishings planned to be utilized in the area.

b. Areas designated for picking up take-out food shall also be shown on the plan.

c. The restaurant shall follow all applicable regulations as outlined by the Massachusetts Department of Public Health, the Alcoholic Beverage Control Commission, and all City health and safety rules, which are not associated with an outdoor seating plan.

d. Smoking is prohibited in all outdoor dining areas.

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e. If a restaurant will be utilizing an existing parking lot or yard area, a plan with the same requirements is required. If a temporary tent or similar structure is proposed, approval of the Building Commissioner is required.

f. Outdoor seating proposed for a parking lot shall not occupy more than 50% of the required parking spaces.

j. Insurance

(i) The licensee shall carry or require that there be carried workers' compensation insurance for all employees and those of its contractors and/or subcontractors engaged in work at the dining facility, in accordance with the state workers' compensation laws. The licensee shall, prior to the issuance of the license, furnish a certificate of insurance to the City's Inspectional Services Department evidencing coverage for workers' compensation insurance.

(ii) In addition, the licensee shall carry comprehensive public liability and property damage liability insurance and, if applicable, liquor liability insurance in accordance with M.G.L. Ch. 138 §. 12, to cover the licensee and its contractors and subcontractors against claims due to accidents which may occur or result from operations under the license. Such insurance shall cover the use of all equipment related to the provision of sidewalk dining services. The comprehensive general liability policy shall insure against all claims and demands for bodily injury and property damage with respect to the sidewalk dining facilities and services. The minimum amount of liability insurance shall be in the amount of One Million Dollars (\$1,000,000.00 per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. Insurance shall be provided by a company licensed to do business in the Commonwealth of Massachusetts.

(iii) The City shall be named as an "additionally insured" in all policies for such insurance. The licensee (and their heirs, successors and assigns in interest) shall also agree to hold harmless, defend and indemnify the City of Framingham and its employees and agents from any responsibility, liability and claims arising out of or related to the operations under the license.

(iv) Where such insurance is renewed or replaced, the licensee shall furnish the City's Board of License Commissioners with a certificate of insurance evidencing same.

k. Approval

(i) Following receipt of a favorable determination by the Building Commissioner, the Board of License Commissioners may approve an outdoor dining license. Upon approval of an outdoor dining area, the Board of License Commissioners and the Building Commissioner will sign the application stating the permanent approval.

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(ii) Determination of an Application shall be made no later than ten (10) days from receipt of a complete application. Decisions shall be made in writing, filed with the City Clerk, and such record kept with the Planning Board.

(iii) Appeals: Any Applicant aggrieved by the determination of the Building Commissioner pursuant to this section may be appealed to the Zoning Board of Appeals in accordance with MGL Ch. 40a sec. 8 & 15.

l. Revocation

If at any time the Building Commissioner determines that the license holder is not complying with these regulations, then the license shall be subject to revocation and notification will be made to the Board of License Commissioners.

m. Amendments

These zoning regulations may be amended from time to time by a super majority vote of the members of the Framingham City Council, provided such amendment follows the required public hearing process for zoning amendments.

n. Effective Date of Adoption

This zoning ordinance shall be adopted following a public hearing and vote of the City Council effective as of that date.

FIRST READING

YEAS: Bryant, Cannon, Case, King, Leombruno, Long, Shepard, Stefanini, Steiner, Stewart-Morales

NAYS: None

ABSTAIN: Ottaviani

ABSENT: All members were present in person or via teleconferencing.

PASSED IN COUNCIL: NOVEMBER 16, 2021

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SECOND READING

YEAS: Bryant, Cannon, Case, King, Leombruno, Long, Shepard, Stefanini, Steiner,
Stewart-Morales

NAYS: None

ABSTAIN: Ottaviani

ABSENT: All members were present in person or via teleconferencing.

PASSED IN COUNCIL: DECEMBER 7, 2021

A True Record, Attest:

12/9/2021

Date Approved

Lisa Ferguson

Lisa A. Ferguson, City Clerk
Emily Butler, Assistant City Clerk

12/17/21

Date Approved

Yvonne M. Spicer

Yvonne M. Spicer, Mayor