

COVID-19 OUTDOOR DINING TEMPORARY ENCUMBRANCE PERMIT

Whereas, on March 13, 2020, Governor Sununu issued Executive Order 2020-04 declaring a state of emergency due to the Novel Coronavirus Disease (COVID-19) Outbreak; and

Whereas, on March 16, 2020, Governor Sununu issued Emergency Order #2 which closed onsite consumption areas in restaurants, diners, bars, saloons, and private clubs (hereinafter referred to collectively as “dining establishments”) to customers; and

Whereas, on May 1, 2020, Governor Sununu issued Emergency Order # 40 which allowed restaurants to offer restricted outdoor dining beginning May 18, 2020; but continued a prohibition on indoor dining.

Pursuant to these Orders and in effort to assist Concord’s downtown restaurants survive the financial impact of the aforementioned Emergency Orders, the Concord City Council, on May 11, 2020, directed the City Manager to authorize dining establishments to temporarily expand their outdoor dining, in accordance with the following rules promulgated by the City Manager in accordance with City of Concord Ordinance 18-3-18:

1. Owner or General Manager (“Permit Applicant”) shall ensure that the establishment has a valid food service license prior to opening for service.
2. Establishments are responsible for meeting the Universal Precautions (<https://www.covidguidance.nh.gov/sites/g/files/ehbemt381/files/files/inline-documents/guidance-universal.pdf>) set forth by the Governor’s Office.
3. Owner or General Manager (“Permit Applicant”) of the dining establishment shall apply for a temporary encumbrance permit which shall be entitled “COVID-19 Outdoor Dining Temporary Encumbrance Permit” from the City of Concord Health and Licensing Officer prior to any expansion of an existing, municipally-licensed outdoor dining area on public property. This permit application is available at <https://www.concordnh.gov/331/Health-Licensing-Services> and shall require the following:
 - a. Liability Insurance. The dining establishment shall provide proof of general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate, including the City of Concord as an additional insured on a primary and noncontributory basis.
 - b. Indemnification. The dining establishment shall defend and indemnify the City of Concord, its officials, employees and volunteers against all demands, claims, suits and actions seeking damages, penalties, costs, interest, statutory relief and/or equitable relief on account of bodily injury, death, personal injury,

property damage and/or economic injury arising out of or related to the permit or the activities of the dining establishment.

- c. Sketch or Photograph: Depiction of total outdoor dining space requested (sketch or illustrated photo). If any table or chair is proposed to be located in front of another business not controlled by the Permit Applicant, it must be noted on this sketch or illustrated photo.
 - d. Parking Spaces Requested: Identification and location of the total number of on-street parking spaces requested to be encumbered for outdoor dining (only parking spaces located directly in front of a Permit Applicant's business are eligible for temporary conversion to outdoor dining).
 - e. Abutter Approval: Written approval (email would be acceptable) from abutting, ground floor business owners if the Permit Applicant's plan is to set up tables and chairs directly in front of that abutters' businesses.
4. Only those on-street parking spaces directly along the frontage of a restaurant shall be available for outdoor dining. The City of Concord reserves the right to limit the number of on-street parking spaces made available for outdoor dining as it deems appropriate. No permit shall be issued for outdoor dining in on-street parking spaces for those restaurants which have a feasible alternative space within a private parking lot, or municipal plaza immediately abutting the dining establishment. No outdoor dining space will be permitted in public parking spaces whereby the abutting vehicular travel way would be reduced to less than 12' in width.
 5. No portion of any table, chair or table umbrella shall extend into the vehicle travel way, into available parking spaces, into the pedestrian clear zone or obstruct any pedestrian tip-down.
 6. Expanded outdoor dining areas shall be laid out in such a way that they maintain compliance with the requirements of the Americans with Disabilities Act (ADA).
 7. It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property.
 8. The City shall provide barriers to delineate the parking spaces that are encumbered by outdoor dining. The applicant is authorized to provide railings or other substantive protective barriers along all sides of the dining area that abut the vehicle travel way and parking spaces available for vehicle parking. The restaurant shall be solely responsible for ensuring that barriers separating motorized vehicles from patron seating areas are maintained in good condition. Barriers and other fixtures within dining areas shall not impede drainage.

9. No attachments to the pavement shall be permitted.
10. The applicant shall affix and maintain rubber tips to the legs of any table or chairs used on concrete, brick or granite surfaces.
11. No tables or chairs shall be positioned in such a manner that a patron could find him/herself within 4' of a vehicle travel lane or parking space available for use by vehicles.
12. The permittee is responsible for removing trash and regularly cleaning the areas being used for outdoor dining (including the areas where servers traverse between the restaurant and extended tables and chairs). Restaurant patron trash shall only be disposed of in the restaurant's commercial trash containers and not in the sidewalk trash receptacles.
13. The following on-street parking spaces shall not be available for outdoor dining: Handicapped parking spaces, loading zone spaces, bus stops, law enforcement only parking spaces, or spaces reserved for the State of New Hampshire.
14. All tip-down access points to the sidewalk shall remain unobstructed. No dining shall be permitted within on-street parking spaces if it results in patrons seated within crosswalks.
15. No outdoor dining shall be permitted within 30' of an intersection or 5' of a driveway.
16. All building entrances shall remain unobstructed.
17. All fire hydrants shall remain unobstructed.
18. No preparation of food or beverages shall be allowed in outdoor dining areas.
19. Applicant and his/her staff must comply with all applicable local, state and federal laws with respect to the serving of food and alcohol.
20. No tents or covers shall be permitted over the outdoor dining space. However, table umbrellas are permitted.
21. No advertising or commercial signage shall be permitted in the outdoor dining area, except as follows:
 - a. Corporate logos printed on table umbrellas
22. The City Manager may terminate or alter use or configuration of expanded dining areas on the public sidewalk, bump-outs or within on-street parking spaces in order to facilitate public or private construction projects, road closures associated with special events or festivals, or any other public purpose. The City of Concord reserves the right to suspend this program at any time.
23. Upon a modification to the Governor's Executive Orders concerning restaurants, the City of Concord will re-evaluate the parameters of this program and may make adjustments which may include, but not be limited to, the reduction in area allowed for expanded outdoor dining or the suspension of this program altogether.
24. The City reserves the right to revoke this permit for non-compliance with the aforementioned regulations.