



# *Town of Brookline*

## *Massachusetts*

December 15, 2020

### **2020-2021 Winter Outdoor Dining Pilot Program Guidelines**

To accommodate businesses interested in continuing outdoor dining service through the winter months, the Town is launching a Winter Outdoor Dining Pilot Program, which features enhanced safety requirements for outdoor seating located in public parking spaces. This pilot program will expire on March 31, 2021. Guidelines for the Spring 2021 Outdoor Dining Program will be announced later this winter.

#### **Pilot Program Requirements:**

- **Program Eligibility:** Only restaurants that have secured outdoor dining approval through the Town's Extended Outdoor Dining Temporary Licensing Program, which was announced in October 2020, are eligible to participate in this Winter Outdoor Dining Pilot Program. Contact the Licensing Clerk, Tiffany Souza, [tsouza@brooklinema.gov](mailto:tsouza@brooklinema.gov), with any questions about your eligibility or to apply for the required temporary license.

Continued eligibility is contingent on the restaurant's compliance 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<sup>1</sup>; 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. The restaurant must obtain and maintain any and all other permits, licenses, authorizations, etc. to allow the expansion of the premises.

- **Updated Documentation by Restaurants Continuing Outdoor Seating with Same Town-Approved Layout as during the Fall Outdoor Seating Program (which expired on 12/7/20):** Restaurants continuing with outside seating on the same premises and using the same layout as they identified in their October 2020 applications must provide the following:
  - o **Statement of Intent:** A statement of their intent to continue with outdoor dining during the Winter Outdoor Dining Pilot Program, stating in addition:
    - i. their agreement to be subject to the same terms and conditions applicable to the Fall Outdoor Seating Program; and
    - ii. their days and hours of operation during the Winter Dining Pilot Program.

---

<sup>1</sup> Available at <https://www.brooklinema.gov/1782/Outdoor-Customer-Areas>.

- **Certificate of Liability Insurance:** A certificate of liability insurance naming the Town of Brookline as an additionally insured party in the amount of \$250,000-500,000 providing coverage through March 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 March 31, 2021.
  - **Proof of consent by third parties:** Restaurants with outdoor seating on the private property of third parties must submit proof of consent by the third party to such use through March 31, 2021, such as a lease or other agreement.
- **Restaurants making changes to their outdoor seating layouts from the layouts the town approved in connection with the fall outdoor seating pilot program (which expired on 12/7/20) should submit a new outdoor seating application** (available at: <https://www.brooklinema.gov/1782/Outdoor-Customer-Areas>). This requirement does not apply to minor changes in layout needed to due the addition of jersey barriers placed around outdoor dining located in parking spaces (see below).
  - **Adequate Maintenance of the Public Way and ADA Accessibility:**
    - **Restaurants with outdoor dining located on the public sidewalk** may continue to provide outdoor seating with the stipulation that all outdoor dining furniture and materials must be completely removed from the sidewalk and other parts of the public way in the event of inclement weather and any conditions that require treatment or clearance of the sidewalks and roadways, namely snow accumulation or freeze/thaw conditions. The Town is not responsible for any damage caused to or by outdoor seating areas in the public way.
    - **Restaurants with outdoor dining located in public parking spaces** may continue outdoor dining provided that those outdoor dining areas are secured by concrete jersey barriers. Restaurants must move their outdoor dining set-ups in 2 feet towards the curb (as measured from the inside edge of the white parking space markings) to accommodate the installation of concrete jersey barriers. End cap barriers will be placed in adjacent parking spaces and may reduce parking both in front of and behind the outdoor seating areas. The Town is not responsible for any damage caused to or by outdoor seating areas in the public way.
      - At no cost to businesses, the Town will provide temporary use, as well as the installation and removal, of concrete jersey barriers. Contact Todd Kirrane, Transportation Administrator, [tkirrane@brooklinema.gov](mailto:tkirrane@brooklinema.gov), to request review of your location and installation of concrete jersey barriers, which are required for participation in the Winter Outdoor Dining Pilot Program.
      - Restaurant owners must ensure that outdoor door 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.
    - **Restaurants with approved outdoor seating must provide the Town with a valid and reliable email address to receive prompt snow removal 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. Restaurants remain responsible to maintain a minimum of 36", but preferably 48", 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. 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.
- **Restaurants with outdoor seating located on private property** may continue to provide outdoor dining service in compliance with the requirements outlined in the sections below.
- **Compliance with Outdoor Heating and Electrical Elements Regulations:**
  - All outdoor heating devices must be Underwriters Laboratory (UL) listed.
  - **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 continue to use patio heaters in outdoor dining areas for the duration of this pilot program. 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 [Liquid Propane \(LP\) Outdoor Patio Heating Appliance Use and Storage Pilot Program Requirements](#). Permitting fees for this pilot program have been waived.
  - **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:
    - 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.
    - Cannot be located on a sidewalk.
    - Maintain all clearances to combustibles.
    - All electrical devices crossing sidewalks overhead must be a min 10ft clearance (use of trees and vegetation not permitted).
    - Electrical devices crossing sidewalks at grade are not allowed during the Winter Outdoor Dining Pilot Program due to possible electrocution hazards during plowing and snow/ice treatment operations.
    - All electric heaters shall be equipped with an automatic shut-off safety feature.
    - Outdoor rated extension cords shall be used if allowed by manufacturer.

- **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 [Liquid Propane \(LP\) Outdoor Patio Heating Appliance Use and Storage Pilot Program Requirements](#). 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.
- **Outdoor Lighting Elements:**
  - Must be used and located per the owner's manual and manufacturer's installation instructions and specifications.
  - All electrical devices crossing sidewalks overhead must be a min 10ft clearance (use of trees and vegetation not permitted).
  - Electrical devices are not permitted to cross sidewalks at grade during the Winter Outdoor Dining Pilot Program.
  - Outdoor rated extension cords shall be used if allowed by manufacturer.
- **Properly Secured Tents and Canopies:** All tents and canopies must be less than 120 square feet and fit within the outdoor seating space authorized by the Town. Tents and canopies shall only be permitted on the public sidewalk through the Pop Up Tent Pilot Program (see sub-bullet below). 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. Tents and canopies must be free and clear of all ignition sources. To avoid damage, in the event of high winds, ice or snow, tents and canopies should be removed promptly. To comply with state-mandated outdoor dining public health requirements, tents and canopies can only be sheltered on two sides (i.e. no more than two tent or canopy walls can be down at one time). 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.
  - **Pop Up Tent Pilot Program:** To provide sheltered customer queuing or waiting areas during the winter months, the Town will approve requests on a case-by-case basis for pop-up canopies or tents located on the sidewalk. Participating restaurants and retailers must submit a certificate of liability insurance to the Department of Public Works (DPW). Tents or canopies must be properly secured during use and removed from the sidewalk at the close of business each day. Additional program details and requirements are available [here](#).
- **Compliance with Semi-Permanent Outdoor Seating Structure Requirements:** All structures installed within the outdoor dining areas buffered by concrete jersey barriers shall be a maximum of 5 feet in height, enclose no more than three sides of the outdoor seating area, and be open and unobstructed along the sidewalk. The interior set up of this space may contain approved tables, chairs, umbrellas, and tents or canopies. No walls or roofs shall be constructed in this area. All lighting installations must comply with applicable Codes and Manufacturer's installation instructions.
- **Compliance 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.

- Violations will result in the outdoor seating permit being rescinded.