



**To:** Mayor Snyder and City Council  
**From:** Jon P. Jennings, City Manager  
**Date:** October 19, 2020  
**Re:** Wintertime Outdoor Dining/Retail Operations

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In order to continue to help local businesses through the pandemic, we plan to allow restaurants and retailers to continue to operate outdoors on private property, public sidewalks, and in parking lanes until January 4, 2020.

We have explored a number of strategies and connected with other cities like Portsmouth, Madison, and Boston to learn of any best practices to implement in Portland. It is vital that wintertime outdoor business operations are conducted safely and in accordance with all public health standards, as well as allow for City crews' expeditious clearing of snow and ice.

City staff will begin the process of reopening closed streets on November 1, 2020, beginning with upper Exchange Street. As streets reopen, we will work closely with abutting businesses to facilitate the continuation of outdoor operations for those that are interested.

Continuation of outdoor operations into the winter will require businesses to apply for a permit; however, we will waive all associated fees. Permits will be available starting tomorrow on the City website; a copy of the application is enclosed in the agenda packet.

One of the requirements of businesses interested in continuing to operate in parking lanes is that their area of operations will be surrounded by barriers to protect people, furniture, and structures during plowing operations. The City recognizes the financial hardship facing local businesses, and we plan to use existing or purchase new concrete blocks for businesses operating in parking lanes.

Our plan is included below in additional detail. As this is an unprecedented program for the City of Portland, we will continue to evaluate it throughout the season and make changes as needed.

## **Summary of Winter Outdoor Dining/Retail Operations**

- The process of reopening roads will begin on November 1, 2020.
- All roads besides the following will be reopened to traffic and for parking.
  - The continuation of the closure of Dana (from Fore to Wharf) will be considered in partnership with abutting businesses.
  - The continuation of the closure of Wharf (from Union to Dana) will be considered in partnership with abutting businesses.
  - Middle Street businesses may continue to use the parking lane as they currently are, with minor modifications to facilitate wintertime operations.
- Parklets in Boothby Square may not be used after November 15, 2020 as there is not enough space for plowing and snow removal operations.
- Dining and retail activity on private property, public sidewalks, and in parking lanes may continue until January 4, 2021. A seasonal permit must be approved (fee waived). Permitting requirements/conditions are included below.
- It is strongly recommended that only tents or other membrane structures are used for coverage of parking lane activities.
- New or existing semi-permanent structures will be considered on a case-by-case basis to ensure they do not disrupt snow removal/plowing operations, and that they meet safety and public health standards.

## **Requirements for Winter Outdoor Dining/Retail on Private Property:**

Businesses currently permitted to operate on private property may apply to continue to do so until January 4, 2021 (all application fees waived).

Operational requirements are below, and are subject to change as needed:

- Heaters may be permitted in tents under certain conditions and upon approval by the Fire Department and Department of Permitting & Inspections.
- Tents that cover more than one table must have 100% of the sides open to allow air flow, or it will be considered an indoor space and subject to indoor space requirements.

- City staff strongly recommend that only tents and other membrane structures are used for seating areas. Snow must be regularly cleared from the top of the tent.

### **Winter Outdoor Dining/Retail on Public Sidewalks:**

Businesses currently permitted to operate on public sidewalks may apply to continue to do so until January 4, 2021 (all application fees waived).

Operational requirements are below, and are subject to change based on official observations and evaluation:

- Outdoor business operations may not take place while plowing or snow removal operations are underway.
- Furniture may remain outdoors overnight only if approved by the Department of Permitting & Inspections and Department of Public Works. Furniture must be removed from the sidewalk immediately upon special request by the City.
- Heater storage specifications (enclosed) must be followed at all times.
- A five-foot-wide passage must be maintained at all times to allow for ongoing sidewalk clearing.
- Temporary structures (e.g. tents or awnings) will be considered by the Department of Permitting and Inspections on a case-by-case basis.
- Any use of electricity must be approved by the Department of Permitting & Inspections.

### **Winter Outdoor Dining/Retail in the Parking Lane:**

Businesses currently permitted to operate in parking lanes or on the street may apply to continue to operate in parking lanes until January 4, 2021 (all application fees waived).

Operational requirements are below, and are subject to change based on official observations and evaluation:

- City staff strongly recommend that only tents and other membrane structures are used for seating areas in the parking lane. Snow must be regularly cleared from the top of the tent.
- Tents and furniture may remain outdoors overnight only if approved by the Department of Permitting & Inspections. Furniture must be removed from the parking lane immediately upon special request by the City.
- Tents that cover more than one table and have any sides down will be considered an indoor space and subject to indoor space requirements.

- Requests for two adjacent parking spaces will be considered based on availability and requests from neighboring businesses.
- Proposals for semi-permanent outdoor structures will be considered. All semi-permanent outdoor structures are subject to indoor space requirements (e.g. heating, ventilation, and snow management requirements), and may require building permits.
- To allow for the safe passage of emergency vehicles and plows, a minimum of 12 feet of accessible roadway must be maintained at all times on one-way streets and streets with islands/medians. A minimum of 20 feet must be maintained on two-way streets. These numbers are subject to change depending on the unique characteristics of different locations and emergency vehicle/plow requirements.
- Businesses must ensure sidewalks and parking spaces on which business activity is taking place is free of snow and ice during all hours of operation.
- Businesses in the Downtown District operating in the parking lane will be given designated areas in which to shovel snow for removal by Public Works.
- Businesses outside the Downtown District operating in the parking lane will be responsible for the removal of snow from outdoor areas of operation, as well as ongoing sidewalk/street maintenance (salting, etc.). Snow may not be shoveled into the street.
- Outdoor business operations may not take place while plowing or snow removal operations are underway.
- All in-street dining areas must be enclosed by jersey barriers or concrete blocks (dimensions: 4' high and 2' wide) on all sides not abutting the sidewalk. Barriers may need to sit within the permitted footprint to ensure an accessible roadway for emergency and operational vehicles. This determination will be made by the Department of Permitting & Inspections and the Department of Public Works.
- Heater storage specifications (enclosed) must be followed at all times.
- Heaters may be permitted in tents under certain conditions and upon approval by the Fire Department and Department of Permitting & Inspections. Please refer to the enclosed document for guidance.
- Any use of electricity must be approved by the Department of Permitting & Inspections.



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## Outdoor Dining Tent and Patio Heaters

### Patio Heaters:

- Must be a listed heater used in accordance with the device's listing and manufacturer's recommendations. Temporary open flame heaters are not allowed. Listing information and manufacturer's instructions shall be provided upon request.
- Heaters shall not be located within 5 feet of any egress.
- Heaters must be installed and operated in accordance with the manufacturer's minimum clearance to combustible surfaces requirements

### Tents:

- Tent capacity with sides down are capped at 50 people due to the Governor's Orders.
- Enclosed tents shall have at least two egress / exit points that are separate and remote from each other.
- Enclosed tents with fuel fire heaters shall have local battery powered carbon monoxide (CO) detection in each tent.

### Additional Information:

- Spare propane tanks:
  - Shall not be stored inside a building or tent.
  - Shall be stored in an area to limit excessive temperature rise or physical damage.
  - Shall not be stored in an area near exit or areas used for egress.
- Fire Extinguishers must be provided in:
  - Any location that has a heater.
  - Any location that has a tent with sides, extinguishers shall be placed near an exit and so one can be reached from anywhere in the tent within 75 feet of travel distance.



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**Winter Temporary Extension of Premise-Outdoor Dining**

**Please include for all Types:**

- **8 1/2" x 11" Plot Plan showing:**
  - Lot lines, where the building sits on the lot and dimensions of the building and lot.
  - Location of proposed outdoor dining area and its components (tables, chairs, barriers, etc.), including dimensions and total outdoor dining area in square feet.
    - Sidewalks must maintain a minimum of 5 feet clearance.
    - Parklets are 8 feet X 20 feet and all barriers, tables, chairs must be located within those dimensions
- **Dining Space**
  - Location and type of heating source
    - Including CO detectors
  - Location and type of Shelter for space including:
    - How the structure/tent will handle snow load
    - Ventilation
    - Egress
    - Electricity
    - **If you are building a structure, erecting a tent or adding impervious surface for the outdoor dining area please contact the Permitting and Inspections Department for permitting requirements at [permitting@portlandmaine.gov](mailto:permitting@portlandmaine.gov) or 874-8703.**
  - How and where items will be stored in inclement weather or during snow removal
  - Snow Removal Plan
  - Type of barriers used and location
    - Minimum height of 4 feet and width of 2 feet in Parklets
- If Alcohol is to be served- Complete an Extension of Premise BABLO

**Please Include if on Public Property (Street, Sidewalk, Park)**

- Proof of Public Liability insurance coverage. The permit holder is required to produce at the time of submission and maintain public liability insurance coverage of not less than four hundred thousand dollars (\$400,000) combined single limit for bodily injury, death and property damage, naming the City as an additional insured.



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**Maintenance and Operations**

- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining area.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.
- No attachments to the pavement or curbing are permitted.
- No advertising other than labels identifying the business is permitted on the outdoor dining space.
- Must comply with all requirements from the Governor's Order.



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**Winter Temporary Extension of Premise-Outdoor Dining**

**For Licensees that currently have Outdoor Dining with the City of Portland**  
**Valid-November 1, 2020 thru January 4, 2021**  
**11:00am-10:00pm**

<b>Classification</b>	<input type="checkbox"/> Without Alcohol <input type="checkbox"/> With Alcohol* must complete attached state application		
<b>Type</b>	<input type="checkbox"/> Public Property <input type="checkbox"/> Private Property <input type="checkbox"/> Parklet		
<b>Business Information</b>			
Business Name (d/b/a):		Phone:	
Location Address:			Zip:
Mailing Address:			Zip:
Contact Person:		Phone:	
Contact Person Email:			

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Please submit to [bl@portlandmaine.gov](mailto:bl@portlandmaine.gov)**

**Date Received: \_\_\_\_\_ Assigned to CEO: \_\_\_\_\_**



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  - Any location that has a heater.
  - Any location that has a tent with sides, extinguishers shall be placed near an exit and so one can be reached from anywhere in the tent within 75 feet of travel distance.



## EXTENSION AREA PREMISE DIAGRAM

In an effort to clearly define your extension please draw a diagram below that will include the area you want for a temporary / permanent license premise. Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including methods of monitoring and containment of certain area which you are requesting approval from the Division for liquor consumption.

### For Office Use Only:

Date Filed: \_\_\_\_\_ Date Issued: \_\_\_\_\_ Issued By: \_\_\_\_\_

Approved       Not Approved

### Subchapter 1: GENERAL CONDITIONS

#### § 1051. LICENSES GENERALLY

**3. Liquor not to be consumed elsewhere.** Except as provided in paragraphs A and B and in section 1207, no licensee for the sale of liquor to be consumed on the premises where sold may personally or by an agent or employee, sell, give, furnish or deliver any liquor to be consumed elsewhere than upon the licensed premises. The service and consumption of liquor must be limited to areas that are clearly defined and approved in the application process by the bureau as appropriate for the consumption of liquor. Outside areas must be controlled by barriers and by signs prohibiting consumption beyond the barriers.