

Edward M. Augustus, Jr.
City Manager



CITY OF WORCESTER

ORDER IMPLEMENTING THE COMMONWEALTH'S TEMPORARY OUTDOOR RESTAURANT DINING PROTOCOLS IN THE CITY OF WORCESTER

WHEREAS, on March 10, 2020, the Governor of the Commonwealth of Massachusetts, acting pursuant to the powers set forth in Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 23, 2020, the governor issued COVID-19 Order No. 13, which close the brick and mortar premises of businesses and organization that do not provide COVID-19 Essential Services;

WHEREAS, on May 18, 2020, the governor issued COVID-19 Order No. 33, which authorized the opening of certain brick and mortar premises designated as Phase I workplaces provided that such workplaces comply with certain workplace safety rules and standards to protect against the spread of COVID-19 virus;

WHEREAS, on June 1, 2020, the governor issued COVID-19 Order No. 35, which clarifies the progression of the Commonwealth's phased re-opening plan and authorizing certain re-opening preparations at Phase II workplaces; and

WHEREAS, COVID-19 Order No. 35 authorizes businesses and other organizations that are included within Phase II of the Commonwealth's re-opening plan to open their physical workplaces and facilities to their workers for the purpose of preparing for a Phase II re-opening when authorized; and

WHEREAS, among Phase II businesses are restaurants providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000, including beer gardens/wineries/distilleries meeting the Phase II re-opening criteria; and

WHEREAS, opening Worcester's qualifying restaurants under the Phase II re-opening plan is essential for the economic well-being of the businesses, the economic health of the City, and the health and welfare of the general public; and

WHEREAS, COVID-19 Order No. 35 provides that the provisions of chapter 40A of the general laws, and any special permit, variance or other approval thereunder, or any other general or special law shall not apply to the city's approval of requests for a qualifying restaurant's request for expansion of outdoor table service, as that term is defined in COVID-19 Order No. 35 ("Outdoor Table Service"); and

WHEREAS, COVID-19 Order No. 35 provides that qualifying restaurants may apply to the local licensing authority ("LLA") for approval of a change in the description of the licensed premises for the purpose of providing outdoor alcohol service as the LLA may deem reasonable and proper, and the

LLA may issue amended licenses without further review or approval by the Alcoholic Beverages Control Commission; and

WHEREAS, the clear intent of COVID-19 Order No. 35 is to facilitate a timely and expeditious commencement of outdoor dining services once authorized; and

WHEREAS, Section 8A of Chapter 639 of the Acts of 1950 provides that any provision of any general or special law or of any rule, regulation or ordinance to the extent such provision is inconsistent with any order or regulation issued or promulgated under the act shall be inoperative while such order or such last-referenced regulation is in effect; and

WHEREAS, the current city ordinances, regulations and permitting processes governing outdoor dining service are inconsistent with COVID-19 Order No. 35 and are therefore inoperative for the duration of COVID-19 Order No. 35;

NOW THEREFORE, I, Edward M. Augustus, Jr., by virtue of the authority vested in me as city manager of the city of Worcester, in the interest of advancing the public health and the economic development of the city of Worcester, do hereby order and direct the following:

(A) In compliance with COVID-19 Order No. 35, the Worcester License Commission, on an expedited basis, shall process applications seeking an extension of premises to provide Outdoor Table Service from common victualer licensees, which application may also include a request to approve a change in the description of the licensed premises for the purpose of permitting outdoor alcohol service. The extension of premises for outdoor alcohol service shall only apply to existing license holders.

(B) The off-street parking requirements and the limitations on outdoor seating capacity under the Worcester Zoning Ordinance, as amended through April 28, 2020, applicable to certain establishments licensed by the Worcester License Commission are suspended for the purpose of allowing Outdoor Table Service.

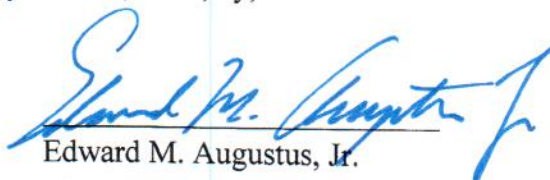
(C) Notwithstanding any Revised Ordinance to the contrary, for the duration of this Order the Worcester License Commission shall process applications for a permit to extend a restaurant's premises onto a public right-of-way.

(D) The Worcester License Commission shall process and approve requests for extension of premises for on-premises consumption of alcohol, alteration of off-street parking requirements and limitations on outdoor seating capacity, and the extension of premises onto the public way in accordance with the procedures and conditions set out in the attached Exhibit A, and such additional rules and regulations not inconsistent with Exhibit A as the Worcester License Commission may adopt.

(E) Pending before the Great and General Court is House No. 4354, an Act addressing challenges faced by food and beverage establishments resulting from the COVID-19 pandemic. If House No. 4354 is passed into law, any provisions of this Order in conflict with the provisions of House No. 4354 shall be ineffective and the provisions of House No. 4354 shall govern.

(F) This Order is effective immediately and shall remain in effect until November 1, 2020 or is rescinded, whichever is sooner, and any approval issued pursuant to this Order and COVID-19 Order No. 35, including deviations from any city ordinance, regulation or permitting process shall terminate and the restaurant's operations shall automatically revert back to its status prior to approval of the changes otherwise authorized by this Order.

ORDERED at City Hall this 3rd day of June, 2020, by,

A handwritten signature in blue ink, appearing to read "Edward M. Augustus, Jr.", is written over a horizontal line.

Edward M. Augustus, Jr.
City Manager

EXHIBIT A

PROCEDURES AND REQUIREMENTS GOVERNING THE APPROVAL OF OUTDOOR TABLE SERVICE PURSUANT TO COVID-19 ORDER NO. 35

GENERAL

Outdoor Table Service is not allowed without the prior approval of the Worcester License Commission ("License Commission").

- a. A qualifying restaurant wishing to add or expand Outdoor Table Service shall file an Alteration of Premises request with the License Commission.
- b. When necessary, licensees shall submit an updated schematic design and applicable COVID-19 documents depicting compliance with the Mandatory Safety Standards for Restaurants issued by the Commonwealth and any other applicable laws and regulations issued by the Commonwealth or the City.
- c. The Outdoor Table Service area shall be maintained in a neat and orderly manner, in accordance with the Massachusetts Safety Standards for Restaurants issued by the Commonwealth and the Alcoholic Beverages Control Commission's ("ABCC") Patio and Outdoor Areas Guidelines.
- d. Food shall not be prepared in the Outdoor Table Service area unless authorized by the License Commission.
- e. All extension of premises licenses are subject to immediate revocation by the License Commission for failure to comply with the conditions of the license, or any violation of applicable rules and regulations of the City of the Commonwealth.

APPLICATION PROCESS

The application for approval to engage in Outdoor Table Service shall be furnished by the Planning & Regulatory Services Division, and shall, at a minimum, include the following information:

- a. A schematic diagram depicting the proposed area for outdoor dining and showing the proposed locations of tables, chairs, fences, other equipment and all other physical features in the area.
- b. A schematic diagram depicting compliance with social distancing requirements, including but not limited to physical barriers between tables, location of directional signage, location of signage posted throughout the premises reminding employees and patrons of social distancing and hygiene protocols.
- c. Proof of ownership, lease or license rights to utilize the area proposed for Outdoor Table Service.

- d. A copy of the restaurant's plan for complying with the Commonwealth's generally applicable COVID-19 safety rules and the Phase II Sector-Specific Rules applicable to the restaurant's workplace.
- e. A description of the safety measures to be employed regarding unanticipated weather (i.e., protocols for patrons and employees when an unexpected storm occurs).
- f. Applications for the extension of premises for on-premises consumption of alcohol must provide a plan of the safety measures that will be employed for containment of alcohol in the area.
- g. There shall be no fees assessed for an extension of premises for Outdoor Table Service under this Order.

REQUIREMENTS FOR EXTENSION OF PREMISES INTO DESIGNATED OFF-STREET PARKING AREAS

- a. In approving the use of a portion of a restaurant's off-street parking area for Outdoor Table Service, the License Commission shall take into account the safety and functionality of the remaining portion of the off-street parking area, in particular the interplay of ingress and egress with the designated Outdoor Table Service area.

REQUIREMENTS FOR EXTENSION OF PREMISES ONTO A PUBLIC RIGHT-OF-WAY

- a. The License Commission shall use the Department of Public Works & Parks' Outdoor Dining on Public Sidewalks Permit Rules & Regulations in its review and approval of applications for an extension of premises onto a public right-of-way.

REQUIREMENTS FOR EXTENSION OF PREMISES FOR ON-PREMISES CONSUMPTION OF ALCOHOL

- a. The License Commission may grant approval to existing license holders for a change in the description of the licensed premises, as it deems reasonable and proper, for the purpose of permitting outdoor alcohol service as the License Commission.
- b. The amended license does not need the further review or approval of the ABCC prior to issuance but the License Commission shall provide notice of the amended license to the ABCC.
- c. Per the ABCC's June 1, 2020 Advisory, the License Commission may act on applications at a public meeting without advance notice to abutters and without a public hearing.
- d. Extensions of premises for on-premises consumption of alcohol must be contiguous to the licensed premises.
- e. The licensee must provide proof of commercial liability and liquor liability insurance providing coverage to the extended premises.