City of Cincinnati

REIGNITE CINCY
ECONOMIC RECOVERY PLAN

GUIDE FOR EXPANDED
RESTAURANT SPACE

May 13, 2020
City Administration Guidelines for Outdoor Street Dining Pilot Program

1. Introduction

On May 13, 2020, Mayor John Cranley and City Health Commissioner Melba R. Moore issued joint emergency order No. 11 authorizing the City Administration to implement a temporary outdoor dining program to provide expanded outdoor seating options at restaurants and bars in Cincinnati. The State of Ohio has issued requirements applicable to the safe, gradual reopening of restaurants to the public, beginning with outdoor dining. The City of Cincinnati seeks to promote the safe reopening of restaurants and bars by expanding options for increased social distancing and dining in outdoor, well-ventilated areas.

Starting on May 15, this the Outdoor Street Dining program allows for suspension of certain code and permit requirements to allow restaurants to apply for expedited City approval of a revocable street privilege (“RSP”) to use the public right-of-way (streets, sidewalks) for temporary outdoor dining areas (“Outdoor Street Dining”). All Outdoor Street Dining areas permitted under this temporary program must comply with state and local health requirements intended to slow or prevent the transmission of COVID-19, including, but not limited to, six-foot separation requirements.

The Outdoor Street Dining program is a pilot program to be instituted at select locations across the City in coordination with community partners and local businesses. The pilot program will enable the City to start immediately to gain experience identifying recurring issues for applicants, evaluating relevant traffic safety and circulation issues, and monitoring public health effects of the outdoor dining program. If the program is successful, the City Administration anticipates expanding the volume of approved Outdoor Street Dining based on demand and safety considerations. Applications for the both pilot and expansion are encouraged citywide and will be evaluated on a rolling basis.

Separately, but in association with the Outdoor Street Dining program and pursuant to the Mayor and Health Commissioner Order No. 11, the City will allow for certain types of private property to be used for outdoor dining areas such as, for example, private outdoor areas and parking lots. Additional guidance is forthcoming.

2. Overview of Application Process and Approval

We strongly recommend that applicants become familiar with these guidelines prior to submitting an application for outdoor street dining RSP. Permissions for outdoor street dining will be conditioned on compliance with these guidelines and failure to adhere to the guidelines slow the review process and potentially result in denial of the application. Particularly with regard to site plans, it is important that applicants provide detail sufficient to enable City safety and health review.

The City is putting together this program with a sense of urgency and seeking to remove obstacles to outdoor dining areas through a simplified and streamlined permit process. During the pilot, there is no
permit application fee for the outdoor street dining RSP, but applicants are responsible for obtaining and installing required traffic barriers as well as other costs of implementing the site plan and complying with RSP conditions. Applicants for full street closure may also bear additional costs and requirements due to the additional City resources required.

The City’s RSP application for Outdoor Street Dining is online at the City’s website. It can be found here: cincinnati.opencounter.com/permits/outdoor-street-dining. The application process is designed to be completed entirely online to allow for electronic routing and RSP issuance. Upon approval of the application, the City will email the applicant an approved RSP for Outdoor Street Dining via email that will typically constitute the only permission required for applicant to proceed with the outdoor street dining area. (Except that in the case of full street closures, additional process will be required.) Commencement of operations will, in most instances, be subject to a field inspection by the City to verify compliance with required safety and health conditions. In addition, applicants are responsible for addressing valet coordination issues and complying with state liquor licensing requirements.

3. Applicant and Site Eligibility

APPLICANT. In order to be eligible for a temporary RSP for Outdoor Street Dining, the applicant must, at minimum:

- Hold a valid certificate of occupancy for restaurant operations adjacent to the area proposed for outdoor street dining;
- Complete the City’s online application;
- Attach a site plan to the application with the proposed layout of the outdoor street dining area in accordance with the requirements set forth in Sections 4 and 5 below;
- Agree to the City’s terms and conditions set forth in Section 6, below, including insurance;
- Obtain required state liquor license approvals (if serving alcohol in the outdoor street dining area);

SITE. Certain sites/locations may not be eligible for use as outdoor street dining areas due to safety, public health, or transportation reasons.

The following factors will be evaluated by the City’s public services and safety personnel in determining eligibility. City staff may suggest measures to address concerns, but the City reserves in its sole discretion the ability to deny an application for one or more of the following reasons:

- Location unsafe due to traffic speed (at least for the pilot program, sites adjacent to roads with posted speed above 25mph are not eligible), poor visibility, narrow street (lack of buffer), or other safety issue related to proximity of motor vehicle traffic;
- Location required for traffic circulation reasons, including use of parking lane by motor vehicles during peak traffic hours;
- Adverse impacts on fire lanes, hydrant access, or other emergency vehicle response;
- Interference with access to private property (driveways, delivery/loading zones);
- Inability to maintain a required minimum clear path of travel for users of the sidewalk area; and
- Inability to ensure adequate spacing of customers within proposed area.
The City retains full authority in its sole discretion to deny applications for outdoor street dining. An explanation of the denial will be provided along with any mitigation or conditions that make the site eligible.

Upon successful implementation of the pilot program, the City intends to accept petitions for street closure to allow for more flexibility in the layout and arrangement of outdoor dining areas due to the avoidance of conflicts with motor vehicles. As a general rule, however, full street closure is more disruptive to the traveling public, affects private property owners along the closure, and raises access issues for utility services and first responders. The street closure process is more complex than the typical outdoor street dining permit and, accordingly, will be subject to additional processes and permit review. Nevertheless, persons may utilize the City’s online application to initiate the process for petitioning for full street closure.

Site Plan

SITE PLAN. As part of the online application process, the applicant must upload a detailed Site Plan. The Site Plan must meet the following general requirements:

1. Provide a fully dimensioned site plan showing location and the length/width of the proposed area. For sidewalk and curb lane seating areas, include location and dimensions to the curb and property line and of all poles, driveways, hydrants, trash cans, street trees, curb ramps etc.
2. The width of the outdoor seating area shall not exceed the width of sidewalk frontage of the applicant’s property.
3. Outdoor facilities, including railing post supports (feet/base) or planters, must be placed to provide at least four-foot-wide area of continuous unobstructed walking space. This area must be free from curbs, poles, fire hydrants, pull boxes, news racks, tree wells, curb ramps etc. In areas of high pedestrian use, the minimum unobstructed width may be greater.
4. The tables, chairs and removable barriers must never restrict the clear path of egress from the main entrance or from egress paths of the adjacent properties to the sidewalk. Curb ramps must not be restricted.
5. Tables and chairs are permitted. No tent structures, heaters, electric, lighting etc. are permitted.
6. Indicate the distance of the applicant’s facility to the proposed seating area if not adjacent to building frontage.
7. Include any potential impacts that your proposed outdoor seating would have on the functions of other buildings on the map, showing any doors, stairs and/or fire escapes.
8. List quantity of tables and seats and proposed layout (note that chair-backs from separate parties must be at least 6’ apart).
9. Show location of ramps to be installed if needed to provide accessible seating at street elevation.
10. If unsafe pedestrian congestion results from the reduced walking space, this privilege will be revoked.
11. If tables are in the roadway, the Site Plan must include accessibility from sidewalk to the roadway elevation.
12. Outdoor street dining areas must be cleaned and maintenance daily by applicant – in addition to more COVID-19 cleaning requirements in between customer use.
13. No drilling, adhesives or attachments are permitted in the roadway or sidewalk.
14. Hours of operation set up and tear down to be determined by the business owner, subject RSP hours of operation limits. In general, outdoor street dining areas may be operated until no later than 10PM Sunday - Thursday and 12AM on Friday and Saturday.
15. Food storage and food preparation are prohibited in the outdoor street dining area.

The following guidelines apply to RSPs for **outdoor street dining in the roadway curb lane at full-time parking locations** in addition to #1-15 above. The below requirements do not apply to sites outside the roadway.

1. Size allowable – parking lane widths vary. Allowable seating area in a curb lane is approximately 6 feet wide depending on the existing roadway lane width, barrier width and a 1 foot shy away if necessary. If business frontage abuts more than two parking spaces, additional parking spaces may be considered.
2. Barricades around proposed seating area are required. In general barriers must be protective against motor vehicle impacts, which requires applicants to utilize a “Jersey” barrier shaped water-filled barrier or concrete barriers.
3. Wheel stops at adjacent on-street parking spaces are required.
4. Reflective tape on barricades is required to improve visibility.
5. Storm water inlets must remain open.

**In the event of a full street closure, the following guidelines apply.** The City will contact the applicant to discuss additional steps necessary to petition for street closure.

1. Size allowable- building front footage x half roadway width. Outdoor dining area should be adjacent to the business frontage.
2. Barricades for the street closure are required. Applicant must submit barricade type proposed.
3. Reflective tape on barricades is required to improve visibility.
4. Storm water inlets must remain open.

### 5. Terms and Conditions

**GENERAL TERMS AND CONDITIONS.** Applicants must comply with the General Terms and Conditions attached as Exhibit A. In addition, applicant must acknowledge that the permit is a revocable license authorizing temporary, revocable permissions to operate outdoor dining areas. This order does not create a private right to occupy the public right-of-way or diminish the City Manager’s authority to oversee and manage the use public right-of-way in the City’s best interests. This revocable street privilege for outdoor street dining is subject to modification or revocation at the City’s sole discretion.

**OPERATING TERMS AND CONDITIONS.** The applicant shall agree to the following specific, operating conditions:

a) Applicant agrees to comply with and enforce customer compliance with the state’s requirements for restaurant and bar operation, a copy of which is attached as Exhibit B, including by refusal of service to customers that do not comply with City and State public health orders.

b) Applicant agrees that all dining tables and chairs must be properly cleaned and disinfected between each customer use with approved cleaning/disinfecting agent.

c) Applicant agrees that to have hand sanitizer on site and adequate hand washing stations available for employees and patrons.
d) Applicant acknowledges that the application will be rejected or the permit withdrawn if the City in its sole discretion determines that the site presents significant safety or traffic circulation concerns.

e) Applicant agrees that it will be responsible for coordinating any issues or permissions required from valet parking operators affected by the proposed site.

f) Applicant agrees that no dogs or other animals are permitted at the site except as required for persons with disabilities (i.e., as accommodations under the Americans with Disabilities Act).

g) Applicant agrees that it will comply with all required liquor laws and be responsible for coordinating compliance with applicable local and state authorities.

h) Applicant agrees that no food preparation or food storage shall occur in the outdoor street dining area.

Exhibit A – General Terms and Conditions

Each person receiving permission to establish outdoor street dining in the right-of-way (“Permittee”) agrees to abide by the following standard terms and conditions of approval:

1. COVID-19 Health Requirements and Other Standard Conditions. The Permittee shall comply and further shall cause its employees, agents, guests, invitees, and contractors to comply with all state and local orders addressing public health and social distancing, including any joint orders issued by the Mayor of the City of Cincinnati and the City of Cincinnati Health Department concerning the establishment of outdoor street dining in the right-of-way. This shall include requirements governing social distancing, face covering, and other requirements for restaurants from the State of Ohio in conjunction with the reopening of outdoor dining effective May 15, 2020, as amended or supplemented over time. In the event of a conflict between City and state guidance, Permittee shall comply with whichever is more protective of the public health as determined by the City.

In addition, the Permittee shall comply and further shall cause its employees, agents, guests, invitees, and contractors to comply with these terms and conditions and any other rules or regulations established by the City of Cincinnati (“City”) concerning the establishment of outdoor street dining in the right-of-way, which the City may modify or supplement from time to time in order to protect and promote the public health, safety, and welfare.

2. Expenses. All expenses associated with the Permittee’s establishment and operation of outdoor street dining in the right-of-way shall be borne by Permittee. The City shall not be responsible for any costs associated with the Permittee’s establishment and operation of outdoor street dining in the right-of-way.

3. Establishment of Outdoor Street Dining Area. In establishing outdoor street dining in the right-of-way, Permittee shall not cause modify, alter, or demolish existing curbs, sidewalks, streets or other encroachments within or near the right-of-way or attach furniture or other fixtures using fasteners, adhesives, or other invasive means, unless specifically approved by the City as part of the City’s approval of Permittee’s plans.

4. Maintenance of Outdoor Street Dining Area. Following the Permittee’s establishment and operation of outdoor street dining in the right-of-way, Permittee shall maintain the area in good, clean, and safe
condition and repair and in accordance with applicable City rules and regulations. If the City determines that the outdoor street dining poses a hazardous condition, has caused damage to City property, or is otherwise not being properly maintained, the City may require Permittee to immediately take such action as is necessary to rectify the situation to the City’s satisfaction. If Permittee fails to correct the identified hazardous condition, improper maintenance, damage, or other problem caused by the outdoor street dining, the City may do so; whereupon Permittee shall pay all costs incurred by the City, together with interest thereon from the date that the City pays or incurs such costs at a reasonable rate of interest determined by the City, within thirty (30) days after the City’s written demand.

5. City’s Right to Enter upon Right-of-Way Property. Permittee acknowledges that the City and its authorized representatives have the unlimited right to enter upon the right-of-way at any time for any purpose, including without limitation to inspect the right-of-way and permitted encroachments; provided, however, the City shall have no duty to inspect.

6. Rights of Utility Companies. All rights herein granted to Permittee establish and operate outdoor street dining in the right-of-way are subject and subordinate to the rights of any and all utility companies that may now or hereafter have utility lines and/or other utility installations within the right-of-way. Permittee shall not alter, relocate, or otherwise interfere with such utility lines and installations and shall not do anything that will impair such utility companies’ right to enter upon the right-of-way from time to time for all purposes associated with the operation, maintenance, repair, replacement or removal of such utility lines and installations. Permittee shall ensure that such utility companies have continued access to the subject area, 24 hours per day, 7 days per week, 52 weeks per year.

7. Insurance. During the period in which this revocable privilege is in effect, Permittee shall maintain a policy of General Liability insurance with respect to the right-of-way and the outdoor street dining in an amount not less than One Million Dollars per occurrence, combined single limit, naming the City as an additional insured. Permittee shall furnish to the City a certificate of insurance evidencing such insurance prior to commencing construction construction of Permittee’s permitted encroachments, unless otherwise authorized by the City.

8. Waiver of Claims for Damage. The City shall have no responsibility or liability for loss or damage to any permitted encroachments or theft of any permitted encroachments or any items of personal property that may at any time be on the right-of-way, including without limitation damage caused by the general public, trespassers, graffiti, thrown objects, wind, hail, fire, or other casualty, no matter how such damage is caused. As a material inducement to the City to grant this outdoor street dining privilege, Permittee hereby waives, as against the City and its employees, agents, guests, invitees, and contractors, all claims and liability, and on behalf of Permittee’s insurers, rights of subrogation, with respect to property damaged or destroyed by fire or other casualty or any other cause, no matter how caused.

9. Indemnification. Permittee shall indemnify, defend, and save the City, its employees, agents, and contractors harmless from and against any and all losses, damages, settlements, costs, charges professional fees, and other expenses and liabilities of every kind and character (including without limitation attorney fees) arising out of or related to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character in connection with Permittee’s establishment and operation of outdoor street dining in the right-of-way, use of the right-of-way, or violation of the provisions set forth
in this outdoor dining privilege, including without limitation any of the foregoing that may arise or be claimed with respect to any death, personal injury, or loss of or damage to property on or about the right-of-way. Permittee shall assume the defense (with counsel acceptable to the City) and settlement of any and all such suits or other legal proceedings brought against the City and shall pay all judgments entered in such suits or other legal proceedings. The assumption of liability and indemnity obligations of Permittee under this outdoor dining privilege shall survive the termination of this outdoor dining privilege with respect to matters arising prior thereto.

10. Compliance with all applicable laws. Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.

11. Adverse impacts on adjacent properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the permitted encroachments.

12. Accessibility. Permission for outdoor street dining in the right-of-way shall be conditioned on maintenance of accessible conditions along the sidewalk adjacent to the outdoor dining area. Permittee shall maintain a minimum path of travel along the sidewalk area of at least 48” in width at all points adjacent to the outdoor dining area, which area shall be permitted to be narrowed due to existing sidewalk fixtures (e.g., light posts, fire hydrants, and other fixtures) but in no case shall be narrower than 36” for a length of more than two feet.

13. City’s Right to Revoke. The City shall have the right to revoke this outdoor dining privilege, for any reason, upon thirty (30) days’ prior written notice to Permittee. Within such 30-day period, and unless otherwise agreed to by the City, Permittee shall remove the permitted encroachment and restore the right-of-way to a condition that is acceptable to the City.
   a. Obligation to Remove Permitted encroachment. If Permittee fails to timely remove the permitted encroachment and restore the right-of-way as required under this outdoor dining privilege, the City may do so at Permittee’s expense. All obligations of Permittee hereunder that have accrued but have not been fully performed as of the effective date of the termination of this outdoor dining privilege shall survive such termination until fully performed.

   b. Transfer of Permittee’s Property: This outdoor dining privilege is personal to Permittee, shall not inure to the benefit of Permittee’s successors-in-interest with respect to Permittee’s property, and shall not be recorded in the public records. Permittee shall provide the City thirty (30) days’ prior written notice of its intent to close on the sale or transfer of Permittee’s property. Upon Permittee’s sale or transfer of Permittee’s property, this outdoor dining privilege shall automatically terminate. Prior to the closing on any such sale or transfer, unless the City has granted, and the purchaser or transferee has accepted, an outdoor dining privilege for the permitted encroachments to take effect upon closing, Permittee shall remove the permitted encroachments and restore the right-of-way to a condition that is acceptable to the City.
Exhibit B - State Health Requirements for Operation of Restaurants and Bars
(See page 9)

Exhibit C - Plan Example
(See page 11)
**Mandatory**

**Employees**

- Ensure minimum of six feet between employees, if not possible, utilize barriers if applicable and increase the frequency of surface cleaning, handwashing, sanitizing, and monitor compliance
- Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations
- Businesses must require all employees to wear facial coverings, except for one of the following reasons:
  - Facial coverings in the work setting are prohibited by law or regulation
  - Facial coverings are in violation of documented industry standards
  - Facial coverings are not advisable for health reasons
  - Facial coverings are in violation of the business’s documented safety policies
  - Facial coverings are not required when the employee works alone in an assigned work area
  - There is a functional (practical) reason for an employee not to wear a facial covering in the workplace

(Businesses must provide written justification, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At minimum, facial coverings (masks) should be cloth/fabric and cover an individual’s nose, mouth, and chin.)

- Employees must perform daily symptom assessment*
- Require employees to stay at home if symptomatic and perform daily symptom assessment requirements before returning to work
- Provide ServSafe, or other approved COVID-19 education, as soon as possible. Add COVID-19 symptoms to the current standard Health Agreement required by the food safety code
- Require regular handwashing by employees
- Comply with person in charge certification requirements and manager certification requirements as set forth in OAC 3701-21-25 and OAC 3717-1-02.4 as applicable
- Maintain compliance with ODH sanitation and food safety regulations
- Limit number of employees allowed in break rooms at the same time and practice social distancing. Maximum to be current group size per state guidelines (currently 10)

**Recommended Best Practices**

- Encourage 3rd-party delivery staff to wait outside or in non-congested areas practicing social distancing guidelines. Encourage 3rd-party delivery staff to wear face coverings
- Educate on proper use, disposal, and maintenance of face coverings. Enhance education on proper use of gloves, per code
- Health checks may include temperature assessments, questionnaires, employee self-checks, screening apps or other tools. Update files with log of “health checks”
- Conduct telephone symptom assessment* for employees who were ill and planning to return to work
- As employee rehiring begins, consider virtual interviewing and on-boarding when possible
- Reinforce education per current food safety code about when to wash hands. Post health department handwashing posters at sinks and stations. Set times for periodic handwashing
- Avoid switching tasks when possible to reduce cross contamination concerns. Increase handwashing if changing tasks is necessary

*Daily symptom assessments should include assessing for symptoms and taking your temperature with a thermometer and monitoring for fever. Per the CDC, symptoms include cough, shortness of breath or difficult breathing, and two of the following: fever, chills, repeated shaking with chills, muscle pain, headaches, sore throat and new loss of taste or smell.
Mandatory

• Ensure a minimum of six feet between parties waiting and when dining - if not possible, utilize barriers or other protective devices
• Post a list of COVID-19 symptoms in a conspicuous place
• Ask customers and guests not to enter if symptomatic
• Provide access to hand washing methods while in the food service establishment, and if possible, place approved hand washing/sanitizing products in high-contact areas
• Food service establishments offering dine-in service must take affirmative steps with customers to achieve safe social distancing guidelines

Physical Spaces

• Establish and post maximum dining area capacity using updated COVID-19 compliant floor plans. With maximum party size per state guidelines (currently 10)
• Post a kitchen floor plan, establishing safe social distancing guidelines and following established state health dept guidance for masks and gloves
• Daily cleaning for the entire establishment. Clean and sanitize tabletops, chairs, and menus between seatings. Clean all high touch areas every two hours, and more frequently as needed (e.g. door handles; light switches; phones, pens, touch screens)
• Provide approved hand washing/sanitizing products in common areas
• When appropriate, establish ordering areas and waiting areas with clearly marked safe distancing and separations per individual/social group for both restaurant and bar service
• Remove self-service, table, and common area items (e.g. table tents, vases, lemons, straws, stir sticks, condiments)
• Salad bars and buffets are permitted if served by staff with safe six feet social distancing between parties
• Private dining and bar seating areas within a foodservice establishment must follow all approved safe social distancing guidelines
• The open congregate areas in restaurants and bars that are not necessary for the preparation and service of food or beverages (billiards, card playing, pinball games, video games, arcade games, dancing, entertainment) shall remain closed

Recommended Best Practices

• Utilize barriers in high volume areas
• If possible, stagger workstations so employees avoid standing directly opposite or next to each other. If not possible, increase the frequency of surface cleaning, handwashing, sanitizing, and monitor compliance
• Limit entrance and exit options when possible while still maintaining code regulations
• Enhance weekly deep cleaning checklists. Consider posting communication to indicate table has been cleaned. Utilize disposable menus when possible
• Post health department “best practices” highlighting continuous cleaning and sanitizing of all food equipment and common surfaces
• Continue to emphasize employee education and compliance with hand washing, glove use, employee health, and food handler training
• Consider air filtration improvements within HVAC system
• Encourage and continue to use designated curbside pickup zones for customers

Confirmed Cases

• Immediately isolate and seek medical care for any individual who develops symptoms while at work
• Contact the local health district about suspected cases or exposures
• Shutdown area for deep sanitation if possible

Customers & Guests

• Face coverings are recommended at all times, except when eating
• Health questions for symptoms** posted at the entrance
• If possible, identify a dedicated entrance and exit door. When possible, enable dining room ventilation (e.g. open doors and windows)
• When possible, encourage customers to make dine-in reservations or use drive through, pick-up, call-in, curbside or delivery options
• Encourage at-risk population to utilize alternative options such as using the drive through, pick-up, call-in, curbside, or delivery options

• Work with local health department to identify potentially infected or exposed individuals to help facilitate effective contact tracing/notifications
• Once testing is readily available, test all suspected infections or exposures
• Following testing, contact local health department to initiate appropriate care and tracing

** Per the CDC, symptoms include cough, shortness of breath or difficulty breathing, and two of the following: fever, chills, repeated shaking with chills, muscle pain, headaches, sore throat and new loss of taste or smell

11 Revised 5/7
Please note that outdoor dining areas must provide an accessible ramp from sidewalk elevation to the street elevation.

“Jersey” barriers must be placed to create 3 feet apart from edge of traffic lane.

Outdoor dining seating must allow for 4 feet unobstructed pedestrian paths on the sidewalk.

Tables and chairs must be spaced at least 4 feet from doors, street lamps, and other obstacles.