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Joint Memorandum

From: Layla R. D'Emilia, Commissioner, Division of Occupational Licensure *LD*
Peter J. Ostroskey, State Fire Marshal, Department of Fire Services *PJO*

Date: February 9, 2022

Re: Updated Guidance for Outdoor Dining

During the past two years, the COVID-19 safety guidelines for restaurants have encouraged outdoor dining in the Commonwealth of Massachusetts in order to assure effective compliance with social distancing requirements. Outdoor dining or table service includes, but is not limited to, service provided on a sidewalk, patio, deck, lawn, parking area, other outdoor space such as under awnings, table umbrellas, and temporary tents. In some cases, restaurants may seek to add additional outdoor or adjoining structures, fixtures, and wiring, both temporary and permanent.

In 2022, it is anticipated that restaurant venues will continue to offer outdoor dining options, which may include a wide variety of separate or adjoining structures, both temporary and permanent. The construction of outdoor structures and issues related to wiring and plumbing may be regulated by the State Building Code, Fire Code, Electrical Code, Plumbing Code, or other specialized codes. Restaurant proprietors may also need to seek approval from local officials who enforce municipal ordinances and bylaws with respect to health and sanitation, zoning, or restrictions about what can be installed on sidewalks or public ways.

This guidance identifies some of the state requirements that may apply to outdoor table service. Municipal officials should collaborate with each other and with restaurant proprietors to ensure everyone understands the state requirements. Cooperation between officials and restaurant owners can help resolve potential issues and avoid unnecessary delays with permitting, if required.

Permitting of Structures and Buildings

The erection of certain accessory structures or buildings related to outdoor dining may be governed by the State Building Code, 780 CMR. For properties not owned by the Commonwealth, the local building official will determine if a project requires a building permit. If a building permit is required, a restaurant proprietor must obtain a permit from the Building Department in a city or town before construction begins. (780 CMR 104; 780 CMR 105.1).

Building officials also have the authority to grant a permit for temporary structures, such as tents, which conform to the building code, for a period not exceeding 180 days (780 CMR 108). Tent structures erected for this period shall comply with the International Fire Code (IFC) per 2015 IBC Section 3103.1. When evaluating temporary structures, building officials should consider exercising their authority in 780 CMR 108 to grant, for

demonstrated cause, extensions of the 180-day time period.

If a building permit is denied, the restaurant owner may seek relief from the Building Code Appeals Board (BCAB), a three-member panel comprised of members of the Board of Building Regulations and Standards (BBRS) that hears appeals from decisions or orders of building officials pursuant to G.L. c. 143, §100.

Plumbing Requirements

Restaurants seeking to offer outdoor dining should also be aware of issues related to plumbing requirements. The Board of State Examiners of Plumbers and Gas Fitters (“Plumbing Board”) regulates the installation of permanently installed and piped heaters in structures (including tents) in 248 CMR 1.00 and mandates the minimum number of plumbing fixtures required for all buildings and structures. When installing permanent heaters, a restaurant must obtain a permit from a city or town and have a local gas or plumbing inspector perform an inspection. Additionally, restaurants must have the required number of plumbing fixtures and bathrooms as set forth in the Plumbing Code, 248 CMR. The Plumbing Board considers outdoor seating count towards the establishment’s total seating count with respect to how many fixtures and bathrooms are required by 248 CMR Section 10.10.

Architectural Access Board and Accessibility Requirements

The Architectural Access Board (AAB) enforces regulations to ensure that public buildings, including restaurants, are accessible to, functional for, and are safe for use by persons with disabilities. The AAB regulations at 521 CMR 17.00 set forth the requirements for restaurants which includes floor space and height clearances and other requirements related to accessibility. Other pertinent sections of 521 CMR such as ramps, curb cuts, and walkways may also apply to outdoor dining operations.

Electrical Wiring Requirements

Any installation of electrical wiring, and fixtures must be in compliance with the Massachusetts Electrical Code, 527 CMR 12.00. The Electrical Code applies to all installations, repairs, and maintenance of electrical wiring and electrical fixtures used for light, heat, and power. The local wiring inspector shall accept electrically powered equipment listed and labeled for the designated use that is installed in accordance with the manufacturer’s instructions. The wiring inspector may also decide on the approval of unlisted or unlabeled equipment and material and grant special permission for the installation in accordance with the rules and articles of the Electrical Code. If a restaurant provides outdoor dining, Electrical Code concerns may arise if an electrical fixture, such as a generator, light, or other electrically powered equipment is installed. Plugging a fixture with a factory-installed electrical cord that is listed and labeled for the intended purpose into a pre-installed electrical outlet is not a fixture.

Fire Prevention Issues

During the colder months, restaurants offering outdoor dining incorporated temporary heat on patios and within temporary tents. As a reminder, open flame devices, including grills, cooking, or heating appliances are not permitted within 20 feet of the tent structure per IFC Section 3104.7.

Temporary Outdoor Heaters

Temporary outdoor heaters may be portable utilizing LPG containers. Portable temporary outdoor heaters are regulated by the local fire department by 527 CMR 1.00. Permanently piped heaters are regulated by 248 CMR.

Open flame devices and other similar devices may be used only in well-ventilated areas away from combustible materials. Open or exposed flames are not permitted inside or within 20 feet of a tent per IFC Section 3104.7. Where vents or flues are used, all portions of the tent structure should be at least 12 inches away from the vent or flue per IFC Section 3104.15.2. Coordination with the local fire department is necessary for the use of these appliances, and for permitting for fuel storage under 527 CMR 1.00.

Fuel storage (LPG)

LPG fuel storage requires a permit from the local fire department for amounts exceeding 42 lbs. (10 gallons). Storage must comply with 527 CMR 1.00: Chapter 69. [527 CMR 1.00: 69.3.12.6]

Fuel storage within buildings must be limited in accordance with 780 CMR and 527 CMR 1.00: Table 60.4.2.1.1.3. Outdoor storage areas must comply with 527 CMR 1.00: Chapter 60 and Chapter 66 or 69 as applicable.

Electrical Heating Equipment

Electrical heating equipment is permitted within a tent if compliant with NFPA 70 per IFC Section 3104.15.7.

Contact Information

If a restaurant or dining establishment within your jurisdiction is seeking assistance with state permitting questions and you have questions or concerns, please do not hesitate to contact:

- Office of Public Safety and Inspection at (617) 826-5236 and OPSI-info@mass.gov
- District state building inspectors at <https://www.mass.gov/doc/state-inspector-districts-0/download>
- Department of Fire Services, Code Compliance and Enforcement Unit at (978) 567-3375, or via email at paul.vigneau@mass.gov for assistance
- Plumbing Board at [617-701-8798](tel:617-701-8798) or via email at Plumbingboard@mass.gov, for assistance.
- Board of Fire Prevention Regulations Electrical Interpretations Committee at (978) 567-3301 or via email at MaryAnn.E.Smith@mass.gov for assistance
- Architectural Access Board at [617-727-0660](tel:617-727-0660) or email at william.joyce@mass.gov for assistance