



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

MIKE KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

Commonwealth of Massachusetts
Division of Professional Licensure
Office of Public Safety and Inspections
1000 Washington Street, Suite 710
Boston, Massachusetts 02118

EDWARD A. PALLESCHI
UNDERSECRETARY OF CONSUMER
AFFAIRS AND BUSINESS
REGULATION

LAYLA D'EMILIA
COMMISSIONER, DIVISION OF
PROFESSIONAL LICENSURE

Memorandum

To: Building Inspectors and Fire Prevention Officers
From: Layla D'Emilia, Commissioner, Division of Professional Licensure
Peter Ostroskey, State Fire Marshal, Department of Fire Services
Date: June 25, 2020
Re: Guidance for Safety Considerations for Outdoor Dining

Based on the recent mandatory safety guidelines, COVID-19 Order No. 35, restaurants and dining establishments are re-opening to patrons (<https://www.mass.gov/doc/executive-order-preparing-for-phase-ii-reopening/download>). Section 4 defines "outdoor table service" as service that is provided outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area, or other outdoor space. Outdoor table service may be provided under awnings or table umbrellas or other cover from the elements, provided that at least 50 percent of the perimeter of any covered dining space must always remain open and unobstructed by any form of siding or barriers.

Building officials do not have authority to enforce the criteria stipulated in COVID-19 Order No. 35. However, it is prudent that all local officials (i.e., fire chiefs, local board health agents) collaborate to ensure safe occupancy for restaurants and compliance with building and fire codes, when applicable. Local officials should also be working with restaurants to ensure they understand these requirements and to help them comply with the relevant codes. This guidance assumes most restaurants applying the COVID-19 Order No. 35 safety guidelines (by moving table service outdoors) will also be cooking inside the brick and mortar building. If cooking will be conducted outside, additional health and fire safety provisions may apply.

Restaurants seeking to move inside table service outside will likely fall into one of three categories: seating under a temporary tent, seating with a barrier to delineate an area, or seating without any barriers. Based on the category applicable to the new seating arrangement, various code provisions will apply.

Permitting of Temporary Structures

Building officials 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 Section 108, as amended). Tent structures erected for this period shall comply with the International Fire Code (2015 IBC Section 3103.1).

1. Building permits apply when the tent exceeds 400 square feet and intended for the gathering together of 10 or more persons.[IFC Section 3103.1.2]
2. A detailed site and floor plan is required for tents having an occupant load of 50 or more. Floor plans, must delineate the means of egress, the tent location on the site, occupant load, etc. [IFC Section 3103.6]



3. Although building officials do not enforce the limitation in COVID-19 Order No. 35, it is helpful for building officials to be mindful that COVID-19 Order No. 35 stipulates 50 percent of the perimeter of any covered dining space must remain open.

When fixed barriers are constructed to delineate an area for outdoor seating, a permit may be required per 780 CMR 105.1 since a barrier could be considered a structure and might restrict free egress. This would also apply if a restaurant had existing outdoor seating in a sectioned area and increased the occupant load or size of the area. In many cases, barriers may be constructed to restrict dining areas for the purpose of maintaining an alcohol license or to provide a protective barricade between seating and parking areas.

When outdoor seating is provided without a tent or a barriers to egress, a permit is not required since there is no construction of a structure. However, the owner should ensure that the seating arrangement does not obstruct fire department access lanes or egress paths from adjacent buildings, and that the occupant load of the outdoor seating doesn't exceed the capacity of indoor plumbing fixtures.

Temporary Tents

Tent materials must be compliant with fire resistance ratings tested to NFPA 701 [IFC Section 3104.2] and the tent must be compliant with the provisions of IFC Chapter 31.

1. Tents must be erected at least 20 feet from lot lines unless the condition conforms to one of the two exceptions. [IFC Section 3103.8.2]
2. Egress, exit signage and illumination shall comply with IFC Section 3103.
3. Smoking is prohibited and "No Smoking" signs shall be conspicuously posted per IFC Section 3104.6.
4. Open flame, including grills or cooking appliances are not permitted within 20 feet of the tent structure [IFC Section 3104.7]. Coordination with the fire department is necessary for the approval and permitting of these appliances, fuel storage and use.
 - a. Fuel storage is under the jurisdiction of the local fire department, including propane and common fuels used for patio heaters and grills. [527 CMR 1.00: 1.12.8.50]

Occupancy

Occupancy is determined by the building official by applying 780 CMR or IFC Section 1004, including Section 1004.5 for outdoor seating and Table 1004.1.2 for seating contained within a tent, on a deck, or within barriers. In restaurants or dining areas, occupancy can be based on the actual number of seats available, if approved by the building official per 780 CMR or IFC Section 1004.1.2. Places of assembly over 50 people are required to have a posted occupant load [780 CMR Section 1004.3]. This posted occupant load can be used to determine the maximum occupancy permitted during various phases of re-opening.

When assessing occupancy loads and seating arrangements, building officials should be mindful that the MA Safety Standards for Restaurants (<https://www.mass.gov/info-details/safety-standards-and-checklist-restaurants>) require tables either to be positioned to maintain at least 6 feet distance from all other tables, or tables may be positioned closer if separated by protective/non-porous barriers (e.g., structural walls or plexi-glass dividers) not less than 6 feet high installed between tables and high foot traffic areas. In addition, the size of a party seated at a table is limited to no more than 6 people.

Means of Egress

Means of egress from temporary tents must comply with IFC Section 3103.12.

1. Exits shall be spaced at approximately even intervals around the perimeter of tents and located so no point is more than 100 feet from an exit. [IFC Section 3103.12.1]
2. Tents shall not have less than 1 exit and not less than the number required by IFC Table 3103.12.2 based on the occupant load.
3. Exit openings shall remain open unless a flame-resistant curtain compliant with 3103.12.3 is provided.
4. Exit doors shall swing in the direction of travel. [IFC Section 3103.12.4]
5. Aisles shall be smooth-surfaced and unobstructed, and at least 44 inches in width. If the occupant load served by an aisle exceeds 50 people, the width must be increased in accordance with IFC Section 3103.12.5.
 - a. The MA Safety Standards for Restaurants document, published by the Governor's office, currently requires a minimum of 6 feet between tables, unless the tables are separated by a protective / non-porous barrier.
6. Exit signs are required at doorways when the exit serves an occupant load of 50 or more people. [IFC Section 3103.12.6]
7. Exit sign illumination and egress lighting shall comply with IFC Sections 3103.12.6.1 and 3103.12.7, respectively.

Means of egress from outdoor dining spaces not within a tent must comply with the provisions of 780 Chapter 10. If outdoor spaces are chained or fenced to prohibit free egress, adequate egress width is required from those spaces through compliant openings or gates equipped with appropriate hardware.

1. Egress capacity of exits must comply with 780 CMR Section 1005.3.
2. Doors and gates with latches, serving 50 or more people, must be provided with panic or fire exit hardware. [780 CMR 1010.1.10]
3. Aisles between and around tables and chairs must comply with 780 CMR Section 1029.
 - a. The MA Safety Standards for Restaurants document, published by the Governor's office, currently requires a minimum of 6 feet between tables, unless the tables are separated by a protective / non-porous barrier.
4. Tables and chairs must be arranged so as not to obstruct egress from neighboring buildings or public ways.
5. Exit marking and illumination must comply with 780 CMR Sections 1013 and 1008, respectively.

Outdoor Patio Heaters

Outdoor patio heaters are regulated by 527 CMR 1.00. These may be portable, utilizing LPG containers, or permanently piped to the building (which is regulated by 248 CMR).

1. Patio heaters must be used only in well-ventilated areas away from combustible materials. They are not permitted within tents with enclosed walls. Patio heaters with open or exposed flames are not permitted inside or within 20 feet of tent per IFC Section 3104.7. Coordination with the fire department is necessary for the approval and permitting of these appliances, fuel storage and use.
 - a. Fuel storage is under the jurisdiction of the local fire department, including propane and common fuels used for patio heaters and grills. [527 CMR 1.00: 1.12.8.50]

- b. Electrical heating equipment is permitted within a tent if compliant with 527 CMR 12.00 (NFPA 70). [IFC Section 3104.15.7]
2. Patio heaters shall not be located within 5 feet of exits. [527 CMR 1.00: 69.3.11.1.3]
3. LPG storage in excess of 42 lbs. (two 20 lbs. grill-sized tanks) requires a permit from the local fire department. [527 CMR 1.00: 1.12.8.50]
4. 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.

Indoor COVID-19 Provisions

Restaurants will have the option to permit indoor dining during various stages of re-opening. When changes are made within the building, it is critical to ensure that these changes maintain the level of fire and life safety required by the building and fire codes. Reconfiguration of space, addition of barriers, and changes to egress, may require a building permit per 780 CMR 105.1.

1. Non-porous barriers shall not be installed within buildings a height that is within 18” of the bottom of automatic sprinkler heads. [2013 NFPA 13: 8.5.5.3]
2. Non-porous membrane barriers shall be flame resistant in accordance with NFPA 701. [527 CMR 1.00: 12.6.2]
3. Doors required for fire separation may not held open in such a manner that they will not close automatically and latch upon activation of the building fire alarm system. [780 CMR Chapter 7 and 527 CMR 1.00: 12.3.3]
4. Temporary signage establishing one-way circulation patterns to maintain social distancing must indicate that emergency exiting is allowed in the direction of required egress.

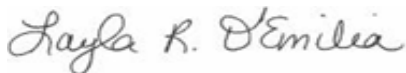
Alcohol-Based Hand Sanitizer

Alcohol-based hand sanitizer stations are required in restaurants at the entry, exit, and dining rooms per COVID-19 Order No. 35. 527 CMR 1.00 regulates the storage and use of alcohol-based hand sanitizer.

1. Storage is based on limitations for flammable and combustible liquids in 780 CMR and 527 CMR 1.00 and is based on the assumption that most alcohol-based hand sanitizer will be considered a Class IB or IC flammable liquid. A permit is required from the local fire department for alcohol-based hand sanitizer in quantities above 10 gallons. [527 CMR 1.00: 1.12.8.40 and 1.12.8.50]
 - a. Up to 120 gallons can be stored within a non-sprinklered building.
 - b. Up to 240 gallons can be stored within a building sprinklered in compliance with 2013 NFPA 13.
 - c. Up to 480 gallons can be stored within a building sprinklered in compliance with 2013 NFPA 13 and within approved storage (rated and ventilated flammable cabinets).
2. Wall-mounted or free-standing alcohol based hand sanitizer dispenser locations are regulated by 527 CMR 1.00. Whereas some installations may be temporary and portable, it is critical that building owners understand the provisions associated with their safe installation and use if they are moved from their original location.
 - a. The maximum capacity of dispensing units in areas open to corridors is 41 oz. (0.32 gal or 1.2 L).
 - b. The maximum capacity of dispensing units in rooms or suites of rooms and separated from corridors is 67 oz. (0.53 gal or 2.0L).

- c. The minimum separation distance between dispensers is 48 inches. [527 CMR 1.00: 10.22.1(2)]
- d. No dispensers shall be located above, within 1 in. to the side of, or within 1 in. below an ignition source, such as an electrical outlet, or open flame. [527 CMR 1.00: 60.5.2(2)]
- e. Dispensers can only be installed directly over carpeted floors in sprinklered areas of the building. [527 CMR 1.00: 60.5.2(3)].
- f. Dispenser operation must comply with manufacturer's instructions and 527 CMR 1.00: 60.5.2(9).

If you have a restaurant or dining establishment within your jurisdiction which is undergoing changes or renovation in response to COVID-19 and have questions or concerns, please do not hesitate to contact the district state building inspector (<https://www.mass.gov/doc/state-building-inspector-district-assignments/download>) or the Office of Public Safety and Inspection 617-826-5236 or the Code Compliance and Enforcement Unit at (978) 567-3375 (business hours), or via email at paul.vigneau@mass.gov for assistance.



Layla R. D'Emilia, Commissioner
Division of Professional Licensure



Peter J. Ostroskey, State Fire Marshal
Department of Fire Services