

Title 5 Chapter 5.40 - Outdoor use of Municipal Spaces

5.40.010 Allowed use of Sidewalks, Municipal Lots, Parks, Parking Spots

- I. Food and beverage service – Notwithstanding any other provisions of the Town of Winthrop Code of Ordinances, licensed food service establishments adjacent to a public way, a municipal parking lot, a public park, provided that such space does not restrict pedestrian movement on said space, shall be allowed, subject to the provisions below, the use of said areas to serve food and beverages from April 1 to October 31. Prior to use of the adjacent area, the establishment must complete a sidewalk placement notice as required by the Director of Public Works, who shall be responsible for enforcement of the provisions of this subsection. No sidewalk bond shall be required; however, the establishment must name the Town of Winthrop as an additional insured for general liability coverage in an amount of not less than \$1,000,000 for the seasonal period and provide proof of same. No permit holder shall obtain any property right in the continued private commercial use of the public way.

5.40.020 Permit required; purpose

- I. Establishments seeking the use of said adjacent sidewalk areas to serve food and beverages shall annually apply for and obtain a permit to be issued by the Licensing Board. No other permit or license from any other board, department or officer of the Town shall be required; however, any permit application shall be sent to the Board of Health, Building Inspector, DPW Director, Police Chief, Fire Chief and Town Manager within 5 days of the scheduled hearing for comment.
- II. The permit application shall include a description and diagram of the area where service will be provided, which shall include the number of tables, chairs, umbrellas, heat lamps and any barriers, railings or other temporary dividers to be used. Applicants shall also provide a certificate of insurance, which shall name the Town as an insured. Other information shall be provided as required by the Licensing Board to carry out the purpose of this article.
- III. The Licensing Board shall grant or deny the permit no later than 30 days from the date the application is received by the Licensing Board and, if no determination is made within that period by the Licensing Board, the permit shall be deemed to be allowed. If an establishment seeks to serve alcoholic beverages as a component of outdoor dining, the application for a permit shall be considered as required by the Licensing Board pursuant to the provisions of Massachusetts General Laws.
- IV. The purpose of this article is to promote and encourage outdoor dining throughout the Town and shall be interpreted in accordance with that intent. The Licensing Board may deny a permit only upon a finding that it would be detrimental to the public interest to have outdoor dining at the location applied for. In making such a determination, the Licensing Board may consider the following factors, among others:
 - A. Objections and/or concerns received from Board of Health, Building Inspector, DPW Director, Fire Chief, Police Chief and Town Manager.
 - B. Previous licensing, health or public safety complaints against the applicant.
 - C. The health and cleanliness of the establishment.
 - D. Excessive noise complaints or concerns, allowing for reasonable activity for the purpose of encouraging outdoor dining.
 - E. Violations of any other laws, rules, or regulations.

- V. The Licensing Board shall have the authority to deny, revoke or suspend the permit upon finding that any provision of this article, including the factors enumerated in Subsection IV above, or condition of approval will be or has been violated. Prior to any action suspending or revoking a holder's license, the Licensing Board must hold a hearing on the matter. The Licensing Board shall give notice of any such action to the permit holder in writing stating the alleged violation(s), the date and time of the hearing on the matter and the reason therefore. The DPW Director, Fire Chief, Police Chief or Town Manager, may suspend the permit temporarily if the public interest requires the suspension or revocation of such permit for a public event, construction, repair, or any other purpose. In the event that any provision of this article shall be deemed illegal or otherwise unenforceable by a court of competent jurisdiction, then only that specific provision shall not be enforced and all other sections and provisions shall remain in full force and effect.

5.40.030 Furnishings

Only movable tables, chairs, umbrellas and heat lamps shall be used in the space. Awnings over the area may be used; however, no permanent roof or shelter over the area shall be erected. Barriers, railings or other temporary dividers may be used to designate the area where service will be provided. Should the permit holder not utilize the area as authorized for a period of 4 days or more, all the tables and materials shall be removed therefrom, including the period from November 1 to March 31.

5.40.040 Prohibitions

- I. No trash, garbage or refuse disposal shall be permitted to be maintained on the area at any time. Areas and all things placed there shall at all times be maintained in a clean and orderly condition. Sidewalk and flooring areas must be cleaned dally, including adjacent areas.
- II. No lighting or fixtures may be attached to public property.
- III. There shall be no smoking in the outdoor dining area.
- IV. At all times, the permit holder must be compliant with all applicable federal, state and local laws and regulation, including the Americans with Disabilities Act and the building and fire codes.

5.40.050 Hours of Operation

The use of licensed areas to serve food and beverages by establishments shall be limited to the hours of operation provided for by current state law, municipal ordinances or licensing provisions.

5.40.060 Pedestrian Access

Adequate room for passage by pedestrians on the remaining area of the sidewalk or public way shall be provided at all times. Food service establishments which are not located on a sidewalk of at least four feet in width or for which no sidewalk exists on a public way may be allowed to obtain a permit for outdoor dining upon a finding by the Licensing Board that the establishment of an outdoor dining area, as shown on the description and diagram of the area where service will be provided, will not impede the passage of pedestrian traffic and where public safety would not be jeopardized.

5.40.070 Music

Music is allowed to be played in spaces licensed under this Chapter between the hours of 11am until 10pm provided that the music does not violate any other current state law, municipal ordinances or licensing provisions.

5.40.080 Expiration

This act shall expire and no longer be in effect on January 1, 2021.