

WEST CHESTER BOROUGH POLICY

Outdoor Dining

It is the policy of the West Chester Borough to accept applications to permit the installation of outside dining areas adjacent to the front of a restaurant and/or the adjacent parking space in the Town Center District when in compliance with the following conditions and requirements.

A. Initial Outdoor Dining Application/Permits

1. Any person who shall desire to install an outside dining area in the Borough shall make application therefor (the applicant) in writing to the Department of Building, Housing and Codes Enforcement. Such application shall be accompanied by such application fee as required by a schedule of fees established by and amended from time to time by resolution of Borough Council. Such application shall be made annually after the first of the year upon forms provided by the Borough.
2. An application for permit to install an outside dining area in a parking area shall be approved by Borough Council if the application complies with all Borough regulations and recommended by the Director of the Building, Housing & Codes Enforcement Department.
3. An application for permit to install an outside dining area that does not include a parking area shall be approved by the Director of Building, Housing & Codes Enforcement if the application complies with all Borough regulations.

B. Renewal Permit for Outdoor Dining

1. Renewal of outdoor dining permits shall be required on an annual basis. If no changes are made to the initial application, then permit renewal shall only require the filing of a permit application, payment of a fee as established by Borough Council, and submission of an agreement of indemnity and a certificate of liability insurance naming the Borough as an additional insured.
2. Renewal of outdoor dining permits with minor changes that do not effect a parking area shall be permitted by the Director of Building, Housing & Codes Enforcement, with the requirements of B(1.).
3. To preserve a previously-approved outside dining area with a parking space, renewal applications shall be submitted between January 1 and March 15 of each year. Failure to timely submit the application by March 15, may cause the applicant to lose the right to the previously-approved outside dining approval in the event that another application seeking an initial outside dining permit (as set forth in Section "A" above) is received for the same block.

C. Application Requirements

1. The name and address of the applicant.

2. Identify the type of outdoor dining area proposed by the applicant, whether it be Cafe I District restaurant-cafe or Cafe II District restaurant-café.
3. The written consent of the property owner, if different than the applicant.
4. Applications must be submitted with architectural drawings in enough detail to show the location of the dining area, seating plan, calculation of the proposed occupant load and where applicable locations of all poles, benches, storm water inlets, fire hydrants, trash receptacles, meters, and signs that are within 15 ft. of the outside edges of dining area.
5. Applications for a new outside dining area in a parking area must be submitted with a petition circulated among other businesses on the block indicating whether they support the request to remove the public parking space.
6. No action shall be taken on any application for a permit under this section until the application has been completed in its entirety and the application fee has been paid in full. The schedule of fees shall be kept on file at the Department of Building, Housing and Codes Enforcement. There shall be no proration of fees under this subsection.
7. An application shall be denied if, in the discretion of the Department of Building, Housing and Codes Enforcement, the installation of the dining area will block safe sight distances at intersections, stormwater inlets and other public utilities.
8. Once approved, a permit for a dining area may be revoked if it is found to create any hazard to the public health safety or welfare of the public as determined by Department of Building, Housing and Codes Enforcement or if the applicant violates any of the provisions of this policy.
9. All furniture, flower boxes and other accessory structures, with the exception of fences, shall be removed from the public sidewalk by December 15th.

D. General Requirements

1. A minimum pedestrian walkway of 54 inches clear is to be maintained in front of the outside dining area.
2. The minimum height of umbrellas which project into the required minimum pedestrian walkway shall be 80 inches.
3. There shall be no advertising displayed on umbrellas or tables which are located on the sidewalk directly abutting or adjacent to the outside dining area.
4. If on-street parking exists in front of the outside dining area, tables on the curblin are prohibited. If on-street parking does not exist in front of the outside dining area tables are permitted at the curblin, provided that a barrier is erected which is approved by the Borough's Historic Architectural Review Board (HARB) **and Borough Council**.
5. There shall be no temporary signs or banners permitted in the outside dining area.
6. The owner of the restaurant is responsible for keeping the pedestrian walkway in front of the premises clean and free of trash and debris.

7. All owners of the restaurant must provide trash receptacles, acceptable to the Borough of West Chester, which are located at the exterior of the premises.
8. In order to preserve a supply of public parking spaces, only two parking spaces per block are permitted to be used as an outside dining area.
9. If approved, the outside dining area may be installed in the parking space right of way between April 1st and November 15th of the licensed year.
10. When a dining area occupies a parking space it shall be constructed with steel frames with rounded corners, as it may come into contact with automobile tires in the adjacent parking space or travel lane. Heavy wood or steel support frame must be used to carry weight of the structure surface which must be constructed with pavers that blend appropriately with the adjacent sidewalk.
11. Dining areas located in a parking space must be surrounded on three sides with a metal railing, or in the alternative planter boxes, to provide separation between dining patrons and adjacent street or parking area. Railing design must be one that has received Historic Architectural Review Board approval. Planter boxes must be of a design approved by Borough Council. Appropriate warnings shall be placed on the railings regarding the proximity of diners to vehicular traffic.
12. If on-street parking abuts the sidewalk where the railing is proposed to be located, the railing shall be installed a minimum of 18 inches from the curbline. If there is no on-street parking which abuts the sidewalk where the railing is proposed to be located, the railing shall be installed at the curbline:
 - a) All railings shall be iron or steel, painted in dark muted colors.
 - b) The design of the railing shall not include sharp points on top of the rails.
 - c) The height of the railing shall be a minimum of 30 inches and a maximum of 45 inches above the sidewalk grade.
13. The dining area shall be set back a minimum of 12 inches from edge of the travel lane.
14. Dining area shall not leave only one adjacent parking spot between the bulb out.
15. The dining area will be inspected by the Borough Department of Building, Housing and Codes Enforcement for compliance with this policy.
16. All Establishments with a dining area shall be RAMP-certified (Responsible Alcohol Management Program), except restaurant-cafés in the Café II District.

E. Café 1 District

1. Owners of a Cafe I District restaurant-cafe must stop serving customers on or before 11:00 p.m. prevailing time and clear all tables of food, beverages and customers on or before 12:00 midnight prevailing time.
2. Owners of a Cafe I District restaurant-cafe must provide table service.

3. The Cafe I District restaurant-cafe shall serve all beverages in glass only.
4. The Cafe I District outside dining area shall not utilize disposable plates or utensils.

F. Café II District

1. Owners of a Cafe II District restaurant-cafe must stop serving customers on or before 9:00 p.m. prevailing time and clear all tables of food, beverages and customers on or before 10:00 p.m. prevailing time.
2. No alcoholic beverages shall be served or allowed to be consumed in a Cafe II District restaurant-café.

G. Insurance Requirements

1. The applicant/property owner shall well and truly save, indemnify, defend and keep harmless the Borough of West Chester, its officers, employees and agents from and against any and all actions, suits, demands, payments, costs and charges for and by reason of the existence of the outside dining area and all damages to persons or property resulting from or in any manner caused by the presence, location, use, operation, installation, maintenance, replacement or removal of such outside dining area or by the acts or omissions of the employees or agents of the applicant in connection with such outside dining area. The applicant/property owner must obtain and maintain an insurance policy which covers general liability in the area of the outside dining area which is within the public right-of-way which names the Borough as an additional insured.
2. The applicant shall execute the indemnification agreement that is attached hereto.
3. For as long as the dining area is installed and in use, the applicant shall pay for and maintain in full force and effect with an insurance company(ies) admitted by the Pennsylvania Insurance Commissioner to do business in the Commonwealth of Pennsylvania and rated not less than A in Best Insurance Key rating Guide, the following policies of insurance:
 - (i) Commercial general liability insurance, including property damage liability and personal injury liability of not less than \$1,000,000 for each occurrence and a \$3,000,000 minimum aggregate amount.
 - (ii) Automobile bodily injury liability insurance of not less than \$500,000 each person; \$500,000 each occurrence.
 - (iii) Statutory Workman's Compensation and employer's liability insurance.
4. All policies of commercial general liability insurance required hereunder shall name the Borough, its officers, agents, elected officials and employees as additional insureds. Specifically, the applicant's commercial general liability insurance policy shall name the Borough, its officers, agents, elected officials and employees as an additional insured under ISO endorsement CG 20 26 07 04 or non ISO equivalent. Certificates of insurance shall state that coverage shall not be cancelled by either party except after thirty (30) days' prior written notice by U.S. certified mail, return receipt requested, has been given to the Borough. The applicant shall furnish the Borough with certificates of insurances and the

requisite endorsements for all required insurance, prior to the issuance of a permit for the dining area. If at any time when the dining area is in use, the applicant fails to maintain the required insurance in full force and effect, the permit shall be revoked and use of the dining area shall be discontinued immediately.

H. Notice for Removal

1. The owner shall remove the outdoor portion of the dining area within 30 days after written notice by the Borough if the Borough determines that the dining area is detrimental to the health, safety and general welfare of the Borough or its citizens because one or more of the following conditions has occurred:
 - a. Due to pedestrian traffic changes, the outdoor dining area narrows the sidewalk to the extent that pedestrian traffic is impeded.
 - b. The outdoor dining area interferes with the maintenance or installation of an underground utility structure.
 - c. The outdoor dining area is no longer being used as such.
 - d. The outdoor dining area has been temporarily or permanently closed for violation of any Borough, state or federal law and/or regulation.
 - e. The outdoor dining area is operated in violation of any ordinance, policy or regulation of the Borough of West Chester.
2. In the event that the owner fails to remove the outdoor dining area within 30 days after written notice, the Borough may proceed to remove and restore the area and charge the owner for the cost thereof. Should the outdoor dining area be removed by the Borough, the owner shall be entitled to a return of the equipment, furnishings or appurtenances so removed only after the payment of all costs due to the Borough and by requesting the return in writing. The responsibility for removal under the provisions of this subsection shall be the sole responsibility of the owner without any obligation or cost assessed against the Borough.
3. The owner shall maintain the outside dining area in accordance with all Borough and state and federal laws, as well as all policies promulgated and adopted by the Borough which pertain to the use of outdoor dining and cafes.
4. Any outdoor dining area that is located on a public street that is closed to vehicular traffic during the Borough's Restaurant Festival shall close its outdoor seating area for the duration of the Restaurant Festival.

INDEMNIFICATION AGREEMENT

The undersigned is the owner of the restaurant at _____ and the applicant for the outside dining area at the premises known as _____. Applicant, for itself its successors and assigns, hereby agrees to indemnify defend and hold harmless, the Borough, and its officers, elected officials, employees, agents, attorneys, successors and assigns from and against all losses, liabilities, claims, demands, causes of action, damages, costs, including reasonable attorneys' fees, and expenses of every kind and nature, whether or not covered by insurance, arising out of, resulting from or caused by, in whole or part, the use of the outside dining area in the public right of way, including but not limited to, those in connection with loss of life, bodily injury, personal injury, death, damage to property, any liability for fines, fees or penalties for violations of any statutes, ordinances, codes, rules or regulations by applicant, its agents, employees or contractors (hereinafter "Acts and/or Omissions"). The applicant shall reimburse the Borough for reasonable attorney's fees/costs of suit that it incurs in defending any suits or claims attributable (as determined by a Court of competent jurisdiction) to any Acts and/or Omissions.

ATTEST/WITNESS

RESTAURANT OWNER

By: _____

Name:

Title:

Date: _____

Date: _____