



CITY OF NEW BEDFORD

In the Year Two Thousand and Seventeen

AN ORDINANCE

Amending Chapter 15, Article VI. -- Planning Board Licenses and Permits

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1.

Chapter 15, Article VI. Shall be struck in its entirety and the following shall be inserted in place thereof:

Chapter 15, Article VI. -- Department of Inspectional Services Licenses and Permits

Sec. 15-100. - Outdoor café permit.

- (1) Jurisdiction. The Department of Inspectional Services shall have the jurisdiction vested pursuant to Section 2-210 of the City of New Bedford Code to inspect, issue permits, and enforce the use of city public right-of-way property for the use of outdoor dining, and to regulate the placement of temporary tables and chairs and appurtenant street furniture for use as outdoor cafés on public ways by licensed restaurants. The City of New Bedford Licensing Board and Massachusetts Alcoholic Beverages Control Commission (ABCC) Alcohol Beverage shall have regulatory authority over outdoor cafes that serve alcohol.
- (2) Permit Necessary. No person shall construct, maintain, use or operate an outdoor cafe without first obtaining a permit as provided in this section. The outdoor café permit application consists of submitting a completed application form, payment of the annual licensing fee, proof of insurance and any and all information contained in the application. The Commissioner of Inspectional Services will review the application for completeness and compliance within this article. If the application is complete to the satisfaction of the Department of Inspectional Services, the Commissioner will then secure administrative approval from the Department of Public Infrastructure, Department of Planning, Housing and Community

Development, Health Department, Police Department and Fire Department (hereinafter referred to as "Interested City Departments"), within forty-five (45) business days of the submittal of the completed application and will issue a determination within sixty (60) business days of the submittal of the completed application. In the event the application is incomplete or deficient, the Commissioner will promptly notify the applicant of any deficiencies.

- (3) For those serving alcohol. Applicants that do/will serve alcoholic beverages must complete the permit application process and, in addition, seek and secure approval from the City of New Bedford Licensing Board and Massachusetts Alcoholic Beverages Control Commission (ABCC) Alcohol Beverage.
- (4) For those within a Historic District. The New Bedford Historical Commission shall have aesthetic review through its Certificate of Appropriateness process for café enclosures, tables, chairs signage, and accessories in areas regulated by Massachusetts General Law Chapter 40C districts. It shall be the applicant's responsibility to provide written proof that it has obtained a certificate of appropriateness and all requisite permits, and/or approvals from relevant agencies and boards to the Department of Inspectional Services, prior to the issuance of a permit.
- (5) Responsibility of property owner. Every owner of property being used for outdoor dining, within a city public right-of-way, shall be severally and jointly responsible for maintaining his or her real property, in compliance with this Ordinance.
- (6) Conditions and Standards for a license to operate a outdoor café on a city public right-of-way:
 - (a) Every outdoor café on a city public right-of-way shall be temporary in nature and designed so that the entire café structure and its appurtenances include, but not limited to, chairs, tables, fencing, bollards and planters can be easily removed during periods of non-use. There will be no permanent fixtures in the public right-of-way. Furthermore, the city reserves the right to require the user to remove the outdoor café if and when it determines it to be necessary, even during the term of the license. The license is available only to a holder of a common victualler license.
 - (b) Location of outdoor café:
 - (i) The outdoor café must be contiguous to a licensed restaurant facility located on a street level. The outdoor café area may not extend beyond the frontage and/or side faces of the licensed restaurant.
 - (ii) There must be at least four (4) feet of free unimpeded pedestrian passageway on the sidewalk. However, the city reserves the right to require

that more than four (4) feet of outdoor be made available during certain hours of the day, or days of the week in order to accommodate pedestrian traffic.

(iii) When located on private property, outdoor cafes must be adjacent to the premises to which the outdoor cafe is accessory but may be located in front of, on the side of and/or to the rear of the premises. Such cafes shall be required to comply with all applicable federal, state and local laws and regulations, including the Americans with Disabilities Act

(c) Limitations on Use:

(i) Service of alcohol. If alcohol is served at an outdoor café, necessary permits and/or licenses from the licensing board must be obtained. In an area where alcohol is served, the seating area must be separated from the pedestrian walk space with a system of enclosure, such as decorative fencing, planters or removable bollards.

(ii) No portion of an outdoor café may be used for any purpose other than seated dining or circulation. Outdoor cafés must serve food. No one shall be seated in an outdoor café for the sole purpose of drinking alcohol, nor can the outdoor café be used as a place for patrons to drink while standing.

(iii) The outdoor café area cannot be used for smoking.

(iv) All outdoor café areas shall be maintained in good order and no refuse and no refuse containers are allowed within the area.

(v) All outdoor activity must cease at the close of business or midnight; whichever is earlier or otherwise regulated by the City of New Bedford Licensing Board and Massachusetts Alcoholic Beverages Control Commission (ABCC) Alcohol Beverage, as applicable.

(vi) All outdoor cafés must comply with all applicable federal, state and local laws and regulations, including the Americans with Disabilities Act. A minimum unobstructed passageway from end of use (parallel to street) of not less than four (4) feet in width at all points will be required.

(vii) The applicant who applies for an outdoor café permit shall bear all financial responsibility for any and all improvements necessary to the public space, both within and surrounding the outdoor café area. At no time and for no reason shall public funds be expended for improvements designed to benefit the licensee.

(viii) The license shall address liability, liability insurance, maintenance and trash removal concerns, and set forth the rental cost for the licensing of the public space.

(ix) Commercial general liability insurance must be procured and maintained on an "occurrence basis" in such amounts as the City Solicitor's office shall from time to time determine to be required. This coverage shall include an endorsement naming the city, including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members as an additional insured. This coverage must be primary, and any other insurance maintained by the additional insured shall be considered to be excess and non-contributing with this insurance, and shall include an endorsement providing for a thirty-day advance written notice of cancellation or non-renewal to send to the City Solicitor and the Department of Inspectional Services. The city on a yearly basis shall determine the fee for the license. The certificate of insurance will be provided to the Department of Inspectional Services prior to the issuance of license.

(x) Vaults. The Department of Public Infrastructure shall determine whether there is a vault under the outdoor area proposed to be used for the outdoor café. In the event that there is an underground vault, the applicant shall not obtain a license for the outdoor café until such time as the applicant has obtained a certification from a licensed structural engineer that the area over the vault is structurally strong enough to support the use as a café.

(xi) Length of license agreement. The license agreement for the use of the public space shall be an annual license that shall expire December 31st of each year.

(xii) Fee for permitting public space. The Department of Inspectional Services is authorized to promulgate rules and regulations governing the use of outdoor cafés spaces including the license fee for use of the public space. The fee is subject to change on a periodic basis.

(xiii) Renewals. An application for renewal of an outdoor café license shall be made to the Department of Inspectional Services. For license applications made by establishments not serving alcohol and not requiring the approval of the Licensing Board, provided no complaints have been made to the Department of Inspectional Services, renewal will be allowed as an administrative process requiring the sign-off of each Interested City Department per this section. For license applications made by establishments serving alcohol, Licensing Board approval is required each year prior to the initiation of the administrative process requiring the sign off of each Interested City Department.

(xiv) Permits issued for outdoor cafés by the Department of Inspectional Services will require that the user adhere to all applicable rules, regulations and laws governing the use of public space, and the operation of the café. Licenses will be subject to renewal on a yearly basis. The city reserves the right to revoke the license for any reason and at any time.

(xv) By accepting a license issued pursuant to this section, the licensee shall be solely responsible for any and all costs of whatever kind and nature relating to the outdoor café and for maintaining the Outdoor café. The city shall not be responsible or liable for any such costs or be requested to reimburse the licensee for such costs in any respect or to any extent.

(xvi) Every table or service area shall be suitably monitored by an employee of the business or organization operating the outdoor café in order to keep the area free from litter or food being left outside for extended periods of time.

(xvii) No advertisements (exclusive of menus intended to be read on the premises of the café and other signage as permitted under Chapter 9 Comprehensive Zoning) and no outdoor entertainment unless allowed as a result of a separate entertainment license shall be permitted within the Outdoor café.

(7) Violations; enforcement.

- (a) The provisions of this section shall be enforced by the Department of Inspectional Services.
- (b) Whoever violates this ordinance shall receive a written warning to cure the violation within seven (7) days. In the event a violation of this section is not cured after a written warning to take corrective action, the Department of Inspectional Services may seek remedies under the ordinance, including instituting a civil action to obtain an injunction, criminal enforcement up to Fifty (\$50.00) Dollars per violation per day, and/or non-criminal citations, up to Fifty (\$50.00) Dollars per violation per day pursuant to G.L. c. 40, § 21D and G.L. c. 40U.
- (c) The Department of Inspectional Services may omit, revoke or suspend a license issued under §15-100 upon a second or subsequent infraction under this section.
- (d) The City of New Bedford Licensing Board and Massachusetts Alcoholic Beverages Control Commission (ABCC) Alcohol Beverage shall govern and enforce all regulations and requirements for outdoor cafes that serve alcohol.

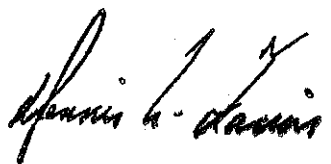
Section 2.

This ordinance shall take effect in accordance with the provisions of Chapter 43 of the General Laws.

IN CITY COUNCIL, December 14, 2017

Referred to the Committee on Ordinances.
a true copy attest:

Dennis W. Farias, City Clerk

A handwritten signature in black ink, appearing to read "Dennis W. Farias", written over a horizontal line.

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City Clerk