

# TOWN OF EASTCHESTER

## BUILDING & PLANNING DEPARTMENT

40 Mill Road  
Eastchester, NY 10709

Phone: (914) 771-3317  
Fax: (914) 771-3322

[building@eastchester.org](mailto:building@eastchester.org)  
[www.eastchester.org](http://www.eastchester.org)

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### Temporary Outdoor Dining Area Application Package

This application is to permit outdoor dining areas on private property (yards, parking lots and sidewalks) associated with an existing food service establishment and/or within the public right-of-way (sidewalks or parking lots) in front of or in the immediate vicinity of an existing food service establishment. Outdoor dining is prohibited within a road right-of way.

All applications will be reviewed by the Building & Planning Department, Eastchester Fire Department, Westchester County Department of Health and the NYS Liquor Authority. Applications may be referred to other departments for review as necessary. Reviews will be conducted in a timely manner.

Food service establishments which have previously received permits for outdoor dining may operate in approved areas, subject to social distancing requirements and all applicable health guidelines as set forth by the CDC, New York State (including Executive Orders), Westchester County Department of Health and the New York State Liquor Authority. However, any proposed outdoor dining not covered under the original approvals will require a temporary permit.

Once a temporary permit has been issued and the outdoor dining has been installed, the applicant must call the Eastchester Building & Planning Department for an inspection before operations can commence. Inspections will be conducted in a timely manner.

The Town of Eastchester's Building & Planning Department, Police Department, Fire Department and Highway Department have the right to require modifications to the application for outdoor dining prior to the issuance of a permit, to require modifications to dining areas once a permit has been issued, and to terminate outdoor dining operations if they present a harm to public health and safety. Decisions (including denials) are final and may not be appealed.

Permits shall automatically expire on July 3, 2020 unless extended by the Town.

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# TEMPORARY OUTDOOR DINING AREA APPLICATION

## FOOD SERVICE ESTABLISHMENT

Name of Food Service Establishment: \_\_\_\_\_

Property Address: \_\_\_\_\_

Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot(s): \_\_\_\_\_

## APPLICANT CONTACT INFORMATION

Lessee (Business Owner) Name: \_\_\_\_\_

Lessee Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Primary Contact Name for Lessee: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

## PROPERTY OWNER CONTACT INFORMATION

Property Owner Name: \_\_\_\_\_

Property Owner Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Primary Contact Name for Property Owner: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

## OUTDOOR DINING AREA INFORMATION

Total Number of Proposed Tables: \_\_\_\_\_

Total Number of Proposed Chairs: \_\_\_\_\_

The Outdoor Dining Area is proposed on (check one):

- Private Property (a privately-owned yard, sidewalk or parking lot)
- Within the Public Right-of-Way (a sidewalk or parking lot)
- On Both Private Property and within a Public Right of Way

## NOTES

- No application or permit fees are required
- Drop **3 hard copies** of all completed application materials off in the Building & Planning Department Drop-Off Box located in the lobby of Town Hall
- All phone numbers and email addresses **MUST** be provided above.

## GENERAL REQUIREMENTS FOR ALL APPLICATIONS

1. All outdoor dining operations must meet social distancing requirements and follow all applicable health guidelines as set forth by the CDC, New York State (including Executive Orders), Westchester County Department of Health and the New York State Liquor Authority. All food service facilities in operation must read and affirm the guidelines set forth by New York State, the Westchester County Department of Health and the New York State Liquor Authority which are required to operate. In addition, a business safety plan must be completed and kept on site for review. For your convenience, attached are the links in order for you to be in compliance prior to operation:  
<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/OutdoorTakeoutDeliveryFoodServicesMasterGuidance.pdf>  
  
<https://forward.ny.gov/phase-two-industries>  
  
<https://sla.ny.gov/new-york-state-liquor-authority-guidance-outdoor-expansion-licensed-premises-response-covid-19>
2. All applications must include a site plan as further described below.
3. All applications must include authorization from the property owner(s) as noted below. Note: You may extend the limits of the dining area up to one full storefront on either side of your business, subject to the written permission of the property owner(s) and at the discretion of the town depending on site-specific conditions.
4. All applications must comply with insurance requirements as noted below.
5. No permanent structures may be affixed within the areas designated for temporary outdoor dining.
6. The boundaries of the outdoor dining area must be clearly delineated by railings, ropes, planters, or other similar enclosures.
7. The outdoor dining area may only be occupied by tables, chairs, umbrellas, planters and light fixtures for the convenience of the patrons.
8. Outdoor heating units, cooling units, trash receptacles and bar stations are prohibited.
9. Exterior lighting and illumination levels shall be kept to a minimum. Any proposed light fixtures may require an electrical permit (subject to review by the Building Inspector).
10. A minimum 4-foot wide pedestrian path, clear of obstructions, must be maintained between the curb and the outdoor dining area.
11. Accessible access to bathroom facilities must be provided.
12. Entrances, emergency exits, sidewalk vault doors, fire hydrants and Siamese connections shall not be obstructed.
13. Entertainment, music, and sound amplification of any type, are prohibited within (and are prohibited to be broadcast to) the outdoor dining areas.
14. No outdoor dining shall be permitted, and no patrons shall be allowed, after 10:30 p.m.
15. All applications involving tents must be accompanied by catalogue cut sheets of the tent structure and anchorage details.

## **SITE PLAN REQUIREMENTS**

### **All Applications**

**All applications** must be accompanied by a site plan sketch, drawn to scale, illustrating the following (if applicable depending on the location of the proposed outdoor dining area):

1. Base map information: Use an existing survey if available to create your base map. Show the property line (distinguish between private and public property). Show the building façade(s) and existing entrances/exits (dimensioned). Show the full width of the sidewalk (dimensioned), curb and curb cuts. Show all sidewalk obstructions such as tree wells, signs, fire hydrants, etc. Show the limits of the maximum outdoor dining area with outside dimensions.
2. Proposed enclosure (e.g., planters, railings, fences, or other suitable structure depending on specific site conditions)
3. Location of all proposed tables and chairs and all other proposed furniture
4. Distance (dimension) between all tables/chairs (minimum 6 feet measured from closest chair to closest chair)
5. Location and dimension of unobstructed path leading from the entrance/exit door of the establishment to the street or parking lot (minimum width must be equal to the width of the door)
6. Location and dimension of unobstructed path leading from the street or parking lot to any Fire Department connections on the building, if applicable (minimum 3-foot wide).
7. Location and dimension of unobstructed path along sidewalk (must be a minimum of 4-feet wide)

### **Outdoor Dining Areas within Parking Lots**

**In addition to the information required above**, applications for outdoor dining areas within parking lots must include the following information:

1. A plan of the parking lot showing proposed parking spaces and traffic aisles
2. An indication of the total number of parking spaces utilized (lost) for the outdoor dining area
3. The limit of the maximum outdoor dining area with outside dimensions. The area must be protected from vehicular traffic. Indicate means of protection (such as Jersey barrier).

**Note:** All plans for dining area within parking lots will be reviewed to ensure the safety of patrons, safe vehicular circulation, access for emergency services, and that adequate parking remains available. Decisions to deny outdoor dining areas in parking lots may not be appealed.

**OWNER’S AUTHORIZATION**

The written, signed and notarized consent of the owner of the property or properties in front of which a sidewalk café is to be operated is required. If the owner(s) are a different party than the applicant, prior to the issuance of the permit, there shall be an agreement executed by the owner and third party to defend and save harmless the Town of Eastchester, its officers and employees against any loss, liability or damages sustained by any person or to any property as a result of the operation of the outdoor dining area, together with a certificate of insurance issued to both the owner and tenant as insured and naming the Town of Eastchester, its officers, and employees as additional insureds, in the minimum amount of \$1,000,000 single-limit general liability coverage approved by the Town Attorney.

**APPLICANT CERTIFICATION STATEMENT**

The undersigned certifies that all information submitted related to this application for a temporary outdoor dining area permit is true and accurate to the best of my knowledge. I understand that the approval of this permit is subject to ongoing compliance with all federal, state or local laws and executive orders in effect during the duration of the permit.

**Property Owner(s) Signature (s) and Date:**

- 1. Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_
- 2. Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_
- 3. Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**Lessee/Business Owner Signature (s) and Date:**

- 1. Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_

## INDEMNITY AND HOLD HARMLESS AGREEMENT

This Indemnity and Hold Harmless Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (NAME OF CORPORATION, LLC OR OTHER ENTITY OBTAINING THE PERMIT) ("Indemnitor") \_\_\_\_\_ (PRINT ADDRESS) for the benefit of the Town of Eastchester, a municipality in the State of New York ("Town").

**WHEREAS**, Indemnitor has submitted an application (the "Application") for the Town's **permission to allow outdoor dining areas on private property (yards, parking lots and sidewalks) and/or within the public right of way (sidewalks or parking lots)** for the following Outdoor Activity [PRINT NAME OF Activity]:

\_\_\_\_\_ (the "Activity")

beginning \_\_\_\_\_ (earliest start date, including set-up) and ending \_\_\_\_\_ (latest end date including breakdown and rain date),

**NOW THEREFORE**, in consideration of Indemnitor's receipt of said permission from the Town, Indemnitor agrees as follows:

1. Permission to use the Premises for the Activity may be revoked by the Town immediately upon the breach by Indemnitor of any term of this Agreement or any term or condition of the approved Application. This Agreement shall survive any such revocation, and Indemnitor shall remain bound by the terms of this Agreement.
2. Indemnitor shall indemnify, defend and hold harmless the Town and its agents, employees, elected and appointed officials, boards, commissions, committees, volunteers and representatives, to the fullest extent permitted by law, from and against any and all losses, claims, allegations, actions, awards, costs and expenses (including but not limited to, court costs and attorney's fees), judgments, subrogations and damages of every kind and character which may arise out of or result from, in whole or In part, Indemnitor's use of the Premises or from the negligent or willful acts or omissions of the Indemnitor or any of its employees or agents, subcontractors, third parties invited or authorized by the Indemnitor to participate at the Activity, and/or anyone else for whose acts Indemnitor may be liable, in connection with the Indemnitor's use of the Premises.
3. Indemnitor shall safeguard all who come upon the Premises and shall protect against any personal injuries and property damage resulting from Indemnitor's use of the Premises.
4. Indemnitor shall obtain the following insurance coverages covering the Indemnitor's obligations under this Agreement, including without limitation claims by participants in the Activity, from companies with an A.M. Best rating of A- (VII) or better:
  - a. Commercial General Liability insurance including Products and Completed Operations. Limits shall be at least: Bodily Injury & Property Damage with an occurrence limit of \$1,000,000; Personal & Advertising Injury limit of \$1,000,000 per occurrence; General Aggregate limit of \$2,000,000 (other than Products and Completed Operations) per location; and Products and Completed Operations aggregate limit of \$2,000,000. For each policy required by this Agreement, the Indemnitor is required to provide the amount of insurance specified in this Agreement or the amount of insurance that the Indemnitor actually has, whichever is higher.
    - i. If alcoholic beverages will be sold, provided and/or served and either (i) a fee is charged for the Activity or (ii) an alcoholic beverage permit is obtained, Liquor Liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless the Activity is scheduled as an exception to the liquor liability exclusion on the Commercial General Liability policy.
    - ii. If Indemnitor has employees, Workers Compensation insurance required by statute with Employer's Liability limits for at least the amounts of liability for bodily injury by accident of \$500,000 each accident, bodily injury by disease of \$500,000, and \$500,000 disease aggregate, including a waiver of subrogation in favor of the Town.

iii. If Indemnitor is renting a Town building, Damage and Rented Premises insurance in the amount of \$500,000 per occurrence.

5. Indemnitor shall provide the Town with Certificate(s) of Insurance on Accord 25 (2016/03) or later edition and the declaration page evidencing all insurance policies required by this Agreement, and all such Certificate(s) of Insurance, shall:
- a. Name the "Town of Eastchester" as an additional insured and include ISO Form CG 2012 04 13 ("Additional Insured -State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations") or equivalent (except that this is not required for Workers Compensation insurance), and
  - b. Be provided on an occurrence basis and will be primary and shall not contribute in any way to any insurance or self-insured retention carried by the Town, and
  - c. Contain a waiver of subrogation in favor of the Town, and
  - d. Contain a broad form contractual liability endorsement or wording within the policy form to comply with the hold harmless and indemnity obligations of Indemnitor under this Agreement, and
  - e. Declare all deductible and self-insured retentions, and all such deductibles and self-insured retentions are subject to the approval of the Town.
  - f. Show that policies are in effect for all of the days of the Activity; otherwise a renewal certificate is required.
  - g. Require notice of cancellation to the Town according to policy provisions.

6. The permit to operate outdoor dining shall be immediately revoked if the holder of such license fails to maintain the required insurance coverage, except that such license may be reinstated if such holder presents proof satisfactory to the Town Attorney that the required insurance coverage is in full force and effect.

7. This Agreement and the Application and the Town's policies and procedures supersede any and all prior agreements and understandings with the Indemnitor regarding the subject matter of this Agreement. This Agreement shall be governed and interpreted in accordance with the laws of the State of New York. No provision of this Agreement shall be deemed waived by the Town unless the waiver is in writing and signed by the Town Supervisor. Any provision of this Agreement that is deemed unenforceable by a court of competent jurisdiction shall be deemed amended and construed to have a valid meaning that is the most protective to the Town, and if no such validated construction is possible shall be severed from this Agreement, and the enforceability of the remaining provision shall not be impaired thereby.

This Agreement shall be binding on Indemnitor and its heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Town of Eastchester and its agents, employees, elected and appointed officials, boards, commissions, committees, volunteers, representatives and assigns.

(NAMES APPEAR ON FOLLOWING PAGE)

WITNESS

INDEMNITOR

\_\_\_\_\_  
Print Name: Print  
Address:

\_\_\_\_\_  
Print Name of the Corporation, LLC, or other Entity

By \_\_\_\_\_

Signature of Authorized Signatory

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**IMPORTANT NOTE:**

**PLEASE SEND A COPY OF THIS AGREEMENT TO YOUR INSURANCE BROKER OR  
COMPANY SO THAT THEY UNDERSTAND YOUR INSURANCE OBLIGATIONS  
BEFORE THEY ISSUE YOUR CERTIFICATE OF  
INSURANCE**