



City of Hagerstown Zoning Permit

Temporary Use - Outdoor Dining Area on Private Property for Restaurants and Pubs

Per emergency ordinance adopted by the Mayor and City Council on May 29, 2020, the Zoning Administrator has the authority to authorize a temporary use of private property for new or expanded outdoor dining by restaurants and pubs which have previously secured zoning approval for that location, suspending the provisions of Section R, Temporary Uses, in the Land Management Code for restaurants and pubs subject to the Governor's Executive Order No. 20-05-27-01.

The Zoning Administrator's authorization for this temporary use shall be for the duration of the Governor's Executive Order No. 20-05-27-01 or any subsequent Executive Order amending or superseding said order, for approving permits. Extension of the Temporary Use Permit shall be at the discretion of the Zoning Administrator on a case-by-case basis.

In granting approval of such applications, the Zoning Administrator will confer with the Chief Code Official and the Fire Marshal to ensure the proposed temporary dining area shall not adversely affect adjacent properties, shall not create health hazard, and does not require significant or permanent changes to the existing topography, vegetation, structures or other features of the site. The size of the outdoor seating area is not intended to create more seating than is provided indoors under normal operations.

Upon expiration of the temporary use approval, the temporary outdoor dining area shall be removed and the site returned to the same or better condition, unless a site plan is subsequently approved or an existing site plan is amended to allow permanent use of the outdoor dining area established in this temporary use. Any request for permanent use shall be required to comply with the zoning parameters for that use and site plan standards in the Land Management Code and any other provisions of the City Code affecting such uses.

Application Process

Applicant must submit an outdoor dining application to the Planning and Code Administration Department that includes an illustration of the intended layout of the outdoor dining area and its relation to the building, sidewalks, parking areas, and neighboring properties. The intended placement of tables, chairs, and tents shall be included and paths of egress shall be clearly marked. If tents are desired, a tent permit application must be made. The Zoning Administrator will review the temporary use application for compliance with the below standards and any other codes affecting this type of use with consultation with the Chief Code Official and Fire Marshal. If the application is deemed compliant, the Zoning Administrator will issue a Temporary Use permit for the outdoor dining area which shall expire with the Governor's Executive Order, unless an extension is granted at the Zoning Administrator's discretion on a case-by-case basis.

Temporary Outdoor Dining Standards

1. Circulation Room: Must maintain a minimum five-foot width of unobstructed walkable space for patrons to the entrance area of the outdoor dining. Outdoor dining areas should be on a stable surface.

2. Parking – No additional parking shall be required to be provided for this temporary use. If the outdoor dining area will temporarily remove existing off-street parking, the applicant must demonstrate that adequate parking remains on site or in the immediate area to accommodate the anticipated patrons and staff.
3. Tents – If a tent is desired, a tent permit is required.
4. Space heaters are permitted upon approval of the Chief Code Official and the Fire Marshal.
5. Music – Amplified music in the outdoor dining area must comply with the City noise ordinance. If the volume of the music creates a nuisance for the adjoining businesses and residents, the City will revoke this approval.
6. Sale of Alcohol – An operating establishment shall not sell, serve or allow consumption of alcohol in the temporary outdoor dining area without obtaining the required license from the Liquor Board. If alcohol is to be served, a barrier must enclose the outdoor dining area. Applicants are encouraged to train their employees to be aware of alcohol regulations.
7. Enclosures – Designs of sectional metal or wood fencing are required if alcohol is served in the outdoor dining area. If the outdoor dining area does not serve alcohol, enclosures may be installed of rope or chain rails with wood or metal vertical posts if so desired by the applicant. Any plans to anchor enclosures in the ground must be approved by the City Planning and Code Administration Department and Hagerstown Fire Marshal Office. Enclosures with fabric inserts or chain link, chicken wire, or similar appurtenances are not permitted.
 - a. Access Openings: No less than 48 inches wide (four feet).
 - b. Minimum height of 36 inches and maximum heights of 48 inches (four feet) from the ground. Any barrier must be at least 50% open to allow for visibility of street level activity.
 - c. Planters may be used in addition to or in place of fenced enclosures. If used as an enclosure for the service of alcohol, planters must be of a system that fully encloses the outdoor dining area. Individual planters are encouraged in unenclosed outdoor dining areas to help demarcate dining area. Planters may not exceed three feet in height above the ground and plants may not exceed a height of eight feet above the ground. All planters must have plants contained within them. Empty planters (or those only containing dirt or mulch) must be removed.
8. Other State Requirements per Executive Order number 20-05-27-01, which are enforced by the Health Officer:
 - a. All staff are to wear face coverings in accordance with provisions of the Executive Order.
 - b. A minimum of six feet is to be maintained between each seated patron, except for households seated together.
 - c. No groups larger than six persons are to be seated together, except members of the same household.
 - d. Food is not to be served in a buffet format.
 - e. Each table and seat is to be disinfected between each seating in accordance with provisions in the executive order.