

CITY OF BOSTON
PUBLIC IMPROVEMENT COMMISSION

SIDEWALK CAFES

The Public Improvement Commission finds that the establishment of sidewalk cafes will promote the use and enjoyment of the City's public space; will enhance tourism within the City, and increase handicapped accessibility to restaurants.

ENABLING LEGISLATION

A. 11-6.3 ---- USE OF PUBLIC WAYS

The Commissioner shall have the jurisdiction vested by statute in the Board of Street Commissioners¹ in relation to the planting and removal of trees in the public ways and to the use of public ways for any temporary obstruction or projection in, under or over the same; but such jurisdiction shall only be exercised with the written approval of the Mayor in each instance. The Commissioner shall also have the powers and perform the duties conferred or imposed by statute on the Board of Street Commissioners in relation to the use of parts of public ways for the storage and sale of merchandise.

Conditions and standards for occupation of the public way:

1. Every cafe shall be temporary in nature and designed so that the entire cafe structure and its appurtenances including but not limited to chairs, tables, fencing, bollards and planters can be easily removed during periods of non-use. Furthermore, the City reserves the right to require the user to remove the sidewalk cafe if and when it to be determines it necessary.

Public Process

2. Every owner/application (hereinafter "User") for a sidewalk cafe will be subject to Community review and approval both through the Licensing Board and Public Improvement Commission hearings.

Location of Sidewalk Cafe

3. The sidewalk cafe must be appurtenant and contiguous to the main restaurant facility. It may not extend beyond the frontage face of the restaurant. To provide safe adequate circulation for patrons, the width of the sidewalk cafe shall be no less than six [6] 1 feet from the facade of the restaurant. However, the City reserves the right to require that more than four (4) feet of sidewalk be made available during certain hours of the day, or days of the week in order to accommodate increased pedestrian traffic.

4. To prevent additional encroachment onto public space and to contain the sale of alcohol within the cafe area, the sidewalk cafe must be separated from the pedestrian walk space with a non-movable system of enclosure, such as decorative fencing with removable bollards.

Limitation on Use

¹ The power granted to the Commissioner of Public Works under II -6.3 shall be interpreted by the Commissioner to mean that a license will be granted only after a public hearing and approval vote by the members of the Public Improvement Commission.

5. No portion of a sidewalk cafe may be used for any purpose other than dining or circulation. Outdoor cafes must serve dinners. No one shall be seated in an outdoor cafe for the sole purpose of drinking alcohol. The hours of operation for outdoor cafes shall be determined by the Licensing Board for the City of Boston and will be incorporated into the lease agreement with the Public Improvement Commission.

Compliance with Laws, Statutes, etc.

6. All sidewalk cafes 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.

Landmarks Commission Approval

7. The Landmark Commission shall have aesthetic review responsibility for cafe enclosures, tables, chairs, and accessories in areas under their jurisdiction; all other proposals shall be subject to BRA design review. All cafe enclosures will be subject to review and approval by the Commission of Persons with Disabilities. It shall be the User's responsibility to provide to the Public Improvement Commission, before the scheduled public hearing, written proof that it has obtained all requisite permits, approval from said agencies.

8. The User who applies for a sidewalk cafe license shall bear all financial responsibility for any and all improvements necessary to the public space, both within and surrounding the sidewalk cafe area. At no time and for no reason shall public funds be expended for improvements designed to benefit the User. In addition a license agreement between the User and the Public Improvement Commission shall be required. The Agreement shall address liability, maintenance and trash removal concerns, and set forth the fair market value rental cost² for the leasing of the public space.

Vaults

9. The User shall provide the Public Improvement Commission with a written statement from a Certified engineer that certifies that no vaults exist below the space where the proposed sidewalk cafe will be placed. In the event that there is an underground vault, the User shall not obtain a license for the sidewalk cafe until such time as the Inspection Services Department is satisfied that there is no risk that the sidewalk cafe will collapse.

Length of Lease

10. The temporary lease for the use of the public space shall be seasonal from May 1st through October 30th, of each year.

Fee For Leasing Public Space

11. Taking into consideration that the City is to incur NO costs relative to the sidewalk cafe, the User understands that construction, maintenance, utilities and other amenities relative to this lease of public space and operation of the sidewalk cafe shall be the responsibility of the User. The rental fee for use of the public space shall be determined by the Public Improvement Commission. Said fee is subject to change on a yearly basis.

12. Licenses issued for sidewalk cafes by the Public Improvement Commission will require that the user adhere to all applicable rules, regulations and laws governing the use of public space, and the operation of the cafe. Permits issued relative to sidewalk cafes 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.

² The fee shall be determined by the City on a yearly basis. The fee is subject to change yearly.

13. By accepting this license the licensee specifically acknowledges that the licensee shall be solely responsible for any and all costs of whatever kind and nature, and 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.

Public Improvement Commission process regarding sidewalk cafes.

1. Petition of property owner for placement of sidewalk cafe on public property directly abutting his restaurant or his tenants' restaurant.

2. Notarized copy of rental lease agreement if surface space is to be used by tenant and not the property owner.

3. Three 8 " x 10 " glossy photos of area to be rented; frontal view, sharp angle right side and sharp angle left side.

4. Three copies of a plan, signed by a registered engineer or surveyor, detailing proposed occupancy of public space; showing placement of all street furniture associated with cafe as well as existing street furniture [telephone poles, street lights, hydrants, traffic lights, newsboxes, trees, signs, telephones, parking meters, bus shelters, etc.]. Plan must clearly show separation between cafe space and pedestrian space noting dimensions of each on plan. Plan should also display or stipulate the storage area for the cafe furniture and appurtenances and detail Utility cut-off points, manholes, vaults, etc. in sidewalk area to be rented.

(a) If a surface vault {areaway} exists an affidavit by a professional engineer must be submitted attesting to the structural adequacy and condition of the vault {areaway} below the sidewalk.

5. If the petition for a proposed cafe meets the standards set by the Commission for use of public space, the matter will be placed on the agenda for a new business hearing. The applicant will be directed to the Licensing Board for the City of Boston for community review and approval. The approval process before the Public Improvement Commission and the Licensing Board for the City of Boston shall be simultaneous. Approval by either the Public Improvement Commission or the Licensing Board shall be given subject to the approval of the other.

6. Indemnification Standards: That the Applicant hereby covenants with the City to indemnify and save harmless the City against all claims and demands of all persons for damages, costs, expenses or compensation for, on account of, or in any way growing out of the use and occupancy by the Applicant, his patrons, and or invitees of the licenses area, or by reason of any act or neglect of said Applicant, its officers, agents, and employees, or by any reason of any violation of any term or specification contained in this Agreement or in any license or permit necessary in the said use and occupancy of the Licensed Premises.

7. Insurance Language: The Applicant's ability to operate the Sidewalk Cafe shall be conditioned upon the Applicant obtaining and maintaining liability insurance for the period covered by the license. The minimum amount of insurance shall be in the amount of One Million [\$1,000,000.00] Dollars per occurrence and Three Million [\$3,000,000.00] Dollars in the aggregate. The Certificate of Insurance shall name the City of Boston as an additional insured, and the Original Certificate shall be provided to the Executive Secretary of the Public Improvement Commission prior to obtaining any permits.

8. Process: The Applicant shall obtain a sample copy of an approved License, Maintenance and Indemnification Agreement [Agreement] from the Executive Secretary of the Public Improvement Commission. The Agreement is to be used as a model which shall be conformed to the particular fact, situation of the applicant. The Agreement is to be submitted to the Department of Public Works for approval by the Law Department.

9. Once the applicant has received all necessary City approvals the License agreement for use of the public space will be signed by the members of the Public Improvement Commission.