

LOWER MERION TOWNSHIP
Outdoor Dining and Merchandise
Sales Regulations during COVID
Conditions

It is the policy of Lower Merion Township to accept applications to permit the installation of outside dining and merchandise sales areas adjacent to the front of a commercial building and/or the adjacent parking spaces when in compliance with the following conditions and requirements for the duration Resolution#_____ remains in effect.

A. Initial Outdoor Dining and Merchandise Sales Application/Permits

1. Any person who shall desire to install an outside dining or merchandise sales area in the Township shall make application therefor (the applicant) in writing to the Department of Building and Planning. A permit fee shall not be required for outdoor areas during the period these regulations are in effect.
2. An application for permit to install an outside dining or merchandise sales area in a public parking area must be approved by the Director of Building & Planning. If public parking lot spaces are being used, the Director of Parking Services must also approve the plans.
3. An application for permit to install an outside dining or merchandise sales area that does not include public parking spaces must be approved by the Director of Building and Planning.

B. Application Requirements

1. The name and address of the applicant.
2. Identify the type of outdoor dining or merchandise sales area proposed by the applicant.
3. The written consent of the property owner, if different than the applicant.
4. Applications must be submitted with drawings in enough detail to show the location of the dining area or merchandise sales, 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 or merchandise sales area.
5. Applications for a new outside dining or merchandise sales area in a public parking lot or space must be submitted with a petition circulated among other businesses on the block indicating whether they support the request to utilize 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.
7. An application shall be denied if, in the discretion of the Department of Building and

Planning, in consultation with the Traffic Safety Division, the installation of the dining area will block safe sight distances at intersections, stormwater inlets and other public utilities, or create an unsafe condition for pedestrians or vehicles.

8. Once approved, a permit for a dining or merchandise sales 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 and Planning or if the applicant violates any of the provisions of this policy.

C. General Requirements

1. Additional parking otherwise required by the Township's zoning code shall not be required for outdoor dining or merchandise sales for the duration these regulations remain in effect.
2. A minimum pedestrian walkway of 54 inches clear on Primary and Secondary streets and 48 inches on all other streets is to be maintained in front of the outside dining and merchandise sales area.
3. The minimum height of umbrellas which project into the required minimum pedestrian walkway shall be 80 inches.
4. If on-street parking exists in front of the outside dining or merchandise sales area, tables on the curb line are prohibited. If on-street parking does not exist in front of the outside dining or merchandise sales area tables are permitted within three feet of the curb line.
5. There shall be no temporary signs or banners permitted in the outside dining or merchandise sales area.
6. The owner of the business is responsible for keeping the pedestrian walkway in front of the premises clean and free of trash, debris, and obstructions.
7. All owners of the restaurant or merchandise sales must provide trash receptacles, acceptable to the Township of Lower Merion, which must be located at the exterior of the premises.
8. In order to preserve a supply of public parking spaces in public parking lots, only up to 50% of the parking spaces in the lot, up to a maximum of eight spaces may be used as an outside dining or merchandise sales area.
9. When a dining or merchandise sales area occupies a public parking space in a public parking lot, the area shall be protected by the installation of a steel frame border railing or planter boxes between the dining or merchandise sales area and the adjacent parking spaces. The design of the steel frame or planter boxes must be approved by the Building and Planning Department.
10. If alcohol is served or consumed outside the business, it shall be limited to the approved outdoor dining area. If the outdoor dining area is located on a lot owned by the Township,

the additional insurance requirements must be documented and submitted to the Township.

11. A private parking lot may be used for outdoor dining or merchandise sales for existing businesses currently operating in the Township, subject to obtaining approval from the property owner and limiting occupancy to a maximum of 50% of the parking lot or 50 parking spaces, whichever is less.
12. Outdoor tables and chairs and merchandise racks shall be placed far enough apart to comply with distancing guidelines recommended by the Governor's Order and the Center for Disease Control.
13. Business owners shall also enforce distancing requirements and strongly suggest that customers wear masks for customers shopping in outdoor areas that are not serving food and beverages.
14. All employees working in the outdoor dining or sales area must wear masks.
15. All outdoor dining or merchandise sales area will be inspected by the Department of Building and Planning prior to occupancy for compliance with these regulations.
16. All Establishments with a dining area shall be RAMP-certified (Responsible Alcohol Management Program) if alcohol is going to be served.

D. Outdoor dining or merchandise sales hours

1. Outdoor dining or merchandise sales areas must cease occupancy on or before 9:00 p.m. on Sunday through Thursday night and by 10:00 p.m. on Friday and Saturday nights. All seating and tables must be cleared within an hour of the times listed above.

E. Insurance Requirements

1. If the outdoor area is located in a public parking lot or on public property, the applicant/property owner shall well and truly save, indemnify, defend and keep harmless the Township of Lower Merion, 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 or merchandise sales 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 or merchandise sales 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 or merchandise sales area which is within the public right-of-way which names the Township as an additional insured.
2. The applicant shall execute the indemnification agreement that is attached hereto.
3. For as long as the dining or merchandise sales area is installed and in use on a public

parking lot, 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 \$2,000,000 minimum aggregate amount.
 - (ii) Automobile bodily injury liability insurance of not less than \$500,000 each person; \$500,000 each occurrence if an auto is used as part of the outdoor activity.
 - (iii) Statutory Workman's Compensation and employer's liability insurance.
4. If a public lot is being used, all policies of commercial general liability insurance required hereunder shall name the Township, its officers, agents, elected officials and employees as additional insureds. Specifically, the applicant's commercial general liability insurance policy shall name the Township, its officers, agents, elected officials and employees as an additional insured under ISO endorsement CG 20 26 07 04 or non ISO equivalent. If liquor is being served or consumed on a lot owned by Lower Merion Township, liquor liability coverage must also be provided that names the Township as an additional insured. 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 Township. The applicant shall furnish the Township 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.

F. Notice for Removal

1. The owner shall remove the outdoor portion of the dining or merchandise sales area after written notice by the Township if the Township determines that the dining area is detrimental to the health, safety and general welfare of the Township or its citizens because one or more of the following conditions has occurred:
 - a. Due to pedestrian traffic changes, the outdoor dining or merchandise sales area narrows the sidewalk to the extent that pedestrian traffic is impeded.
 - b. The outdoor dining or merchandise sales area interferes with the maintenance or installation of an underground utility structure.
 - c. The outdoor dining or merchandise sales area is no longer being used as such.
 - d. The outdoor dining or merchandise sales area has been temporarily or permanently closed for violation of any Township, state or federal law and/or regulation.

- e. The outdoor dining or merchandise sales area is operated in violation of any ordinance, policy or regulation of the Township of Lower Merion.
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- 2. In the event that the owner fails to remove the outdoor dining or merchandise sales area in compliance with the written notice, the Township may proceed to remove and restore the area and charge the owner for the cost thereof. Should the outdoor dining or merchandise sales area be removed by the Township, 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 Township 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 Township.
 - 3. The owner shall maintain the outside dining or merchandise sales area in accordance with all Township and state and federal laws, as well as all policies promulgated and adopted by the Township which pertain to the use of outdoor dining and cafes.
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INDEMNIFICATION AGREEMENT

The undersigned is the owner of the business at _____ and the applicant for the outside dining or merchandise sales area at the premises known as _____. Applicant, for itself its successors and assigns, hereby agrees to indemnify defend and hold harmless, the Township, 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 or merchandise sales 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 Township 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

BUSINESS OWNER

By: _____

Name:

Title:

Date: _____

Date: _____