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Guidance for Cities on Expanding Outdoor Service at Bars and Restaurants

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(Updated May 28, 2020)

On May 20, 2020, the state outlined plans, as mentioned in [Executive Order 20-56](#), for bars and restaurants to open on June 1 for outdoor service so long as certain conditions, including social distancing, are maintained to prevent the spread of COVID-19. The Minnesota Department of Public Safety (DPS) Alcohol and Gambling Enforcement Division worked with the League to provide the following guidance.

Get answers to frequently asked questions (FAQs) regarding outdoor service at restaurants and bars:

[Q1. Do cities need to change their regulations?](#) *(Updated May 22, 2020)*

[Q2. Can the city allow businesses to expand their outdoor areas?](#)

[Q3. Can the city grant catering permits as a way for businesses to expand their outdoor service?](#)

[Q4. Do municipal on-sale liquor establishments have to follow the same rules as other businesses if they want to expand their outdoor service?](#) *(Updated May 22, 2020)*

[Q5. Can bars and restaurants that are open on June 1 have restrooms inside available for use?](#) *(Added May 22, 2020)*

[Q6. Can our charitable gambling organizations operate outdoors at their normal bar/restaurant starting June 1?](#) *(Added May 22, 2020)*

[Q7. Can golf courses serve liquor now?](#) *(Added May 22, 2020)*

[Q8. Do bars and restaurants need to get additional licenses, fees, or approvals to sell food outdoors \(if they don't normally sell outside\)?](#) *(Added May 22, 2020)*

[Q9. Are bars and restaurants in the Metropolitan Council region that are expanding their premises to allow for outdoor seating subject to additional Sewer Availability Charges \(SAC\)?](#) *(Added May 22, 2020)*

[Q10. Can restaurants with an on-sale liquor license continue to sell limited quantities of alcohol with takeout food orders on June 1, 2020?](#) *(Added May 27, 2020)*

Q11. If the city closes streets to allow bars and restaurants to expand their outdoor space, is there liability on the city? Would the League of Minnesota Cities Insurance Trust cover claims? (Added May 27, 2020)

Q12. If a bar or restaurant wants to use public property to expand, can the city agree to let it use the city's property temporarily? (Added May 27, 2020)

Q13. Can restaurants set up tents to offer dining in a screened-in or covered setting outdoors? (Added May 28, 2020)

Q14. Does the 50-person maximum include employees? (Added May 28, 2020)

Q15. Are restaurants required to keep a log of reservations? (Added May 28, 2020)

Q16. What about inclement or severe weather? Can customers go indoors then? (Added May 28, 2020)

Q1. Do cities need to change their regulations?

A1. Cities may need to make changes to current regulations to assist businesses requesting to have additional outdoor seating. The outdoor expansion requests may include areas like sidewalks, some parking spaces, or undeveloped outdoor areas adjacent to their buildings. Cities are taking different approaches to how they will allow for this. Some have changed ordinances that require the business to apply for a permit for this temporary increase in size. Others have approved resolutions. The benefit of having a permit process is the option to make this an administrative process that does not require council approval. It is important to work with the city attorney in developing this process.

Some important considerations for cities:

- The retailer must provide the city with proof that their liquor liability insurance covers alcohol sales in any expanded outdoor spaces which, under Minnesota law, must be “compact and contiguous” to the main structure. Proof of liquor liability insurance must also be provided for onsite catered events.
- The city will need to approve a map of expanded service areas. Note that [guidance from the Minnesota Department of Employment and Economic Development \(DEED\)](#) limits bars and restaurants to 50 guests with reservations for the entire outdoor service area.
- Cities may want to consider noise and traffic concerns.
- Local zoning and building codes would apply to any physical expansions such as new or modified patios and decks. This may include the type of materials for fencing required to have a compact and continuous new space.

[Return to top of page](#)

Q2. Can the city allow businesses to expand their outdoor areas?

A2. [Minnesota Statutes, section 340A.410, subdivision 7](#) requires retail alcoholic beverage licensed premises to be compact and contiguous. [Minnesota Rules 7515.0430, subpart 2](#) defines the types of additions license holders can make as part of their licensed premises to include physically connected attachments to the main structure such as patios, decks, or pavilions. The space would have to be owned and/or leased and be a part of the business. The city would have to approve any compact and contiguous additions to the licensed premises and include such additions in the license files and on documentation defining the licensed premises.

Sidewalk seating or other types of city-controlled public space that would normally not be used for expanded seating could be used at the city's discretion as it would for sidewalk table seating under normal circumstances. The city would have to allow the license holder use of the space and include it as retail licensed premises patio space.

Use of a parking lot would have to constitute a compact and contiguous additional patio space.

The Minnesota Department of Transportation is preparing guidance on the use of parking lots and areas traditionally used as right of ways. A link to that guidance will be provided here when available.

[Return to top of page](#)

Q3. Can the city grant catering permits as a way for businesses to expand their outdoor service?

A3. If the parking lot or other expansion space is not contiguous to the original licensed premises, another option would be for the business to apply and qualify for an alcohol catering permit to enable alcohol incidental to food service for events (see [Minnesota Statutes, section 340A.404, subdivision 12](#)). An event is not daily bar service, but could be weekend parties or music events, etc.

[Return to top of page](#)

Q4. Do municipal on-sale liquor establishments have to follow the same rules as other businesses if they want to expand their outdoor service?

A4. Cities that operate an on-sale liquor establishment need to have:

- City approval for expanded outdoor spaces,
- Updated liquor liability insurance, and
- An updated premises map.

Cities also need to follow [DEED guidance on reopening measures](#), including requiring employees who provide food and drink service to wear masks.

[Return to top of page](#)

Q5. Can bars and restaurants that are open on June 1 have restrooms inside available for use?

A5: Yes. The establishment should have a preparedness plan in place that specifies access and sanitation practices.

[Return to top of page](#)

Q6. Can our charitable gambling organizations operate outdoors at their normal bar/restaurant starting June 1?

A6. Yes. Pull tabs and other lawful gambling can be conducted outdoors where food and alcohol are allowed to be served. See [guidance from the Gambling Control Board](#).

[Return to top of page](#)

Q7. Can golf courses serve liquor now?

A7. Starting June 1, bars and restaurants can serve food and liquor for consumption on premises in designated outdoor seating. Guidance specific to golf courses, including whether there can be mobile food/drink sales on the golf course, are not yet available, but we have made requests for clarification.

[Return to top of page](#)

Q8. Do bars and restaurants need to get additional licenses, fees, or approvals to sell food outdoors (if they don't normally sell outside)?

A8. Sometimes. Additional approvals would likely not be required for additional service stations supporting the outdoor food service of an existing kitchen. It would be a best practice for establishments to share their plans and questions with their Minnesota Department of Health (MDH) inspector or their locally delegated public health agency. MDH has an Additional Food Service fee category that is occasionally applied in addition to the Category 1/2/3 fee for the main kitchen, but they plan to address how to apply that on a case-by-case basis. New construction and remodels would also require plan review. See the [Minnesota State and Local Food, Pools, and Lodging Contacts](#) to get contact information for all areas of the state.

[Return to top of page](#)

Q9. Are bars and restaurants in the Metropolitan Council region that are expanding their premises to allow for outdoor seating subject to additional Sewer Availability Charges (SAC)?

A9. No. Metropolitan Council Environmental Services will not adjust or charge [SAC](#) during the order, given that these operations would be within current capacity and within the current statutory guidance. Specifically, there will be no SAC due for restaurants that temporarily set up or expand outdoor seating due to the governor's order. This is in compliance with the SAC statute because there is no additional capacity demanded on the system given the governor's order of no indoor seating and a limit of 50 people outside.

Instead, Environmental Services will set up a tracking form for each city, where the city will report to the Council the name, address, and new or expanded outdoor square footage for each restaurant that sets up temporary facilities. These can be reported as the applications come in, weekly or at least monthly. Once the restriction is lifted, Environmental Services staff will send the list back to the cities and ask them to confirm that each restaurant is closing their outdoor facility or making it permanent. If permanent, the normal SAC determination process will be followed.

[Return to top of page](#)

Q10. Can restaurants with an on-sale liquor license continue to sell limited quantities of alcohol with takeout food orders on June 1, 2020?

A10. Yes. Because many establishments will not be able to make the transition to outdoor on-sale and those that do will only be able to under a very limited capacity, the Gov. Walz said in [Executive Order 20-63](#) that the next phase is a partial extension of the previous closure executive orders and are not discontinuing the current ability for bars and restaurants to conduct off-sale in the quantities laid out by the Legislature.

[Return to top of page](#)

Q11. If the city closes streets to allow bars and restaurants to expand their outdoor space, is there liability on the city? Would the League of Minnesota Cities Insurance Trust cover claims?

A11. The city would likely be covered by its Trust coverage for any claims against the city related to closing the streets. There would not be Trust coverage for any restaurants or bars.

[Return to top of page](#)

Q12. If a bar or restaurant wants to use public property to expand, can the city agree to let it use the city's property temporarily?

A12. Yes. Ideally, if a bar or restaurant wanted to use the city's right of way or a city parking lot, the city would have a written agreement with the bar that includes the following provisions:

- The bar must have commercial general liability (CGL) insurance of at least \$1 million per occurrence.
- The bar must have liquor liability (dram shop) insurance of at least \$1 million per occurrence.
- The city must be named as an additional insured on both the CGL and liquor liability insurance.
- The bar must agree to defend and indemnify the city for any claims against the city arising from the use of the right of way or parking lot.

[Return to top of page](#)

Q13. Can restaurants set up tents to offer dining in a screened-in or covered setting outdoors?

A13. Yes, as long as at least half of the sides of the tent are open or screened.

[Return to top of page](#)

Q14. Does the 50-person maximum include employees?

A14. No. An establishment is limited to a maximum of 50 customers on the premises at any one point, not including employees.

[Return to top of page](#)

Q15. Are restaurants required to keep a log of reservations?

A15. No, restaurants are not required to keep a log, nor are they discouraged from doing so. There is no requirement that a business check an ID or verify a person's identity with their reservation.

[Return to top of page](#)

Q16. What about inclement or severe weather? Can customers go indoors then?

A16. Yes. The underlying goal of all guidelines and requirements is to keep people safe and save lives. In the event of inclement weather, customers may move indoors to package food and pay bills but must exit quickly; businesses should not allow customers to move indoors to continue their meal. While indoors, customers must follow social distancing rules and avoid congregating. Nothing in Executive Order 20-63 prohibits indoor sheltering in the event of severe weather.

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