

Text amendment <u>PLPZ 2022 00480</u>	Text amendment Revise section 6-100 – Outdoor dining
--	--

UPDATE:

Based on the December 6, 2022 meeting, the regulations have revised as shown in red.

PROPOSED TEXT AMENDMENT LANGUAGE:

Proposed text is in bold and deleted text is denoted via strikethrough.

Sec. 6-100. USE GROUPS FOR BUSINESS ZONES.

USE GROUP 1 (9/28/2010)

...

~~For Restaurant uses approved by the Greenwich Planning and Zoning Department, to operate temporary outdoor dining for the 2022 outdoor dining season, pursuant to CT HB 5271, AN ACT CONCERNING THE PROVISION OF OUTDOOR FOOD AND BEVERAGE SERVICES AND OUTDOOR DISPLAYS OF GOODS, to commence on April 1, 2022 and end on the Sunday prior to Thanksgiving, November 20, 2022~~

Outdoor dining facilities, ancillary and contiguous to an eating establishment (restaurant, or retail food establishment), operating on a seasonal (seven month) basis starting on April 1st and concluding on **November 1st20th** in any calendar year subject to the following: (11/25/2008, 3/25/2014)

(1) In the case of small-scale projects (3 tables **with fewer than 12 total seats**) ~~or less~~, on private property) site plan approval by the Planning and Zoning Commission will not be necessary. **An administrative application shall be submitted to the Planning and Zoning Office for review by the** Town Planner ~~shall review and approve said projects,~~ ~~after~~ Assurance that the conditions of this subsection have been met and any requisite insurance **must be** provided as mandated by the Town. (4/9/2014)

(2) Any **other** applicant seeking approval of an outdoor dining area shall submit a site plan application to the Planning and Zoning Commission. After the initial

approval by the Commission, annual administrative approvals are required from the Planning and Zoning Department. ~~Restaurants found to be in violation within a given outdoor dining season are subject to revocation of their approval and may need to return to the Commission for re-approval.~~ Any restaurant found to be in violation within a given outdoor dining season is subject to immediate closure and shall be ineligible to reapply for such approval during the following outdoor dining season. All outdoor dining applications are subject to the following requirements:

(7)

- A. The total number of indoor and outdoor seats shall not exceed the total number of seats approved for the site. For example, if a restaurant is limited to 100 seats, the total number of indoor and outdoor seats shall not exceed 100 seats.
- B. Outdoor dining areas shall be capable of accommodating disabled patrons **in accordance with all applicable laws.**
- ~~C. Proof of the availability of adequate parking shall be submitted at the time of application for final site plan approval guaranteeing said availability for the period the use is to function.~~
- C. **Outdoor dining areas shall** not interfere with public, state or municipal use of any public street, sidewalk or property, **will shall** not create a disturbance or hazard to pedestrians or traffic and **will shall** not interfere with the safe and free flow of pedestrians or traffic. (7/24/83)
- D. Dining facilities use **on private property** must be entirely on **contiguous land property** owned or leased by the applicant. Public property may not be used for dining facilities purposes unless ~~a properly executed lease agreement has been obtained~~ proof of adequate liability insurance has been provided.
 - a. Outdoor dining areas located on Town sidewalk(s) will be required to carry additional liability insurance and/or policies in such an amount as determined by the Town's Risk Management Office. Proof of liability insurance shall be disclosed on an Acord form entitled, "Certificate of Liability Insurance", and be in the amount as required by the Town's Risk Management Office. The Town of Greenwich shall be named as an additional insured. **Restaurants operating on the site must also comply with the CT Worker's Compensation Statutes.**
 - b. If alcohol is being served, the Certificate of Liability Insurance certificate must disclose that liquor liability insurance is in place for the same amounts of the required general and umbrella liability policies and the applicant will be required to carry further liability insurance and/or policies.

e. The owner/operator shall sign an agreement indemnifying the Town from liability on adjacent Town property resulting from the operation of said use prior to **any approvals for a given outdoor dining season.** ~~the issuance of Building and Zoning permits. (4/9/2014)~~

- E. Pass-through or take-out windows are prohibited except that walk-up take-out windows may be permitted at seasonal snack-bar type restaurants, which are provided as an accessory use within recreational facilities such as public parks, school sports stadiums or golf courses, provided that such take-out windows shall be located and operated in a manner which ensures that they are an amenity to patrons of the facility and not a **food service** destination in their own right. Any door used to deliver food from the restaurant to an ~~accessory~~ outdoor dining area shall be self-closing, unless an alternative mechanism is approved by the Town of Greenwich Health Department.**
- F. Public address systems or other systems intended to convey verbal messages through the use of amplified sound shall be prohibited. If an applicant proposes to provide any form of music for the benefit of patrons, it shall be stated in the application and shall include specific details regarding the manner in which music is to be provided. The Planning and Zoning Commission may impose any restrictions upon the playing of music it deems to be appropriate given the location of the proposed outdoor dining area or any other circumstances that the Commission deems to be relevant.**
- G. Patrons must be seated at tables. Bar service in outdoor areas, whether patrons are standing or seated at stools, is not permitted. The service of alcoholic beverages must be at an approved table and be adjunct to the service of food.**
- H. Lighting shall be limited to ~~that level which is the minimum level~~ necessary to illuminate the outdoor dining area for patrons and staff **and LEDs should be prohibited for this purpose.** Flashing/blinking lights shall be prohibited.**
- I. ~~During the season when the outdoor dining area is in operation~~ During the **outdoor dining season, the outdoor dining area,** shall be kept clear of litter, food scraps or soiled dishes and utensils at all times. The entire floor/sidewalk surface in and around the outdoor dining area shall be swept as necessary, but not less frequently than daily, and cleaned to remove greases, oils and stains by steam cleaning or a similar process on a monthly basis. Spilled materials shall be cleaned **promptly-immediately.** Sweeping debris or spilled materials into the gutters of public streets shall be prohibited. ~~This requirement~~ **The cleaning requirements in this section** shall also apply to any areas beyond the outdoor dining area that are traversed by restaurant staff and/or patrons.**

- J.** Umbrellas may be used to shade tables, provided that the drip edge thereof is located at least seven feet above the ground and further provided that they shall not be used to advertise the restaurant or any other product or service. Tables, chairs and umbrellas shall be of durable commercial-grade materials, sufficiently weighted to avoid displacement by wind.
 - K.** The design of the outdoor dining area, including its furniture, should complement the design of the restaurant with which it is associated and contribute to the attractiveness of the streetscape. Diversity in the design of the furniture and outdoor dining areas is encouraged, provided that they complement the overall streetscape. The Commission may choose to seek input from either the Historic District Commission or the Architectural Review Committee, both of whom are advisory to the Commission in this capacity.
 - L.** Tents over outdoor dining areas are prohibited.
 - M.** When the seasonal use ceases at the end of the approved period, all evidence of such use shall be removed from the premises.
- (3) Any application for outdoor dining shall include at least the following:**
- a.** Proof of approval and number of seats for the use of the eating establishment.
 - b.** Written approval of the proposed plan from the Health Department, Fire Marshall's Office, and Proof of liability insurance and the CT Worker's Compensation Statutes acceptable to the Town Risk Manager if applicable.
 - c.** A plan drawn to scale demonstrating the total number and arrangement of the tables and chairs. All outdoor dining areas must be handicap accessible and show that a minimum 6-foot public walkway will be provided and maintained pursuant to Americans with Disabilities Act and CT State Building Code as referenced in Public Act 22-1. If different furniture is used for the outside dining, it shall be shown which indoor seats will be removed and noted whether they will be stored on or off site.
 - d.** The plan shall also show the specifications of the dining area (e.g., fencing, planters, or barricades), any trash receptacles, bussing stations, lighting, heaters, and signage.
- ~~(3) If said use is to be re-established the applicant must reapply, annually, and again meet all conditions and standards of this subsection.~~
- ~~(4) Building and Zoning permits must be obtained prior to the start of dining facilities use regardless of the amount of construction involved. (11/17/97, 4/9/2014)~~

APPLICATION SUMMARY:

The outdoor dining regulations were revised over the last two years to create a way for people to stay outdoors and with appropriate social distance between them while we were in the middle of a public health crisis (Covid pandemic). The Board of Selectman created outdoor space in parking spaces on Greenwich Avenue and the Planning and Zoning Commission, in coordination with the State government, adjusted the dining regulations to allow seating in those areas.

A survey (see attached) was conducted over the summer of 2022, and by most accounts, outdoor dining is a welcome part of the Greenwich business landscape. However, there were also many complaints about significant increase in rats and cockroaches, loud music that has drowned out fire alarms, ADA concerns, and safety on Greenwich Avenue due to the increase of traffic, both vehicular and pedestrian. Further, a parking study was also done before and during the 2022 outdoor dining season, which shows that the parking is saturated in the downtown.

The public health crisis has subsided, and therefore staff is proposing to revert to the pre-pandemic seating allowances for outdoor dining. The section was also updated to provide clarifying language and greater emphasis on handicap accessibility. It is likely that the Board of Selectman will vote to continue the use of parking spaces for outdoor dining.

DETAILS OF PROPOSAL:

- 1) It is proposed to extend the outdoor dining season from April 1 to November 20. Tents are prohibited, but heaters are permitted if they are shown on the plan and electric permits are issued by the Building Department.
- 2) The process for initial approval followed by the required annual renewal has been clarified.
- 3) The total number of indoor and outdoor seats shall not exceed the total number of seats approved for the site. For example, if a restaurant is limited to 100 seats, the total number of indoor and outdoor seats shall not exceed 100 seats.
- 4) Greater attention to ADA requirements needs to be in the plan submitted for approval.
- 5) Dining facilities must be entirely on property owned or leased by the applicant. Public property may not be used for dining facilities purposes unless proof of adequate liability insurance has been provided.
 - a. **When using the zoning regulations for outdoor dining, the Commission has historically only allowed dining on property owned by the applicant or on Town property once suitable insurance is in place. During the last few years, property owners were allowed to use considerably more land than that**

including parking lots, rights-of-way, easement areas and the like. The intent as to where dining would be permitted may need to be strengthened.

- 6) Lighting shall be limited to that level which is necessary to illuminate the outdoor dining area for patrons and staff. Flashing/blinking lights shall be prohibited.
- 7) Umbrellas may be used to shade tables.
- 8) The design of the outdoor dining area, including its furniture, should complement the design of the restaurant with which it is associated and contribute to the attractiveness of the streetscape

How many additional seats under HB5271 versus zoning approvals for restaurants throughout the Town?

	Zoning/ Pre-COVID			House Bill #5271			Total increase
	Indoor	Outdoor	Combined	Indoor	Outdoor	Combined	
Totals Seats:	2679	749	3331	2764	1441	4205	874
Parking Requirement:	893	250	1110	921	480	1402	291

How many additional seats under HB5271 versus zoning approvals for restaurants in the Downtown?

	Zoning/ Pre-COVID			House Bill #5271			Outdoor Only
	Indoor	Outdoor	Combined	Indoor	Outdoor	Combined	
Totals Seats:	795	147	845	1018	712	1730	930
Parking Requirement:	265	49	282	339	237	577	310

DRAFT PARKING STUDY

The attached maps are all DRAFT and are subject to change slightly, but they demonstrate the point, which is that the parking is over 90% occupied in the downtown parking areas in the evening hours. The maps are part of a draft downtown parking analysis run by DPW.

In total, there are approximately 2,013 public parking spaces available within the study area, of which some 576 spaces are permit-restricted at some point during the week. There are estimated to be 1,200 parking spaces within private parking lots. These spaces are assumed to generally absorb office worker, tenant, and residential parking, as well as parking for customers of specific businesses along Greenwich Avenue.

The on-street parking (by block) and off-street parking occupancy were collected throughout the spring and summer. Three rounds of counts were collected: in March/April, July, and September/October.

During each count, data was collected on both a weekday and a Saturday to develop a full parking profile of downtown Greenwich. Parking data was collected from 9:00 a.m. to 9:00 p.m. at all public parking facilities within the study area.

The first set of counts was conducted on Tuesday, March 22, 2022 and Saturday, April 2, 2022. During this time, school was still in session, but outdoor dining, which allows restaurants to occupy up to four on-street parking spaces each, was not yet in place along Greenwich Avenue. The second set of counts was conducted on Tuesday, July 19, 2022 and Saturday, July 23, 2022.

Notably, outdoor dining was in place along Greenwich Avenue, occupying segments of the on-street public parking. The Town provided a list detailing the number of parking spaces occupied by the outdoor dining. Based on that list, there were 62 parking spaces within the study area reserved for outdoor dining. During the counts, however, 47 and 56 spaces were blocked for restaurants during the weekday and Saturday, respectively, slightly below the Town's estimate. The analysis is based on the number of restaurant spaces counted in the field, rather than the Town's provided estimate.

The final set of counts was conducted on Wednesday, September 28, 2022 and Saturday, October 8, 2022. At the time of these counts, outdoor dining was still in place along Greenwich Avenue and school was back in session. As in the July counts, turnover data was collected on the weekday from 9:00 a.m. to 5:00 p.m. and on Saturday from 9:00 a.m. to 12:00 p.m. for the on-street parking and regular occupancy counts were conducted at two-hour intervals for the remainder of the count periods (until 9:00 p.m.) for both days. The off-street parking was counted as it had been in March and July, with occupancy counts being conducted every two hours from 9:00 a.m. to 9:00 p.m.

PROPOSED TEXT AMENDMENT LANGUAGE:

Proposed text is in bold and deleted text is denoted via strikethrough.

Sec. 6-100. USE GROUPS FOR BUSINESS ZONES.

USE GROUP 1 (9/28/2010)

...

~~For Restaurant uses approved by the Greenwich Planning and Zoning Department, to operate temporary outdoor dining for the 2022 outdoor dining season, pursuant to CT HB 5271, AN ACT CONCERNING THE PROVISION OF OUTDOOR FOOD AND BEVERAGE SERVICES AND OUTDOOR DISPLAYS OF GOODS, to commence on April 1, 2022 and end on the Sunday prior to Thanksgiving, November 20, 2022~~

Outdoor dining facilities, ancillary and contiguous to an eating establishment (restaurant, or retail food establishment), operating on a seasonal (seven month) basis starting on April 1st and concluding on **November 1st20th** in any calendar year subject to the following: (11/25/2008, 3/25/2014)

(1) In the case of small-scale projects (3 tables **with less than 12 total seats** ~~or less~~, on private property) site plan approval by the Planning and Zoning Commission will not be necessary. **An administrative application shall be submitted to the Planning and Zoning Office for review by the** Town Planner ~~shall review and approve said projects,~~ ~~after~~ Assurance that the conditions of this subsection have been met and any requisite insurance **must be** provided as mandated by the Town. (4/9/2014)

(2) **Any applicant seeking approval of an outdoor dining area shall submit a site plan application to the Plan and Zoning Commission. After the initial approval by the Commission, annual administrative approvals are required from the Planning and Zoning Department. Restaurants found to be in violation within a given outdoor dining season are subject to revocation of their approval and may need to return to the Commission for re-approval. All outdoor dining applications are subject to the following requirements:**

(7)

D. The total number of indoor and outdoor seats shall not exceed the total number of seats approved for the site. For example, if a restaurant is limited to 100 seats, the total number of indoor and outdoor seats shall not exceed 100 seats.

E. Outdoor dining areas shall be capable of accommodating disabled patrons.

~~F. Proof of the availability of adequate parking shall be submitted at the time of application for final site plan approval guaranteeing said availability for the period the use is to function.~~

G. With Outdoor dining areas shall not interfere with public, state or municipal use of any public street, sidewalk or property, will not create a disturbance or hazard to pedestrians or traffic and will not interfere with the safe and free flow of pedestrians or traffic. (7/24/83)

H. Dining facilities use must be entirely on property owned or leased by the applicant. Public property may not be used for dining facilities purposes unless a properly executed lease agreement has been obtained ~~proof of adequate liability insurance has been provided.~~

a. Outdoor dining areas located on Town sidewalk(s) will be required to carry additional liability insurance and/or policies in such an amount as determined by the Town's Risk Management Office. Proof of liability

insurance shall be disclosed on an Acord form entitled, "Certificate of Liability Insurance", and be in the amount as required by the Town's Risk Management Office. The Town of Greenwich shall be named as an additional insured. **Site must also comply with the CT Worker's Compensation Statutes.**

- b. If alcohol is being served, the Certificate of Liability Insurance certificate must disclose that liquor liability insurance is in place for the same amounts of the required general and umbrella liability policies and the applicant will be required to carry further liability insurance and/or policies.
- e. The owner/operator shall sign an agreement indemnifying the Town from liability on adjacent Town property resulting from the operation of said use prior to **any approvals for a given outdoor dining season.** ~~the issuance of Building and Zoning permits. (4/9/2014)~~

- I. Pass-through or take-out windows are prohibited except that walk-up take-out windows may be permitted at seasonal snack-bar type restaurants which are provided as an accessory use within recreational facilities such as public parks, school sports stadiums or golf courses, provided that such take-out windows shall be located and operated in a manner which ensures that they are an amenity to patrons of the facility and not a destination in their own right. Any door used to deliver food from the restaurant to an accessory outdoor dining area shall be self-closing, unless an alternative mechanism is approved by the Town of Greenwich Health Department.**
- J. Public address systems or other systems intended to convey verbal messages through the use of amplified sound shall be prohibited. If an applicant proposes to provide any form of music for the benefit of patrons, it shall be stated in the application and shall include specific details regarding the manner in which music is to be provided. The Plan and Zoning Commission may impose any restrictions upon the playing of music it deems to be appropriate given the location of the proposed outdoor dining area or any other circumstances that the Commission deems to be relevant.**
- K. Patrons must be seated at tables. Bar service in outdoor areas, whether patrons are standing or seated at stools, is not permitted. The service of alcoholic beverages must be at an approved table and be adjunct to the service of food.**
- L. Lighting shall be limited to that level which is necessary to illuminate the outdoor dining area for patrons and staff. Flashing/blinking lights shall be prohibited.**

- M. During the season when the outdoor dining area is in operation, it shall be kept clear of litter, food scraps or soiled dishes and utensils at all times. The entire floor/sidewalk surface in and around the outdoor dining area shall be swept as necessary, but not less frequently than daily, and cleaned to remove greases, oils and stains by steam cleaning or a similar process on a monthly basis. Spilled materials shall be cleaned promptly. Sweeping debris or spilled materials into the gutters of public streets shall be prohibited. This requirement shall also apply to any areas beyond the outdoor dining area which are traversed by restaurant staff and/or patrons.**
- N. Umbrellas may be used to shade tables, provided that the drip edge thereof is located at least seven feet above the ground and further provided that they shall not be used to advertise the restaurant or any other product or service. Tables, chairs and umbrellas shall be of durable commercial-grade materials, sufficiently weighted to avoid displacement by wind.**
- O. The design of the outdoor dining area, including its furniture, should complement the design of the restaurant with which it is associated and contribute to the attractiveness of the streetscape. Diversity in the design of the furniture and outdoor dining areas is encouraged, provided that they complement the overall streetscape. The Commission may choose to seek input from either the Historic District Commission or the Architectural Review Committee, both of whom are advisory to the Commission in this capacity.**
- P. Tents over outdoor dining areas are prohibited.**
- Q. When the seasonal use ceases at the end of the approved period, all evidence of such use shall be removed from the premises.**
- (5) Any application for outdoor dining shall include at least the following:**

 - a. Proof of approval and number of seats for the use of the eating establishment.**
 - b. Written approval of the proposed plan from the Health Department, Fire Marshall's Office, and Proof of liability insurance and the CT Worker's Compensation Statutes acceptable to the Town Risk Manager if applicable.**
 - c. A plan drawn to scale demonstrating the total number and arrangement of the tables and chairs. All outdoor dining areas must be handicap accessible and show that a minimum 4-foot public walkway will be provided and maintained pursuant to Americans with Disabilities Act and CT State Building Code as referenced in Public Act 22-1. If different furniture is used for the outside dining, it shall be shown which indoor seats will be removed and noted whether they will be stored on or off site.**

d. The plan shall also show the specifications of the dining area (e.g., fencing, planters, or barricades), any trash receptacles, bussing stations, lighting, heaters, and signage.

~~(6) If said use is to be re-established the applicant must reapply, annually, and again meet all conditions and standards of this subsection.~~

~~(7) Building and Zoning permits must be obtained prior to the start of dining facilities use regardless of the amount of construction involved. (11/17/97, 4/9/2014)~~

HISTORY:

- 1) State legislation has temporarily regulated “Outdoor Activities” for the past two years by expanding opportunities for business to be conducted outside as a mechanism to mitigate the spread of COVID-19.
- 2) Outdoor Activities authorized Food Establishments to provide outdoor dining, and Outdoor Activities enabled non-food Establishments to offer outdoor storage and display of merchandise.
- 3) Health Code requirements related to Outdoor Activities were increased, and local zoning requirements were all but temporarily removed. A series of phases, rules, and guidelines were established by the State of CT defining how Food Establishments could re-open while protecting the public health and providing for an economic recovery.
- 4) Governor Lamont on May 12, 2020, initially issued Executive Order #7MM, “Protection of Public Health and Safety During COVID-19 Pandemic and Response.
- 5) The State Legislature on March 31, 2021, adopted Special Act 21-3, An Act Concerning the Outdoor Sale of Goods and Provision of Food and Beverage Service, that became effective immediately, and expired on March 31, 2022.
- 6) Special Act 21-3 replaced EO #7MM and authorized the “Outdoor Activities” previously approved under EO #7MM to continue. The State Legislature on June 21, 2021, adopted Public Act 21-2, An Act Concerning Provisions Related to Revenue and Other Items to Implement the State Budget for the Biennium Ending June 30, 2023. This 790-page document has varying effective dates. Section 182, related to outdoor dining, was effective through April 1, 2022.
- 7) HB5271 effectively extends Special Act No. 21-2 to April 2023
- 8) Through application PLPZ 2022 0094 (May of 2022) the Commission revised the zoning regulations is to allow outdoor dining in conformance with HB5271, through April 30, 2023, as opposed to local zoning regulations. The bill allowed for the continuation of the outdoor dining like we have seen over the last two years since the start of the pandemic.