



OFFICE OF THE CITY MANAGER

CITY OF BANGOR

CATHERINE M. CONLOW
CITY MANAGER

ER #9

**EMERGENCY REGULATION:
OUTDOOR VENDING, SEATING, AND RESTAURANT SERVICE
(revised May 27, 2020)**

WHEREAS, there is an ongoing pandemic caused by the 2019 novel coronavirus (“COVID-19”);

WHEREAS, the State of Maine, began placing restrictions on businesses located within the State on March 18, 2020;

WHEREAS, those restrictions of the State of Maine came, at least partly, in the form of the Governor’s Executive Orders 14 FY 19/20, 19 FY 19/20, 28 FY 19/20, 34 FY 19/20, 49 FY 19/20;

WHEREAS, the State of Maine has initiated a four-stage “reopening plan” that began May 1, 2020 and has established an “Economic Recovery Committee”;

WHEREAS, the purpose of the State of Maine’s reopening plan is to allow for business to resume operations in the safest way and order possible;

WHEREAS, the City of Bangor wishes to aid its citizens and businesses in allowing for the safe reopening of businesses as governed by the State of Maine’s reopening plans;

WHEREAS, the City of Bangor desires any such reopening to be done in the safest manner possible;

WHEREAS, the risk to consumers from COVID-19 may be reduced by temporarily allowing for outdoor vending by retailers and outdoor seating and service at restaurants and breweries;

I, Catherine M. Conlow, City Manager of the City of Bangor, pursuant to the City's Proclamation Declaring State of Emergency of March 16, 2020 and Section 28-79 of the Bangor City Code, regulate as follows, effective as of May 27, 2020 at 5:00 P.M.:

- A. Permit required. No retailer, restaurant, or brewery may sell or display goods, serve customers, or otherwise operate in any fashion outside of the bounds of a building or grounds for which they have been granted a certificate of occupancy unless they have been awarded a permit to do so under this Emergency Regulation or an existing City ordinance or order.
- B. Permit Title. A permit granted under this Regulation may be referred to as an Outdoor Area Permit.

C. Fees.

- (1) There shall be no fee for an application made pursuant to this Regulation.
- (2) Additionally, all fees for applications made pursuant to City Council Order 15-035 are waived for the period of the City of Bangor's State of Emergency.

D. Application process.

- (1) An application form for an Outdoor Area Permit may be obtained from, and shall be submitted to, the City's Code Enforcement Office. The format of the application submitted shall be as set by the Code Enforcement Officer or his designee.
- (2) For an application to be considered, it must be submitted with a Site Plan that is:
 - (a) sufficient in detail to assess all potential health and safety risks associated with the proposed outdoor area, and
 - (b) is approved as to detail by the Code Enforcement Officer or his designee.

E. Code Enforcement Officer action on application.

- (1) Upon receipt of a complete application, the Code Enforcement Officer shall forward the application to such other City departments and perform any inspections that he deems appropriate in order to determine whether an Outdoor Area Permit may be granted consistently with the criteria set forth in Section F below.
- (2) If the Code Enforcement Officer finds that the applicant meets the requirements of Section F of this Regulation, the Code Enforcement Officer or his designee shall issue an Outdoor Area Permit. If the Code Enforcement Officer finds that the applicant does not meet or has not demonstrated that it meets the criteria required under Section F of this Regulation, the Code Enforcement Officer or his designee shall deny the application and notify the applicant of such denial and the reasons for the denial.

F. Criteria. To be granted an Outdoor Area Permit, the applicant must demonstrate that it meets the following criteria:

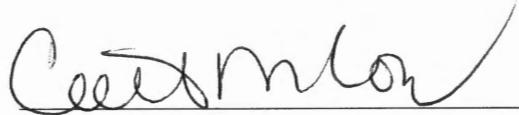
- (1) The Applicant is a retailer, restaurant, or brewery or is an authorized agent of said retailer, restaurant, or brewery,
- (2) The Applicant is in compliance with all federal, state, and local laws and regulations, and the Applicant is authorized to open and do business under the State of Maine's four-stage reopening plan,
- (3) The Applicant is in compliance with the State of Maine's COVID-19 Prevention Checklist specific for its industry, or in the event that there is no specific checklist, the "COVID19 Prevention Checklist General Guidance," and the Applicant will remain so in compliance after any Outdoor Area Permit is issued,

- (4) The proposed outdoor area would create no unreasonable health or safety risks to customers or the public at-large. For example, such unreasonable health or safety risks could potentially be created by interfering with vehicular traffic, limiting sidewalks to non-ADA complaint measurements, causing queuing lines to enter public or private rights-of-way, or not providing barriers or other separation between seating or shopping areas and areas open to vehicular traffic.
 - (5) The Applicant owns, leases, or otherwise has written permission to use any private land within the proposed outdoor area,
 - (6) The elimination of any parking spots within the proposed outdoor area will not reduce the number of parking spots to an unreasonable or unsafe level and any business served by a reduced off-street parking area agrees to the reduction,
 - (7) If the proposed outdoor area includes any public or City Owned land, the standards contained in Section G are met,
 - (8) The Applicant acknowledges that the Outdoor Area Permit is a temporary permit that may expire at any point and will expire, at the latest, when the City of Bangor's State of Emergency expires,
 - (9) The proposed outdoor area must be at a distance reasonably serviceable on foot by employees from the restaurant, brewery, or retailer's primary facility. In determining whether a distance is reasonable under this Section F, paragraph 9, due regard and consideration is to be given to the area immediately surrounding the restaurant, brewery, or retailer's primary facility and the availability of other potential outdoor permit areas.
 - (10) For a restaurant or brewery intending to serve or in fact serving alcohol in the proposed outdoor area, the Applicant must:
 - (a) extend any liquor or victualer's license to the proposed outdoor area,
 - (b) maintain control, containment, and supervision of the proposed outdoor area,
 - (c) maintain a constant employee presence in the proposed outdoor area, and
 - (d) meet all of the applicable provisions of Sections 1051 through 1080 of Title 28-A of the Maine Revised Statutes, including, but not limited to, Sections 1051(3) ("Liquor not to be consumed elsewhere"), and 1051(9) ("Use of noncontiguous real estate").
- G. Additional requirements for public or City land. In addition to the requirements contained in Section F above, an Outdoor Area Permit for which the proposed outdoor area contains public or City land may only be granted if:
- (1) The City Manager or her designee, in consultation with the City Engineer, Code Enforcement Officer, and Director of Economic and Community Development, determines that the proposed outdoor area is appropriate for use by local restaurants, breweries, or retailers,

- (2) The benefitted retailer, restaurant, or brewery agrees to establish and maintain the proposed outdoor area such that the area is safe for the proposed use,
 - (3) The benefitted retailer, restaurant, or brewery agrees not to make and will not make any material changes to the proposed outdoor area without the prior consent of the City,
 - (4) The benefitted retailer, restaurant, or brewery agrees not to erect and will not erect any permanent structure on the proposed outdoor area without the prior consent of the City,
 - (5) Except for any changes made to public or City land pursuant to Section G, paragraphs 3 and 4, immediately above, the benefitted retailer, restaurant, or brewery agrees to and will return to the public or City land to the conditions that it was in prior to the granting of the Outdoor Area Permit,
 - (6) The benefiting retailer, restaurant, or brewery, in a form agreeable to the City's Legal Department, agrees to indemnify the City of Bangor for any harm or injury caused by its use of said public or City owned land,
 - (7) The benefiting retailer, restaurant, or brewery maintains liability insurance in amounts and types agreeable to the City Legal Department, and the retailer, restaurant, or brewery names the City of Bangor as an additional insured on those insurance policies, and
 - (8) In addition to the requirements of Section F, Paragraph 10, a restaurant or brewery intending to serve alcohol in the proposed area must meet paragraphs 3, and 5 through 8 of the "City of Bangor Outdoor Seating Permit – Alcohol Service," which was last revised on January 29, 2020, and shall be subject to the enforcement provisions in paragraph 9 of the same,
- H. Term. All Pandemic Response Outdoor Permits shall expire, automatically, at the end of the City's declared state of emergency or at any earlier time deemed appropriate by the City Manager.
- I. Suspension and revocation. The Code Enforcement Officer may revoke any permit issued under this Emergency Regulation if the benefitted restaurant, brewery, or retailer ceases or otherwise fails to comply with the requirements of Section F, or, if applicable, Section G.
- J. Appeals. Appeals from decisions made pursuant to this Sections E or I may be made to the Board of Appeals upon the terms and conditions specified in Chapter 23 of the City Code of Ordinances, but any such appeals will be rendered moot by the lapsing or revocation of this Regulation.
- K. Conflict of Code Provisions. This Emergency Regulation and the provisions herein take precedence over Section 165-41, Sections 165-87 through 165-108.2, Sections 165-62 through 165-70.3, Sections 165-71 through 165-75, and Sections 165-109 through 165-116, any other requirement for a certificate of occupancy for said proposed outdoor area, any other requirement, except those required state law, for yard space or setbacks, and any sign requirement except those applicable to Section G, Paragraph 8 above.

- L. Prohibitions and exceptions. Except for sales of alcohol at a restaurant or brewery pursuant to this Emergency Regulation, no display, sale, or storage of any alcohol, tobacco, marijuana, other intoxicating substance, or lewd devices or material(s) may be done or performed on an outdoor area pursuant to an Outdoor Area Permit.
- M. Intent. It is the intent of this Section to allow for outdoor retail sales, brewery, and restaurant operations in a safe and conscientious manner to help local businesses and reduce the risks of spreading COVID-19.

May 27, 2020



Catherine M. Conlow
City Manager