



## Department of Community Affairs

### Division of Fire Safety

### Fire Code Enforcement



**TO:** LEA Fire Officials  
**FROM:** Louis Kilmer, Chief, Bureau of Fire Code Enforcement  
**DATE:** June 15, 2020  
**SUBJECT:** Outside Dining

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On June 3, 2020, Governor Murphy signed Executive Order No. 150 (EO 150) permitting restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, bars, and all other holders of a liquor license with retail consumption privileges, collectively referred to as “food or beverage establishments” to offer in-person service at outdoor areas effective 6:00 a.m. June 15, 2020. Establishments must ensure that all areas designated for food and/or beverage consumption are in conformance with applicable local, State, and Federal regulations.

The Uniform Fire Code is one of the applicable regulations that establishments must follow. Compliance with the Fire Code is essential in order to provide for a safe environment for individuals patronizing the establishments, occupants of adjoining buildings and first responders. Site plans, including property location, occupant capacity, activities and layout will vary from establishment to establishment. Listed below are guidelines to assist local fire officials in ensuring uniform and consistent enforcement of the Fire Code. This is not an all-inclusive list. Common items of concern are listed. Specific situations may necessitate additional restrictions to ensure public safety.

- **Fire Department Access** – Access for fire department vehicles must be maintained. This includes street and parking lot access. Fire Department apparatus including aerial apparatus must be able to reach surrounding buildings. Barriers blocking streets and lots must be easily movable so apparatus may enter. Tents are not permitted to be set up in designated fire lanes.
- **Fire Hydrant and Fire Department Connection Access** – Access to fire hydrants and fire department connections must always be maintained.
- **Tent Permits** – A Type 1 permit is required to be issued for all tents, tensioned membrane structures, and canopies greater than 900 square feet or more than 30 feet in any dimension whether it is one unit or composed of multiple units, but 16,800 square feet or less in area and 140 feet or less in any dimension, whether it is one unit or composed of multiple units. Tents exceeding this size require the issuance of a Uniform Construction Code permit.

**Memorandum – Outside Dining**  
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- **Flame Propagation Performance Treatment** – Before a permit is granted, the owner or agent shall file with the fire code official a certificate executed by an approved testing laboratory certifying that the tents and their appurtenances are composed of material meeting the flame propagation performance criteria of Test Method 1 or Test Method 2, as appropriate, of NFPA 701 or shall be treated with a flame retardant in an approved manner.
- **Tent Requirements** – Requirements found in Chapter 31 of the International Fire Code 2015, New Jersey Edition must be met. Included, but not limited to are requirements for fire department access, tent location, means of egress, exit openings from tents, exit signs, means of egress illumination, emergency means of egress illumination and portable fire extinguishers. Smoking and open flame are not permitted in tents.
- **Smoking**- EO 150 prohibits smoking in any outdoor areas designated for the consumption of food and/or beverages. Approved “No Smoking” signs shall be posted through-out.
- **Access to Buildings** – If access is provided to the inside of existing food or beverage establishments for bathroom facilities or ingress or egress to outside dining areas, it is imperative that all exits from the building remain unlocked and means of egress is available.
- **Electrical** – The use of temporary wiring should be limited to what is absolutely necessary. Extension cords need to be rated for outdoor use and must be powered by a GFI protected outlet. Any permanent wiring installed requires a Uniform Construction Code permit.
- **Outdoor Cooking** – A Type 1 permit is required to be issued for all outdoor cooking operations involving an open flame. If food is not being brought out from the restaurant’s kitchen and cooking is done outside, it must be done in the open or in a separate cooking tent. Appropriate fire protection equipment must be provided for cooking operations. Installation of cooking equipment must be inspected to ensure safe operation. LP gas cylinders must be inspected to ensure cylinders are located and positioned properly.
- **Fenced in Areas** – Areas utilized for outside dining that are fenced in must have sufficient exits from the fenced area based on capacity. Width, capacity, quantity of exits and travel distance of exits must be checked. Fenced areas cannot block existing building exits or exits of neighboring buildings. Exit access to a public way must always be maintained. Egress lighting must be sufficient.

Type 1 permits carry the fee of \$54.00 unless modified by local ordinance. Locations establishing outside dining areas are currently registered as life hazard uses and paying a life hazard use registration fee for their establishment. Due to the public health emergency these businesses have been unable to offer inside dining but have still been required to maintain their life hazard use registration. Considering this, it is the position of the Division of Fire Safety that these businesses not be subject to additional permit fees when moving their operation outside. As permits are charged by the local enforcing agency the ultimate decision on whether to charge a permit fee is up to the local enforcing agency. Regardless of whether a fee is charged, a permit must be issued for activities requiring one.

The issues surrounding the COVID-19 pandemic have created unique challenges. At the same time, it has created opportunities for all of us to work together and come out of this stronger and more resilient. Business owners and customers alike look forward to being able to go out and enjoy a meal together dining outside. I encourage all local fire officials to work together with business owners to ensure that public safety is maintained, and the business community can open as quickly as possible. If you have any questions, please feel free to contact me at [louis.kilmer@dca.nj.gov](mailto:louis.kilmer@dca.nj.gov). Thank you for your continued support and commitment to fire safety.