

City of Cleveland Heights

The information in this document is current as of **April 1, 2009**.

Introduction

The City of Cleveland Heights recognizes the importance of outdoor dining to the prosperity and vitality of its commercial districts. The purposes of our outdoor-dining regulations are to allow for and to support this desirable activity and to control potentially negative side effects.

If you would like to open an outdoor dining facility in the City of Cleveland Heights, regardless of how small or large and regardless of whether the facility will be visible from the street, please read through this document. If you have any questions, contact the Planning and Development Department at 216-291-4878 or planning@clvhts.com.

Permit requirements

Because multiple approvals may be needed for an outdoor dining facility, the permitting process may seem onerous. Planning and Development Department staff will work with you to advise you in regard to your particular circumstances and to guide you through the process.

The permits that are or may be required for outdoor dining facilities are:

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| 1. | Conditional use permit- | required for ALL outdoor dining facilities (see page 2) |
| 2. | Use-of-public-property agreement- | required for outdoor dining facilities that will be partly or wholly in the public right-of-way or on other public property (see page 2) |
| 3. | Fence permit- | required for all fences, except temporary stanchions with ropes or similar temporary arrangements (see page 2, and please note that stone or masonry walls require a building permit, issued through the Building Department, rather than a fence permit) |
| 4. | Architectural Board of Review approval- | may be required for outdoor dining facilities with fences or certain structural elements (see page 2) |
| 5. | Building permits- | required for any structural, plumbing, electrical, or paving changes that are necessary for your outdoor dining facility (for more information, contact the Building Department at 216-291-4900) |
| 6. | Ohio Division of Liquor Control approval- | required for outdoor dining facilities that will serve alcohol on the public sidewalk or elsewhere in the public right-of-way (see page 3) |

1. **Conditional use permits are required for ALL outdoor dining facilities.**

All outdoor dining facilities in the City of Cleveland Heights require a conditional use permit. This is because outdoor dining is a land use that "may be conditionally permitted" in certain zoning districts, rather than a land use that is "permitted by right" in those districts.

A conditional use permit may be granted administratively for outdoor dining facilities with 25 or fewer seats. Outdoor dining facilities with more than 25 seats require approval by the Planning Commission. The application form (see page 5) and accompanying materials (see page 3) required to obtain a conditional use permit are almost the same regardless of the number of seats. An application fee of **\$50.00** applies to outdoor dining facilities up to 25 seats and will not require Planning Commission approval.

Applications for conditional use permits are accepted at any time, but to avoid unnecessary delays, you should be aware of the Planning Commission's meeting schedule. Generally, the Planning Commission meets on the second Wednesday of each month, and applications are due on the second Wednesday of the preceding month. For a detailed schedule of this year's Planning Commission meetings and application deadlines, see page 5. See also "Submitting an application for approval of an outdoor dining facility," on page 3.

2. **Use-of-public-property agreements are required for some outdoor dining facilities.**

A use-of-public-property agreement is required for any outdoor dining facility that will operate wholly or partially in the public right-of-way (such as on a public sidewalk) or on other City property. A separate application is not required, but you must submit, along with your conditional use permit application, proof of liability insurance in the amount of at least one million dollars, covering the area of your facility that is on public property and naming the City of Cleveland Heights as additional insured. This "certificate of liability insurance" is easily obtainable from your insurance company.

It is important that your site plan show clearly what portions of your proposed outdoor dining facility will be on public property. Please keep in mind that, upon review of a proposal by City staff and the City Council, use of public property for an outdoor dining facility may or may not be permitted.

3. **Fence permits are required for most fences.**

A fence permit is required for any fence constructed as part of your outdoor dining facility. This requirement applies to fences that are in place only during the outdoor dining season, as well as to fences that are permanently installed. Less formal fencing arrangements, such as stanchions with ropes, do not require a fence permit, but their use must be set out clearly in your detailed written description, and they must be depicted on your site plan.

A separate application is required for a fence permit. For more information on fence regulations and to obtain a fence permit application, contact the Planning Department at 216-291-4878, or download these materials directly from http://www.clevelandheights.com/pdfs/FenceRegulations_PermitAppl.pdf. Fence permits are usually issued within a few business days of our receipt of your application.

The same size and placement restrictions that apply to fences apply to masonry and stone walls, but masonry and stone walls require a building permit, rather than a fence permit. If a wall will be a part of your outdoor dining facility, please contact the Building Department at 216-291-4900.

4. **Architectural Board of Review approval is required for some outdoor dining facilities**

Architectural Board of Review (ABR) approval, which requires a separate application, is required for any major structural change that would accompany an outdoor dining facility.

ABR approval is also required for fences that will be located within 25 ft. of and parallel or approximately parallel to a public right-of-way, and ABR approval is required for ALL masonry or stone walls, regardless of their size or location.

The ABR generally meets at 4 p.m. on the first and third Tuesdays of each month, with some exceptions around holidays. Applications are due one week before the meeting. Applications can be obtained from the Building Department, which staffs the ABR. Contractors or architects often handle the ABR approval process on behalf of their clients. To contact the Building Department, call 216-291-4900.

ABR approval is also required for most permanent signage, but please note that, except for directional and instructional signage, outdoor dining facilities are generally not permitted to have additional signage beyond what is permitted for the associated indoor restaurant. Signage is not permitted on umbrellas or awnings that are part of an outdoor dining facility.

5. **Building permits may be required.**

Building permits are required for any structural, plumbing, electrical, or paving changes that are necessary for your outdoor dining facility. Contact the Building Department at 216-291-4900.

6. **Ohio Division of Liquor Control approval may be required.**

Any outdoor dining facility that will serve alcohol on the public sidewalk or elsewhere in the public right-of-way must obtain the approval of the Ohio Division of Liquor Control. It is the operator's responsibility to obtain this approval, which generally will not be granted unless a conditional use permit has already been obtained. More information is available at the division's Website, www.liquorcontrol.ohio.gov. The local contact is Veronica Davenport, who can be reached at 216-244-7579.

A copy of the Division of Liquor Control's approval must be submitted to the Planning Department and attached to the operator's conditional use permit.

Submitting an application for approval of an outdoor dining facility

Applications must include:

- (1) a **completed application form** (see page 5)*;
 - (2) a **detailed written description of the proposed outdoor dining facility***, including information on hours and days of operation, service type, off-hours storage of equipment, and other specifics;
 - (3) a **site plan***, drawn to scale, in an 8-1/2-by-11 or 11-by-17 format, showing the proposed outdoor facility and connections to the indoor portion of your restaurant, locations of tables, fencing, and all property lines, including public-right-of-way lines;
 - (4) a **certificate of liability insurance**** for any outdoor dining facility that would encroach onto public property. The Certificate must show the City of Cleveland Heights as additional insured;
 - (5) **proof of ownership or control**** of any private property on which the outdoor dining facility is proposed; and
 - (6) a **\$50 application fee** for any outdoor dining facility that will have up to 25 seats. More than 25 seats will require Planning Commission review.
 - (7) ****** Include 12 copies of each item marked with two asterisks for outdoor dining facilities that will have more than 25 seats and which will thus require Planning Commission review. Include one copy of each item marked with two asterisks if the outdoor dining facility will have 25 or fewer seats.
- * Include one copy of each item marked with one asterisk, regardless of how many seats are proposed.

The application form and supporting materials may be dropped off at our office on the main level of City Hall or mailed to City of Cleveland Heights, Department of Planning and Development, 40 Severance Circle, Cleveland Heights, OH 44118. Our office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Format of the Planning Commission review and public hearing, if required

At the Planning Commission meeting, members of the staff and the applicant will make presentations regarding the proposed conditional use. Neighbors, who will be notified in advance of the hearing by mail, and other interested parties will have the opportunity to comment during the public-hearing portion of the Planning Commission's meeting. The Planning Commission may grant or deny the request for a conditional use permit, or it may postpone making a decision to consider or seek additional information. It is the Planning Commission's responsibility to make decisions based on the facts presented, within the framework set by the Zoning Code.

Regulations governing outdoor dining in Cleveland Heights

Three sections of the Cleveland Heights Zoning Code contain regulations that apply specifically to outdoor dining facilities or to conditional uses in general. Additionally, a section governing outdoor dining on public property was recently added to the Administrative Code. The texts of these Code sections, which you should familiarize yourself with, are included in this document and begin on page 7. These regulations are in addition to the general regulations of the Zoning Code, which apply to all land uses.

The Code sections that apply specifically to outdoor dining are, from the Zoning Code, "supplemental regulations for specific uses- outdoor dining," Subsection 1153.05(p); "[commercial-district] fences," Subsection 1131.08(c); and "general standards for all conditional uses," Section 1151.02; and, from the Administrative Code, "outdoor dining on public property," Section 110.05.

Sign regulations also apply to outdoor dining facilities and, as noted above, additional signage beyond what is permitted for the associated restaurant, other than directional or instructional signage, is generally not permitted for an outdoor dining facility.

Again, please familiarize yourself with these regulations (go to page 7). Direct questions about these and other regulations that may apply to the Zoning Administrator at 216-291-4878.

Application for Conditional Use Permit**

Please type or print clearly.

Project number _____

Date submitted _____

Contact information:

Applicant(s) _____

Phone/fax/e-mail _____

Address of subject property _____

Mailing address of applicant _____

Applicant's representative, if any _____

Phone/fax/e-mail _____

Address of representative _____

Property owner, if different from applicant _____

Phone/fax/e-mail _____

Address of property owner _____

Brief summary of project (please attach detailed written description):

Supporting documentation (check all that apply):

- _____ Detailed written description of project**
- _____ Proof of ownership, option, or lease agreement (1 copy)
- _____ Site plan**
- _____ Elevations**
- _____ Certificate of liability insurance (1 copy)
- _____ \$50.00 application fee

Applicant's signature _____ Date _____

** 12 copies required if your outdoor dining facility will have more than 25 seats and require review by the Cleveland Heights Planning Commission. Otherwise, only one copy is needed.

**City of Cleveland Heights
PLANNING COMMISSION
MEETING DATES FOR THE YEAR 2013**

Meetings are held on the second Wednesday of each month at 7:00 p.m., unless otherwise indicated, and are held in City Council Chambers on the 2nd floor of Cleveland Heights City Hall. Applications are due by 5:00 p.m. on the second Wednesday of the previous month.

The applicant or the applicant's representative must be present at the meeting.

Application Deadline

Meeting Date

DECEMBER 12, 2012

JANUARY 9, 2013

JANUARY 9, 2013

FEBRUARY 13, 2013

FEBRUARY 13, 2013

MARCH 13, 2013

MARCH 13, 2013

APRIL 10, 2013

APRIL 10, 2013

MAY 8, 2013

MAY 8, 2013

JUNE 12, 2013

JUNE 12, 2013

JULY 10, 2013

JULY 10, 2013

AUGUST 14, 2013

AUGUST 14, 2013

SEPTEMBER 11, 2013

SEPTEMBER 11, 2013

OCTOBER 9, 2013

OCTOBER 9, 2013

NOVEMBER 13, 2013

NOVEMBER 13, 2013

DECEMBER 11, 2013

Regulations that apply specifically to outdoor dining facilities or to conditionally permitted uses in general in the City of Cleveland Heights

Zoning Code Subsection 1153.05(p) Supplemental regulations for specific uses- Outdoor Dining

In C-2 and C-3 districts, an outdoor dining facility may be conditionally permitted. An outdoor dining facility located on private property and having 25 or fewer seats may be approved by the Zoning Administrator; a facility with more than 25 seats shall require Planning Commission approval. In granting approval for an outdoor dining facility, the following standards shall apply:

- (1) The facility shall only be used in conjunction with, and under the same management and exclusive control of, a restaurant located on the same or contiguous property.
- (2) The use shall not interfere with the flow of pedestrian traffic. The approving authority shall determine to what extent, if any, such use may encroach upon the public right-of-way, provided that an unobstructed walkway of a width specified in the conditional use approval is reserved for public passage. In no case shall the unobstructed walkway be less than six feet in width.
- (3) Before a conditional use permit is granted for the use, it shall be determined that the facility will not create an undue parking shortage within the district.
- (4) Temporary stanchions with chains or ropes may be approved for the outdoor dining facility, the extent and nature of which shall be set out in the conditional use permit. Architectural Board of Review approval shall be required only for fencing that is temporarily or permanently affixed to the ground or floor of the outdoor dining area.

Zoning Code Subsection 1131.08(c) Commercial-district fence regulations

Fences may be erected in any commercial district provided they comply with the following regulations:

- (1) A fence located in a front yard shall have a maximum height of 42 inches above ground level.
- (2) In a rear or interior side yard, a fence shall have a maximum height of seven feet above ground level.
- (3) In a corner side yard, a fence shall have a maximum height of 42 inches above ground, except as required by Sec. 1165.05 for lots adjacent to a residential district, or unless set back 15 or more feet from the public right-of-way, in which case a fence shall have a maximum height of seven feet above ground level.
- (4) Any fence within 25 feet of a public right-of-way and parallel or approximately parallel to such street shall be approved by the Architectural Board of Review. No chain-link or wire-mesh fencing shall be permitted in a front or corner side yard.
- (5) No barbed-wire fence shall be constructed or erected on any lot.

For a fence permit application, contact the Planning Department at 216-291-4878, or download the application from the City's website at:

http://www.clevelandheights.com/pdfs/FenceRegulations_PermitAppl.pdf

Administrative Code Section 110.05 Outdoor dining on public property

The City Manager is hereby authorized to administratively approve requests for outdoor dining on sidewalks or other public rights-of-way, provided the following conditions are met:

- a. Such outdoor dining may only be conducted in conjunction with, and under the same management and exclusive control of, a restaurant located in a building contiguous to the public right-of-way upon which the outdoor dining is proposed to be conducted.
- b. The outdoor dining shall not interfere with the flow of pedestrian traffic. At least five feet of unobstructed sidewalk must be maintained, although more may be required in areas of high use.
- c. Outdoor dining shall be limited to no more than six tables and twenty-four chairs.
- d. No alcohol may be sold or consumed on the outdoor dining premises without the specific legislative authorization of the City Council and the approval of the Ohio Division of Liquor Control.
- e. All agreements for outdoor dining shall be approved in writing by the City Manager, Director of Law, and Director of Planning and Development, and shall contain the following terms, as well as others deemed necessary by the City Manager and Director of Law:
 - (1) The agreement shall set forth the hours of operation and the term of the agreement, which may be automatically renewable each season unless terminated by either party. A detailed

- description of the location of furniture and other improvements or objects shall be included.
- (2) The agreement shall require the restaurant owner or other responsible party to keep the outdoor dining area clean and sanitary and to remove all tables and chairs each evening for storage.
 - (3) The agreement shall require the responsible party to indemnify and hold the City harmless from any liability or damages caused by the outdoor dining and to provide an insurance policy in amount approved by the Director of Law, with the City being named as an additional insured.
 - (4) The agreement shall provide that it may be terminated by the City Manager at any time without notice if he deems that the use is creating a nuisance or interfering with the use of the public right-of-way, or that the property is needed for municipal purposes.
- f. This ordinance applies only to outdoor dining on public property, with outdoor dining on private property being governed by the provisions of the Zoning Code.

Zoning Code Section 1151.02 General standards for all conditional uses

When reviewing and application for a conditional use permit, the Planning Commission must determine that the proposed conditional use satisfies the standards listed on this page, as well as any use-specific standards that may apply to the proposal. In preparing a detailed description of a proposed conditional use, the applicant should be mindful of these standards:

- a. The conditional use will be in general accord with the purpose, intent, and basic planning objectives of the Zoning Code, and with the objectives for the district in which it would be located.
- b. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- c. The conditional use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not essentially change the character of the area.
- d. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood.
- e. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- f. Adequate utilities, access roads, drainage, and necessary facilities have been or are being provided.
- g. Adequate measures have been or will be taken to provide ingress and egress designed as to minimize traffic congestion in the public streets.
- h. The establishment of the conditional use will not be detrimental to the economic welfare of the community by creating excessive additional requirements at public cost for public facilities such as police, fire, and schools.
- i. There is minimal potential for future hardship on the conditional use that could result from the proposed use being surrounded by uses permitted by right that are incompatible.
- j. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, as well as the specific supplemental conditions set forth in Zoning Code Chapter 1153.

Sign regulations also apply to outdoor dining facilities. Additional signage beyond what is permitted for the associated restaurant, other than directional or instructional signage, is generally not permitted for an outdoor dining facility.