

Risk Management Considerations for Closing Streets and Outdoor Dining

By: Jennifer Swahlstedt; Director of Training and Risk Management at IRMA

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As IRMA members look forward to expanding their indoor and outdoor dining options in Phase 4 of the Restore Illinois Plan, members must balance the need for economic vitality with the health and safety of their communities. IRMA supported the prospect of closing streets to vehicles so that restaurants could have additional dining capacity in Phase 3. Now in Phase 4, IRMA still deems it appropriate to consider an ordinance establishing a temporary permit process whereby restaurants can apply for permits to utilize municipal property such as sidewalks and streets for additional dining capacity. There is also viability in allowing use of privately owned parking areas for this. The potential liability exposure is an important consideration.

Liability Considerations for Closing Streets and Public Spaces

Municipalities have a duty to maintain their property in a reasonably safe condition for intended and permitted users. As such, streets must be maintained in a reasonably safe condition for vehicles. However, if a municipality allows outdoor dining services to be provided on streets, then pedestrians are permitted users and the streets should be maintained in a reasonably safe condition for pedestrians. The best protection from liability for IRMA members is to require businesses to execute a defense, indemnification and hold harmless agreement and to name the municipality as an additional insured. It would be appropriate to require this as a condition for issuance of a temporary permit. Attached is sample language IRMA members can use.

Require Businesses to Submit a Plan

In addition to liability considerations, IRMA members should also require businesses submit plans for the safety of workers and customers, which should include:

- A site plan depicting the dining area, queue area and barricades
- Physical distancing
- Use of face coverings
- Frequent handwashing and regular cleaning and disinfection
- Training of employees
- Worksite-specific COVID-19 prevention plan
- Process to identify cases of illness in workplaces and plan to halt the spread of the virus
- Designate an employee responsible to implement and monitor compliance with all procedures
- Adequate safeguards for security, crowd control, lighting control
- Signage and/or other markings at 6-foot intervals in queue areas
- Procedures for enhanced sanitizing and disinfecting
- Disposable menus or digital menus

Temporary Ordinance Considerations

- Temporary permit ordinance should include a provision requiring compliance with any directions by the Liquor Commissioner to modify or discontinue the use due to safety concerns
- Temporary permit ordinance should include a mandate to comply with all protocols and guidelines issued by the Illinois Department of Public Health, Centers for Disease Control or other official authority
- Temporary permit ordinance should specify hours of operation
- Temporary permit ordinance should prohibit bar areas
- Temporary permit ordinance should require physical barriers to separate outdoor dining area from other areas

The permit application should include a disclaimer stating the municipality assumes no responsibility for any injury or damage to persons or property arising out of or related to the use of property or issuance of a permit.

Risk Management for Closing Streets and Public Spaces

- Refer to your employer-specific Special Event Protocols used for other outdoor events to assist with specific needs related to outdoor dining such as:
 - Road Closures
 - Emergency Access
 - Traffic Control Measures
 - Crowd Control Measures
 - Inspection Protocol
 - Documentation Protocol
- Follow MUTCD Guidelines for all road closures, signs, lane encroachment
 - Resources:
 - [Work Zone Safety & Traffic Incident Quick Guide](#)
 - MUTCD 2009 Edition Part 6: [Temporary Traffic Control](#)
 - MUTCD 2009 Edition, Chapter 6H: [Typical Applications](#)
- Communicate effectively with motorists and pedestrians
 - Create traffic plans and detour routes for motorists
 - Adjustment of traffic signals; identify jurisdiction and responsible party for ownership and maintenance (county, IDOT, Member).
 - Review crosswalk placement
- It is preferable roadways are closed to vehicular traffic rather than sharing roadways (including parking) between motorists and outdoor dining areas
- Should road closures not be feasible, for those members who are exploring the opportunity to increase dining capacity onto low-volume, low-speed, non-emergency roadways, IRMA recommends the installation substantial temporary barriers that isolate diners from motorists. Temporary barriers made of contractor-constructed wooden railing and chain link fencing are examples of unacceptable methods to protect diners as they cannot prevent vehicle intrusion and they fragment or distort upon impact. Portable concrete systems or other American Society for Testing and Materials (ASTM) rated barriers, coupled with additional temporary traffic calming measures, should be installed as they provide the most significant protection for diners as well as motorists. Options could include, but are not limited to barriers, planters, pilons, rigid posts, bollards, or parking blocks. Temporary traffic calming measures such as painted lines, colors, patterns, or rumble strips will help alert motorists to the changes made to the roadway to accommodate street dining. All barriers design and plans should be reviewed with a civil engineer or equivalent competent person to ensure installation meets ASTM F3016 / F3016M

guidelines and other safety measures requirements for the roadway in length, depth and buffer distances as well are ADA compliant.

- Identify the responsible party for all safety measures, including installation and maintenance of all devices and proper reporting protocol
- Determine an inspection process of all converted spaces
- ADA parking spaces are required and access to/from those spaces shall not be impeded.
- Restaurants that expand into parking lot or other outdoor areas must obtain permission from the property owner or manager and install concrete barriers to separate the outdoor dining area from the rest of the parking lot.

Sale of To-Go Mixed Drinks and Cocktails

Local municipalities may prohibit or further restrict the sales and delivery of “to go” mixed drinks/cocktails. Licensed retailers should contact the local liquor control commissioner prior to engaging the sales and delivery of “to go” mixed drinks/cocktails to ensure compliance with local laws.

See full Guidance at [Illinois Liquor Commission COVID-19 Related Action](#)