



**Town of Foxborough
Board of Selectmen**

Temporary Outdoor Dining Areas

Adopted June 3, 2020

A. Intent

Pursuant to and in accordance with the authority vested in the Board of Selectmen by Governor Baker's COVID-19 Order No. 35, issued on June 1, 2020 (the "Order"), and every other enabling authority, the Town of Foxborough seeks to support the restaurants in Town by temporarily allowing the creation or expansion of outdoor dining areas to facilitate social distancing. The Town is creating this program to allow temporary outdoor dining areas with the intent to allow for greater physical distancing and safety for patrons when the state's public health orders allow restaurants to resume sit-down service.

B. General Requirements

All Outdoor Dining Areas are subject to the following requirements:

1. Applicants must have a valid common victualler's license approved by the BOS.
2. The combination of outdoor seats and indoor seats planned for use under these guidelines shall not exceed the number of seats allowed by the current/original permit of approval for restaurant use.
3. A rope, chain or other similar device shall serve to delineate the permitted outdoor dining area. No fabric inserts, chain link fencing, chicken wire or cyclone fencing are permitted to be used as barriers and no fabric or advertising on canvas is allowed on barriers. For dining areas in proximity to vehicular traffic there shall be a physical barrier or separation to protect staff and customers from vehicle traffic, subject to approval by the Fire Department.
4. Outdoor tables and chairs must not block or restrict access to or from any building and must comply with Building, Fire, Health, State and Federal codes and requirements as may be applicable.
5. The outdoor seating plan must meet Fire Department standards, including points of egress, access to fire extinguishers, and tent and awning ratings, if applicable.

Temporary Outdoor Dining Areas

June 3, 2020

Page 2 of 7

6. If a tent or canopy is to be used it must be fire rated and the fire rating for the tent must be approved. A separate permit may be required from the Inspections Department.
7. Tables must not block entrances, exits, fire lanes, hydrants, sprinkler connection points, drive aisles, back-up areas, drainage structures, pedestrian or handicapped access.
8. Minimum life safety requirements and Americans with Disability Acts (ADA) must still be met, subject to approval of the Fire Department and Inspections Department.
9. If the business owner is not the property owner, written evidence of property owner approval shall be included with the application.
10. If the temporary outdoor dining area extends into space occupied or otherwise used by an adjacent business, approval by the adjacent business is required and written evidence of such approval shall be included with the application.
11. Temporary outdoor dining areas shall be maintained free of trash and other debris. Establishments are required to pick up debris, sweep and wash the designated dining area at the end each business day during the outside dining season. Businesses must use their own trash and recycling receptacles.
12. No smoking of any kind, including the use of electronic cigarettes, is allowed in the temporary outdoor dining area.
13. Parking spaces may be used for dining tables, but there must be a physical barrier or separation to protect customer from vehicle traffic, such as bollards or planter boxes.
14. The Town shall not require additional parking for temporary outdoor dining approved under these temporary regulations.
15. Divider stands and all other dining furniture must remain inside the temporary outdoor dining area at all times.
16. No tables, chairs or other equipment shall be attached, chained or in any manner affixed to any tree, post, sign, curb or sidewalk, or property of the Town.
17. Any outdoor alcohol consumption shall be in compliance with the rules and regulations of the Massachusetts Alcoholic Beverages Control Commission ("ABCC") and Foxborough Board of Selectmen requirements, including, without limitation, ABCC Advisory Regarding Guidelines for Extension of Premises to Patio and Outdoor Areas, dated August 6, 2015, and ABCC Advisory Regarding Local Licensing Authorities' Approval of Outdoor Seating, dated June 1, 2020.
18. Outdoor food preparation is not allowed unless specifically authorized by the Health Department.

19. Temporary outdoor dining areas may only be used for sit-down dining or customer pick-up and carry-out service. They cannot be used for "standing areas," as these would promote congregating. Outdoor bars or service bars may not be located in temporary outdoor dining area. Temporary outdoor dining areas cannot be used for yard games or other similar activities that would encourage people to congregate or share equipment.
20. No live entertainment shall be permitted, unless otherwise allowed in an existing outdoor dining permit.
21. Signage shall comply with the Foxborough sign bylaw.
22. There will be no application fee for this temporary use authorization (beyond normal inspection fees).
23. Hours of Operation shall be as follows:
New Outdoor Dining Areas:
 - Sunday through Thursday, outdoor dining areas are required to close by 10 p.m.
 - Friday, Saturday, and federal holidays, outdoor dining areas are required to close by 11 p.m.For Existing Outdoor Dining Areas:
 - Current approved hours
24. For those restaurants that currently hold a permit for outdoor dining and will not be expanding or modifying their Outdoor Dining Area, only a sign-off by the Foxborough Health Department will be necessary.

C. Plan Requirements

Restaurants seeking new or expanded temporary outdoor dining areas shall submit a scaled site plan sketch, indicating the proposed layout of the temporary outdoor dining area, including number and placement of tables, chairs, umbrellas, outdoor heaters and any proposed railings, stanchions or other suitable barriers. The Site Plan Sketch should also include the location / coverage of any proposed tent area as well as an illustration of the pathway waitstaff will use to and from the kitchen. Information on access to restrooms should also be provided. The drawing should include all driveways, parking areas, grass/landscaped areas, adjacent streets, curb cuts and adjacent buildings. In addition, all building entrances and exits (including those in any proposed temporary outdoor dining area) should be shown. Areas designated for picking up take-out food shall also be shown on the plan. Vehicle locations associated with curb-side delivery parking and/or take out service should be indicated on the Site Plan Sketch. The submission must have sufficient detail so

that staff can determine compliance with the abovementioned requirements and the layout and location of proposed on the site. Handicap access to and from the seating area, restrooms and parking areas must also be shown.

The restaurant shall follow all other social distancing and virus prevention measures as required and/or recommended by the Board of Health, which are not associated with an outdoor seating plan. Smoking is prohibited in all outdoor dining areas.

If a temporary tent or similar structure is proposed, approval of the Building Commissioner and Fire Department may be required.

D. Insurance

For both Tier 1 and Tier 2, prior to opening any temporary outdoor dining area, the Restaurant Owner shall obtain and have in place or require that there be obtained Workers' Compensation Insurance for all employees of the Restaurant Owner and those of its contractors and/or subcontractors engaged in work at the temporary outdoor dining area, in accordance with the State Workers' Compensation Laws. In addition, the Restaurant Owner shall obtain and have in place Comprehensive Public Liability and Property Damage Liability Insurance with limits hereinafter set forth to cover the Restaurant Owner and its contractors and subcontractors against claims due to accidents which may occur or result from operations under this Agreement. Such insurance shall cover the use of all equipment related to the provision of outdoor dining services, and shall include the Town of Foxborough as "additional insured" if outdoor dining is occurring on public property (Tier 2). The Comprehensive Public Liability and Property Damage Liability Insurance shall insure against all claims and demands for personal injury and property damage with respect to all temporary outdoor dining areas, facilities and services, with limits of One Million Dollars (\$1,000,000) for property damage, One Million Dollars (\$1,000,000) for injury or death to one (1) person, and Two Million Dollars (\$2,000,000) for injury or death of more than one (1) person in a single accident. If such limits are not commercially available at a reasonable cost to the Restaurant Owner, such insurance may be maintained at such lower limits that are commercially available at a reasonable cost and satisfactory to the Town; provided, however, that the Restaurant shall notify the Town Manager in advance of the effective date of any such lower limits. Under Tier 2, The Town shall be named as an "additional insured" on all policies of insurance and the Restaurant Owner shall furnish a certificate of insurance to the Town prior to commencing provision of the facilities and services authorized under these regulations. Where such insurance is renewed or replaced the Restaurant Owner shall furnish the Town with a certificate of insurance evidencing the same.

E. Approval

Applications for approvals/permits for new or expanded temporary outdoor dining areas shall be addressed in two tiers based on the ownership of the land upon which the proposed temporary outdoor dining area is located. Administrative level review and approval (Tier 1) is required for dining areas proposed entirely on private property, while a slightly more formal review process (Tier 2) requiring a permit to be issued by the Board of Selectmen will apply to dining areas proposed on public property (including but not limited to sidewalks, roadways, public parking lots, open space, other Town-owned property) or on locations where the outdoor dining area would not be physically contiguous with the existing restaurant.

1. Administrative (Tier 1)

Application for Tier 1 Administrative approval for a temporary outdoor dining area shall be submitted to the Planning Department. The Planning Department will review the application and plan for completeness and compliance, and will distribute the completed submission to the Inspections, Fire, Police and Health Departments for their review and sign off. If additional information is needed or a revision to the seating plan is required, the Planning Department will contact the applicant. We are aware of the time sensitive nature of this program therefore all efforts will be made to move these applications expeditiously through the review process. *Submission of fully completed applications will typically result in shorter review times.*

All plans must comply with any applicable COVID-19 Orders or Guidances issued by the Massachusetts Governor, Massachusetts Department of Public Health or the Massachusetts Division of Labor Standards relative to social distancing or other requirements for food services establishments.

Applications shall be submitted on the attached form along with a plan for the temporary outdoor dining area, an insurance certificate as described below, and any required authorizations.

a. Tier 1 Approval by Town Manager

If the temporary outdoor seating plan is deemed acceptable by all required Town departments through a "sign off", the application will be forwarded to the Town Manager for approval and issuance of a temporary permit.

Temporary outdoor seating permit may include conditions of approval, such as daily cleaning and maintenance of the temporary outdoor dining area, as the Town Manager shall deem appropriate.

The Town Manager may approve a temporary outdoor dining area permit upon recommendation by the required departments and after making a determination that the design and location of an outdoor dining area is suitable to its environs, consistent with public health and safety interests, and that all other requirements (insurance, maintenance, litter control, etc.) of the permit have been met.

2. Discretionary (Tier 2) – The Board of Selectmen, with input from the departments above, plus input from the Department of Public Works, shall be the license granting authority for the use of any public property (e.g., sidewalks, streets, public parking lots, open space, etc.) for outdoor dining areas, and also for any application for an temporary outdoor dining area that is not physically contiguous with the current occupied restaurant space.

Tier 2 Approval Process

1. Applicants shall meet with the Department of Public Works director (or his designee) to review a proposed plan for use of public property prior to filing. DPW must sign off on a proposal for use of public or non-contiguous property.
2. Upon DPW sign off, an application shall be submitted in the attached form, along with a plan for the temporary outdoor dining area, an insurance certificate as described above, and any other required property owner authorizations, to the Board of Selectmen's Office.
3. Within two business days of receipt of the completed application, the Board of Selectmen will provide a public meeting date/time to the applicant.
4. The applicant shall then provide a copy of the plan, including a brief written summary of the proposal including times and scope of operation, to all abutting property owners, businesses or residents and any other entity that would be directly affected by the proposed temporary outdoor dining operation. A notice of the day and time the Board of Selectmen will be discussing the matter at a public meeting should also be included.
5. The Board of Selectmen will forward the application package to the Planning, Inspections, Fire, Police and Health Departments for their review and sign off.
6. The Board of Selectmen will discuss the proposal at the previously determined public meeting of the Board.
7. In order to grant a temporary outdoor dining license, the Board shall make a determination that the design and location of a temporary outdoor dining area is suitable to its environs, consistent with public health and safety interests, and that all other requirements (insurance, maintenance, litter control, etc.) of the

license have been met. Input from the DPW and other departments will be considered by the Selectmen in making their decision.

8. Upon grant of the outdoor dining area license which entails use of any Town owned or controlled property by the Board of Selectmen, the owner and operator of the restaurant and the Town Manager will sign the License Agreement which has been prepared for these purposes by Town Counsel.

F. Amendments

These rules may be amended by a majority vote of the members of the Board of Selectmen provided such amendment is presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

G. Effective Date

These rules were adopted at a special meeting of the Board of Selectmen on June 3, 2020, and became effective as of that date, subject to applicable requirements of the Commonwealth of Massachusetts.

H. Expiration

This temporary program is effective through November 1, 2020, or until the Order is rescinded, whichever is sooner. Upon expiration of the program, businesses will have one week to remove the fixtures from their temporary outdoor dining area.

Approved by unanimous vote on June 3, 2020