

TOWN OF EASTON
SELECT BOARD POLICY # 38

TEMPORARY OUTDOOR DINING POLICY
IN ACCORDANCE WITH GOVERNOR BAKER'S COVID-19 ORDER NO. 35

ARTICLE I - GENERAL

Section 1 - Purpose and Scope

The 2020 COVID-19 pandemic has caused not only a public health crisis; it has also triggered a worldwide economic crisis. Public health requirements for social distancing have placed new burdens and challenges on the business community to provide more physical space between customers and staff. In an effort to respond to the new social distancing requirements, the Select Board have adopted a temporary outdoor dining policy that will allow local restaurants to establish outdoor seating on sidewalks, parking lots, or landscaped yard areas around their restaurants to provide more space for seating their patrons and picking up To-Go orders. These regulations will be in effect until further notice.

Outdoor dining license applications will be reviewed by Town staff with final approval from the Town Administrator. All approvals issued under this policy will expire on November 1, 2020 or the date the Governor's COVID-19 Order No. 35 is rescinded.

Section 2 - Design and Appearance

Outdoor dining areas must be distinguished from their surroundings by some form of perimeter fence or barrier consistent and in compliance with the Alcoholic Beverages Control Commission (ABCC) Patio Guidance. Appropriate perimeter materials include, but are not limited to demountable wrought-iron fences, bollards and chains, or individual planters of wood, masonry, or terra cotta. Where the seating area is within a parking lot or adjacent to vehicular traffic, barriers shall be sufficient to protect diners from vehicles. (As an example, jersey barriers would provide sufficient protection. Other barriers will be reviewed for adequate safety prior to approval.) The public sidewalk or street may not be damaged by the installation of any perimeter treatment. Cafe umbrellas are allowed; umbrellas and furniture should be of a design appropriate to the character of the building. Tent or similar type overhead coverings are allowed provided they are consistent and compliant with Executive Order COVID-19, No. 35: 50% of the cover's perimeter must be open. Trash receptacles should be integrated in the design and materials with other outdoor cafe elements. The restaurant operator is responsible for managing all trash generated from the outdoor dining area; trash receptacles shall be provided. The ground in and around the outdoor seating area shall be kept clean of food and trash. The Town will consider requests for using on-street parking spaces where existing off-street parking spaces are intended to be used as the outdoor dining area.

Pick up stations for to-go orders shall be clearly shown on the plan, including any proposed temporary parking spaces. The Town will consider requests for using on-street parking spaces for temporary parking while an order is being picked up. The Town does not guarantee the use of any on-street parking spaces for such use.

Section 3 - Pedestrian and Wheelchair Passage

Placement of outdoor dining tables and chairs, umbrellas, lighting, service equipment, perimeter fences or barriers must maintain adequate pedestrian and wheelchair access. Dining must be accessible and meet ADA and Massachusetts Architectural Access Board's regulations.
<https://www.mass.gov/law-library/521-cmr>

Section 4 - Outdoor Food Preparation

Outdoor food preparation or storage is not allowed unless specifically authorized by the Health Department.

Section 5 - Alcoholic Beverages

The State has granted a waiver of ABCC approval requirements for new outdoor seating areas. If a restaurant with an existing liquor license submits a Temporary Outdoor Dining Area Application, approval by the Town Administrator will amend the existing liquor license to include the outdoor dining area. Nothing in this policy shall prevent the ABCC from exercising its statutory or regulatory enforcement authority over any such amended license issued.

Section 6 - Temporary Seating & Parking Relief

Due to the seasonal and temporary nature of an outdoor dining area and reduced occupancy loads required by emergency regulations, the seating within an outdoor dining area will not be interpreted as an increase in the number of seats serving a restaurant or eating establishment, and will not be counted towards any off-street parking requirement. The Town may temporarily approve a reduction in existing off-street parking to accommodate the use of said parking spaces as part of the outdoor dining area.

The approval of an outdoor seating area is subject to change if a neighboring business has requested use of the sidewalk or parking lot. The restaurant operator may be required to work with the Town and an abutting business owner to accommodate the needs of abutting businesses.

Section 7 - Entertainment

Outdoor entertainment uses are not covered under this approval. The Select Board may consider approval of outdoor entertainment at a later date. Outdoor dining licenses issued under this policy, therefore, do not permit a modification of any aspect of an existing entertainment license.

Section 8 - Use of Public Property

The approval of the use of public property, including sidewalks, public streets or ways for outdoor dining or any other private use is subject to a separate license agreement, subject to approval at the sole discretion of the Select Board.

ARTICLE II - SUBMISSION AND APPROVAL OF APPLICATIONS

Section 1 - Application Procedure

Applications for outdoor dining licenses shall be submitted on the attached application form along with all required documents and emailed to restaurants@easton.ma.us. If complete, the application and plan for outdoor seating will be reviewed by Health, Public Safety, Public Works, Planning

Adopted by Vote of Select Board June 8, 2020

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and Economic Development and other departments as determined by the Town Administrator. All plans must comply with any applicable Massachusetts Governor's orders, Massachusetts Department of Public Health orders and guidance documents for social distancing and for food services establishments. If the outdoor seating plan is acceptable and the application form is complete, they will forward it to the Town Administrator for review and recommendation. Outdoor seating permits may include conditions of approval such as daily cleaning and maintenance of the outdoor seating area. If additional information is needed or a revision to the seating plan is required, the Town will contact the applicant.

Section 2 - Plan Requirements

A neatly drawn plan will be submitted depicting the precise area of the proposed outdoor dining area, the arrangement of outdoor dining furniture, perimeter barriers (including type of safety barriers), cafe umbrellas, lighting, and any other equipment. The traffic pattern/flow of a parking lot and areas designated for picking up take-out food shall also be shown on the plan. Tables and chairs shall be separated by at least six feet to provide for social distancing. Take-out food pickup areas shall also be a minimum of six feet from patron seating areas. The restaurant shall follow all other social distancing and virus prevention measures as outlined by the Board of Health, which are not associated with an outdoor seating plan. Smoking is prohibited in all outdoor dining areas.

A tent, or similar structure, and some kinds of outdoor lighting may require a building permit. Some equipment (i.e. outdoor heaters) may require a Fire Department permit. Outdoor seating proposed for a parking lot shall not occupy more than 50% of the required parking spaces.

Section 3 - Insurance

The Restaurant Owner will maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated, and as required by law, including all necessary insurance pursuant to Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) and comprehensive commercial general liability insurance, which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Restaurant Owner's employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the restaurant operations, inclusive of the outdoor dining facilities, including injury or destruction of tangible property, including loss of use resulting therefrom. 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.

Section 4 - Approval by the Town Administrator

Following receipt of a favorable recommendation from Health, Public Safety, Public Works, Planning and Economic Development and other departments as determined by the Town Administrator, the Town Administrator shall make a determination that the design and location of an outdoor dining area is suitable, and that all other requirements of the outdoor dining license

have been met, including an on-site inspection by Town staff and any additional requirements or documents deemed necessary by the Town Administrator.

Approvals of outdoor dining licenses are at the discretion of the Town Administrator, which decision is final, with no local appeal. Approvals are considered issued administratively only upon signature of the Town Administrator. An approval of an outdoor dining area constitutes approval pursuant to Executive Order 35, including any and all requisite zoning relief, change of the existing licensed premises for service of alcohol on-premises under G.L. c. 138, § 12 (as may be applicable), and expansion of existing common victualler license. The Town Administrator reserves the right to alter or revoke any approvals based on complaints, lack of compliance, or changes to state or local guidelines. All approvals issued will be announced at the next scheduled Select Board meeting. All approvals issued under this policy will expire on November 1, 2020 or the date the Governor's COVID-19 Order No. 35 is rescinded.

Section 5 – Notice to Select Board

Upon approval of an outdoor dining license described herein by the Town Administrator, the related application and approval documents and materials shall be provided to the Select Board to be noted at the next regularly scheduled public meeting.

ARTICLE III - TOWN OF EASTON LIABILITY DISCLAIMER

By exercising the privileges of this Outdoor Dining Approval in serving persons with food and alcoholic beverages, the Licensee is potentially exposed to significant liability for injuries and damages to the persons served or to others who are injured or damaged by the persons served. The Restaurant Owner's acceptance and exercise of this Outdoor Dining Approval will be deemed to be acknowledgement that the Restaurant Owner is aware of this potential liability.

The Restaurant Owner is encouraged to discuss the risks associated with exercising your privileges of this Outdoor Dining Approval and the appropriate precautions to avoid injuries, damage and liability to others with your legal advisor.

The Town of Easton, acting as the Local Licensing Authority, and its employees, officers and affiliates shall not be liable to the Restaurant Owner to others if injury or damage shall result from the exercise of this Outdoor Dining Approval.

The Restaurant Owner acknowledges that he/she understands and will comply with all applicable liquor regulations set forth by the Alcoholic Beverages Control Commission (ABCC), the Local Licensing Authority (BOS) of the Town of Easton, and any other local or state authority.

ARTICLE IV - AMENDMENTS

These rules may be amended by a majority vote of the members of the Select Board provided such amendment is presented in writing at a regular meeting.

ARTICLE V - EFFECTIVE DATE

This policy was adopted at a regular meeting of the Select Board on June 8, 2020 and became effective as of that date.