

Temporary Extension of Premises: Outdoor Dining Area on Private Property/Parking Lot

GUIDELINES

The Town of Newbury would like to assist businesses in increasing activity and revenues during the COVID-19 pandemic.

This guidance is a step-by-step instruction manual if you would like to use a private parking lot or land adjacent to your restaurant to allow for outdoor dining temporarily during the COVID-19 pandemic. **This approval process is only available to those restaurants which have received all local approvals, including the maintenance of all current requisite inspections, necessary to operate as a restaurant and, where applicable, serve alcohol for consumption on premises, and which are in full compliance with the Town of Newbury bylaws, rules, regulations.**

Before the private parking lot or land is used for the benefit of the restaurant, the owner or his/her/their designee, shall submit the following information to the town and it will be reviewed. The town is prepared to expedite this process as much as possible in order to assist the business community.

The following information below is needed. For additional information regarding COVID safety and sector-specific guidance for reopening, go to:

<https://www.mass.gov/info-details/reopening-massachusetts>

Please feel free to contact us.

REQUIRED DOCUMENTS

- I. **Basic Information** – fill out the attached form and include it with your submittal.
- II. **Letter of Permission**, if applicable – If the parking lot is not owned by the restaurant, submit a letter of permission from the owner of the parking lot indicating permission to use it for outdoor dining.
- III. **Letter(s) of Acknowledgement**, if applicable – If other businesses and/or residents share the use of the parking lot, submit letter(s) of acknowledgement of this plan from all other users.
- IV. **Plan** – submit a drawing showing the parking lot you would like to use for outdoor dining that includes the following information:
 - a. Dimensions of the entire parking lot. Include the total number of spaces and handicap spaces.
 - b. Dimensions of the portion of the parking lot to be used for outdoor dining. Include the number of spaces that will be used for dining.
 - c. Locations of curb cuts with ramps to the parking lot, if applicable.
 - d. Layout of tables and chairs.

NOTE: Tables must be 6' apart to facilitate social distancing.

- e. Dimensions of tables.
- f. Photo or description of barriers to be used to protect diners from vehicles and their locations (i.e. at entrance(s) to parking lot, around the portion of the lot being used for outdoor dining, etc.).
- g. Plan for tenting. Tents must be approved by the Building and Fire Department.

The outdoor dining area and barriers must be accessible and meet ADA and Massachusetts Architectural Access Board's regulations. <https://www.mass.gov/law-library/521-cmr>. This information is also included in this guidance packet. **50% of the cover's perimeter must be open**

- V. **Alternative Parking Area(s)** – describe or indicate on a map, other areas where customers could park when visiting your establishment; indicate whether you will rely on street parking
- VI. **Outdoor Dining COVID-19 Safety Protocol Plan** – fill out the attached form and include it with your submittal
- VII. **Outdoor Dining COVID-19 Safety Protocol Affidavit** – review the attached affidavit and include the signed document with your submittal.

The restaurant, through its owner and/or manager, is responsible for the following as it pertains to the use of the parking lot for outdoor dining:

1. Food and Alcoholic beverages may not be served outside of a licensed establishment unless and until an application to extend the licensed premises has been approved.
2. An application to extend the premises must describe the area in detail, including dimensions, seating capacity, and maximum occupancy.
3. The premises must be enclosed by a fence, rope, or other means to prevent access from a public walkway.
4. The outdoor area must be contiguous to the licensed premises with either (a) a clear view of the area from inside the premises, or, alternatively (b) the licensee may commit to providing management personnel dedicated to the area.
5. The applicant must have a lease or documents for the right to occupy the proposed area.
6. The licensing authorities should consider the type of neighborhood and the potential for noise in the environs.
7. Outdoor areas, where alcohol is served to patrons who are seated at the tables, must also provide food.
8. The applicant must adhere to the plans and documents submitted, reviewed, and approved.
9. The applicant must procure tables, chairs, disinfecting stations, and any other physical items that will be used in the outdoor dining area.
10. The applicant must provide evidence of liability insurance to the Town covering the new dining space.

Rights of the town

The decision to approve or deny said application is at the discretion of the town, which decision is final, with no local appeal, including, but not limited to the following reasons:

1. The application is for a business, which does not have the appropriate licensure for service of food, and where applicable, alcohol, including all requisite licenses/permits, such as: (1) alcohol license for on-premises consumption; (2) food permit; (3) common victualler.
2. The operation of the outdoor dining area cannot, as presented, be in compliance with safety protocols;
3. The outdoor dining area cannot, as presented, facilitate safe passage in accordance with Americans with Disability Act requirements.
4. The Health Dept., Chief of Police, or Board of Health or their designees determine that the operation of the outdoor dining area may negatively impacting public health and safety.

Other restrictions/requirements:

1. Only disposable products, including napkins, glasses, silverware and plates, shall be used for outdoor service.
2. No music, speaker or sound system, which can easily disturb or interrupt the peacefulness of adjacent neighborhoods, are permitted
3. Outdoor service bars are not permitted.
4. Use of public spaces, such as sidewalks, shall not be permitted under this application.
5. No outdoor food preparation or storage.
6. Restaurant must post MA COVID-19 Public Compliance / Attestation Poster available at <https://www.mass.gov/doc/compliance-attestation-poster-english/downloadposter> which should be displayed in an area within the business premises that is visible to employees and visitors.
7. Restaurant must adhere to the MA COVID-19 RESTAURANT SPECIFIC Checklist <https://www.mass.gov/doc/restaurants-checklist-english/download>

The town reserves the right to revoke its permission to allow the use of the parking lot for outdoor dining for the following reasons:

1. The operation of the outdoor dining area is not in compliance with submitted safety protocols;
2. The outdoor dining area is not facilitating safe passage in accordance with Americans with Disability Act requirements.
3. The Health Dept., Chief of Police, or Board of Health or their designees determine that the operation of the outdoor dining area is negatively impacting public health and safety.

**ALL BUSINESSES ARE RESPONSIBLE FOR FOLLOWING THE STATE'S COVID-19
GUIDELINES**

APPLICATION

Application Fee

Payable to: Town of Newbury

Waived

BASIC INFORMATION

- 1. Business name: _____
- 2. Business address: _____

- 3. Business phone number: _____
- 4. Owner/manager: _____
- 5. Owner/manager email address: _____
- 6. 24-hour contact number (In case of issues outside of normal business hours): _____

- 7. Business hours of operation: _____
- 8. Is this business currently approved to operate as a restaurant?
 YES NO
- 9. Do you have a current common victualler license?
 YES NO
- 10. Do you have a current food permit issued pursuant to 105 CMR 590.000?
- 11. Are all inspections current and valid?
 YES NO
- 12. Who owns the parking lot? _____
Owner Address: _____

*If the business owner is not the owner of the parking lot, submit a letter from the owner authorizing the use of the lot by the restaurant.

13. How many OTHER businesses share the parking lot besides the restaurant? _____
of Users

If the restaurant is not the only user of the parking lot, the other users of the lot must indicate their knowledge and support of the use of the lot for outdoor dining by submitting signed acknowledgement of the restaurant's plans.

14. How many tables and chairs would you like to put in the outdoor dining area? _____
of Tables

NOTE: Tables must be at least 6' apart to facilitate social distancing.

15. Will you be using umbrellas? YES NO

16. Will you be using a tent? YES NO

If yes, what are the dimensions _____

*Note: Refer to Executive Order COVID-19, No. 35: 50% of the cover's perimeter must be open; It is recommended that photos of the proposed tent be provided

17. Describe the type of barrier/fencing which will surround the seating area: _____

*Note: Refer to ABCC Patio Guidance; It is recommended that photos of the proposed barrier/fence be provided

18. Will there be food preparation or storage occurring in the exterior area of the premises?

YES NO

If so, please describe the type and location of such storage and preparation: _____

19. Will there be lighting in the exterior area of the premises?

YES NO

If so, please describe the type and location of such lighting: _____

20. Does this business have a current license for on-premises consumption under G.L. c. 138 § 12 (Pouring License)?

YES NO

If so, what type of license do you currently hold?

Restaurant hotel club

Tavern general-on-premises other

*Refer to Executive Order COVID-19, No. 35: Approvals are limited to those businesses which serve food.

21. Will you be serving alcohol in the outdoor dining area? YES NO

TOWN OF NEWBURY LIABILITY DISCLAIMER FOR TEMPORARY LICENSE EXTENSION

By exercising the privileges of this License Extension 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. Your acceptance and exercise of this License Extension will be deemed to be acknowledgement that you are aware of this potential liability.

You are encouraged to discuss the risks associated with exercising your privileges of this License Extension and the appropriate precautions to avoid injuries, damage and liability to others with your legal advisor.

The Town of Newbury, the Board of Selectmen acting as the Local Licensing Authority, and the Board of Health, its employees, officers and affiliates shall not be liable to the Licensee to others if injury or damage shall result from the exercise of this License Extension.

By signing this form, the Applicant 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 Newbury, and any other local or state authority.

Signature of Applicant: _____

Date: _____

OUTDOOR DINING COVID-19 SAFETY PROTOCOL PLAN

I. Social Distancing. Check the boxes to certify that you have:

- Ensured that all persons, including employees and customers in the outdoor dining area, remain at least six feet apart to the greatest extent possible.
- Established protocols to ensure that employees can practice adequate physical distancing.
- Posted signage for safe physical distancing.
- Required face coverings or masks for all employees that cover their mouth and nose.

II. Hygiene Protocols. Check the boxes to certify that you have:

- Provided hand washing capabilities throughout the workplace.
 - Ensured frequent hand washing by employees and provided adequate supplies to do so.
 - Provided regular sanitization of high touch areas, such as workstations, equipment, screens, tables and chairs, perimeter barriers, doorknobs, restrooms.
 - Implemented additional procedures. Please describe them here:
-
-

III. Staffing and Operations. Check the boxes to certify that you have:

- Provided training for employees regarding the social distancing and hygiene protocols.
 - Ensured employees who are displaying COVID-19-like symptoms do not report to work.
 - Implemented additional procedures. Please describe them here:
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IV. Cleaning and Disinfecting. Check the boxes to certify that you have:

Established and maintained cleaning protocols specific to the outdoor dining area.

Ensured that when an active employee is diagnosed with COVID-19, cleaning and disinfecting is performed

Prepared to disinfect all common surfaces at intervals appropriate to said workplace.

Implemented additional procedures. Please describe them here:

Signature of Owner/Manager

Print Name

Date

(FOR INTERNAL TOWN OF NEWBURY USE ONLY)

RECOMMENDATIONS

Planning Director

Recommended approval

Recommended denial

Recommended approval subject to the following conditions: _____

Police Chief

Recommended approval

Recommended denial

Recommended approval subject to the following conditions: _____

Health Director

Recommended approval

Recommended denial

Recommended approval subject to the following conditions: _____

Building Inspector

Recommended approval

Recommended denial

Recommended approval subject to the following conditions: _____

Fire Chief

Recommended approval

Recommended denial

Recommended approval subject to the following conditions: _____

Conservation Agent

Recommended approval

Recommended denial

Recommended approval subject to the following conditions: _____

DECISION

Selectmen Vote: Pursuant to Executive Order COVID-19, No. 35, issued by Governor Baker on June 1, 2020, and notwithstanding the provisions of chapter 40A (zoning), chapter 138 (alcohol license), or chapter 140 (common victualler) of the general laws, or any special permit, variance or other approvals thereunder, or any general or special law to the contrary, the Board of Selectmen for the Town of South Hadley voted to permit applications for outdoor seating, and to delegate approval of said applications to the South Hadley Town Administrator which approvals are subject to substantial compliance with the documents, plans and statements contained within said application and submitted therewith which documents are incorporated into said approval by reference. The approvals issued pursuant to this vote shall be freely revocable upon the determination of the Health Dept., Chief of Police, Board of Health, or their designees that the operation of the outdoor dining area is negatively impacting public health and safety. Further, the approvals issued pursuant to this vote shall automatically be rescinded on November 1, 2020 or upon the rescission of Executive Order COVID-19, No. 35, whichever shall come first.

By the authority granted under the Board of Selectmen's vote referenced above, the application for outdoor seating is:

Approved

Denied

Approved subject to the following conditions: _____

Outdoor Seating Operating Hours: _____

Tracy Blais, Town Administrator

_____, 2020
Date

Board of Health (Food Permit)

By the authority granted under the G.L. c. 111, 105 CMR 590.000, and the 2013 Food Code, the application to expand the food permit to include outdoor seating is:

Approved

Not Approved

Deborah Rogers
Director/Health Agent

_____, 2020
Date

REQUIREMENTS FOR ACCESSIBILITY

Dining must be accessible and meet ADA and Massachusetts Architectural Access Board's regulations. <https://www.mass.gov/law-library/521-cmr>

521 CMR 17.00: RESTAURANTS

17.2 SEATING

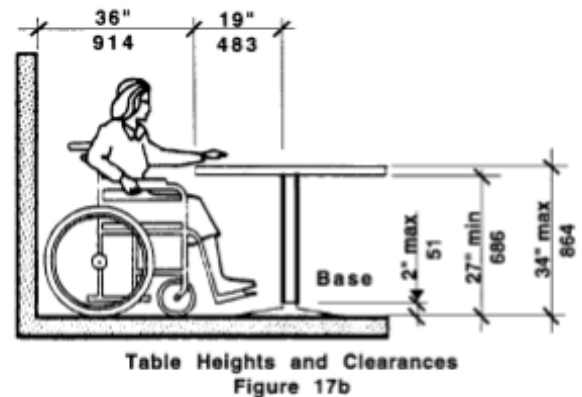
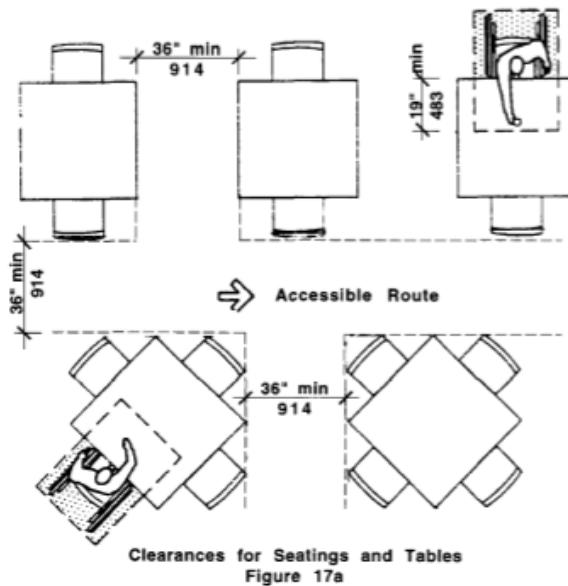
At least 5%, but not less than one, of the tables shall be accessible, be on an accessible route, and in compliance with the following:

17.2.2 A 36-inch (36" = 914mm) access aisle shall be provided between all accessible tables. No seating shall overlap the access aisle. See Fig. 17a.

17.2.3 Clear floor space as defined in 521 CMR 5.00: DEFINITIONS shall be provided at each seating space. Such clear floor space shall not overlap knee space by more than 19 inches (19" = 483mm). See Fig. 17a.

17.2.4 Knee Clearances: If seating for people in wheelchairs is provided at tables or counters, knee spaces at least 27 inches (27" = 686mm) high, 30 inches (30" = 762mm) wide, and 19 inches (19" = 483mm) deep shall be provided. See Fig. 17b.

17.2.5 Height of Tables or Counters: The tops of accessible tables and counters shall be from 28 inches to 34 inches (28" to 34" = 711mm to 864mm) above the finish floor or ground. See Fig 17b.



ACCEPTABLE BARRIERS

Barriers placed around the perimeter of the outdoor dining area must meet the following requirements:

- Height: Between 36" – 38" in height
- Not Permanent: Free-standing, stable, and easily removed
- Continuous Rail: They must have a continuous rail 2" to 6" from the sidewalk or parking space surface
- Base: The base of the barrier must be flat, with less than 1/2" thickness and placed so that it extends less than 6" into the areas around the outdoor dining area.

SAMPLES OF ACCEPTABLE BARRIERS

