



## Town of Middleton

# Temporary Outdoor Dining Area Process

The Town of Middleton would like to assist restaurant businesses in increasing activity and revenues during the COVID-19 pandemic. Pursuant to the Governor's June 1<sup>st</sup> COVID-19 Order No. 35, the Board of Selectmen has developed the following process for:

1. Approving temporary outdoor dining area requests regardless of the requirements of G.L. c. 40A (The Zoning Enabling Act, or any specific local zoning limitations including special permit or variance requirements.
2. Allowing expansion of alcohol sales in outdoor spaces where it is not presently allowed under an existing liquor license.

The Temporary Outdoor Dining Area [**TODA**] approval process will only be 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 Middleton 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 for review. The town is prepared to expedite this process as much as possible in order to assist the business community. The Town's goal is to issue decisions on complete applications within 48 hours.

## REQUIRED INFORMATION

The following information must be submitted along with each application for a **TODA**.

Complete applications will be reviewed and inspected within two working days - if you cannot provide any of the required information, please explain why in the space provided on application form.

- I. **Basic Information** – fill out the online TODA application form at: [URL] (ATTACHMENT A)
- II. **Owner Authorization**, if applicable – If the proposed outdoor dining area is not owned by the restaurant, submit a letter of permission from the owner 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 proposed outdoor dining area/parking lot, submit letter(s) of acknowledgement of your proposal from all other users.

- IV. **Site Plan** – submit a sketch or drawing showing the proposed outdoor dining area/parking lot you would like to use for outdoor dining. The Town’s GIS system can be used to print out a copy of the proposed seating area and to measure distances within the proposed area: <https://www.axisgis.com/MiddletonMA/>. Include 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. 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. Proposed tents. 50% of the tent cover’s perimeter must be open and all tents will be reviewed by the Building and Fire Department as part of the TODA application.

The outdoor dining area and barriers must be accessible and meet ADA and Massachusetts Architectural Access Board’s regulations, see ATTACHMENT D. <https://www.mass.gov/law-library/521-cmr>.

- V. **Photographs of proposed barrier/fence and tent (if proposed)** - See ATTACHMENT E for examples of acceptable barriers.
- VI. **TODA Liability Disclaimer (if applying for a temporary liquor license extension)** – fill out the appropriate form and include it with your submittal (ATTACHMENT B)
- VII. **Outdoor Dining COVID-19 Safety Protocol Affidavit** – fill out affidavit accepting full responsibility under the Outdoor Dining COVID-19 Safety Protocol Plan and include the signed document with your submittal (ATTACHMENT C)

## **RESTAURANT OWNER RESPONSIBILITIES**

The restaurant, through its owner and/or manager, is responsible for the following as it pertains to the use of the proposed area/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 and/or by suitable vehicle barriers if located in parking lot

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. Outdoor areas, where alcohol is served to patrons who are seated at the tables, must also provide food.
7. The applicant must adhere to the plans and documents submitted, reviewed, and approved.
8. The applicant must procure tables, chairs, disinfecting stations, and any other physical items that will be used in the outdoor dining area.
9. Pets other than service animals are not allowed in Temporary Outdoor Seating Areas.
10. The applicant must provide evidence of liability insurance to the Town covering the new dining space.
11. Entertainment is not a part of this permitting process and must be permitted separately.
12. Tents will be reviewed for COVID-19 compliance as a part of this process, but must also receive a building permit.
13. The restaurant's maximum number of seats authorized for the premises shall not be exceeded outdoors, indoors, or by a combination of outdoor and indoor seating, at any given time during the life of the temporary permit.
14. Portable restrooms are not allowed in conjunction with proposed outdoor seating.

For additional information regarding COVID safety and sector-specific guidance for reopening, go to: <https://www.mass.gov/info-details/reopening-massachusetts>

## **RIGHTS OF THE TOWN**

### Decisions

The decision to deny any application is final, with no local appeal, and is at the discretion of the town. Denials will be based on, 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, Fire Chief, Board of Health or their designees determine that the operation of the outdoor dining area may negatively impact public health and safety.

#### Revocation of Permit

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, Fire Chief, Board of Health or their designees determine that the operation of the outdoor dining area is negatively impacting public health and safety.

**ATTACHMENT A**

**APPLICATION FOR TEMPORARY OUTDOOR DINING AREA [TODA]**

**Application Fee: WAIVED**

**Date:** \_\_\_\_\_

**GENERAL 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 emergency): \_\_\_\_\_
7. Business hours of operation: \_\_\_\_\_
8. Is this business currently permitted as a restaurant?  YES  NO
9. Do you have a current common victualler license?  YES  NO
10. Are all inspections current and valid?  YES  NO
11. Who is the property owner of the proposed TODA\*?  
Property Owner Name: \_\_\_\_\_  
Property Owner Address: \_\_\_\_\_

*\*If the business owner is not the owner of the proposed outdoor dining area, submit a letter from the owner authorizing the use of the lot by the restaurant.*

12. How many OTHER businesses share the parking lot besides the restaurant\*\*? \_\_\_\_\_

*\*\*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.*

**TODA SITE PLAN**

Submit a drawing showing the proposed outdoor dining area/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 (Tables must be 6' apart to facilitate social distancing).
- e. Dimensions of tables.
- f. 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. Proposed tents. 50% of the tent cover's perimeter must be open. Tents must receive a building permit. Middleton Permitting Portal: <https://middletonma.gov/330/Licenses-Permits>

13. How many tables and chairs would you like to put in the outdoor dining area?

Seating capacity: \_\_\_\_\_ Maximum capacity: \_\_\_\_\_

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

14. Will you be using umbrellas?  YES  NO

15. 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; submit photos of the proposed tent be provided. Tents must also receive a building permit. Middleton Permitting Portal: <https://middletonma.gov/330/Licenses-Permits>*

16. Will you be using heaters of any kind?  YES  NO

17. Describe the type of barrier/fencing which will surround the seating area\*: \_\_\_\_\_

*\*NOTE: Refer to ABCC Patio Guidance; submit photos of the proposed barrier/fence be provided*

18. Will there be lighting for the proposed TODA?  YES  NO

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

19. Will there be music playing in/for the proposed TODA?  YES  NO

**TODA FOOD PREPARATION**

20. 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: \_\_\_\_\_  
\_\_\_\_\_

**POURING LICENSE**

21. Does this business have a current license for on-premises consumption under G.L. c. 138 § 12 (Pouring License)\*?  YES  NO

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

- RESTAURANT  HOTEL  CLUB  
 TAVERN  GENERAL-ON-PREMISES  OTHER

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

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

*NOTE: If yes, submit a signed Attachment B: LIQUOR LICENSE LIABILITY DISCLAIMER.*

**COVID-19 SAFETY PROTOCOL PLAN**

23. COVID-19 Safety Protocol Plan\*

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

<input type="checkbox"/>	Ensured that all persons, including employees and customers in the outdoor dining area, remain at least six feet apart to the greatest extent possible.
<input type="checkbox"/>	Established protocols to ensure that employees can practice adequate physical distancing.
<input type="checkbox"/>	Posted signage for safe physical distancing.
<input type="checkbox"/>	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:

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

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

<input type="checkbox"/>	Provided training for employees regarding the social distancing and hygiene protocols.
<input type="checkbox"/>	Ensured employees who are displaying COVID-19-like symptoms do not report to work.
<input type="checkbox"/>	Implemented additional procedures. Please describe them here:

**IV. Cleaning and Disinfecting.** Check the boxes to certify that you have:

<input type="checkbox"/>	Established and maintained cleaning protocols specific to the outdoor dining area.
<input type="checkbox"/>	Ensured that when an active employee is diagnosed with COVID-19, cleaning and disinfecting is performed
<input type="checkbox"/>	Prepared to disinfect all common surfaces at intervals appropriate to said workplace.
<input type="checkbox"/>	Implemented additional procedures. Please describe them here:

*\*NOTE: Submit a signed Attachment C: "Outdoor Dining COVID-19 Safety Protocol Affidavit"*



**ATTACHMENT B**



**Town of Middleton**

**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 Middleton, 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 Middleton, and any other local or state authority.

\_\_\_\_\_  
\_\_\_\_\_  
**Signature of Applicant**  
**Date**

\_\_\_\_\_  
**Print Name**

**ATTACHMENT C**



**Town of Middleton**

**OUTDOOR DINING COVID-19 SAFETY PROTOCOL AFFIDAVIT**

I, \_\_\_\_\_, being the owner or manager of \_\_\_\_\_, located at \_\_\_\_\_, Middleton, MA, acknowledge and accept the responsibilities of maintaining a clean and safe outdoor dining experience for guests and for staff in the outdoor dining area through the diligent adherence to the Massachusetts Outdoor Dining COVID-19 Safety Protocol Plan submitted along with any and all mandatory state safety standards for workplaces and outdoor dining.

\_\_\_\_\_  
\_\_\_\_\_  
**Signature of applicant**  
**Date**

\_\_\_\_\_  
**Print Name**

## ATTACHMENT D

### 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

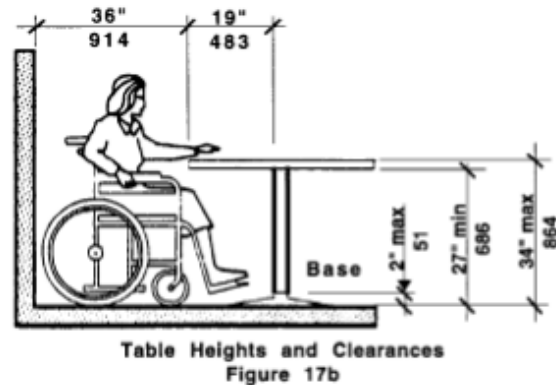
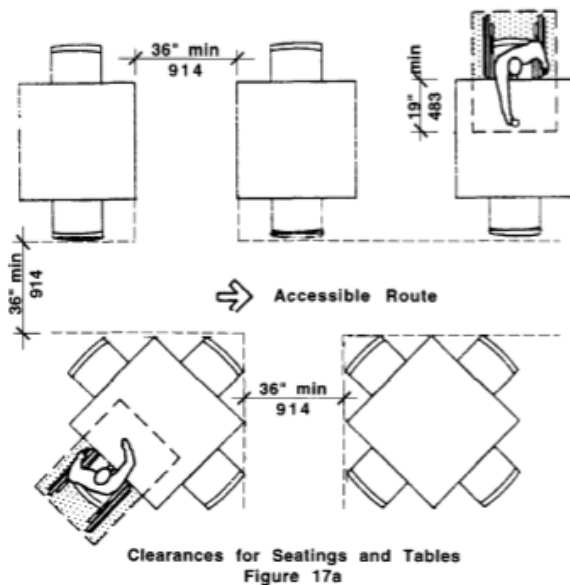
**17.2 SEATING.** At least 5%, but not less than one, of the tables shall be accessible, be on an accessible route, and in compliance with the following:

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.



## ATTACHMENT E ACCEPTABLE BARRIERS

**TODA NOT WITHIN PARKING LOT:** If the proposed TODA is currently protected from vehicles, barriers shall be placed around the perimeter of the outdoor dining area and meet the following requirements:

- Height: Between 36" – 38" in height
- Not Permanent: Free-standing, stable, and removable
- 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.



**TODA LOCATED IN EXISTING PARKING LOT:** Barriers shall be placed around the perimeter of the outdoor dining area and meet the following requirements:

- Suitable Vehicle Barrier
- Not Permanent: Free-standing, stable, and removable
- Continuous : They must be continuous along its length

