



**TOWN OF AYER
BOARD OF SELECTMEN
POLICY, PROCEDURES and RULES
USE OF OUTDOOR SPACE
FOR FOOD and ALCOHOL SERVICE**

In accordance with Governor Baker's COVID-19 Order No. 35, or any other applicable law or executive order, the Board of Selectmen of the Town of Ayer hereby issues the following policy to create an expedited process to enable food service establishments to expand their premises to accommodate the service of food and alcohol in designated outdoor areas.

For purposes of this policy, the term "restaurant" shall apply to any facility with a Common Victualler License and/or Food Permit authorizing the consumption for food and drink on the premises of the establishment.

Only restaurants currently authorized to serve alcoholic beverages in their indoor premises may apply for permission to use outdoor areas for the service of alcohol through this procedure; otherwise, service shall be limited to food only.

This policy shall supersede any inconsistent regulations for the duration of the application of the policy.

This policy shall remain in effect until November 1, 2020, unless superseding legislation or executive order extends such period, and then for the duration of such extended period, unless sooner revoked or modified. The use of any outdoor dining space approved in accordance with this policy shall cease on or before the close of business on November 1, 2020, unless superseding legislation or executive order extends such period, and then only for the duration of such extended period, unless sooner revoked or modified.

Nothing herein shall be deemed to prevent a restaurant from permanently expanding its premises through the normal statutory procedures, subject to any applicable zoning or other restrictions.

PROCEDURES AND RULES

1. Restaurants with permits that have designated outdoor areas may continue to use those areas and are not subject to the procedures in this Policy, provided that they comply with all applicable laws concerning the service of food and drink at their establishment and all other applicable laws and regulations; provided, however, that there shall be no expansion or increase in occupancy of any existing outdoor area unless such expansion or increase is approved in accordance with this Policy.
2. Restaurants wishing to expand their premises to include outdoor seating areas shall make written application to and receive the approval of the Town Manager prior to using any outdoor dining space; provided further that if the applicant also wishes to serve alcoholic beverages in the outdoor area, approval of the Town Manager, acting on behalf of the Board of Selectmen as local licensing authority, shall be required for an expansion of the licensed premises to include outdoor seating as an amendment to a liquor license.
3. The Town Manager, after consultation with the Health Department, Fire Department, Building Department and Police Department shall oversee the application process.

4. The application shall include a plan showing the location of the proposed outdoor seating area, the size of the outdoor seating area, the number of seats and tables that will be located in the outdoor seating area, a completed restaurants MA COVID-19 Checklist, Social Distancing portion, and any other information required by the Town Manager.
5. Outdoor seating areas may be located outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area, or other outdoor space; provided, however, that if a parking lot is used, there shall be no reduction in handicapped accessible parking spaces.
6. The applicant shall demonstrate a legal right of access to use the proposed outdoor space, either through ownership, lease or written permission of the owner. Outdoor seating may be allowed on public sidewalks, within the Town's public right of way or on any other Town-owned property, only through prior approval of a license for use of public property.
7. The applicant shall demonstrate that the outdoor seating area is adequately insured, either through a separate insurance policy or coverage under an existing policy. If applicant intends to use public sidewalks the owner must add the Town of Ayer as an additional insured and indemnify the Town against all claims.
8. No outdoor entertainment, including live or recorded music, will be allowed in the outdoor seating area unless the applicant already has an entertainment license allowing such entertainment or if the Board of Selectmen grants permission after a public hearing.
9. The outdoor seating area shall be within the control of the primary premises, such that wait staff and patrons shall not have to cross streets, private property, or parking lots to access the outdoor seating area, and must be clearly visible by management from inside the establishment, unless the licensee dedicates management personnel to the outdoor seating area.
10. The outdoor seating area shall be physically designated with ropes, fencing or other barriers, and the restaurant shall be responsible for ensuring that there is no consumption of food or alcohol outside of the designated outdoor seating area.
11. The outdoor seating area may be provided under awnings or table umbrellas or other cover from the elements, provided, however, that at least 50 percent of the perimeter of any covered outdoor seating area must remain open and unobstructed by any form of siding or barriers at all times.
12. The outdoor seating area shall comply with all requirements of the Americans with Disabilities Act and applicable regulations of the Massachusetts Architectural Access Board.
13. The restaurant shall comply with and enforce all rules, orders and guidance of the Governor, the Department of Public Health, and the Town relative to COVID-19 safety measures, including but not limited to any applicable regulations of the Alcoholic Beverages Control Commission and the Massachusetts Department of Health COVID-19 Safety Standards for restaurants, as may be amended from time-to-time. The standards are currently available at the following link: <https://www.mass.gov/info-details/safety-standards-and-checklist-restaurants>
14. The restaurant shall be solely responsible for sanitizing the tables and chairs after each use, cleaning the outdoor seating area and securing tables, chairs and equipment when the area is not in use.

15. All other regulations and permit conditions, including hours of operation, shall remain in effect, and the outdoor seating areas shall be subject to inspection by agents of the Board of Selectmen and Board of Health. Once approved, the conditions set forth in this policy shall become part of the licenses and permits for the restaurant and any violations shall be considered a violation of the terms of said licenses and permits.
16. The Town Manager may deny any application or suspend or revoke any approval for use of outdoor seating areas if they find that the proposed outdoor space does not comply with the requirements of this policy or any other applicable law, including but not limited to the orders and guidance of the Governor, the Department of Public Health and the Board of Health, or if the use of the outdoor seating areas poses a threat to public health, safety or welfare, or if the seating plan is likely to cause unreasonable impacts to the neighborhood.
17. The Town Manager reserves the right to impose additional requirements on a case-by-case basis as may be necessary to protect public health, safety and welfare.
18. If any provision of this order or the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.