



# Town of Hingham Board of Selectmen

## TOWN OF HINGHAM COVID-19 TEMPORARY POLICY REGARDING RESTAURANT OUTDOOR TABLE SERVICE

This Town of Hingham COVID-19 temporary policy regarding restaurant outdoor table service (this "OTS Policy") is hereby adopted by the Town of Hingham Board of Selectmen this 9<sup>th</sup> day of June, 2020 and shall be deemed effective immediately.

### Recitals:

**WHEREAS**, the 2019 novel Coronavirus ("COVID-19") has been declared a Public Health Emergency of International Concern by the World Health Organization; and

**WHEREAS**, COVID-19 is a highly contagious, and in some cases, fatal respiratory disease; and

**WHEREAS**, on March 10, 2020, the Governor of Massachusetts declared a State of Emergency as a result of the COVID-19 public health emergency; and

**WHEREAS**, on March 13, 2020, the President of the United States declared a National Emergency Concerning the COVID-19 public health emergency; and

**WHEREAS**, effective March 13, 2020, the Hingham Board of Selectmen declared a State of Emergency Concerning the COVID-19 public health emergency; and

**WHEREAS**, on June 1, 2020 Governor Baker issued COVID-19 Order No. 35 entitled "Order Clarifying the Progression of the Commonwealth's Phase Workplace Re-Opening Plan and Authorizing Center Re-Opening Preparations at Phase II Workplaces" ("Order No. 35"): <https://www.mass.gov/doc/executive-order-preparing-for-phase-ii-reopening/download>; and

**WHEREAS**, the Commonwealth of Massachusetts has issued a preview of the mandatory safety standards, recommended best practices and a checklist for restaurants; and

**WHEREAS**, on June 1, 2020 the Massachusetts Alcoholic Beverages Control Commission issued an "Advisory Regarding Local Licensing Authorities' Approval of Outdoor Seating"; and

**WHEREAS**, pursuant to Order No. 35, restaurants will be authorized to provide Outdoor Table Service (as defined in Order No. 35) at the commencement of Phase II, subject to COVID-19 workplace safety rules for restaurants; and

**WHEREAS**, pursuant to Order No. 35, as the same may be modified by such other emergency legislation, orders or guidance as may be enacted, adopted or issued by the Commonwealth (each a "State Action"), notwithstanding the provisions of certain state law and regulations, the Town of Hingham may, on a temporary basis, approve requests for expansion of Outdoor Table Service; and

**WHEREAS**, prior to approving such requests, the Board of Selectmen shall establish the process for approving such requests; and

**WHEREAS**, the Board of Selectmen deem it in the public interest of the Town of Hingham to take all steps reasonable, necessary and appropriate to allow restaurants and on premises food service establishments to commence on-premise service as quickly as possible, while mitigating the spread of COVID-19 in order to protect the health and welfare of the people of the Town of Hingham.

**NOW, THEREFORE**, the Board of Selectmen of the Town Hingham hereby establish the following process for the application for, and approval of, Outdoor Table Service in the Town of Hingham.

**Section 1. Definitions.**

(a) "ABCC" shall mean the Commonwealth of Massachusetts Alcoholic Beverages Control Commission.

(b) "Establishment" shall mean a restaurant, cafe, fast food restaurant, coffee shop, and any other similar place of public accommodation offering food and beverages, including alcoholic beverages.

(c) "Local Licensing Authority" shall mean the Board of Selectmen in connection with the issuance of an OTS Approval.

(d) "Order No. 35" shall have the meaning set forth in the Recitals hereto.

(e) "Original Premises" shall mean the premises described in the Establishment's existing liquor license or, if no liquor license, its common victualler license in effect prior to application for OTS Approval.

(f) "OTS Approval" shall mean a temporary approval issued by the Local Licensing Authority to a particular Establishment pursuant to this OTS Policy for one or more of the following purposes:

- (i) To modify an existing liquor license and/or common victualler license to allow for service to OTS Premises.
- (ii) To allow modifications to an Establishment's Original Premises and/or contiguous sidewalks, parking areas, landscaped areas and other outdoor areas that may be otherwise subject to Pre-Existing Permits or zoning requirements.

(g) "OTS Premises" shall mean the temporary new or expanded Outdoor Table Service area that is proposed for OTS Approval.

(h) "Outdoor Table Service" shall have the following meaning set forth in Order No. 35 as follows, as the same may be amended by subsequent State Action:

"Outdoor Table Service" shall mean service that is provided outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking

area, or other outdoor space. Outdoor table service 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 dining space must remain open and unobstructed by any form of siding or barriers at all times. "Pre-existing Outdoor Premises" shall mean the outdoor area, if any, in which an Establishment was permitted to operate under any Pre-existing Permit as of March 10, 2020.

(i) "Pre-existing Permit" shall mean any permit, license, approval or permission granted to an Establishment as of March 10, 2020, pursuant to applicable laws, bylaws, regulations, licenses and permits, including without limitation, state and local zoning permits and liquor license, common victualler and/or entertainment licenses.

(j) "Rescission Date" shall have the meaning set forth in Section 3(c).

(k) "State Action" shall have the meaning set forth in the Recitals hereto.

## **Section 2. Applicability; Temporary Provisions.**

(a) Pursuant to applicable State Actions, this OTS Policy shall only apply on a temporary basis to OTS Premises. All Establishments must provide food service in order to be eligible for OTS Approval. In no event shall an OTS Approval grant any right, permit or approval for any Establishment to continuing operating within OTS Premises or under such OTS Approval after the Rescission Date. Any Establishment that desires to modify its Original Premises or Pre-Existing Permits to allow for the permanent creation of new or expanded Outside Table Service shall be subject to all applicable state and local laws, regulations and bylaws and must seek approvals thereunder.

(b) Except as provided in this OTS Policy, any provision of the Town of Hingham General By-Law, the Town of Hingham Zoning By-Law, or any Pre-existing Permit which is inconsistent with this OTS Policy as to the allowance of OTS Premises shall be suspended until the Rescission Date, provided that the authority of the Local Licensing Authority to issue OTS Approvals shall be limited to the extent of the authority granted under applicable State Actions. Notwithstanding the foregoing, nothing herein shall limit the authority of the Local Licensing Authority to act in accordance with its authority under all other applicable state and local laws, regulations, and bylaws.

(b) Unless earlier terminated in accordance with the terms hereof, on the earlier of November 1, 2020 or the date Order No. 35 is rescinded (or other applicable State Action expires or is rescinded) (the "Rescission Date"), any OTS Approval issued under this OTS Policy shall automatically expire, at which time the Establishment shall revert back to its prior statue (pre-OTS Approval), including without limitation, reversion to its Original Premises and subject to all Pre-existing Permits.

### **Section 3. Eligible Outdoor Table Service Areas.**

Establishments may apply for OTS Approval for the following types of outdoor areas:

(a) Contiguous private property under the ownership or control of the Establishment, or abutting private property with the record owner's written consent; provided such abutting private property is not zoned for residential purposes and use of such property shall not create a material violation of legal requirements applicable to such abutting property.

(b) Public property, including public rights-of-way (sidewalks, parking areas), open space and any other public areas, subject to the issuance of a temporary license by the Town of Hingham board having legal care and control of such public property, issuance of which may be allowed or denied in such board's sole and absolute discretion.

### **Section 4. Compliance with Applicable Codes, Standards and Guidelines.**

Establishments applying for OTS Approval must comply with all applicable state and local standards and restrictions related to the Commonwealth's "Reopening Massachusetts" comprehensive plan, as well as all other applicable state and local laws and regulations governing the operation of food and beverage Establishments. Without limiting the foregoing, each Establishment shall comply with the following:

(a) The state's reopening plan requires all businesses to self-certify that they have met the Mandatory Workplace Safety Standards established by the state before they can reopen in the appropriate Phase of the plan. The Mandatory Workplace Safety Standards cover social distancing, hygiene protocols, staffing and operations, and cleaning and disinfecting. They are designed to reduce the risk of COVID-19 transmission to employees and customers and are applicable to all sectors and industries. The state has developed the following materials to help businesses comply with the new requirements:

- COVID-19 control plan template – Template that satisfies the written control plan requirement for self-certification.
- Compliance attestation poster – Poster that customer-facing businesses are required to print, sign, and post in an area within the business premises that is visible to workers and visitors.
- Employer and Worker posters – Posters that businesses can print and display within the business premises to describe the rules for maintaining social distancing, hygiene protocols, and cleaning and disinfecting.
- Welcome poster/checklist – After completing the COVID-19 Control Plan template, businesses should display this poster in an area on premises that is visible to employees and visitors.

The Town has assembled this List of Resources and sample materials from the Centers for Disease Control and the state that you can use to develop plans for your organization.

Restaurants are expected to implement the following protocols *in addition to* the more general Mandatory Workplace Safety Standards described above: "Safety Standards and Checklist: Restaurants" found at <https://www.mass.gov/info-details/safety-standards-and-checklist-restaurants>.

(b) Establishments seeking to extend liquor service to OTS Premises shall be subject to the guidelines set forth in the following ABCC Outside Service Advisories. The Local License Authority may also apply such ABCC guidelines, as appropriate, to Establishments seeking to extend food only service to OTS Premises.

- “Advisory Regarding Local Licensing Authorities’ Approval of Outdoor Seating” found at <https://www.mass.gov/doc/abcc-advisory-regarding-lla-approval-of-outdoor-seating/download>; and
- “Advisory Regarding Guidelines for Extension of Premises to Patio and Outdoor Areas” found at <https://www.mass.gov/doc/abcc-advisory-regarding-guidelines-for-extension-of-premises-to-patio-and-outdoor-area/download>.

### **Section 5. Application Process.**

(a) Establishments with questions about the OTS Approval process or seeking OTS approval shall submit such questions and the required applications and supporting materials to the Local Licensing Authority by email at [restaurantopening@hingham-ma.gov](mailto:restaurantopening@hingham-ma.gov). The list of required submissions is set forth below.

(b) The Local Licensing Authority shall refer the OTS application for review by the Town of Hingham restaurant re-opening working group which consists of the Executive Health Officer, the Building Commissioner and Town land use, police department, fire department and licensing staff.

(c) The applicant will be notified of any missing submission materials. Each application will be reviewed on a site-specific basis and additional information may be required. A site visit by Town staff to review the proposed OTS Premises and adjacent area may also be required.

(d) The application will be reviewed by the working group members for compliance with applicable state and local requirements related to Outside Table Service including, without limitation, state workplace safety and restaurant-specific standards, fire code requirement, accessibility requirements, and physical safety of diners, pedestrians and motor vehicles, including:

- Safety: ensuring that diners, staff, and pedestrians can maintain appropriate social distance from each other (in accordance with state standards) and are safely separated from motor vehicles; compliance of separation barriers, tents, outdoor heaters and the like with fire safety requirements.
- Accessibility: ability of customers with accessibility challenges to navigate the OTS Premises and the Establishment’s restroom facilities, and for pedestrians to navigate around outdoor areas on sidewalks and parking areas.
- Emergency access: maintaining access by public safety officials to the Establishment and to adjacent properties and buildings.

(e) The OTS Approval shall be subject to approval by the Local Licensing Authority at a duly posted public meeting. Under Massachusetts law, such meetings must be posted at least 2 business days prior to the meeting. The applicant will be notified as soon as its application is scheduled for review by the Local Licensing Authority and the applicant, or its representative, shall attend such meeting.

(f) The OTS Approval shall be immediately effective upon filing of notice thereof with the Hingham Town Clerk.

#### **Section 6. Submission Requirements.**

(a) Every applicant shall submit the Outdoor Table Service Application [found [here](#)], along with a site plan which must demonstrate compliance with the state standards and guidance listed in Section 4, and include, without limitation, the following information:

- (i) Layout of tables and seating surfaces
  - Limit tables to no more than six (6) guests per table
  - Tables spacing should must be maintained so that seating will be 6 feet apart from chair to chair, with such distance shown on the plan
  - Tables spacing must be maintained so people sitting at adjacent tables are more than 6 feet apart, and to allow employees/servers to stand back 6 feet from a group's table
- (ii) Method and materials of defining area of outdoor table service site (fences, walls, planters or other barriers)
  - Proper protective barriers shall be in place to maintain public safety, not a simple rope or yellow tape, particularly where alcohol will be served
- (iii) Location of and accessible walkway to sanitary facilities (hand sanitizer stations, restrooms, etc.)
- (iv) Location and materials for walkway to accessible exits, including traffic flow arrows for servers and path to restrooms
- (v) Location and method of lighting walkways for evening service
- (vi) Location of waiting area/line (if applicable):
  - Must have safe areas to stand away from traffic
  - Must have designated space that does not interfere with pedestrian traffic flow
  - Must allow for adequate social distancing
- (vii) Location of heating appliances and fuel storage (if applicable)

- (viii) Location of tent or other covering (if applicable)
- (ix) Boundary of proposed OTS Premises. If the Establishment has Pre-existing Outdoor Premises, the plan should show the entire outdoor area and which area is the expansion for with OTS Approval is requested.
- (x) Layout of tables and chairs showing the scaled distances between each diner (not each table) in compliance with state requirements.
- (xi) Local of umbrellas, tents, awnings, heat lamps and any barriers, railings or other temporary dividers to be used.
- (xii) Accessible path to restrooms and sidewalks or parking areas to be designated with marking tape.

A sample site plan is attached as Exhibit A for reference.

(b) If the applicant does not own or control (through a lease) the proposed OTS Premises, the applicant must submit written evidence of consent to the Outdoor Table Service application by the owner of such property.

(c) If no liquor is to be served, an application [[found here](#)] for modification of the Establishment's existing common victualler license and any additional information required therewith.

(d) If liquor is to be served in the OTS Premises, an application for modification of the Establishment's existing liquor license on the ABCC's required form [[found here](#)] and any additional information required therewith including, without limitation, an updated insurance certificate evidencing that the proposed OTS Premises is part of the insured premises.

(e) Proposed outdoor entertainment of any type (including, without limitation, music (live or prerecorded), televisions or screens) shall require an entertainment license application [[found here](#)].

(f) If the OTS Premises is proposed to be located on public property, the applicant must obtain a license from the applicable Town board, as set forth in Section 3(b), in form approved by the Local Licensing Authority. If the Board of Selectmen is the board with care and control of the public property, a request for such license may be submitted simultaneously with the Outdoor Table Service application. For reference, the Board of Selectmen is the board with care and control of all public ways and many public parking areas. If you are unsure of which board has care and control of certain public property, please email the proposed location to [restaurantopening@hingham-ma.gov](mailto:restaurantopening@hingham-ma.gov) and request that determination.

(g) A description, including size, number and design of any proposed temporary signage.

(h) If a tent covering is proposed, a tent permit may also be required from the Building Commissioner. Click [here](#) for Building Department application page.

## **Section 7. Fees.**

No fees shall be charged for the OTS Approval or for any other permits or licenses required to establish OTS Premises during the effective period of this OTS Policy.

## **Section 8. Findings.**

The OTS Approval is discretionary and no applicant is entitled to an OTS Approval. The Local Licensing Authority may approve the application, or portions thereof, with or without conditions, if it finds, in its judgment:

(a) The proposed use of the OTS Premises is consistent with the general purpose and intent of state and local restaurant reopening standards and guidelines, including those specifically applicable to Outdoor Table Service;

(b) The physical layout of the specific site of the proposed Outside Table Service can comply with safety requirements set forth in applicable state and local standards and guidelines established to protect the public from the spread of COVID-19;

(c) The specific site provides for accessibility, pedestrian safety, safe vehicular circulation and adequate parking, and adequate access for public safety purposes; and

(d) Potential impacts, if any, on residential abutters and neighboring businesses from light, noise and odor will be mitigated.

## **Section 9. Conditions and Restrictions.**

In addition to compliance with the state standards and guidance referenced in Section 4, the following conditions and restrictions shall apply to all OTS Premises.

(a) Unless this OTS Policy is renewed or expanded, Establishment will have one week (through November 9, 2020) to remove any tables and other installations temporary approved under this Policy from the OTS Premises.

(b) Hours of Operation: OTS Premises that are expansions of Pre-existing Outdoor Premises shall be subject to the hours of operation set forth in any Pre-existing Permit for such Establishment. Hours of operation of new OTS Premises shall be determined by the Local Licensing Authority but in no event shall such OTS Premises close later than the earlier of (i) 10:00 p.m. on Sundays - Thursdays and 11:00 p.m. on Fridays and Saturdays or (ii) one hour after the kitchen of the establishment closes for food service.

(c) Allowed Uses: OTS Premises may only be used for sit-down food and beverage service or customer pick-up and carry-out service.

(d) To prevent additional encroachment onto public space and to contain the sale of alcohol within the Establishment's approved OTS Premises, the area must be separated from any pedestrian sidewalk with a system of enclosure, such as decorative fencing with removable bollards, planters or the like. Establishments that do not serve alcohol are not required to

provide such enclosure unless deemed necessary by the Local Licensing Authority for public safety purposes.

(e) Total seating, inclusive of outdoor seating permitted under an OTS Approval and indoor seating (once permitted by the Commonwealth), shall not exceed the Establishment's maximum occupancy under any Pre-existing Permit or applicable building or fire codes.

#### **Section 10. Enforcement.**

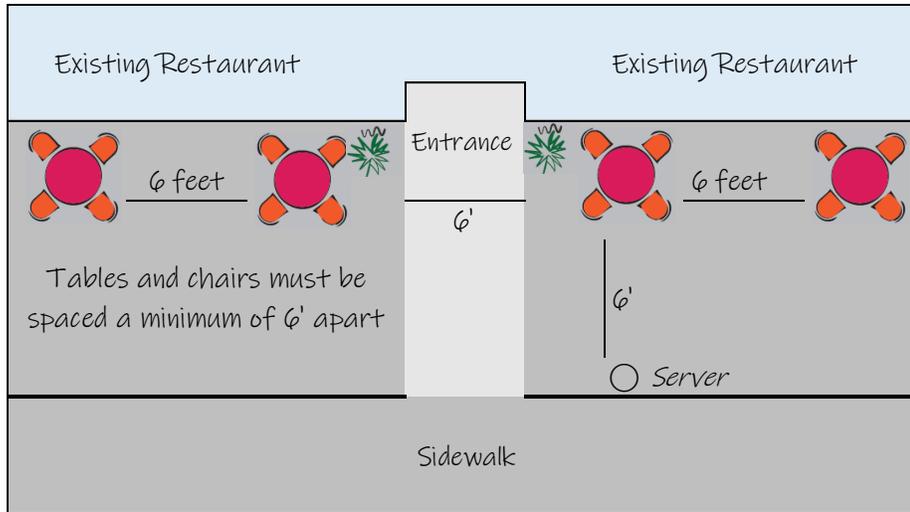
Notwithstanding any provision of this OTS Policy or the OTS Approval issued hereunder, in the event that an Establishment violates the conditions of this OTS Policy or its OTS Approval, the Establishment shall cease such violation or cure the condition causing such violation immediately upon written notice thereof from the Town. Failure to cure such violations may result in a revocation of the OTS Approval by the Local Licensing Authority. Nothing contained in this Section 10 shall limit the authority of any code enforcement officer of the Town, any law enforcement officer, the Board of Health or Executive Health Officer, or any other enforcement authority of the Town, to enforce all laws, codes and regulations within its jurisdiction.

This OTS Policy shall terminate November 1, 2020, unless extended by vote of the Board of Selectmen in a manner consistent with applicable State Action.

### Exhibit A

The following examples are intended to show conceptual OTS layouts that comply with social distancing requirements. In addition, sketch plans submitted with an OTS application should show accessible routes to restrooms, means of egress, server circulation patterns, and other requirements more fully detail in Section 6.

Ex. 1:



Ex. 2:

