

**Wednesday, June 3, 2020**  
**Board of Selectmen & Planning Board Joint Meeting Minutes**  
**Foxborough Town Hall**  
**Andrew Gala, Jr. Meeting Room**  
**6:00 p.m.**

**BOS Members Present:** Mark Elfman, Chair  
Leah Gibson, Vice Chair\*  
Ed O’Leary, Clerk  
David Feldman  
Chris Mitchell  
*\*Participating remotely*

**Also Present:**  
William Keegan Jr., Town Manager  
Mike Johns, Assistant Town Manager  
Paige Duncan, Planning Director\*  
Gaby Jordan, Staff Planner\*  
Chris Gallagher, DPW Director\*

1. 6:00pm Board of Selectmen & Planning Board Joint Meeting – Discussion and possible vote on Temporary Outdoor Dining Guidelines

Bill Keegan – Paige has been working with Town Counsel over the past several days on the Temporary Outdoor Dining Guidelines. This document has been reviewed multiple times. The Governor just came out with Executive Order #35 just the other day that allows alcohol to be served on the outside premises as well. I’m informed there was also a House and Senate bill that reinforces what the Governor just put out and passed all 3 legislative branches. This makes it so there is no longer a hearing required for alcohol service that can be handled by sending something to the ABCC to notify them of the change. This document provides the new regulations that we can go forward with the review process internally. The application is submitted by the individual wants to have the additional outdoor space and then we circulate it to our various departments for review and if everything meets the requirements including insurance then I can sign off on it. The only area that requires a lot more consideration is anyone who is utilizing a sidewalk then Chris Gallagher becomes a player in that process and the Board of Selectmen has to take a further look at that as well. Any questions about the procedure or regulations?

Paige Duncan – Thank you for everyone coming together so quickly it seems like we are going to be poised in the nick of time for this. I want to thank Leah and Ron and the two different boards that really rallied together. To be clear there are two tiers. Tier 1 is for temporary outdoor seating that will occur on private property and that’s sort of the one thing that requires sign off by Bill once vetted by the other departments. Tier 2 is where Chris gets involved, not entirely sure what that will involve. Other communities have talked about closing roadways or sidewalks and we want to be responsive to that. We have not received any requests to date for the use of public space. The one caveat that Gabby caught was if you are serving alcohol, you cannot serve outdoors if it is not contiguous to your property, for example if there was land that someone was trying to use that was not adjacent to the building, under the new circumstance if they were seeking alcohol service that would not be permitted under the revised ABCC rights. The process is pretty clear, we are not alone but we are certainly on the cutting edge of it. We’ve also attached an application form for review and Town Counsel prepared a license agreement that would be used in the event of Tier 2 when public property is involved. If people have question we can get straight to that or we can talk about 2 Tier and what that would involve with Chris and the public realm. We would like to get some parameter done right now so we can advise people who are looking to get this done.

BK – Governor has issued this as a temporary measure so that anyone looking to build a permanent space on to their property and use for long term beyond November or until the Governor removes the restriction, this would be a good time to test that out to see if it would be a good permanent fixture. If a permanent space is desired that would have to go through the normal channels to be clear.

Mark Elfman – An example of that is Union Straw

BK – Union Straw can do the temporary measure to put them in place immediately and then look to do more permanent and do that through the normal channels.

Ron Bresse – They actually chose to do permanent.

ME – They will be on our agenda next meeting.

PD – Bill and I discussed this earlier and think that Union Straw is a unique circumstance. They have been talking about doing a long term one for a little while now and this has incentivized them to do it. We would prefer them to do it in the permanent way rather than take up a parking lot that would bring up a host of issues. In this instance we think that Union Straw can come in do the temporary license because there is no loss to it and no fee and it will expedite the liquor license part of it, while working with the ABCC and the town to do it permanently for after November.

Gary Whitehouse – Has the Health Department seen this document at all? Do they have any questions and will they be able to meet this timeline?

PD – Yes, they seem open to it. We were working on a check list which the Governor came out with. Both Pauline (Health Director) and Eric Arvedon (Board of Health Chair) review the regulations and are fine with them. They don't step on any of their regulations and they will go on about doing their checklist as provided by the state. This will probably tax the Board of Health (BoH) and us a little bit more depending on the workload that comes in. This whole situation has been taxing and we are committed to helping out any of the business and restaurants and we just have to find a way to do it. The BoH has certainly been partnering with us all along and have been amenable to working with us.

ME – We should talk about public property and the only place I can think of is downtown and maybe Foxborough House of Pizza that might be the only one that might be involved with public property. It could be in back with public parking or the front. Chris, what are your thoughts on something like this downtown?

CG – When I received this from Paige, I then look to both these Boards for guidance to see what the thought of the Town is on this. It is something that we want to allow restaurants on Mechanic Street to use the sidewalk and then shut down the parking spaces to be a temporary sidewalk. I've looked at what Norwood has sketched out and in Foxborough we know some of those parking spaces aren't getting used every day all day but we hope that in time as restaurants are able to open those spots would be utilized. It's a matter of what the Town wants to see, I don't want to make a decision that sidewalks can be used and parking spaces closed without the opinion of the boards that are involved.

ME – Using Foxborough House of Pizza as an example, if he wanted to use the sidewalk and take up 6 of those parking spots for a walkway would be a good solution.

GW – Anything you would do would have to be particular to the establishment. I don't see any vendors going out to the sidewalk on mechanic's street.

Chris Mitchell – Question on insurance, if you look on the insurance that is in the original document, it talks about Tier 1, there's a lot of specifics, a million dollars, injury or death, two million dollars injury or death, when you get to the agreement with the Tier 2 stuff, none of that is in here. It says at least a million dollars. That would have to be adjusted I assume because the liability on Town owned property is so much greater, especially if it's a sidewalk. I'm fine with approving the Tier 1 but Tier 2 needs a lot of work, I'm not opposed to expediting it when we get it right but at least a million dollars, that doesn't cut it for me.

PD – The insurance is intended to apply to both Tier 1 and Tier 2, it applies to any temporary dining.

CM – Does it specifically say that if it's on town owned property in the big document?

PD – It says prior to opening any temporary outdoor dining area. The way I read it, if you have outdoor dining you have to have that in place.

Tracy Vasile– They typically already have insurance that covers both the building and all of their property so is this in addition to that?

BK – It may need to be clarified through the insurance company who is providing the coverage that the area is properly defined as including this area as well.

TV– So we are going to need to see a copy of their policy and they should have to provide proof that the policy coverage is that the outside is covered as well as the inside.

GW – It's common to get those certificates from businesses.

CG – That is the piece that changes here, the additional insured. Any time a contractor pulls a permit for a street opening the town gets named on the certificate as additional insured. That is what covers the town in case of an accident is within the public right of way, which is important for anything in the public right of way.

TV – This would be only for Tier 2. From a Tier 1 standpoint all they would need to do is to produce that proof of insurance coverage for outside and the Town wouldn't need to be named as a secondary insured because they are not coming onto the right of way in Tier 1.

CM – Right, its Tier 2 that is my concern, it seems ambiguous.

GW – AS long as the insurance covers Tier 1 as well as Tier 2 we should be covered.

PG – I want to clarify that the application form makes it clear that an insurance certificate is required to for any application so that's a given and would be part of our check off and would be verifying that the insurance certificate included the expanded premise. If we did get to a Tier 2 we would be checking to ensure the language was appropriate. We can add a sentence at the beginning of the insurance section for both Tiers.

LG – I agree with Paige, it seems clear.

CM – I would suggest on the application for the Temporary application for the public way that we add something more than a million dollars that doesn't seem like it is tight enough.

ME – We could say instead of at least a million, coverage per section D.

CM – If someone is sitting on a public sidewalk and a car comes up by accident, I want the Town to be protected as best as possible.

PG – Will update to say as part of the agreement in section 10 and we'll also add in the Town will be added in as an additional insured under Tier 2.

BK – Particularly as it relates to public right of ways.

GW – I think under Tier 1, god forbid a car goes into the temporary dining area in the parking lot and now you have violated your own site plan review, there could be some liability there.

RB – Lets do additionally insured across the Board, it doesn't cost the policy holder anything to do that.

Dave Feldman – I think we need to clarify the expiration because the temporary program expires on November 1<sup>st</sup>, 2020 unless extended by the Board of Selectmen. The Board will only have that authority if the ABCC order has been extended. The language should be consistent with the ABCC. So it should say the temporary program expires on November 1<sup>st</sup>, 2020 or until the order is rescinded. Otherwise you'll have people coming to the Board asking for an extension.

PG – Do you want November 1<sup>st</sup> or to say this temporary program expires when the order is rescinded by the Commonwealth.

DF – The language should be consistent.

PG – November 1<sup>st</sup> is in the Governor's statute today. The counsel added this one. We could say this temporary program expires on November 1<sup>st</sup> or when the order is rescinded by the Commonwealth.

DF – The actual language issued by the ABCC was: Please be aware that all expanded premises approved pursuant to this order are only effective through November 1, 2020 or until the order is rescinded, whichever is sooner and revert to their original license premises on that date.

LG – Isn't that just for the alcohol? If someone wanted to keep dining outside of November they could still dine outside, which is what these regulations are for, without the alcohol?

BK- The new regulations speak to the zoning piece too. They address both the alcohol and the zoning piece. I just talked to Town Counsel prior to this meeting and he noted that. They waived the zoning requirements and the alcohol requirements in the same legislation and that just came out late this afternoon.

ME – We should have the same language.

LG – Looking at the logistics of it, I think we should add on to the form an email, a phone and a fax number on the form. We should also send this out or post this on the webpage and maybe email, and make people aware. We could come up with a cover letter, which I'm happy to come up with. We should also add an effective date as well. Paige has done a great job vetting these with everyone and in pulling it together really quick.

BK – To be clear about the logistics and to follow up on Leah's point, if this gets approved tonight, somebody can apply and we start the process, get the word out immediately to all the different departments and try to turn it around as quickly as we can so that they can their businesses reopened.

LG – I will coordinate with Paige on outreach starting tomorrow.

John Rhoads – Bill, do you foresee the types of applications coming in as Tier 1?

BK – I believe so, yes.

JR – I think we are ready to go on Tier 1 and there might be some tests that we might have to do some revisions. Do we anticipate having different subdivisions of Tier 2, where you use the sidewalk only, street and sidewalk and are there certain streets that we want to limit to sidewalk only and will not issue a permit for the street, hours that we would use it. Some of these decisions would be based on the amount of traffic, the time for the application, and the day of the week. It's almost as if we should don't list specifics that we should list some specifics in a preamble so they know what we are likely to look for and as for. It's probably going to be a case by case basis and maybe we try and cover that in the preamble. Maybe there is a street we want to not entertain the idea of using the portion of the street.

RB – The only street that any of us could think of is Central Street. I did speak to Chief Grace and he said that some other communities are closing a section of road for a period of time on a given day to allow the restaurants to use it. We would have a great opportunity with Liberty and Wall Street that we can circumvent the center of town very easily. We are still only talk about 2 or 3 entities that haven't come forward at this point in time.

LG – There is also the parking to, we could talk about which side of the building, is it the parking lot side that doesn't affect the traffic and sidewalks or the street side.

ME – That is why we have Tier 2 with that extra level of vetting.

TV – I thought about that parking lot, that is in horrible shape overall and just from a liability standpoint it may be better to consider the street when and if we get an application.

LG – I'm looking at the list of restaurants that I referenced earlier, I think there are 2 restaurants on Central Street and maybe Primo's could be another one. I'm not sure how much land they have, the only other one besides the Commons and Gunther Tooties and Sam's that may run into that issue.

CM – South Street and Sal's and Mal's.

PG – I also thought about Saturday and Sunday morning, with Gunther Tooties and the Commons, that there could be a nice little breakfast thing going. Of course we would have to be sensitive to the hair and nail salons and Cindi's because there are a lot of variables here. I believe with Chris' guidance we can figure it out. Also remember there is a limit to how many seats you can have.

LG – Are we good to make a motion?

ME – Yes

Motion to approve the Temporary Outdoor Dining regulations as amended and discussed in this meeting by L. Gibson, 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**

PG – Thank you to all. I know the restaurant owners I have spoken to greatly appreciate this and they are really noticing that Foxborough is stepping up.

BK- I have also received thanks from a restaurant that we are doing this. I also want to know that that Chairman of the Board of Health has joined the meeting and would ask him if had anything he wanted to share on this matter.

Eric Arvedon – Thank you for inviting me. I applaud everyone for all your efforts, Paige put in incredible effort, we're excited and believe this will be good.

Motion to close the Board of Selectmen meeting by C. Mitchell, 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**