

# BOROUGH OF MIDDLETOWN RESTAURANT SIDEWALK DINING – COVID-19

Applicant Name: \_\_\_\_\_  
 Relationship to Business: \_\_\_\_\_  
 Applicant Address: \_\_\_\_\_  
 Applicant Phone Number: \_\_\_\_\_  
 Business Name: \_\_\_\_\_  
 Business Address: \_\_\_\_\_  
 Business Phone Number: \_\_\_\_\_  
 Property Owner: \_\_\_\_\_

**Describe Proposed Outdoor Furniture. List quantity, colors, materials, types:**

	Qty	Description
Chairs:	_____	_____
Tables:	_____	_____
Umbrellas:	_____	_____
Partition:	_____	_____
Other:	_____	_____

Please complete and submit the information below:

- Proof of licensure by the Pennsylvania Liquor Control Board authorizing the sale and consumption of alcoholic beverages in the restaurant sidewalk dining area, if applicable.
- Proof of liability insurance in the amount of \$100,000 per individual and \$300,000 per occurrence.

Submit this application along with the above items to: Borough of Middletown, 60 W. Emaus Street, Middletown, PA 17057.

This is to certify that I, \_\_\_\_\_, the Applicant, have read the Restaurant Sidewalk Dining Provisions as set forth in Chapter 235, Streets and Sidewalks, Article IX (as amended), Resolution 2020-19, and will follow the guidelines set forth by the Governor of Pennsylvania.

The following conditions must be met prior to operating a restaurant sidewalk dining area and continued compliance with the rules and conditions is required during the term of June 4, 2020 through October 31, 2020.

- (A) The requirements of Section 235-40 (C) shall still partially apply and be enforced but temporarily substituting a requirement of thirty-six (36”) inches in lieu of the normal forty-eight (48”) inch requirement for the width of the unobstructed path available for pedestrian traffic and for the minimum unobstructed distance from a bus stop, fire hydrant, light post, mailbox, planter, street sign or similar public structure.
- (B) The restrictions on the hours of operation from 7:00 a.m. to 10:00 p.m. in Section 235-42 shall continue to be enforced.
- (C) The prohibition in Section 235-43 (A)(8) against using the pedestrian walkway for the service of food or beverage or the conduct of any other business shall continue to apply and be enforced.
- (D) The hold harmless / indemnification agreement requirement of Section 235-43 (A)(9) shall continue to apply and be enforced.
- (E) The proof of insurance requirement of Section 235-43 (A)(10) shall continue to apply and be enforced.

Failure to comply with these requirements, and any other provisions of the Borough Code incorporated herein, may result in the revocation of permission to hold outside dining at your establishment.

I, \_\_\_\_\_, the Applicant, acknowledge that any and all documents and plans submitted with this application may be subject to the Pennsylvania Right to Know Law (RTK) and copies of same may be made public in response to a request under the RTK Law or to Borough officials and I authorize the Borough to do so.

I agree to defend, indemnify and save harmless the Borough of Middletown and all of its elected officials, appointees and employees from any and all loss, liability, damages or judgments resulting from any claims made against any of them by reason of, or in connection with, operation of a restaurant sidewalk dining area on a public sidewalk. I waive any loss or damage (direct or inconsequential) that may arise from the application of the provisions of the Borough of Middletown Code Chapter 235 and/or the regulations adopted as amended from time to time, and/or any condition or requirements applied or imposed by the Code/Zoning Officer in connection with the Restaurant Sidewalk Dining Permit.

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*A restaurant sidewalk dining area permitted pursuant to the Borough Code and duly licensed for sale and consumption of alcoholic beverages by the Pennsylvania Liquor Control Board, shall not be subject to Chapter 98, Alcoholic Beverages, Article II, Open Containers, of the Code of the Borough of Middletown and the restrictions set forth thereunder.*

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**MIDDLETOWN BOROUGH**

**RESOLUTION NO. 2020-19**

**RESOLUTION TO TEMPORARILY SUSPEND DUE TO THE COVID-19 PANDEMIC UNTIL OCTOBER 31, 2020 ENFORCEMENT OF CERTAIN RESTRICTIONS IN PART II, CHAPTER 235 (SIDEWALKS AND STREETS), OF THE CODE OF ORDINANCES OF THE BOROUGH OF MIDDLETOWN ON OUTDOOR DINING AT RESTAURANTS IN ORDER TO ACCOMMODATE THE NEED FOR SOCIAL DISTANCING**

**WHEREAS**, the Borough of Middletown, Dauphin County, Pennsylvania (hereinafter the “Borough”), is a body corporate and politic duly organized and existing as a political subdivision of the Commonwealth of Pennsylvania; and

**WHEREAS**, the COVID-19 virus continues to pose threats of injury, damage and suffering to the persons of the Borough of Middletown by potentially endangering the health, safety and welfare of persons residing in the Borough, and continues to threaten the economic wellbeing of businesses, including restaurants, of the Borough and those who depend upon them for their livelihood; and

**WHEREAS**, Borough Council by its prior Ordinance 2018-1351 (hereinafter the “Outdoor Dining Ordinance Amendment”), a copy of which is attached hereto as “Exhibit A” and incorporated herein by reference, had amended Part II, Chapter 235 of the Code of Ordinances of the Borough of Middletown to provide for outdoor dining on sidewalks for Borough restaurants subject to certain conditions, restrictions and limitations; and

**WHEREAS**, as the Commonwealth moves toward reopening restaurants in connection with the easing of certain restrictions relating to the COVID-19 pandemic, it is anticipated that CDC and Department of Health guidance and recommendations relating to restaurants will potentially permit and recommend certain social distancing practices for patrons that may include the option of accommodating social distancing and other mitigation measures through outdoor dining; and

**WHEREAS**, certain of the requirements, physical restrictions, and limitations that are included in Chapter 235 as a result of the Outdoor Dining Ordinance Amendment would impair the ability of some Middletown restaurants to take advantage of potential outdoor dining to the fullest extent possible in order to accommodate COVID-19 social distancing and recommended mitigation protocols and practices; and

**WHEREAS**, Borough Council finding that in view of the current COVID-19 pandemic emergency it is in the interests of public health and safety as well as the economic wellbeing of the Borough’s citizens and restaurant businesses to temporarily allow and encourage socially distanced outdoor dining to the extent it may be permitted by the Commonwealth, has determined that it is appropriate to provide for the formal temporary suspension until October 31,

2020 of the enforcement of certain of the Outdoor Dining Ordinance Amendment requirements and restrictions of Part II, Chapter 235, of the Code of Ordinances of the Borough of Middletown, subject to the exceptions to suspension set forth in this Resolution.

**NOW, THEREFORE, BE IT RESOLVED, BY THE COUNCIL OF THE BOROUGH, AS FOLLOWS:**

**Section 1.** Enforcement of the requirements that were added to Part II, Chapter 235, of the Code of Ordinances of the Borough of Middletown by the said Outdoor Dining Ordinance Amendment (attached as Exhibit A to this Resolution) is hereby temporarily **SUSPENDED** until **October 31, 2020**, in order to accommodate the potential health and safety related need due to the COVID-19 pandemic emergency to provide for social distancing and other mitigation measures for restaurant customers that may be available through outdoor dining **EXCEPT** to the following extent:

- (A) The requirements of Section 235-40 (C) shall still partially apply and be enforced but temporarily substituting a requirement of thirty-six (36") inches in lieu of the normal forty-eight (48") inch requirement for the width of the unobstructed path available for pedestrian traffic and for the minimum unobstructed distance from a bus stop, fire hydrant, light post, mailbox, planter, street sign or similar public structure.
- (B) The restrictions on the hours of operation from 7:00 a.m. to 10:00 p.m. in Section 235-42 shall continue to be enforced.
- (C) The prohibition in Section 235-43 (A)(8) against using the pedestrian walkway for the service of food or beverage or the conduct of any other business shall continue to apply and be enforced.
- (D) The hold harmless / indemnification agreement requirement of Section 235-43 (A)(9) shall continue to apply and be enforced.
- (E) The proof of insurance requirement of Section 235-43 (A)(10) shall continue to apply and be enforced.

**Section 2.** In the event any provision, section, sentence, clause, or part of this Resolution shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this Resolution, it being the intent of the Borough that such remainder shall be and shall remain in force and effect.

**Section 3.** This Resolution shall become effective immediately, and all resolutions or parts of resolutions inconsistent herewith are expressly repealed.

**BEING DULY ADOPTED** this 4<sup>th</sup> day of June, 2020 at a regular meeting of the Middletown Borough Council.

ATTEST:

BOROUGH OF MIDDLETOWN,  
DAUPHIN COUNTY, PENNSYLVANIA

Grace Miller  
Borough Secretary

By: Angela Lloyd  
Borough Council President

(Seal)

EXHIBIT A

# Exhibit A

## MIDDLETOWN BOROUGH ORDINANCE NO. 2018 - 1351

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE BOROUGH OF MIDDLETOWN, PART II, CHAPTER 235, STREETS AND SIDEWALKS, REVISING THE CHAPTER TO ADD A NEW ARTICLE IX, SIDEWALK OBSTRUCTIONS, TO PROVIDE FOR AUTHORIZED RESTAURANT SIDEWALK DINING AREAS IN ACCORDANCE WITH THE BOROUGH CODE BY ESTABLISHING DEFINITIONS, RESTAURANT SIDEWALK DINING REQUIREMENTS, PERMIT REQUIREMENTS, HOURS AND MONTHS OF OPERATION, REGULATORY CONDITIONS, NOISE CONTROL, REQUIREMENTS RELATED TO THE LAWFUL SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES, REVOCATION OF PERMITS, NON-TRANSFERABILITY AND VIOLATIONS AND PENALTIES.**

**WHEREAS**, the Borough of Middletown recognizes the expansion of businesses in the Borough and the services provided; and

**WHEREAS**, in order to allow restaurants located in the Borough to expand their services to customers within the Borough, the Borough believes it is appropriate to revise its Code of Ordinances as it relates to restaurant sidewalk dining; and

**WHEREAS**, the Borough desires to encourage businesses within the Borough to properly and lawfully expand the services provided and establish requirements related to the expansion of services.

**NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED**, by the authority of the Borough Council of the Borough of Middletown, Dauphin County, Pennsylvania, that the Code of Ordinances of the Borough of Middletown, Part II, Chapter 235, Streets and Sidewalks, be amended by adding a new Article IX, Sidewalk Obstructions, to read as follows:

**SECTION 1.** The Code of Ordinances of the Borough of Middletown, Part II, Chapter 235, Streets and Sidewalks, be amended by adding a new Article IX, Sidewalk Obstructions, immediately following Article VIII, to read as follows:

Article IX. Sidewalk Obstructions.

§ 235-39. Definitions.

As used in this article, the following terms shall have the meanings indicated:

**PEDESTRIAN WALKWAY**

That portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

## PERSON

Includes an individual, partnership, corporation, association, trust, estate or other legally recognized entity.

## RESTAURANT SIDEWALK DINING

An outdoor dining area operated by a restaurant located on an immediately adjacent public sidewalk area and containing nonpermanent outdoor furnishings such as tables and chairs, which is not located on and does not obstruct the pedestrian walkway as established under the provisions of this article. It shall not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy.

## SIDEWALK

An area constructed in accordance with Chapter 235, Streets and Sidewalks, Article VII, Curb and Sidewalk Construction and open for the pedestrian use of members of the general public.

### § 235-40. Restaurant Sidewalk Dining Requirements.

A. A person in compliance with all applicable Borough Code requirements and other applicable county, state and federal legal requirements with regard to the operation of a restaurant and desiring to operate restaurant sidewalk dining shall meet the requirements set forth in this chapter and otherwise described in the Borough Code.

B. The use of public sidewalk space adjacent to a restaurant for restaurant sidewalk dining shall only take place following the issuance of a valid permit pursuant to this article and the satisfaction of any and all conditions as may be applied to said use by the Borough through Borough Council.

C. Restaurant sidewalk dining shall be restricted to areas immediately adjacent to the property on which the restaurant establishment operating the sidewalk dining area is located and when the designated outdoor dining area is located on a public sidewalk, there shall be an unobstructed path available for pedestrian traffic a minimum of 48 inches wide. Under no circumstances shall a restaurant sidewalk dining area obstruct access to or be located less than 48 inches from a bus stop, fire hydrant, light post, mailbox, planter, street sign or similar public structure.

D. Prior to the issuance of a permit, the restaurant sidewalk dining area shall be inspected by the Borough Code/Zoning Officer for compliance with this article.

### § 235-41. Permit required.

A. Written application must be submitted to the Borough Manager making clear a request to use a public sidewalk area for restaurant sidewalk dining. The person submitting the application concerning property located in the Borough must show sufficient authority to submit the application (*e.g.*, property owner, tenant, power of attorney).



B. A permit issued pursuant to this article shall be issued on the basis of a calendar year and written application for renewal must be made in each new calendar year.

C. The permit application fee and annual permit renewal fee shall be set by resolution of the Borough Council. Permit fees and renewal fees are not subject to proration.

§ 235-42. Hours of operation; Months of operation.

A. Restaurant sidewalk dining areas shall only operate from 10:00 a.m. to 10:00 p.m. during the permitted months of use.

B. Restaurant sidewalk dining areas shall only be open for use April 1 through October 31.

§ 235-43. Regulatory conditions.

A. The following conditions must be met prior to the issuance of a permit to operate a restaurant sidewalk dining area and continued compliance is required during the term of any permit issued:

1. Serve no food or beverages to a patron in a restaurant sidewalk dining area unless that patron is seated at a table.
2. Outdoor furnishings located in a restaurant sidewalk dining area shall be limited to nonpermanent partitions, tables, chairs, umbrellas, canopies and safely operated heat lamps.
3. All outdoor furnishings must be removed from the restaurant sidewalk dining area at the close of business each day and stored within an interior structure when the area is closed per business hours. No outdoor furnishings shall be placed in a restaurant sidewalk dining area outside the season of operation.
4. A nonpermanent, rigid, aluminum or resin, partition shall be used to separate the restaurant sidewalk dining area from the unobstructed pedestrian sidewalk. The height of the partition shall be 36 inches. The partition shall be black or white in color.
5. High top and pub style table and chair sets are prohibited.
6. Any sign placed in the restaurant sidewalk dining area must meet the requirements of Chapter 260, Zoning, Article XVII, Signs, of the Code of the Borough of Middletown.
7. The restaurant sidewalk dining area shall be maintained in a clean manner and kept free of all trash and debris.

8. Permittees shall not use the pedestrian walkway for the service of food or beverage or the conduct of any other business.
9. Execute an indemnification and hold-harmless agreement in favor of the Borough against all claims and losses, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the restaurant sidewalk dining area.
10. Provide proof of liability insurance in the amount of \$100,000 per individual and \$300,000 per occurrence.
11. Proof of licensure by the Pennsylvania Liquor Control Board authorizing the sale and/or service of alcoholic beverages in the restaurant sidewalk dining area shall be provided to the Borough Manager, where applicable.

§ 235-44. Noise.

The holder of a permit to operate a restaurant sidewalk dining area shall control the noise created by the operation of the restaurant sidewalk dining area, including but not limited to, the conduct of patrons, or any other disturbances prohibited by Chapter 185, Noise, Article I, Noise Disturbances, of the Code of the Borough of Middletown.

§ 235-45. Lawful sale and consumption of alcoholic beverages.

A. A restaurant sidewalk dining area permitted pursuant to this article and duly licensed for sale and consumption of alcoholic beverages by the Pennsylvania Liquor Control Board, shall not be subject to Chapter 98, Alcoholic Beverages, Article II, Open Containers, of the Code of the Borough of Middletown and the restrictions set forth thereunder.

B. Alcoholic beverages served in the restaurant sidewalk dining area shall not be transported outside of the restaurant sidewalk dining area.

C. No alcoholic beverage shall be consumed directly from its original bottle, can, carton or other original packaging.

§ 235-46. Revocation of permit.

Failure to comply with the requirements of this article, conditions, and any other provisions of the Borough Code incorporated herein, may result in the revocation of a permit by the Borough Manager. Borough Council may revoke a permit without cause.

§ 235-47. Non-transferrable.

Restaurant sidewalk dining area permits are not transferrable. Changes in ownership/operation require reapplication for a permit.

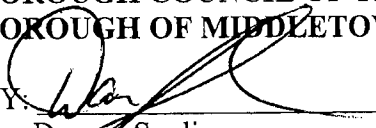
§ 235-48. Violations and penalties.

A. Any person who shall violate any provision of this article shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000 and not less than \$50 and costs of prosecution for each offense and, upon refusal to pay such fine and costs, to imprisonment for not more than 30 days. Each day during which a violation occurs shall constitute a separate offense.

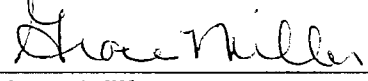
B. This article and the foregoing penalties shall not be construed to limit or deny the right of the Borough or any person to such equitable or other remedies as may otherwise be available with or without process of law.

**BE IT DULY ORDAINED AND ENACTED** into law this 9<sup>th</sup> day of July, 2018, by the Borough of Middletown, Dauphin County, Pennsylvania, in lawful session duly assembled.

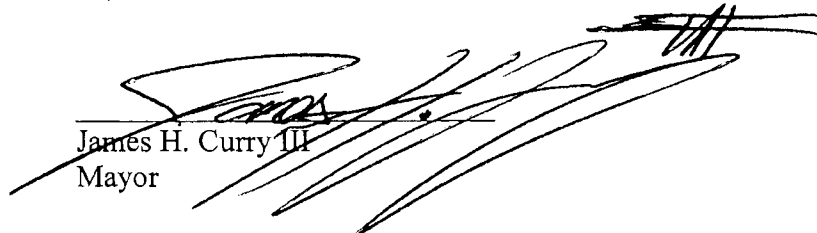
**BOROUGH COUNCIL OF THE  
BOROUGH OF MIDDLETOWN**

BY:   
Damon Suglia  
Borough Council President

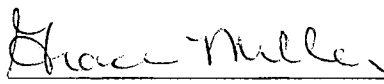
**ATTEST:**

  
Grace Miller  
Borough Secretary

**AND NOW THIS** 9<sup>th</sup> day of July, 2018, the foregoing Ordinance is approved.

  
James H. Curry III  
Mayor

I hereby certify the foregoing Ordinance was advertised in the Patriot News on June 26, 2018, a newspaper of general circulation in the municipality and was duly enacted and approved as set forth at the regular meeting of the municipality's governing body held on July 9, 2018.

  
Grace Miller  
Borough Secretary