

Covid-19 Modifications to Existing Special Permits

The Provincetown Board of Health approved the following Rule and Order (included in its entirety in Attachment A).

In accordance with the provisions of the State Food Code, 105 CMR 590.000, et seq., and Massachusetts General Laws, Chapter 111, Sections 104 and 122, and any other applicable law, the Board of Health hereby issues the following Rule and Order relative to outdoor activities. This order is issued for the protection of public health and to prevent causes of sickness within the Town by allowing restaurants with on-premises dining to use additional outdoor space so as to achieve greater distancing between tables and diners.

The Planning and Zoning Boards are requested to make an appropriate finding to take actions to ensure that businesses affect by the Board of Health Order may make such Temporary Modifications to Existing Special Permits in a timely manner:

- Establish a process that would allow temporary modifications to existing Special Permits specifically to address the Town's goals of advancing the social distancing criteria and guidance required by the Governor. The timeline of the modification will be tied directly to the Board of Health Rule and Order.
- The modification may be changed and adjusted depending on the changing health environment, therefore these processes and permits can be modified.
- Any temporary modification granted is not a suspension of enforcement of the Zoning Bylaw or Licensing Regulations.
- The Zoning and Planning Boards will make a finding pursuant to the bylaw, that temporary modifications of existing Special Permits for the purpose of complying with Covid-19 guidance "...does not represent a substantive change of the findings or conditions of approval of the project."
- The Zoning and Planning Boards will approve an expedited permitting process in which it allows modifications to Special Permit provided staff confirms that any such modification conforms to the Board of Health Order.
- This fee for the Temporary Modification to the Special Permit will be waived.

The following issues may be considered as part of the Staff review of the temporary modifications:

Temporary Pickup/Loading Zones

Consideration for temporary pick-up/loading zones which could have an impact on traffic circulation.

- Limit signage related only to the instructions for pickup
- Establishing consistent timeframes for pickup areas

Relaxed Signage Regulations

Temporary signage should be limited to the purpose of facilitating the social distancing goals and should not be used specifically to exceed the sign area requirements.

- Limiting signage ensuring it is COVID-19-related to alert customers that they are open and to follow social distancing protocol
- Temporary window signage and sandwich board signage (depending on available space) focused on the need to operate safely.
- Ensuring circulation on sidewalks, streets, and elsewhere is not impeded
- Ensuring signage does not inhibit vehicle sight lines and safety
- Possibly limiting the size of signage, such as how much of store façade or window area can be covered by temporary signage
- No additional illumination for temporary signage

Flexible Indoor/Outdoor Restaurant Seating

- To ensure safe social distancing while dining, food service establishments would create new outdoor seating areas or increase the amount of permitted outdoor seating in order to create more space between tables.
- Does not allow an increase in overall seating or an increase to the assigned Title 5 flow for any property or business.
- Availability of outdoor space adjacent to the business on the property or in an adjacent parking area
- Considered on an adjacent parcel, sidewalk or beach area only on a case by case basis and with a higher level of scrutiny.
- If seating is placed in a parking lot, a physical barrier or safe separation of seating areas from vehicle traffic is required, such as bollards or planter boxes, will protect customers from vehicle traffic both on-site/within the parking area and adjacent to the site.
- Proximity to sensitive resources such as adjacent residential units and environmental resources.
- Outdoor Food Preparation is not allowed unless specifically authorized by the Health Department.
- At this time approval of an outdoor dining area shall not to be construed as an approval for the alteration or extension of premises where alcoholic beverages are served. The serving or consumption of alcohol outside of the premises of a duly licensed establishment to serve alcohol must be approved by the Licensing Board and the ABCC. If alcohol is permitted in the future, a Temporary Modification approval may be amended to reflect such a change.

Required Criteria

- Seating Area Plan of the proposed layout for review by the designated town staff with sufficient detail to determine the layout, location, and safety measures proposed
- Dining tables are spaced according to public health guidelines

- Tables do not block entrances, exits, fire lanes, hydrants, drive aisles, back-up areas, or pedestrian circulation
- Outdoor seating does not block handicapped parking spaces or handicapped access
- A physical barrier or separation, such as bollards or planter boxes, protects customers from vehicle traffic both on-site and adjacent to the site
- The outdoor seating plan meets Fire Department standards, including points of egress, access to fire extinguishers, and tent and awning fire safety ratings, if applicable
- Outdoor dining areas are maintained and free of trash and other debris and include adequate provisions for trash disposal and recycling
- Operating hours do not exceed the hours of indoor seating
- Any additional lighting required for dining areas, must be dark sky compliant and minimal to provide safe access and must be directed onto the site and not overspill onto adjacent properties.

Outdoor Entertainment Uses

- Due to a lack of current guidance, outdoor entertainment uses are not covered under this approval. Once guidance is provided, a Temporary Modification approval may be amended to reflect such a change.

Temporary Tents and Covered Areas for Outdoor Uses

- Temporary tents may be used to serve as outdoor retail sales areas, restaurant seating areas, or curbside order and pickup areas.
- Tents will require a tent permit and must demonstrate manufacturers fire spread specifications.
- Tents erected for more than 7 days will require a new Special Permit and may not exceed maximum lot coverage requirements, setback requirements, parking requirements. Existing Special Permits for tent over 180 days may be extended consistent with the purposes of these guidelines.
- Historic District Commission requirements for new temporary structures would be required unless waived by the HDC.

Required Criteria

- Completed application with a sketch showing the location of the proposed tent on a site plan, size and height of tent, proposed tent material, and a description of how the tent will be used to support business; sketch is detailed enough to show the tent will not interfere with safe site circulation
- Tent material meets fire safety standards
- Tent complies with any height requirements and size requirements established by the town
- If the tent is located within a parking area or immediately adjacent to a roadway, a physical barrier or separation, such as bollards or planter boxes, is used to protect customers from vehicle traffic on-site and adjacent to the site

- Specifications must be provided for any proposed outdoor heating elements and must be approved by the Building Commissioner.
- Tent does not obstruct safe parking lot circulation
- Tent does not block handicapped parking spaces or limit handicap accessibility

Reduced Parking Requirements

- Exiting Special Permits may be modified to reduce the parking requirements to advance the goals of social distancing whether for restaurant seating or outdoor retail display. Property owners may not block handicapped parking areas nor handicapped access.
- New requests for a reduction in parking not associated with an existing Special Permit or Non-conforming situation will require a Special Permit from Zoning.

Liquor Licenses (for Takeout and Delivery)

During the State of Emergency, Massachusetts has allowed businesses with liquor licenses to sell beer and wine for off-premises consumption. The current order in Massachusetts requires food to be purchased along with the beer or alcohol.

If the State provides further relief or exempts temporary service area changes, then we could permit the expansion of alcohol service into these dining areas. If alcohol is permitted in the future, a Temporary Modification approval may be amended to reflect such a change.

Outdoor Display of Merchandise

- Existing Special Permits for Outdoor Display of merchandise may be modified consistent with the purposes of these guidelines.
- New Outdoor Display request require Special Permit approval through the Zoning Board of Appeals.
- Limited to private property, merchandise may not be placed on the public sidewalk or encroach into the public way or extend in front of adjacent businesses.
- Displays must not impede pedestrian circulation and are intended to spread out merchandise displays not increase merchandise displays.
- Must be limited to merchandise and types of retail sales that occur within the associated retail establishment.

Required Criteria

- Completed application with detailed sketch, drawn to scale on a map of the display area, for review by the designated town staff with sufficient detail for staff to determine the layout, location, impacts, and any safety measures proposed
- Tables, tents, display racks, or other objects proposed do not block entrances, exits, fire lanes, hydrants, drive aisles, back-up areas, or safe pedestrian circulation
- May not block handicapped parking areas or handicapped access

- If placed in a parking lot, a physical barrier or separation, such as bollards or planter boxes, will protect customers from vehicle traffic both on-site/within the parking area and adjacent to the site
- The plan meets Fire Department standards, including points of egress, safe circulation, and access to fire extinguishers

Application Procedure

Applications for Temporary Modifications to existing Special Permits shall be submitted to the Community Development Department in the form of a site plan or seating plan as applicable.

The Department will review the application and plan for outdoor seating area plan and will consult with the Health, Licensing, Building, Fire, Police and Zoning Departments.

Seating Area Plans may be “conditionally approved based on seating area, final approval may contingent upon an inspection confirming compliance with valid Orders from the Commonwealth and Provincetown Board of Health regarding restaurants and social distancing.”

All plans must comply with any applicable Massachusetts Governor’s orders, Massachusetts Department of Public Health orders and guidance documents for social distancing and for food services establishments.

Seating Plans may include additional conditions of approval such as maintenance of the outdoor seating area, trash, or barriers as appropriate. If additional information is needed or a revision to the seating plan is required, they will contact the applicant. Applications shall be submitted on the attached form along with a plan for the outdoor seating area and an insurance certificate as described below.

Plan Requirements

A neatly drawn plan will be submitted depicting the precise area and placement of tables within the dining area, the arrangement of outdoor dining furniture, perimeter fencing, cafe umbrellas, outdoor heaters and any other equipment. Areas designated for picking up take-out food shall also be shown on the plan. ‘

The restaurant shall follow all other social distancing and virus prevention measures as outlined by the Board of Health, which are not associated with an outdoor seating plan. Smoking is prohibited in all outdoor dining areas. If a restaurant will be utilizing an existing parking lot or yard area, a plan with the same requirements is required. If a temporary tent or similar structure is proposed, approval of the Building Commissioner is required.

Proposed Motions

Zoning Board of Appeals Motion (Supermajority):

Restaurants:

Pursuant to the Provincetown Zoning Bylaw, Section 5350, I move to issue an amendment and minor modification to the valid Special Permit to allow for compliance with the Town of Provincetown Board of Health Rule and Order on Use of Outdoor Space for On-Premises Dining effective, May 28, 2020 (The “Board of Health Rule and Order”) by allowing all restaurants in Provincetown to submit a revised seating plan to the Building Commissioner.

Said amendment and minor modification shall be noted in the file and shall only be valid while the Board of Health Rule and Order is in effect.

Retail:

Pursuant to the Provincetown Zoning Bylaw, Section 5350, I move to issue an amendment and minor modification to the valid Special Permit to allow for compliance with the Commonwealth of Massachusetts Governor’s Order Prohibiting Gatherings of More Than 10 People (COVID-19 Order No. 13) by allowing any retail establishment with an existing Outdoor Display Special Permit to submit a revised outdoor display plan to the Building Commissioner.

Said amendment and minor modification shall be noted in the file and shall only be valid while COVID-19 Order 13 is in effect.

Planning Board Motion (Majority):

Pursuant to the Provincetown Zoning Bylaw Section 4040, I move to issue an amendment and minor modification to the valid Site Plan to allow for compliance with the Town of Provincetown Board of Health Rule and Order on Use of Outdoor Space for On-Premises Dining effective, May 28, 2020 (The “Board of Health Rule and Order”) by allowing all restaurants in Provincetown to submit a revised seating plan to the Building Commissioner:

Said amendment and minor modification shall be noted in the file and shall only be valid while the Board of Health Rule and Order is in effect.

ATTACHMENT A

TOWN OF PROVINCETOWN
BOARD OF HEALTH

RULE AND ORDER ON USE OF OUTDOOR SPACE
FOR ON-PREMISES DINING

EFFECTIVE MAY __, 2020

In accordance with the provisions of the State Food Code, 105 CMR 590.000, et seq., and Massachusetts General Laws, Chapter 111, Sections 104 and 122, and any other applicable law, the Board of Health hereby issues the following Rule and Order relative to outdoor. This order is issued for the protection of public health and to prevent causes of sickness within the Town by allowing restaurants with on-premises dining to use additional outdoor space so as to achieve greater distancing between tables and diners.

It is hereby ordered that restaurants with food permits authorizing the service of food for consumption on the premises shall hereinafter be authorized to expand their premises to accommodate outdoor dining on decks or in parking lots, subject to the following requirements:

1. Restaurants with permits that have designated outdoor areas may continue to use those areas and are not subject to the requirements of this Order.
2. Permit holders wishing to expand their premises to include outdoor dining areas, shall make written application to the Board of Health and shall receive the approval of the Board or its authorized agent prior to using any outdoor dining space.
3. The application shall include a plan showing the location of the proposed dining area, the size of the dining area, the number of seats and tables that will be located in the dining area, and any other information required by the Board or its agent.
4. Approval to use an outdoor dining area shall not result in an increase in the number of seats authorized for the premises; such that the number of seats permitted inside the establishment shall be reduced by the number of seats allowed outside the establishment.
5. The permit holder shall demonstrate a legal right of access to the proposed outdoor space, either through ownership, lease or written permission of the owner. Under no circumstance shall outdoor dining be allowed on any public sidewalk, within the Town's public right of way or on any other Town-owned property, unless approved by the Select Board, in writing.
6. The permit holder shall be responsible for obtaining any necessary approvals from the Board of Appeals, and/or the building department.
7. If the establishment intends to serve alcohol in the outdoor area, the permit holder shall apply for and receive approval of an alteration of premises from the Licensing Board and the ABCC.
8. If the establishment intends to use the outdoor area for entertainment, the permit holder shall obtain a permit from the Licensing Board.

9. The outdoor area shall physically abut the primary premises, such that wait staff and patrons shall not have to cross streets, private property or parking lots to access the outdoor area.

10. The outdoor area shall be physically designated with ropes, fencing or other barriers and no space outside the designate area shall be used for dining purposes.

11. The permit holder shall comply with and enforce all rules, orders and guidance of the Governor, the Department of Public Health and the Town of Provincetown Board of Health relative to COVID-19 safety measures, including but not limited to gathering size limits, physical distancing, and face covering requirements.

12. The permit holder shall be solely responsible for sanitizing the tables and chairs after each use, cleaning the outdoor area and securing tables, chairs and equipment when the area is not in use.

13. All other regulations and permit conditions, including hours of operation, shall remain in effect, and the outdoor areas shall be subject to inspection by agents of the Board of Health.

14. The Board of Health reserves the right to impose additional requirements on a case-by-case basis as may be necessary to protect public health, safety and welfare.

15. This Order shall be enforced by the Board of Health, or its authorized agent in the same manner that the requirements of the Food Code and other Board of Health regulations are enforced, including but not limited to permit suspension or revocation and/or the imposition of fines.

16. This Order shall take effect when the Governor authorizes on-premises dining at restaurants and it shall expire and the use of all outdoor seating areas shall cease and be decommissioned on _____ or by further order of the Board of Health.

17. Copies of this Order and any other notices required by this Order shall promptly be: (1) made available at the Provincetown Hall; (2) posted on the Town Website; and (3) provided to any member of the public requesting a copy of this Order; and (4) shall, as soon as reasonably possible following the adoption of the same, be provided to the Cape Cod Times, Provincetown Banner, and the Provincetown Independent.

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.

19. Whoever violates any provision of this Order may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. The Board of Health may seek to enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

20. This Order may be enforced as a regulation of the Board of Health by the Provincetown Health Director, Assistant Health Officer, Agent of the Board of Health, and/or any Police Officer of the Town of Provincetown.

21 Whoever violates any provision of this Order may be penalized by a noncriminal disposition process as provided in Massachusetts General Laws, Chapter 40, section 21D and the Town's non-criminal disposition by-law.

If non-criminal disposition is elected, then any person who violates any provision of this Regulation and Order shall be subject to a penalty in the amount of three hundred dollars (\$300.00) violation. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

Board of Health Proposed Motion

“Moved to issue a Rule and Order on the Use of Outdoor Space for On-Premises Dining” as set forth in the attachment to the agenda, said order to be effective on _____; it being understood that each restaurant will be responsible for seeking any necessary approvals from other regulatory boards as stated in Sections 6 and 7 of the Order through an expedited process as may be approved by each regulatory board where such approval is required.”