

**TOWN OF PROVINCETOWN
SELECT BOARD AND BOARD OF HEALTH**

**JOINT EMERGENCY RULE AND ORDER IMPOSING CERTAIN MEASURES TO
PREVENT THE SPREAD OF
COVID -19 WITHIN THE TOWN**

In accordance with the authority under G.L. c 111, §§ 31, 122, and 95 through 105, and any other applicable law, the Provincetown Select Board and the Provincetown Board of Health hereby issues the following Joint Order:

1. The intent of this Order is to impose measures to address the expected significant increase in people residing in or visiting the Town of Provincetown during the summer season. The Board of Health has estimated that the Town’s year round population, which is approximately 3,000, may increase on any given day during the summer season to between 35,000 and 40,000. The extreme population density within the Town during the summer months presents challenges with regard to ensuring the safety of Town residents as well as visitors during the State of Emergency declared by the Governor and the Town due to the ongoing COVID – 19 pandemic. The unique circumstances of the Town requires local measures that may be more stringent than the Governor’s emergency orders in order to protect public health and safety because the requirements for social distancing to minimize the inherent risk of COVID-19, a highly contagious disease, are not feasible in many areas of the Town including walking on Commercial Street and other streets within the Town especially during the summer season.
2. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order is deemed to constitute an imminent threat to public health.
3. This Order incorporates by reference all prior Orders of the Select Board and Board of Health, the provisions of which shall remain in effect unless they are in conflict with this Order, in which case the provisions of this Order shall take precedence.
4. This Order incorporates by reference the Declaration of Emergency issued by Governor Baker on March 10, 2020, and all subsequent orders, guidelines, and regulations issued by the Commonwealth relative to the COVID-19 State of Emergency, whether now in effect or issued in the future, and said orders, guidelines and regulations shall be enforced in the same manner as a regulation of the Board of Health.
5. This Order shall remain in effect until this Order is amended or rescinded by the Town.
6. This Order acknowledges that many of the measures contained herein affecting businesses and other activities are currently not allowed under the Governor’s COVID-19

Orders and related regulations and guidelines. Nevertheless, this Order is intended to provide residents, visitors, and businesses with some degree of certainty and predictability regarding local measures, which may apply in future phases of the Governor's Re-Opening Plan, depending on present public health conditions and the containment of COVID-19.

7. To the extent that any provisions of this Order imposes requirements or restrictions that are different from those imposed by the Governor or state agencies, the provisions that are most protective of public health shall prevail.

COVID-19 Vaccinations Encouraged

All residents, business owners, contractors, employees and visitors are strongly encouraged to receive a COVID-19 vaccination when they are eligible to do so, particularly those who interact with members of the public.

Dining (Indoor and Outdoor Seating):

On June 1, 2020, the Governor issued COVID-19 Order No. 35, which allowed restaurants to provide outdoor table service at the commencement of Phase II of the Commonwealth's phased re-opening of workplaces and until November 1, 2020.

On September 10, 2020, the Governor issued COVID-19 Order No. 50, extending the time period for allowing restaurants to provide outdoor table service to a date 60 days past the end of the State of Emergency or such earlier date established by the Town, and allowing the Town to automatically extend any approvals for outdoor dining that were previously provided.

The Governor's Orders authorize the Select Board to establish the process for approving requests from restaurants to provide outdoor table service. This Order sets forth the process for restaurants operating in Provincetown.

1. Any approvals for outdoor table service granted prior to the date of this regulation are hereby extended to a date 60 days past the end of the COVID-19 State of Emergency, provided that there are no changes from what was previously approved.
2. "Outdoor table service" shall have the same meaning as set forth in COVID Order No. 35. It 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.
3. Any restaurant 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.
4. The application shall include a plan showing the location of the proposed outdoor dining area, the size of the outdoor dining area, the number of seats and tables that will be

located in the outdoor dining area, and any other information required by the Board or its agent. In anticipation of the allowance of indoor dining, the plan submitted should also include, for approval, the configuration of indoor tables along with the total number of proposed seating.

5. Approval to use an outdoor dining area shall not result in an increase in the number of seats authorized for the premises. In the event the Commonwealth authorizes at a later date indoor table service, this Order may be deemed revised accordingly, except that the number of seats permitted inside the establishment shall be reduced by the number of seats allowed outside the establishment.

6. The expansion of outside dining onto Town-owned beaches is subject to approval by the Board of Health and the Select Board. Expansion of dining on to private beaches is subject to approval of the beach owner and the Board of Health.
7. The permit holder shall demonstrate a legal right of access to the proposed outdoor space, through either ownership, lease or written permission of the owner. Under no circumstances 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.
8. Notwithstanding the provisions of chapter 40A of the General Laws, or any special permit, variance or other approval thereunder, or any general or special law to the contrary, the Building Department shall approve requests for expansion of outdoor table service. The approval need not comply with the notice and publication provisions of section 11 of Chapter 40A of the General laws. Simultaneously, the Building Department may approve the configuration of an amended indoor seating plan. This may be accomplished by submitting a singular amended plan.
9. If the establishment intends to serve alcohol in the outdoor area, the holder of the liquor license may apply to the Licensing Board for a change in the description of the licensed premises to allow outdoor alcohol service. The Licensing Board may grant the change in location without a public hearing and without further review or approval by the Alcohol Beverages Control Board ("ABBC") prior to issuance. See the COVID-19 Order and the ABCC Advisory issued on June 1, 2020.
10. If the establishment intends to use the outdoor area for entertainment, the permit holder shall obtain a permit from the Licensing Board.
11. 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.
12. The outdoor area shall be physically designated with ropes, fencing or other barriers and no space outside the designate area shall be used for outdoor dining purposes.
13. 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, workplace safety requirements, gathering size limits, physical distancing, and face covering requirements.
14. 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.
15. The hours of alcohol sales allowed at businesses with pouring licensees shall be between 8:00 am to 11 pm Monday – Saturday and 1-:100 am – 11 pm on Sunday.
16. All other regulations and permits conditions, including hours of operations, shall remain in effect and the service areas shall be subjected to inspection by agents of the Board of

Health and Licensing Agent.

17. 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.
18. Pursuant to the Governor's COVID-19 Order No. 50 , , any approval under this section and/or the June 1, 2020 order, shall automatically revert back to its status prior to the approval of the change for expansion of outdoor table service or in the description of a licensed premise on a date 60 days past the end of the COVID-19 State of Emergency, unless further extended by order of the Governor or the Board.
19. Food Trucks and the outdoor dispensing of food at hotels located out of the center of Town, as determined by the Board of Health, are not allowed.

Outdoor Display of Merchandise:

The outdoor display of merchandize shall be permitted subject to approval of the Building Department, but may not encroach into the public way.

Cruise Ships and Excursion Marine Vessels:

In light of the significant risk caused by an influx of visitors to the Town caused by these activities which will make social distancing more difficult to achieve, the use of any docking facilities within the Town by cruise ships, whale watching, dinner or sightseeing cruises, gambling cruises, or other vessels for hire shall not be permitted except with the approval of the Board of Health, after consultation with the Harbormaster and the Provincetown Public Pier Corporation. This prohibition does not apply to scheduled ferry service, which is considered an integral part of the Town's transportation infrastructure. Any person or entity with a plan previously approved in accordance with this section may continue operating under that plan provided that there are no changes from what was previously approved.

Street Performers:

Street performers must be duly licensed by the Town and are required to wear a mask or other face covering while performing as provided for in this Order. Licensed street performers shall be permitted to perform only within certain designated zones and during the hours as set forth in Section 9-4 of the Town's General Bylaws. It is the intent of this prohibition that street performers have the right to exercise freedom of speech subject only to reasonable time place and manner restrictions, and are designed to protect public health, safety and welfare. The Board

of Health reserves the right to issue further orders in this regard should the Board determine that the ability to social distance is not possible during performances.

Mask Order:

Individuals are required to wear a mask or other cloth face covering over the nose and mouth when along the public way from Bang Street to Pleasant Street and include the Town’s Commercial Center Zoning District 24 hours a day, 7 days a week. The Eastside Commercial Fishing Docks of McMillian pier would be excluded. This order does not apply to children under the age of 2 or any person who is unable to wear a mask or face covering due to a medical condition or is otherwise exempted by the Department of Public Health guidance. Persons not able to wear a mask due to a medical condition are not required to produce documentation of the condition. This Order is intended to supplement the requirements of the Governor’s mask order, which continues to remain in place throughout the Town.

Indoor Entertainment:

Live indoor entertainment, including cabarets and other live performances, which would otherwise require an entertainment license by the Licensing Board is hereby prohibited.

Food Buffets:

Food buffets and/or any kind of self-service of any food that is not pre-packaged, including self-serve coffee soft drinks, and water dispensing areas, are not allowed to operate.

Outdoor Areas of Restaurants or Bars

Smoking in outside restaurant areas or bar areas is prohibited.

Use of Town Property

As the custodial board of Town property, the Select Board will make certain properties available for use by members of the public for the consumption of take-out meals. Said outdoor areas shall be subject to such reasonable rules and regulations as the Select Board deem necessary and shall be available on a first-come, first-serve basis. Pursuant to the authority of the Select Board over public ways and authority to enact traffic regulations, the Select Board will temporarily remove parking spaces on Ryder Street to promote social distancing and pedestrian movement. The Select Board will permit the expansion of the Farmer's Market and the Sunday Vendor's Market onto the Town Hall lawn.

Enforcement:

1. 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) a summary of which shall be published in the Cape Cod Times, Provincetown Banner, and the Provincetown Independent.
2. 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.
3. 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 and/or the Select Board 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.
4. The Provincetown Health Director, Assistant Health Officer, Agent of the Board of Health, and/or any Police Officer of the Town of Provincetown may enforce this Order as a regulation of the Board of Health.
5. 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.
6. 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 one hundred dollars (\$100) for the first offense; two hundred dollars (\$200) for the second offense; and three hundred dollars (\$300) for a third and subsequent offense. Each day or portion thereof

shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

7. Notwithstanding the foregoing, agents and officers are encouraged to educate offenders and to exercise their judgment on a case-by-case basis, and they may issue verbal or written warnings prior to determining that an offense has occurred.

So Ordered by the Provincetown Board of Health on this 4th day of March, 2021

So Ordered by the Provincetown Select Board on this 4th day of March, 2021