



## BOARD OF SELECTMEN

**Issue Date: June 8th, 2020**

**Type of Policy: New (X) Amendment ( )**

**Effective Date: June 8th, 2020**

**Town Wide Policy**

## LOCAL EXTENSION OF THE LICENSED PREMISES POLICY

### 1. Purpose

To temporarily allow restaurants to create and/or expand seating areas on either private or public property, including public rights-of-ways, subject to review by Town staff to that ensure public safety, public health, and public access are all maintained.

### 2. Design, Appearance, and Application Criteria

- A. Alcoholic beverages cannot be served outside of a licensed establishment unless and until an application to extend the licensed premises has been approved. The Edgartown Board of Selectmen as the Local Licensing Authority shall have final approval on all applications.
- B. An application to extend the premises must describe the area in detail, including dimensions, seating capacity, maximum occupancy, location of tables and any other furnishings and equipment, sanitation plan, and areas designated for picking up take-out food.
  - i. Cafe umbrellas are allowed; umbrellas and furniture shall be of a design appropriate to the character of the building and the district.
  - ii. Trash and recycling receptacles shall be integrated in the design and materials with other outdoor cafe elements.
  - iii. Smoking is prohibited in all Outdoor Dining Areas.
  - iv. Outdoor heaters are prohibited in all Outdoor Dining Areas.
  - v. If a temporary tent or similar structure is proposed, details of the tent or similar structure must be submitted and approval by the Building Inspections department is required.
- C. The sale of and consumption of alcoholic beverages in the area of the local extension will not be authorized without a food order.
- D. Areas shall not be utilized after 10:59 PM.
- E. The premises must be enclosed by a fence, rope, or other means to prevent access from a public walkway.
  - i. Areas in public ways with vehicular traffic safety concerns should include requests for additional force protections measures (i.e. Jersey Barriers, etc)

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- F. The outdoor area must be contiguous to the licensed premises with either
  - i. A clear view of the area from inside the premises, or, alternatively
  - ii. The licensee may commit to providing management personnel dedicated to the area.
- G. The Town will consider the type of neighborhood and the potential for noise in the environs.

### 3. Application Procedure

- A. Applications shall be submitted to the Town Administrator via the Administrative Assistant of the Selectmen, Karen Fuller [kfuller@edgartown-ma.us](mailto:kfuller@edgartown-ma.us), who shall review the application for completeness. Incomplete applications will be returned without action.
- B. The Town Administrator will forward the application, if complete, to the following Departments for review and comment:
  - i. Board of Health - Public Health orders and guidance documents for social distancing and for food services establishments
  - ii. Building Inspector – Zoning/ADA
  - iii. Historic District Commission – Design and appearance
  - iv. Highway Superintendent – Impact to streets, sidewalks and other public ways
  - v. Fire / Police – Public safety, fire safety, emergency access
- C. Department reviews shall be completed and returned to the Town Administrator within seven business days of the department's receipt of the application from the Town Administrator. Each department shall indicate whether it recommends that the application be: Denied, Approved, or Approved with Modifications.
- D. The Town Administrator will forward the application and recommendations from the departments to the Board of Selectmen for final decision. Approvals will be mailed to the Alcoholic Beverage Control Commission (ABCC) per the ABCC "Advisory Regarding Local Licensing Authorities Approval of Outdoor Seating."
- E. Applications shall be submitted on Appendix A along with all other requested supplementary materials.

### 4. Insurance and License

- A. The Restaurant Owner shall carry business operations and liability insurance coverage and shall add the Town as an additional insured for the premises, or provide other insurance coverage acceptable to the Town, and shall promptly deliver to the Town Administrator a copy of said insurance certificate, said insurance to be at all times in amounts, terms and conditions deemed reasonable by the Town from time to

LOCAL EXTENSION OF THE LICENSED PREMISES APPLICATION



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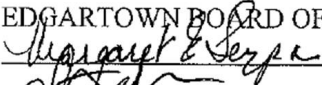
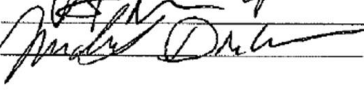
time, and at least \$1,000,000.00 and with companies satisfactory to the Town and authorized to do business in the Commonwealth of Massachusetts. If alcohol is served on the premises, the Restaurant Owner shall include the Town as an additional insured on its liquor liability insurance under terms and conditions acceptable to the Town.

- B. The Restaurant Owner shall enter into a temporary license agreement with the Town of Edgartown per Appendix B if the extended license area will be located on Town sidewalks, rights-of-way or other Town owned property.
- C. If the extended license area will be located on property not owned by the Restaurant Owner or the Town of Edgartown, the Restaurant Owner shall submit the Property Owner Affidavit Form per Appendix C.

Arthur Smadbeck, Chairman  
Michael Donaroma  
Margaret Serpa

Date: June 8<sup>th</sup>, 2020

BOARD OF SELECTMEN  
EDGARTOWN BOARD OF SELECTMEN

  
\_\_\_\_\_  
  
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TOWN OF EDGARTOWN  
 OFFICE OF THE SELECTMEN  
 70 Main Street, P.O. Box 5158  
 Edgartown, MA 02539  
 508-627-6180

**LOCAL EXTENSION OF THE LICENSED PREMISES APPLICATION**

**Fee: None**

Date: \_\_\_\_\_

SECTION 1 – APPLICANTS

|   |  |
|---|--|
| Applicant’s Full Legal Name:<br>And title/position with business<br>entity, if applicable |  |
| Applicant’s Home Address:   |  |
| Applicant’s Mailing Address (if<br>different):  |  |
| Applicant’s & Manager’s Home<br>Telephone Number:   |  |
| Applicant’s & Manager’s E-Mail<br>Addresses:  |  |

SECTION 2 –BUSINESS INFORMATION

|  |  |
|--|--|
| Full Legal Name of the Business:<br>(“Restaurant Owner”) |  |
| Full Street Address of the<br>Business:                  |  |
| Mailing Address of the Business<br>(if different)        |  |
| Telephone Number of the<br>Business (if different):      |  |
| E-Mail Addresses of the Business<br>(if different):      |  |

SECTION 3 – OTHER INFORMATION, AND TERMS AND CONDITIONS

Please describe here and **attach a photo and sketch showing** all changes you want to make, showing the area in detail, including dimensions, seating capacity, maximum occupancy, location of tables and other furnishings and equipment, sanitation plan, area designated for picking up take-out food area, access and egress, whether umbrellas or tents are proposed, whether the area is owned by the Restaurant Owner or other private party, etc. Be sure to describe and show fencing or other barriers to separate patrons from non-patrons. The Town will review them and may approve them, including with conditions. Use additional sheets if necessary.

## Appendix A

The Board of Selectmen may, upon notice, modify, suspend or rescind any approval as circumstances, law and guidelines change. Nothing herein or any action by the Town shall be construed as an assurance by the Town that approval of this application will be given or that the activities at issue are safe.

The applicant agrees to indemnify, defend and hold harmless the Town of Edgartown for any loss, claim or damage, including reasonable attorneys' fees, arising out of or related to this application or any approval granted, any use of or activity on the licensed premises as extended, or any breach or violation of applicant's obligations under this application or any approval granted. Any costs or expenses incurred by the Town, including Town employee time, arising out of or related to the enforcement of this application or any approval granted or applicant's default of its obligations in relation to this application or any approval granted, shall be paid by the applicant and shall be a debt of the applicant to the Town.

It is understood and agreed that any approval or use hereunder is temporary and not precedent setting. Unless a termination date is specified or imposed by the Town in the future, or Covid-19 Order No. 35 issued by Governor Baker is rescinded or amended sooner, the License will revert back to its prior form on September 30, 2020.

The Restaurant Owner is responsible for ensuring that all laws, rules, regulations and orders are complied with, including but not limited to any and all guidelines and requirements issued by the Commonwealth of Massachusetts or its Governor, or the Town of Edgartown, as a result of the Covid-19 pandemic, and for obtaining all applicable inspections, permits, licenses and other required authorizations.

If the extended license area will be on Town-owned property, the Restaurant Owner shall enter into a temporary license agreement with the Town per Appendix B. If the extended license area will be on property not owned by the Restaurant Owner or the Town, Restaurant Owner shall submit the Property Owner Affidavit Form per Appendix C.

Applicant's (authorized) Signature

\_\_\_\_\_ By signing above you verify the accuracy of all information and agree to the terms of this form and any other terms and conditions made as part of the Town's approval. Attach certificate of corporate or other authority for signing this application, and print your name and title/position with the business entity.

**TOWN OF EDGARTOWN TEMPORARY LICENSE AGREEMENT  
TO USE SPECIFIC TOWN OF EDGARTOWN SIDEWALKS AND/OR PROPERTY  
FOR EXPANSION OF SEATING AND RESTAURANT OPERATIONS DUE TO  
LIMITATIONS IMPOSED BY THE COVID-19 PANDEMIC**

This Temporary License Agreement is made this \_\_\_\_\_ day of **June, 2020**, by and between \_\_\_\_\_, all collectively and singularly being the Licensee hereunder, unless otherwise specified (meaning the Licensee itself, its employees, himself, herself, itself, its representatives, agents, officers, officials, members, consultants and those acting under its authorization) and the Town of Edgartown, 70 Main Street, Edgartown, MA 02539 (Town, meaning the Town itself, its employees, representatives, agents, officers officials, consultants and those acting under its authorization).

WHEREAS, Licensee has requested from Town permission to temporarily use Town sidewalks or other areas as shown on the attached and incorporated sketch (Property) for the purpose of temporarily expanding its restaurant operations into the Property due to restrictions on normal operations due to the Covid-19 Pandemic; and

WHEREAS, the Town, acting by and through the Board of Selectmen, wishes to grant temporary permission for said use, subject to the following terms and conditions; and

WHEREAS, the Licensee are agreeable to said terms and conditions;

NOW THEREFORE, Town and Licensee do hereby covenant and agree as to the entering into of this temporary license (called License or Temporary License, which term shall be interchangeable).

1. This exclusive license is granted for the period of \_\_\_\_\_ a/p.m., June \_\_\_\_\_, 2020 to \_\_\_\_\_ a/p.m. on \_\_\_\_\_, 2020, unless terminated or extended sooner.
2. The sole purpose of the License is for the temporary expansion or alterations of the restaurant operations into the Property due to restrictions on normal operations due to the Covid-19 Pandemic. Food and alcohol may be served and consumed so long as the appropriate local and state licenses, permits and other approvals are obtained and in effect.
3. The following activities are not permitted under this license: (i) placing any structure, sign, bulletin board, post, pole, or advertising device of any kind whatsoever upon the Property or to attach any notice, bill, poster, sign, wire, rope, or cord to any tree, shrub, fence, railing, post or structure in such areas, except as previously authorized by the Town in writing or to engage in any other activity other than that permitted by this Temporary License Agreement; notwithstanding the foregoing, Licensee may as part of this license place a reasonable number of directional signs approved by the Town, which shall be removed at the conclusion of the license; or (ii) using combustibles or fire in any fashion or the discharge of weapons or fireworks, or consumption or having possession of any alcoholic beverages whatsoever unless the same is included in an alcoholic beverages license issued by the Town and approved by the ABCC or engage in any activity which is contrary to any federal, state or local law; or (iii) making any other use of the Property other than that allowed hereunder; or (iv) engaging in any noisome or noxious or disturbing activity, having due regard for the neighborhood; or (v) engaging in or allowing any activity that would cause substantial interference with the rights, safety or enjoyment of occupants of any adjacent property.

## Appendix B

4. This license is granted only for the purposes and upon the terms and conditions stated herein and is conditioned on the Licensee' agreement which is evidenced by the signatures of the Licensee below.
5. Licensee agrees to (i) indemnify, defend and hold harmless the Town from and against any and all loss, claims, damages and liability, including reasonable attorneys' fees, to or of any person or property arising out of or related to the use or occupancy of the Property, or the exercise or breach of the rights or obligations under this license, by the Licensee or its patrons, customers, licensees and invitees; (ii) fully and completely protect the Town against any and all claims or litigation growing out of the Licensee's use or anything done by Licensee under this license; (iii) return the Property to the same condition and degree of cleanliness or better that it was in prior to the commencement of the use promptly at the expiration or termination of this license (reasonable wear and tear excepted), and maintain the Property in good and clean condition during the term of the license, all at Licensee's sole cost and expense; (iv) remove any item of property left or placed in or on the Property by Licensee promptly at the expiration or termination of this license; (v) faithfully and completely perform and observe all of the terms and conditions of this license; and (vi) perform such other reasonable requests as may be made from time to time concerning the Licensee's use of the Property by the Town or its representatives. The indemnification, defense and hold harmless rights and obligations shall accrue immediately upon the utterance of a claim or complaint covered by this agreement, regardless of other claims simultaneously brought, and shall not be contingent upon the merits of such claim or questions of fact raised by the claim or complaint. The provisions of this paragraph shall survive the termination of this agreement.
6. The Town reserves the right at any time to immediately upon notice to Licensee or posting of notice at the site, terminate and cancel this license prior to its expiration for any cause as determined in the best interests of the Town, and all rights granted hereunder shall immediately terminate and cease and the Town shall not be held liable by reason thereof.
7. This license is not transferable or assignable and Licensee shall be responsible for any uses permitted hereunder. Licensee shall supervise and observe any and all use of the property during the license period and shall be solely responsible for the use of the Property during the term hereof.
8. Licensee shall take all reasonable steps necessary to secure and protect the property and to prevent access by those not authorized.
9. The Town shall be under no liability for any damage or loss of the property of the Licensee or others and no claim shall be made therefore against the Town. The use of the Property is at the sole risk of the Licensee and not the Town. Licensee acknowledges that Licensee has inspected the site and is satisfied as to the suitability of the site for its purposes. No warranty or representations as to the site or its suitability for any particular purposes is made by the Town, and the Licensee accepts the Property in its as is condition. No action or inaction of the Town shall constitute or be construed to be an explicit and specific assurance of safety or assistance. The Town may inspect the site at any time.
10. The Licensee further agrees to have said area included in their business operations and liability insurance coverage and to add the Town as an additional insured for the premises and property, or provide other insurance coverage acceptable to the Town, and to promptly deliver to the Town Administrator a copy of said insurance certificate, said insurance to be at all times to be in amounts, terms and conditions deemed reasonable by the Town from time to time, and at least \$1,000,000.00 and with companies satisfactory to the Town and authorized to do business in the Commonwealth of Massachusetts. If alcohol is served on the premises or Property, Licensee shall include the Town as an additional insured on its liquor liability insurance under terms and conditions acceptable to the Town.

Appendix B

11. Licensee acknowledges that Licensee is responsible for obtaining and maintaining any other permits, authorizations, permissions, licenses and the like which may be needed for this activity. This license is only for the use of property as is the property of the Town or under its control to the extent that it may grant this license.
12. Licensee agrees to promptly reimburse or pay for and pay to the Town any actual sustained costs or expenses, or time for its employees, incurred by the Town directly or indirectly arising from the Licensee's use of the Property. The Licensee acknowledges and understands that the Town is not expected to or obligated to take any action relative to the Licensee's use of the Property or items thereon.
13. The Licensee is solely responsible for ensuring that all laws, rules, regulations and orders are complied with, including but not limited to any and all guidelines and requirements issued by the Commonwealth or its Governor, or the Town of Edgartown, as a result of the Covid-19 pandemic, and for obtaining all applicable inspections, permits, licenses and other required authorizations for the Licensee's use of the Property.
14. This document may be signed in duplicate originals, each of which when joined together shall constitute a valid agreement. If any provisions of this Temporary License Agreement are held or declared to be invalid, illegal or unenforceable under any law applicable thereto, such provision shall be deemed deleted from this Temporary License Agreement without impairing or prejudicing the validity, legality and enforceability of the remaining provisions hereof. Licensee agrees that this Temporary License Agreement does not create any real property interests or rights in Licensee, does not constitute a lease of real property and does not create a landlord/tenant relationship between the parties.

Executed as a sealed instrument this \_\_\_\_\_ day of June, 2020

By: S/ \_\_\_\_\_  
Name of Licensee \_\_\_\_\_ witness

Title: \_\_\_\_\_

Telephone, must include a cell phone or other means of contact at any time:

\_\_\_\_\_

Town of Edgartown, Massachusetts

By: \_\_\_\_\_  
Arthur Smadbeck  
Edgartown Board of Selectmen, Chair



**PROPERTY OWNER AFFIDAVIT FORM**

(if different than business owner or located within a Commercial Condominium)

I, \_\_\_\_\_,  
(Printed name of Owner)

hereby attest that I am the owner of the property located at

\_\_\_\_\_  
(Property address)

in the Town of Edgartown. The below signature attests that I am aware of an application being filed with the Town of Edgartown for use of the property listed above by

\_\_\_\_\_  
(Printed name of Applicant/Restaurant Owner)

and that I have consented to the use described in the application.

**Owner Signature:** \_\_\_\_\_  
Print name, and, if applicable, title and name of entity

**Owner Address:** \_\_\_\_\_

**Owner Phone:** \_\_\_\_\_

**Owner Email:** \_\_\_\_\_

The Owner hereby consents for themselves and their successors and assigns to the entry onto the property during reasonable hours by the Zoning/Building Enforcement Officer, the Board of Health and other Town of Edgartown Departments, and/or their designees, to monitor and ensure compliance with any and all conditions associated with approval of the submitted application.