TOWN OF ARLINGTON TEMPORARY OUTDOOR DINING RULES AND REGULATIONS

Monday June 1, 2020

Revised September 29, 2020

ARTICLE I - GENERAL

Section 1 - Purpose and Scope

The 2020 COVID-19 pandemic has caused not only a public health crisis; it has also triggered a worldwide economic crisis. Public health requirements for social distancing have placed new burdens and challenges on the business community to provide more physical space between customers and staff. In an effort to respond to the new social distancing requirements, the Department of Planning and Community Development recommends temporary outdoor dining regulations that will allow local restaurants to establish outdoor seating on sidewalks, parking lots, on street parking spaces, or landscaped yard areas around their restaurants to provide more space for seating their patrons and picking up To-Go orders. These regulations will be in effect until further notice following review of the Select Board.

Outdoor dining areas of appropriate design, configuration and appearance can be an attractive amenity throughout the warmer months of the year. Temporary Outdoor Dining License ("TODL") applications will be reviewed by Town staff for compliance with these guidelines and will be forwarded to the Select Board office for administrative approval. TODL License are intended to be compatible with regular outdoor dining and seating licenses. TODL Licenses, like regular licenses must be reapplied for annually so as to assure that they remain in compliance with terms of the original approval and are adequately maintained from year-to-year, but may be terminated at any time the Select Board determines the purpose of temporary outdoor seating is no longer served by such licenses.

Section 2 - Design and Appearance

Outdoor dining areas must be distinguished from their surroundings by some form of perimeter fence or barrier. Appropriate perimeter materials include, but not limited to demountable wrought-iron fences; or individual planters of wood, masonry, or terra cotta; or other fencing deemed acceptable by Town staff. The public sidewalk or street may not be damaged by the installation of any perimeter treatment. Cafe umbrellas are allowed; umbrellas and furniture should be of a design appropriate to the character of the building. Trash receptacles should be integrated in the design and materials with other outdoor cafe elements.

Section 3 - Pedestrian and Wheelchair Passage

These temporary regulations allow the restaurant operator to place outdoor dining tables and chairs, umbrellas, lighting, service equipment, perimeter fences or barriers to occupy a defined area of the sidewalk. In some cases, the Department of Public Works (DPW) can erect temporary barriers on the street to allow for the passage of pedestrian and wheelchair traffic around the portion of sidewalks devoted to outdoor seating in compliance with Americans with Disabilities Act standards.

Section 4 - Outdoor Food Preparation

Outdoor food preparation is not allowed unless specifically authorized by the Health Department.

Section 5 - Alcoholic Beverages

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 Select Board on a case-by-case basis. Interested establishments with alcohol licenses should submit an additional request for a temporarily amended alcohol licenses to the Select Board. The only change permitted is to the description of the premises providing that alcohol may be served in outdoor seating that was added or re-configured pursuant to these regulations. All temporary amendments shall remain in effect until sixty (60) days past the end of the state of emergency, or by Order of the Governor rescinding COVID-19 restrictions on dining establishments, whichever is sooner.

Section 6 - Temporary Seating & Parking Relief

Due to the seasonal and temporary nature of an outdoor dining area and reduced occupancy loads required by emergency regulations, the seating within an outdoor dining area will not be interpreted as an increase in the number of seats serving a restaurant or eating establishment, and will not be counted towards any off-street parking requirement. However, in no event shall the overall number of seated customers shall exceed the number of seats available, as permitted and supplemented by a regular outdoor dining/seating license.

ARTICLE II - SUBMISSION AND APPROVAL OF APPLICATIONS

Section 1 - Application Procedure

Applications for TODLs shall be submitted to the Health Department. The Health Department will review the application and plan for outdoor seating and will consult with the Building, Fire, Public Works, and Planning Department. 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. If the outdoor seating plan is acceptable and the application form is complete, they will forward it to the Select Board office for administrative approval. Outdoor seating permits may include conditions of approval such as daily cleaning and maintenance of the outdoor seating area. 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.

Section 2 - Plan Requirements

A neatly drawn plan will be submitted depicting the precise area of the proposed outdoor 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. Tables and chairs shall be separated by at least six feet to provide for social distancing. Take-out food pickup areas shall also be a minimum of six feet from patron seating areas. 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. Outdoor seating proposed for a parking lot shall not occupy more than 50% of the required parking spaces.

Section 3 - Insurance

The Restaurant Owner shall carry or require that there be carried Workers' Compensation Insurance for all employees and those of its contractors and/or subcontractors engaged in work at the outdoor dining facility, in accordance with the State Workers' Compensation Laws. In addition, the Restaurant Owner shall carry Comprehensive Public Liability and Property Damage Liability Insurance with limits hereinafter set forth to cover the Restaurant Owner and its contractors and subcontractors against claims due to accidents which may occur or result from operations under this Agreement. Such insurance shall cover the use of all equipment related to the provision of outdoor dining services. The Comprehensive Public Liability and Property Damage Liability Insurance shall insure against all claims and demands for personal injury and property damage with respect to the sidewalk dining facilities and services, with limits of One Million Dollars ($1,000,000) for property damage, One Million Dollars ($1,000,000) for injury or death to one (1) person, and Two Million Dollars ($2,000,000) for injury or death of more than one (1) person in a single accident. If such limits are not commercially available at a reasonable cost to the Restaurant Owner, such insurance may be maintained at such lower limits that are commercially available at a reasonable cost; provided, however, that the Restaurant shall notify the Town in advance of the effective date of any such lower limits. The Town shall be named as an "additional insured" in all policies for such insurance and the Restaurant Owner shall furnish a certificate of insurance to the Town prior to commencing provision of the facilities and services authorized under these regulations. Where such insurance is renewed or replaced the Restaurant Owner shall furnish the Town with a certificate of insurance evidencing the same.

Section 4 - Approval by the Select Board office

Following receipt of a favorable recommendation from the Public Health Director, the Select Board office may approve a TODL. Upon approval of an outdoor dining area by the office of the Select Board, the owner and operator of the restaurant and Select Board office staff will sign the License Agreement which has been prepared for these purposes by Town Counsel.

ARTICLE III - AMENDMENTS

These rules may be amended by a majority vote of the members of the Select Board provided such amendment is presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

ARTICLE IV - EFFECTIVE DATE

These rules were adopted at a regular meeting of the Select Board on October 5, 2020 and became effective as of that date.