TO: TOWN ADMINISTRATORS AND TOWN MANAGERS

FROM: TOWN COUNSEL

RE: OUTDOOR SEATING; OUTDOOR LIQUOR SALES

DATE: JUNE 3, 2020

As you likely are aware, restaurants are being permitted to reopen under Phase 2 of the Massachusetts Reopening Plan and the recent Governor’s order issued on June 1 (attached). However, there are substantial restrictions on any restaurant that chooses to reopen, including limits on occupancy. To that end, we have received a number of inquiries regarding the ability for restaurants to serve their customers outdoors, either in parking lots or other exterior spaces. Below is a short summary of the issues for Towns to consider.

**Current Prohibition & Expected Re-Opening**

Currently, all restaurants with a retail food permit issued by the Board of Health pursuant to 150 CMR 590, including those on-premises consumption licensees with an attendant food permit, are prohibited from serving any food or drinks for on-premises consumption until the earlier of **June 8, 2020**, the commencement of the Phase II reopening plan, or by further notice by the Governor. However, these establishments immediately can begin to prepare for the anticipated Phase II reopening. Further, these establishments may continue takeout and delivery services.

Those on-premises consumption licensees, which do not serve food, shall remain closed until Phase IV of the reopening plan.

**Zoning**

Because of social distancing and other occupancy requirements, the opening of a restaurant under their existing occupancy limits may not be practical. Accordingly, there has been a concerted interest in allowing restaurants to expand service to outdoor spaces, including, but not limited to, patios, sidewalks, and parking lots. However, zoning restrictions may preclude such expansions. Prior to the issuance of the Governor’s order, there was no mechanism to waive an existing zoning bylaw to permit outdoor seating where such seating was regulated, or where other zoning requirements, such as parking, would restrict the ability of a restaurant to expand to provide for outdoor seating. However, pursuant to the June 1st order, Select Boards may develop a process for approving such expansion requests regardless of the requirements of G.L. c. 40A (the Zoning Enabling Act), or any specific local zoning limitations including special permit or variance requirements. The process for approving such requests has been streamlined:

- There are no notice or publication requirements, namely no requirement to either advertise or notify abutters.
• However, compliance with the Open Meeting Law has not been waived per the order. Therefore, if Select Boards retain the authority to grant waivers, they must still properly post on an agenda with 48 hours’ notice.

• Further, the approval only needs to be submitted to the town clerk and is effective immediately upon filing with the town clerk; there are no recording requirements.

• The order does not prescribe the method for approving relief from zoning requirements. Rather, it allows a Select Board to develop a process under which the relief may be granted. For example, the Select Board may retain authority to grant relief on their own or it may delegate the authority to grant relief to other municipal officials or staff.

• We recommend that each decision be reduced to writing. We also recommend that each such decision note that it is final and not subject to appeal. While there could still potentially be challenges to any arbitrary decision making, we believe that such a notation will serve to protect your community.

• There is no requirement that relief must be granted. We recommend that the Town examine each request on its merits. If necessary, conditions and limitations may be imposed on any waiver of zoning requirements. You may also wish to expressly reserve the right to modify or revoke the decision. Note too that any relief issued under the Governor’s Order expires on the earlier of the rescission of the Governor’s Order or November 1st. You may include an earlier sunset provision if you so desire.

Liquor Licenses

Allowing alcohol sales in outdoor spaces where it is not presently allowed under an existing liquor license, has also been a concern for many communities. Unfortunately, under current law, allowing an expansion of the service area would require a lengthy process both within the town and then at the ABCC. However, pursuant to the Governor’s order and the attached guidance from the ABCC, ABCC review of such expansions has been waived. Under this process, and similar to the waiver of zoning compliance, local licensing authorities (LLAs), typically Select Boards, may also follow an expedited process to permit the outdoor sale of alcoholic beverages for on-premises consumption. Select Boards may simply amend the description of the licensed premises to existing, and properly permitted, license holders. This process has been streamlined as follows:

• The ABCC approval requirement has been waived. Instead, Towns must simply provide notice to the ABCC.

• The LLA has discretion to approve based on what it deems to be “reasonable and proper”.

Though the order does not expressly eliminate all of the procedural requirements for an alteration of premises approval, including a public hearing, advertisement, and abutters’ notification, the ABCC has clarified in its guidance that these procedural requirements have been waived.

However, here too the requirements of the Open Meeting Law have not been waived. Therefore, the LLA must still properly post on an agenda with 48 hours’ notice. Further, the ABCC has also indicated that licensees must adhere to its guidance relative to patio service (attached).

Notably, this portion of the order clearly contains an automatic sunset provision, which is the earlier of November 1, 2020 or upon rescission of the order by the Governor. At that time, the licensed premises reverts back to its status prior to the expansion to include outdoor facilities.
Board of Health

Omitted from the order is a waiver of compliance with the requirements of 105 CMR 590.00 State Sanitary Code Chapter X—Minimum Standards for Food Establishments and the 2013 Food Code. Specifically, the following compliance requirements remain:

- Section 590.008 and the Food Code, require submittal of plans showing modifications of permitted premises, as well as, an indication as to whether the change is temporary; though these plans are to be submitted at least 30 days in advance, it is our opinion that boards of health could act on these applications immediately, and

The Board of Health may approve the modification at a properly posted public meeting.

Mandatory Safety

Without a doubt, in the event towns choose to permit outdoor seating for local restaurants, the restaurants are bound to comply with the mandatory safety standards established by the Governor’s office in conjunction with the Department of Public Health. A preview of the mandatory safety standards, recommended best practices and a checklist for restaurants can be found at https://www.mass.gov/info-details/safety-standards-and-checklist-restaurants.

Written Process Outline

The Governor’s Order further requires towns to prepare written policies outlining the process to be followed in receiving approvals under his order. Therefore, prior to granting these expansions, Select Boards must adopt a policy. We would be pleased to assist you with drafting any processes required to implement the Governor’s Order.

Sidewalks and Other Public Spaces

Should a town desire to permit seating on public sidewalks or other public spaces, a lease, which is a type of conveyance requiring Town Meeting approval, is not optimal. However, there may be opportunities to license these spaces. We are happy to work with Towns to prepare the appropriate documentation to ensure that such a temporary arrangement would satisfy all legal requirements.

Further Legislation

There has been some concern that the Governor’s Order may test the bounds of his executive Order. Accordingly, it is understanding that the legislature is working on a bill that codifies some of the above processes. In the interim, it is our opinion that you may rely upon the Governor’s order and implement relief accordingly.

We are hopeful that this information is helpful. As always, we are here should you need further assistance.
ORDER CLARIFYING THE PROGRESSION OF THE COMMONWEALTH’S PHASED WORKPLACE RE-OPENING PLAN AND AUTHORIZING CERTAIN RE-OPENING PREPARATIONS AT PHASE II WORKPLACES

COVID-19 Order No. 35

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control have advised that COVID-19 is spread mainly by person to person contact and that the best means of slowing the spread of the virus is through practicing social distancing and protecting oneself and others by minimizing personal contact with environments where this potentially deadly virus may be transmitted;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact and non-essential movement outside the home as a means of combatting the spread of COVID-19 within the Commonwealth, I issued COVID-19 Order No. 13, which designated certain COVID-19 Essential Services, as defined in the Order, temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services, and prohibited gatherings of more than 10 people;

WHEREAS, on March 31, 2020, April 28, 2020, and May 15, 2020, I issued COVID-19 Orders No. 21, 30, and 32, respectively, which extended the period in which COVID-19 Order No. 13 would continue to restrict the operation of businesses and organizations that do not provide COVID-19 Essential Services;
WHEREAS, recent public health data indicate continued improvement in key areas of measurement as a result of the extraordinary efforts of health care providers in the Commonwealth and the public’s unselfish compliance with the restrictions imposed in COVID-19 Order No. 13 and other measures implemented in response to the COVID-19 health crisis;

WHEREAS, on May 18, 2020, I issued COVID-19 Order No. 33, which authorized the re-opening of certain brick-and-mortar premises designated as “Phase I” workplaces (“Phase I enterprises”), subject to the requirement that all such workplaces comply with workplace safety rules and standards implemented to protect against the risk of the COVID-19 virus and which otherwise further extended the period in which COVID-19 Order No. 13 will continue to restrict the operations of businesses and organizations that do not provide Essential Services or that have not been designated as Phase I workplaces;

WHEREAS, a sustained trend of improvement in public health data will permit a continuing, carefully phased relaxation of certain restrictions that COVID-19 Order No. 13 has placed on businesses and other organizations, provided that any adjustment can only be maintained or expanded on the basis of continuing improvements in the public health data, and further provided that any adjustment must reflect the reality that the Commonwealth remains in the midst of a public health emergency, as demonstrated by reporting from the Department of Public Health that as of May 31, 2020, 1,824 persons remain hospitalized in the Commonwealth as a result of COVID-19 and 436 of these patients are receiving treatment in intensive care units;

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, regulating the sale of articles of food and household articles, variance of the terms and conditions of licenses and permits issued by the Commonwealth or any of its agencies or political subdivisions, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby order the following:

1. Advance Preparations by Phase II Enterprises

Beginning immediately, businesses and other organizations that are included within Phase II of the re-opening plan, as defined in Section 2 below, may open their physical workplaces and facilities (“brick-and-mortar premises”) to workers for the purpose of preparing for a Phase II re-opening when authorized. In preparing their premises for re-opening, Phase II businesses and other organizations (“Phase II enterprises”) must at all times comply with all generally applicable COVID-19 workplace safety rules and any relevant sector-specific COVID-
19 workplace safety rules issued pursuant to Section 2 of COVID-19 Order No. 33 or otherwise by the Department of Labor Standards ("DLS"), the Department of Public Health ("DPH"), or any other agency authorized to issue similar health and safety rules.

Phase II enterprises may not open their premises to customers and the public generally until authorized to do so by subsequent Order.

2. **Designation of Phase II Enterprises**

Phase II enterprises are businesses or other organizations that meet each of the following conditions:

They are

- not currently permitted to open their premises as an Essential Service or Phase I enterprise pursuant to Section 1 of COVID-19 Order No. 33;
- not closed by any COVID-19 Order separate from or in addition to COVID-19 Order No. 13;
- not excluded or excepted from the terms of this Order in Section 4; and
- not designated on the chart below as a Phase III or Phase IV enterprise.

<table>
<thead>
<tr>
<th>Phase II</th>
<th>Enterprises that meet all of the conditions specified above and including</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Retail Stores including stores in enclosed shopping malls</td>
</tr>
<tr>
<td></td>
<td>Restaurants providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000, including beer gardens/wineries/distilleries meeting these criteria</td>
</tr>
<tr>
<td></td>
<td>Hotels, motels, inns, and other short-term lodgings (no events, functions, or meetings)</td>
</tr>
<tr>
<td></td>
<td>Limited organized youth and adult amateur sports activities and programs—no contact and no games or scrimmages, and indoor facilities limited to youth programs</td>
</tr>
<tr>
<td></td>
<td>Professional sports practice and training programs—no inter-team games and no admission for the public</td>
</tr>
<tr>
<td></td>
<td>Personal Services provided at a fixed place of business or at a client location</td>
</tr>
<tr>
<td></td>
<td>o Step 1: Services involving no close personal contact (photography, window washers, individual tutoring, home cleaning, etc.)</td>
</tr>
<tr>
<td></td>
<td>o Step 2: Services involving close personal contact (massage, nail salons, personal training for individuals or no more than 2 persons from same household, etc.)</td>
</tr>
<tr>
<td></td>
<td>Non-athletic instructional classes in arts/education/life skills for youths under 18 years of age in groups of fewer than 10</td>
</tr>
<tr>
<td></td>
<td>Driving schools and flight schools</td>
</tr>
<tr>
<td></td>
<td>Outdoor historical spaces—no functions or gatherings and no guided tours</td>
</tr>
<tr>
<td></td>
<td>Funeral homes—increased capacity to permit 40% occupancy for one service at a time within the facility</td>
</tr>
</tbody>
</table>
| Phase III | Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools—general operations  
| Casino gaming floors  
| Horse racing simulcast facilities (no spectators)  
| Indoor recreational and athletic facilities for general use (not limited to youth programs)  
| Fitness centers and health clubs including  
| Casino/weight rooms/locker rooms/inside facilities  
| Fitness studios (yoga, barre, cross-fit, spin classes, general fitness studios)  
| Indoor common areas  
| Indoor swimming pools  
| Indoor racquet courts and gymnasiums  
| Locker rooms/shower rooms  
| Excluding saunas, hot-tubs, steam rooms  
| Museums  
| Indoor historic spaces/sites  
| Aquariums  
| Outdoor theatres and performance venues of moderate capacity  
| Indoor theatres, concert halls, and other performance venues of moderate capacity  
| Sightseeing and other organized tours (bus tours, duck tours, harbor cruises, whale watching)  
| Fishing and hunting tournaments and other amateur or professional derbies  
| Weddings/events/gatherings in parks, reservations, and open spaces with allowance for moderate capacity  
| Overnight camps  
| Indoor non-athletic instructional classes in arts/education/life skills for persons 18 years or older  
| Indoor recreational businesses: batting cages, driving ranges, go karts, bowling alleys, arcades, laser tag, roller skating rinks, trampolines, rock-climbing  

This listing is subject to amendment.

| Phase IV | Amusement parks, theme parks, indoor or outdoor water parks  
| Saunas, hot-tubs, steam rooms at fitness centers, health clubs, and other facilities  
| Bars, dance clubs, and nightclubs—venues offering entertainment, beverages, or dancing and not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000  
| Beer gardens/breweries/winery/distilleries not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000  
| Large capacity venues used for group or spectator sports, entertainment, business, and cultural events including  

This listing is subject to amendment.
3. Rules for Phase II Limited Organized Sports Activities and Programs

Amateur Sports: Effective immediately, organizers of sports activities and programs for youths and adults and facilities that host such programs or activities may open their premises to employees to begin preparations, consistent with the provisions of Section 1, for authorized Phase II activities. In addition to complying with generally applicable COVID-19 workplace safety rules, organizers of sports activities and programs for youths and adults and facilities that host such programs or activities shall be subject to the following directives during Phase II:

a. Programs for contact sports must limit activities exclusively to no-contact drills and practices. Programs for no contact sports where ordinary play allows for social distancing may include ordinary play.
b. Games, scrimmages, and tournaments shall not be permitted for any organized sports activities.
c. Programs must separate participants into groups of no more than 10 participants, including coaches and staff.
d. Indoor athletic facilities shall be open and available exclusively for the use of supervised sports programs, including sports camps, for youths under the age of 18.

The Secretary of the Executive Office of Energy and Environmental Affairs ("EEA") shall issue guidance to implement these directives and all generally applicable COVID-19 workplace standards for organizers of youth and adult sports programs and operators of facilities that host those programs. Organizers of youth and adult sports programs shall follow the EEA guidance; provided, however, that when the program is governed by formal league rules or other binding agreements or affiliations, the organizer shall comply with any COVID-19 and other health and safety rules applicable under those authorities. The requirements of items (a) – (d) above shall apply in all circumstances.

Professional Sports: Effective immediately, professional sports organizations may open their premises to employees and other workers for the activities provided for in Section 1 and may also open their premises to employees for on-premises athletic practices and training,
subject to adoption of COVID-19 health and safety rules implemented under the authority of formal league rules or other binding agreements or affiliations.

Professional sports organizations may not engage in inter-team games within the Commonwealth and may not open any facilities within the Commonwealth to the public until further Order.

4. **Preparations and Accommodation for Outdoor Restaurant Dining Service**

Restaurants will be authorized to provide outdoor table service at the commencement of Phase II of the Commonwealth’s phased re-opening of workplaces. If the public health data reflects continued positive progression, restaurants will be authorized at a later date and by a subsequent Phase II Order to commence indoor table service. In each case, restaurants will be required to comply with sector-specific COVID-19 workplace safety rules for restaurants.

“Outdoor table service” 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.

Notwithstanding the provisions of chapter 40A of the general laws, or any special permit, variance or other approval thereunder, or any other general or special law to the contrary, a city or town may approve requests for expansion of outdoor table service, including in the description of licensed premises as described below. Prior to such approval, the mayor, select board, or chief executive as established by charter or special act, shall establish the process for approving such requests. Such process need not comply with the notice and publication provisions of section 11 of chapter 40A.

Any such approval may be exercised immediately upon filing of notice thereof with the city or town clerk, without complying with any otherwise applicable recording or certification requirements.

In order to provide improved opportunities for outdoor table service, for any type of license that permits the sale of alcoholic beverages for on-premises consumption, a local licensing authority (“LLA”) may grant approval for a change in the description of the licensed premises for the purpose of permitting outdoor alcohol service as the LLA may deem reasonable and proper, and issue an amended license to existing license holders, without further review or approval by the Alcoholic Beverages Control Commission (“ABCC”) prior to issuance. Upon approval of an amended license, the LLA shall provide notice of the amended license to the ABCC. Nothing in this Order shall prevent the ABCC from exercising its statutory or regulatory enforcement authority over any such amended license issued.
On November 1, 2020 or the date this Order is rescinded, whichever is sooner, any approval issued under this Section, including any amended license issued by an LLA as a result of this 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 premises.

5. **Sector-Specific Rules**

The Director of Labor Standards and the Commissioner of Public Health shall issue, subject to my approval, COVID-19 workplace safety rules for certain, specific Phase II enterprise workplace sectors (“Sector-Specific Rules”) to address the particular circumstances and operational needs of those specific workplace sectors. These Phase II Sector-Specific Rules shall supplement the generally applicable COVID-19 safety rules applicable to all workplaces in the Commonwealth. Phase II enterprises shall adopt and comply with all Sector-Specific Rules applicable to their workplaces.

6. **Limitations on Gatherings**

A Phase II enterprise that is authorized to open its brick-and-mortar premises to workers under the terms of this Order shall not be subject to the 10-person limitation on gatherings established in Section 3 of COVID-19 Order No. 13 in its normal operations of those premises; provided, however, that Phase II enterprises must comply with the social distancing requirements in the Commonwealth’s generally applicable COVID-19 workplace safety rules, any more specific limitations on gatherings and meeting sizes included in any applicable Sector-Specific Rules, and any other similar restrictions specified in this Order.

Section 3 of COVID-19 Order No. 13 shall otherwise remain in effect for businesses or organizations not permitted to open their brick-and-mortar premises as COVID-19 Essential Services, or Phase I or Phase II enterprises.

4. **Exceptions**

This Order shall have no application to any of the following businesses, organizations, workplaces, or facilities:

a. Any municipal legislative body, the General Court, or the Judiciary
b. Federal governmental entities
c. Any health care facility or provider licensed by the Department of Public Health or the Board of Registration in Medicine
d. Any of the following workplaces or facilities with specialized functions and populations:
   - Public and private elementary and secondary (K-12) schools
   - Residential and day schools for special needs students
- Licensed, approved, or exempt child care programs and any emergency child care centers and emergency residential programs operating under emergency authorization
- Facilities operated by the Department of Correction or any Sheriff
- Facilities operated or licensed by the Department of Mental Health or the Department of Developmental Services
- And any other facilities or workplaces that the Commissioner of Public Health may in writing exempt from the terms of this Order

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at 12:00 PM this 1st day of June, two thousand and twenty

[Signature]

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts
ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY REGARDING LOCAL LICENSING AUTHORITIES’ APPROVAL OF OUTDOOR SEATING

On June 1, 2020, Governor Charlie Baker issued an Order Clarifying the Progression of the Commonwealth’s Phased Workplace Re-Opening Plan and Authorizing Certain Re-Opening Preparations at Phase II Workplaces, which, in part, details the process for reopening establishments for on-premises consumption. The text of the Governor’s Order can be found [HERE](#).

When the Governor declares that the Commonwealth has entered Phase II of its reopening plan all licensees for on-premises consumption of alcohol may commence outdoor table service only. Indoor service will remain prohibited until further order from the Governor.

The Governor’s Order also grants the local licensing authorities (“LLA”) the authority to expand alcohol licensees’ licensed premises for outdoor seating in an expedited process.

Pursuant to the Governor’s Order, on application from a licensee that serves alcohol for on-premises consumption1, the LLA may alter the description of the licensee’s licensed premises to expand for outdoor seating that the LLA deems “reasonable and proper.” The LLA does not need to comply with M.G.L. c. 138, § 15A, and therefore does not need to provide advance notice to abutters or hold a public hearing on the application. LLAs must continue to follow the ABCC’s guidelines issued in 2015 for the approval of outdoor seating, which can be found [HERE](#).

ABCC approval is not required on these applications. Upon approval from the LLA the LLA may issue the amended license forthwith. The LLA must provide notice by mail to the ABCC on all application approvals. For further guidance on the process of approving and issuing these amended licenses LLAs should consult with their counsel.

Please be aware that all expanded premises approved pursuant to this Order are only effective through November 1, 2020, or until the Order is rescinded, whichever is sooner, and revert to their original licensed premises on that date.

The ABCC continues to retain supervision and oversight of all alcohol licensees, including those that expand their licensed premises pursuant to this Order. As always, all licensees must ensure that they comply with the laws of the Commonwealth of Massachusetts, and that sales of

---

1 This includes restaurants, bars, hotels, general-on-premises, clubs, war veterans’ clubs, continuing care retirement communities, pub-brewers (M.G.L. c. 138, §§ 12 and 19D), farmer-series pouring permits, and manufacturers’ pouring permits (M.G.L. c. 138, §§ 19(b), 19B(n), 19C(n), and 19E(o)).
alcoholic beverages take place only as authorized by federal, state, and local law. All questions should be directed to Executive Director Ralph Sacramone at (617) 727-3040 x 731.

(Issued June 1, 2020)
ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY REGARDING
GUIDELINES FOR EXTENSION OF PREMISES TO PATIO AND OUTDOOR AREAS

On July 28, 2015, at a public meeting, the Alcoholic Beverages Control Commission approved amendments to its “Guidelines for Extension of Premises to Patio and Outdoor Areas.” These amended guidelines supersede the previously issued Guidelines from August 22, 1989. A copy of the amended Guidelines are attached to this Advisory.

As a reminder, all licensees must ensure that they are in compliance with the Laws of the Commonwealth of Massachusetts and that sale of alcoholic beverages take place only as authorized by applicable law. Questions concerning this Advisory can be directed to Ralph Sacramone, Executive Director of the Massachusetts Alcoholic Beverages Control Commission at (617) 727-3040 x 731.

(Issued August 6, 2015)
GUIDELINES FOR EXTENSION OF PREMISES TO PATIO AND OUTDOOR AREAS

1. Alcoholic beverages cannot be served outside of a licensed establishment unless and until an application to extend the licensed premises has been approved.

2. An application to extend the premises must describe the area in detail, including dimensions, seating capacity, and maximum occupancy.

3. The premises must be enclosed by a fence, rope, or other means to prevent access from a public walkway.

4. The outdoor area must be contiguous to the licensed premises with either (a) a clear view of the area from inside the premises, or, alternatively (b) the licensee may commit to providing management personnel dedicated to the area.

5. The applicant must have a lease or documents for the right to occupy the proposed area.

6. The licensing authorities should consider the type of neighborhood and the potential for noise in the environs.

7. Preferred are outdoor areas where alcohol is served to patrons who are seated at the tables and where food is also available.

Approved July 28, 2015 (superseding August 22, 1989, Guidelines)