



## NINTH AMENDED DECLARATION OF STATE OF EMERGENCY FOR THE TOWN OF OAK ISLAND

**WHEREAS**, it has been determined that the COVID-19 pandemic poses an imminent threat and that existing conditions have caused or could likely cause widespread or severe illness, or loss of life to our citizens; and

**WHEREAS**, the Governor of the State of North Carolina declared a State of Emergency for the State of North Carolina pursuant to G.S. 166A-19.3 as the result of the public health emergency posed by COVID-19; and

**WHEREAS**, Chapters 160A, 166A and 14 of the North Carolina General Statutes, as well as Article II of the Town's Code of Ordinances, authorize the Town of Oak Island to proclaim the existence of a State of Emergency; and

**WHEREAS**, pursuant to Article II of the Town Code of Ordinances, the Mayor or his designee is authorized to proclaim the existence of a State of Emergency and to declare orders for evacuation, curfew and various other restrictions and prohibitions; and

**WHEREAS**, the spread of COVID-19 is a public health incident that poses an imminent threat to the life, safety, health, and welfare of the residents, visitors and the public within the Town of Oak Island.

**NOW, THEREFORE**, pursuant to the authority vested in the Mayor by Chapters 160A, 166A and 14 of the North Carolina General Statutes, as well as Article II of the Town's Code of Ordinances, I, Ken Thomas, Mayor of the Town of Oak Island, do hereby declare the existence of a State of Emergency for the Town of Oak Island.

I further proclaim and hereby implement the following:

1. All Town parks are open, however, restroom facilities and playground equipment within those parks remain closed.
2. All other Town recreational facilities remain closed.
3. The Town urges that all travel be limited to essential travel for property owners and residents, business owners and their respective employees and contractors, and municipal employees and contractors.
4. Town Operations: The Town Manager or his designee is hereby authorized to take all lawful

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actions necessary to manage the Town during this State of Emergency, including, without limitation, procuring goods and services necessary to manage this emergency including but not limited to the adjustment of hours, access, and operation of all government operations, Town-owned facilities, roads, rights-of-way, and parks, as deemed reasonably necessary to restrict the spread of COVID-19 and protect Town residents, the public and municipal employees.

## 5. ESTABLISHMENT OF TEMPORARY OUTSIDE DINING/SEATING PROGRAM.

The Town of Oak Island hereby establishes a temporary Outdoor Dining/Seating Program to assist food and beverage service providers (hereinafter "providers") lawfully operating within the Town. Pursuant to N.C. Gen. Stat. § 166A-19.31 and Article II of the Town Code of Ordinances the Town of Oak Island hereby establishes a temporary (Phase 2 only) Outdoor Dining/Seating Program as follows:

### I. Use Standards:

(1) *Outdoor dining.* The following standards shall apply to outdoor dining:

- A. *Location of outdoor seating.* Outdoor seating for food service with on-premises sales of alcoholic beverages are permitted where food and/or alcohol are served on private property, in which case these outdoor food service areas may be located in the front, side or rear of the principal building.
- B. *Outdoor seating in public right-of-way.* Any outdoor dining activity within the public right-of-way, including sales of alcoholic beverages, may be permitted under the following standards:
  - i. *ABC license required.* Restaurant owners must ensure that the premises that is the subject of the applicable ABC permit includes all areas both inside and outdoor dining.
  - ii. *Federal, State & local regulations.* Outdoor dining activities are permitted on a public sidewalk in conformance with G.S. 136-27.4, the Federal Highway Administration where applicable.
  - iii. *Outdoor dining activity only associated with restaurant.* The outdoor public dining activity shall only be located adjacent to the restaurant that is providing the outdoor dining activity.
  - iv. *Minimum clearance for pedestrian movement.* The arrangement of the tables and chairs and any other fixtures related to and in conjunction with the outdoor dining activity shall maintain a minimum five feet of free-flowing pedestrian travel way on the sidewalk.
  - v. *Location of outdoor dining activity.* The tables and chairs used in association with the outdoor dining activity shall have a minimum separation of six feet from any travel lane of a NCDOT street or highway. If on-street parking is provided adjacent to the outdoor dining area then the parking space and parked cars serve to provide

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the minimum separation. If the outdoor dining is on Town public rights-of-way, the outdoor dining activity shall be no closer than two feet to the public streets.

- vi. *Indoor dining required.* The restaurant must have a kitchen and an inside dining area with a minimum seating capacity for 10 people.
- vii. *Panhandling activities prohibited.* Panhandling activities directed at sidewalk dining shall be prohibited.
- viii. *Liability insurance.* To the extent a food and beverage service provider seeks to provide an outdoor dining area within a public right of way, said owner shall procure liability insurance that serves to protect the North Carolina Department of Transportation, the Town of Oak Island and the restaurant/property owner from liability.

## **II. Registration:**

Operators are required to register temporary outdoor dining/seating with the Town of Oak Island. There will be no fee associated with this registration.

## **III. Compliance with Executive Order 141:**

The temporary outdoor dining/seating shall provide outdoor seating in a manner compliant with social distancing spacing restrictions set out in Governor Cooper's Executive Order No. 141 (i.e., arrange tables and chairs so that customers sitting at a table are not within six (6) feet of any customers sitting at another table and no more than ten (10) customers shall be seated together at the same table unless they are from the same household).

## **IV. Use of Public Right-of-Way & Temporary Extension of Outdoor Dining/Seating**

The Town will allow additional outdoor dining/seating on public right of way(s) either directly adjacent to the food/beverage business or adjacent to another business/property, provided that the primary business operator/property owner grant written permission for the food/beverage business to extend adjacent to their location. This expansion is limited to in front of one (1) additional business - not the entire block or shopping strip. (Crossing a parking lot, driveway, or street to extend temporary outdoor dining/seating shall not be allowed for obvious, public safety purposes).

## **V. Private Parking Lots**

Businesses with private parking lots are allowed to use up to 25% of their designated parking spaces (excluding ADA spaces) for their restaurant operations for outdoor seating, provided the business designates the area with a barrier (e.g., ropes or other like material) for safety purposes and follows the same social distancing and spacing restrictions as identified above.

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## **VI. Requirements of the North Carolina ABC Commission – May 24 – Phase 2 Response**

Pursuant to the guidance provided by the North Carolina ABC Commission on Sunday, May 24, 2020 (in response to Phase 2's easing of restrictions), food and beverage businesses wishing to extend temporary additional outdoor dining/seating, either on private property or in the public right of way, must do the following:

1. Obtain approval from the local government entity (Town of Oak Island). Town Police Department will be notified of application and requirements necessary to extend temporary ABC permitted areas.
2. Obtain the written permission of the owner of the property, if the business owner is not also the property owner, to extend temporary additional outdoor seating.
3. Business must receive confirmation of approval prior to use of the temporary extended area. This includes those who will be temporarily extending their premises onto their own property (yard or parking lot) and Town-maintained property.
4. Maintain a diagram of the temporary extension on the permitted premises indicating the size and location of the temporary extension, the types of barriers to be used, and how many tables and chairs will be placed in the temporary area.
5. Position the temporary extension such that it is adjacent to, abutting, and connected to the primary licensed premises. One of the exterior walls of the licensed premises must be part of the extended area.
6. Comply with ADA accessibility requirements (e.g., no blocking of sidewalks).
7. Visibly and vertically mark off the temporary area so that the average citizen can distinguish between the extended licensed premises and the public walkway.
8. Monitor consumers such that they are not allowed to take open containers of alcoholic beverages out of the temporary extension of premises area.

## **VII. Registration Requirements**

Food and beverage providers wishing to provide temporary additional outdoor dining/seating either on private property or in the Town's public right of way must do the following:

1. Obtain approval from the Town of Oak Island by submitting a completed Temporary Outdoor Dining Registration Form to the Town's Development Services Department.
2. Obtain the written permission of the owner of the property, if the business owner is not also the property owner, to extend temporary additional outdoor seating.
3. Maintain a diagram of the temporary extension on the permitted premises indicating the size and location of the temporary extension, the types of barriers to be used, and how many tables and chairs will be placed in the temporary area.
4. Position the temporary extension such that it is adjacent to, abutting, and connected to the primary licensed premises. One of the exterior walls of the licensed premises must be part of the extended area.

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5. Comply with ADA accessibility requirements.
6. The installation of tents associated with temporary extension areas may be subject to inspection by Town staff.
7. Visibly and vertically mark off the temporary area so customers can distinguish between the extended licensed premises and the public walkway.
8. Educate and monitor consumers such that they are not allowed to take open containers of alcoholic beverages out of the temporary extension of premises area.
9. Comply with the Town of Oak Island's Noise Ordinance.
10. Close the outdoor seating area (including ensuring customers have vacated the area) by 10:00 pm.
11. Comply with Executive Orders issued by Governor Cooper.

I and the Town Council further strongly encourage everyone to comply with all CDC and Brunswick County Health Department guidelines, including limiting activities in public and maintaining at least six (6) feet of distance from other people as well as comply with the Executive Orders issued by the Governor of the State of North Carolina.

This Ninth Amended Declaration of State of Emergency shall become effective Thursday, June 11, 2020 and shall remain in effect until it is otherwise modified or rescinded.

Declared this the 16<sup>th</sup> day of July, 2020.



Ken Thomas, Mayor  
Town of Oak Island

Attested:



Lisa P. Stites, MMC, Town Clerk



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## TEMPORARY OUTDOOR DINING REGISTRATION FORM

To establish new or additional outdoor dining/seating areas in order to operate consistent with the State of North Carolina Phase 2 – Easing of Restrictions (Interim Guidance for Restaurants (May 22, 2020)), food and beverage providers are required to register temporary outdoor dining/seating with the Town of Oak Island and comply with the requirements outlined in the Town's Temporary Outdoor Dining/Seating Guidelines. Please fill out the form below.

The guidelines allow for restaurants and other food and beverage businesses permitted to be open under Executive Order No. 141 to utilize private parking spaces and sidewalk space for temporary outdoor dining conversion.

Restaurants with dedicated parking may convert up to 25% of parking spaces (excluding ADA spaces) to temporary outdoor dining. This can allow for more dining capacity while complying with Governor Cooper's Phase 2 requirements.

This program will be **effective July 16, 2020 beginning at 5:00 pm through August 7, 2020 at 5:00 pm** (subject to change pending changes by the Governor and/or other regulatory State, County or Local Government agencies).

Applicant Name \_\_\_\_\_

Phone # \_\_\_\_\_

Email \_\_\_\_\_

Position/Title \_\_\_\_\_

1. Name of the business seeking temporary outdoor dining/seating registration:

\_\_\_\_\_

2. Business address (including any unit or suite number, where applicable):

\_\_\_\_\_

3. Type of temporary outdoor dining you are applying for (check all that apply):

- Parking Lot Outdoor Dining/Seating (Private Lot)
- Town-maintained Right-of-way

State-maintained Right-of-way

4. Number of indoor seats previously (pre-emergency) at the restaurant: \_\_\_\_\_
5. Number of outdoor seats previously (pre-emergency) at the restaurant: \_\_\_\_\_
6. Maximum number of people allowed in the building (according to the certificate for building occupancy): \_\_\_\_\_
7. Number of indoor seats with executive order restrictions (no more than 50% of building occupancy which includes staff) \_\_\_\_\_
8. Will temporary extension of outdoor dining/seating include a tented area? (circle one) YES NO
9. Days of the week and hours new/additional outdoor seating will be used \_\_\_\_\_
10. Landlord/property owner authorizing the new/additional outdoor seating (circle one) YES NO
11. Date that the new/additional outdoor seating is proposed to begin \_\_\_\_\_
12. This restaurant agrees to the following (all boxes must be selected to participate in the program):
  - The temporary outdoor dining will adhere to all State and local laws
  - The temporary outdoor and indoor dining seating will not exceed 100% of the certified building capacity
  - The temporary outdoor dining will not include a platform, electricity, or plumbing.
  - The temporary outdoor will maintain ADA accessibility standards
  - The temporary outdoor dining/seating will follow NC ABC Commission Phase 2 Guidelines

*(if your business is NOT seeking temporary outdoor dining/seating for the sale of alcohol, please skip this next section and provide signature where indicated).*

**ABC COMMISSION - PERMIT HOLDERS SEEKING TEMPORARY EXTENSION OF ON-PREMISES ADDITIONAL OUTDOOR DINING/SEATING AS PART OF EXISTING ABC PERMIT**

**Requirements of the North Carolina ABC Commission – May 24 – Phase 2 Response**

Pursuant to the guidance provided by the North Carolina ABC Commission on Sunday, May 24, 2020 (in response to Phase 2's easing of restrictions), food and beverage businesses wishing to extend temporary additional outdoor dining/seating, either on private property or in the public right of way, must do the following (check boxes after completion):

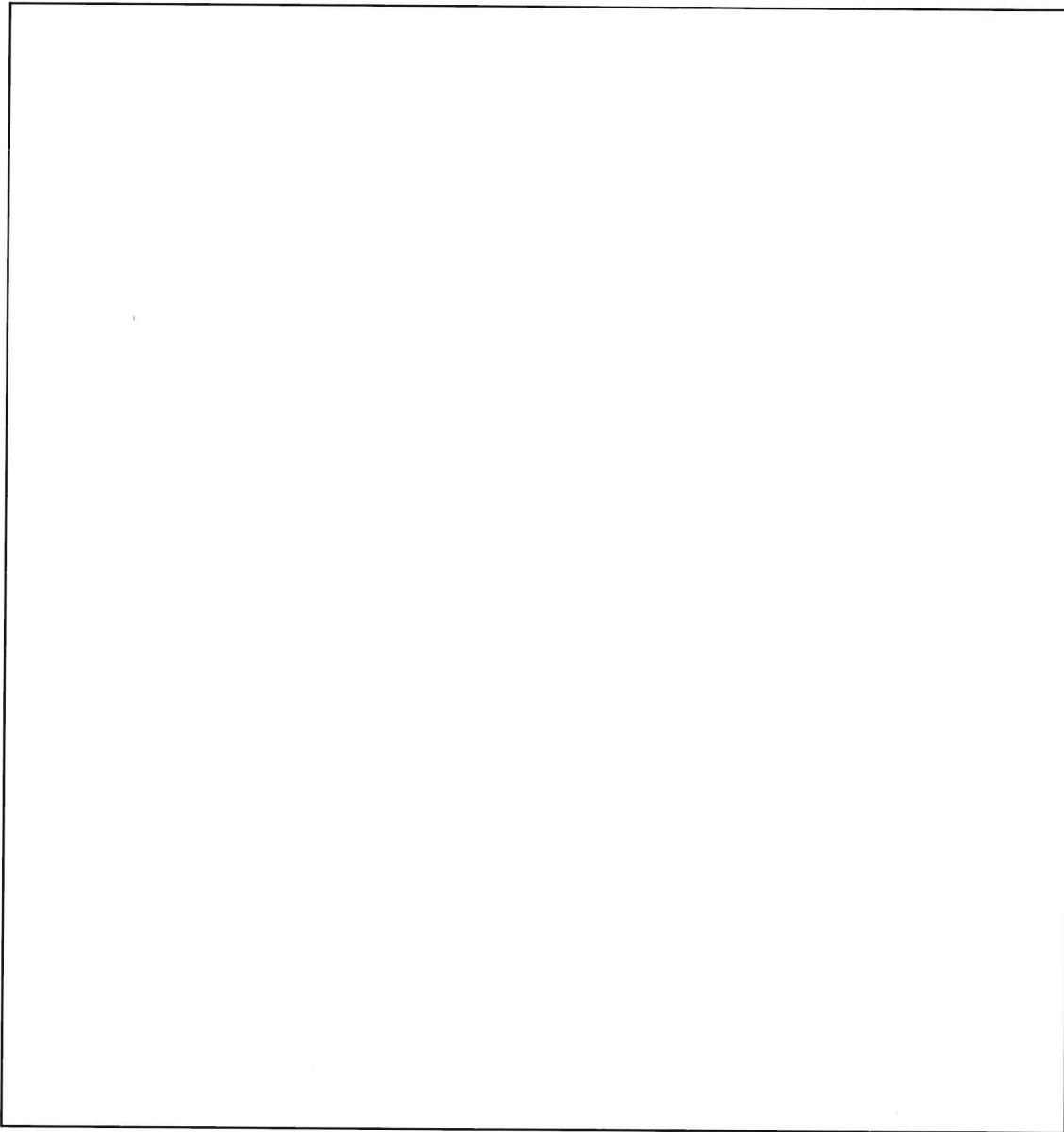
1. Obtain approval from the local government entity via the Town's Development Services

Department. Town Police Department will be notified of application. Applicant must receive confirmation approval prior to use of the extended area. This includes those who will be temporarily extending their premises onto their own property (yard or parking lot) and any temporary extension onto Town-maintained property (e.g., sidewalks).

- Completed application/registration
- 2. Obtain the written permission of the owner of the property, if the business owner is not also the property owner, to extend temporary additional outdoor seating.
  - Permission granted from property owner (if different from applicant)
- 3. Maintain a diagram (sketch) of the temporary extension on the permitted premises, indicating the following: the size and location of the temporary extension; the types of barriers to be used; and how many tables and chairs will be placed in the temporary area. The temporary extension area must be visibly and vertically marked off so that the average citizen can distinguish between the extended licensed premises and the public walkway; this should also be indicated on the diagram.
  - Diagram of temporary extension of temporary permitted premises.
- 4. Position the temporary extension such that it is adjacent to, abutting, and connected to the primary licensed premises. One of the exterior walls of the licensed premises must be part of the extended area.
  - Temporary extension area positioned appropriately to primary licensed premises.
- 5. Comply with ADA accessibility requirements.
  - Business acknowledges compliance of ADA accessibility requirements.
- 6. Temporary extension area is visibly and vertically mark off the temporary area so that the average citizen can distinguish between the extended licensed premises and the public walkway.
  - Documentation provided to Town showing temporary extension area to be visibly and vertically marked off (may be part of diagram)
- 7. Business agrees to educate/monitor consumers such that they are not allowed to take open containers of alcoholic beverages out of the temporary extension of premises area.
  - Business' members of management and staff agree to monitor consumers to ensure compliance with alcoholic beverage open container laws.

(go to page 4)

Diagram for temporary outdoor seating (may use separate sheet):



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Applicant Signature

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Date

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Property Owner Signature (if different from Applicant)

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Date