**Topic 16:** **(05/13/20) ABC Response to Temporary Approval of Outside Dining Areas**

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to the temporary approval of outside dining areas in conjunction with Executive Orders 61 and 62.

**Background:** The Authority is creating this accelerated process for receiving requests for outside dining areas. Any outside dining areas previously approved by the Authority remain in effect and are not subject to this expedited process and required listed conditions. Any licensee that does not qualify for the expedited process or meet the required conditions, may make application through the normal process by contacting your local ABC enforcement office. Since these requests will take additional resources and due to the anticipated volume of submissions, the approval of these requests could experience longer processing times.

**Held:** The Authority acting under the abilities granted within Executive Order 51 and Virginia Regulation has made the decision to create this accelerated process for receiving and processing requests for outside dining areas. The Authority will allow the temporary expansion of outside dining rooms or areas only until the expiration of EO 61 and EO 62 under the following conditions:

1. All requirements specified under EO 61 and EO 62 are followed. Licensees located within the Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, as well as the Towns of Dumfries, Herndon, Leesburg, and Vienna (Northern Virginia Region) shall become eligible for this process on May 29, 2020 or as may be extended by further Executive Order.

2. The licensee receives written approval for use of the temporary outside dining area from the locality where the business is located.

3. The area, or areas, need not be covered under the licensee's lease; however, if not, the licensee must have written approval from the owner of the property to have exclusive control over the area(s), with the expressed permission to the Virginia Department of Health and any other regulatory agency for entry and inspection into the outside area(s).The area(s) must be contiguous to the licensee's leased premises. (If the area is not contiguous, it shall be within **100 feet** of the licensed premises. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201.

4. The licensee shall provide a diagram of the outdoor dining area to the Authority.

5. The licensee shall provide items 2-4 to their assigned ABC agent before the licensee may utilize the temporary outside dining area. Once items 2-4 are sent to the ABC agent and an **"acknowledgement of receipt"** is received by the licensee, the licensee may begin using the area pending final approval or disapproval by the Authority.

6. The area may be used for the selling and consumption of alcohol only between 6am and 11pm unless such area is further limited by authorization from the locality in number three. Any area used after sunset must be well lit. The lighting should be sufficient to determine the patron's age and sobriety, as well as to facilitate the consumption of food and beverages.

7. There shall be no entertainment in the temporary approved areas.

8. The area shall only be used for table seating and used exclusively for dining and/ or beverage consumption. (i.e. no food or drink preparation)

9. Access to the area(s) must be made by well-defined points of ingress and egress. With the exception of the ingress and egress point(s), the entire area must be enclosed with a well-defined barrier designed to prevent entry and exit except for at the designated entry and exit point(s). An example of an acceptable barrier would be the temporary orange event fencing.

10. Each licensee shall have their own exclusive outside dining area. There shall be no sharing or comingling of outside dining areas by any licensees. There will be no approval of any type of food court concepts.

11. Adequate tables and chairs must be provided. If it is a mixed beverage license and it exceeds the existing seating tax, no additional seating tax will be required. Meals as defined in Virginia Alcoholic Beverage Control Circular Letter 16-03 dated April 16, 2016 must be offered during the time the establishment is utilizing the temporary area. (https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\999\GDoc_ABC_5991_v1.pdf)

**Revocation:** The temporary outdoor dining areas/rooms stated herein may be revoked summarily by the Authority for any noncompliance with the above-referenced restrictions or for any cause set forth in § 4.1-225 and § 4.1-325 without complying with subsection A of § 4.1-227.

Revocation of the temporary outdoor dining areas/rooms shall be effective upon personal service of the notice of revocation to the licensee or upon the expiration of three business days after the notice is mailed to the licensee either at his/her residence or the address given for the business on the license application.

The determination to revoke the temporary outdoor dining areas/rooms shall not be subject to appeal. The Authority retains discretion regarding the enforcement of delivery requirements as dictated by statute and regulations as well as the authority to pursue administrative and/or criminal charges for any violations committed.