

EMERGENCY ORDER NO. 11
EFFECTIVE MONDAY JUNE 8, 2020
OF THE NANTUCKET
SELECT BOARD AND BOARD OF HEALTH
COVID-19 - OUTDOOR DINING AT RESTAURANTS

In accordance with the authority under G.L. c 111, §§ 31, 122, and 95 through 105, and any other applicable law, the Nantucket Select Board and the Nantucket Board of Health hereby issues the following Joint Order:

The intent of this Order is to facilitate the ability of restaurants to re-open as soon as authorized by the Governor's Re-Opening Plan by allowing restaurants to propose a revised seating plan that will allow for social distancing of patrons by expanding seating to outside seating areas.

This Order shall remain in effect as provided for in Paragraph 15 unless this Order is amended or rescinded by vote of the Select Board and the Board of Health.

On June 1, 2020, the Governor issued COVID-19 Order No. 35, which allows restaurants to provide outdoor table service at the commencement of Phase II of the Commonwealth's phased re-opening of workplaces. The Governor's Order authorizes the Select Board to establish the process for approving requests from restaurants to provide outdoor table service. This Order sets forth the process for restaurants operating in Nantucket.

1. "Outdoor table service" shall have the same meaning as set forth in COVID Order No. 35. It 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. Handicapped parking spaces may not be utilized for outdoor dining. The expansion of outside dining onto Town-owned beaches is subject to approval by the Board of Health and the Select Board. Expansion of dining on to private beaches is subject to approval of the beach owner and the Board of Health. In order to meet the safety requirements contained within COVID-19 Order No.35, a temporary reduction of on-site parking spaces, temporary erection of a tent structure for a period exceeding 30 days, and/or temporary encroachment into a required yard setback shall not be deemed a zoning violation. The erection of signs, fencing, or other temporary exterior architectural features or temporary modifications to approved structures shall not require a Certificate of Appropriateness prior to approval by the Building Commissioner.
2. Any restaurant owner requesting to expand their premises to include outdoor dining areas shall make written application to the Department of Planning and Land Use Services ("PLUS").
3. The application shall include a plan showing the location of the proposed outdoor dining area, the size of the dining area, the number of seats and tables that will be located in the dining area, and any other information required by the Building Commissioner.
4. Approval to use an outdoor dining area shall not result in an increase in the number of seats authorized for the premises under any applicable law, bylaw or code. In the event the Commonwealth authorizes at a later date indoor table service, this Order shall be deemed revised accordingly, except that the number of seats permitted inside the establishment shall be reduced by the number of seats allowed outside the establishment.

5. The permit holder shall demonstrate a legal right of access to the proposed outdoor space, through either ownership, lease or written permission of the owner. Under no circumstances shall outdoor dining be allowed on any public sidewalk, within the Town's public right of way or on any other Town-owned property, unless approved by the Select Board, in writing.
6. Notwithstanding the provisions of chapter 40A of the General Laws, or any special permit, variance or other approval thereunder, or any general or special law to the contrary, the Board of Health, or its designee, and the Building Commissioner, after consultation with the Licensing Agent and the Fire Chief, may approve a seating plan extending restaurant seating areas to outside areas. The revised seating plan shall not be approved if the Board of Health, or its designee, or the Building Commissioner determines that the proposed outdoor seating plan constitutes a danger to public health, safety, welfare, or fire safety, or if the seating plan is likely to cause unreasonable impacts to the neighborhood. The revised seating plan must comply with applicable Americans with Disabilities Act requirements. The approval need not comply with the notice and publication provisions of section 11 of Chapter 40A of the General laws.
7. If the establishment intends to serve alcohol in the outdoor area, if required by law, the decision of the Board of Health, or its designee and Building Commissioner, shall be subject to ratification by the Select Board, in accordance with notice and public hearing requirements section 15A of Chapter 138 of the General Laws. If such a hearing is required, the applicant will be notified of the date, time and remote joining instructions for the hearing and the applicant will be solely responsible for ensuring that all abutters are notified in a timely manner and for providing proof of service prior to the hearing.
8. If the establishment intends to use the outdoor area for entertainment, the permit holder shall obtain a permit from the Select Board.
9. The permit holder shall comply with and enforce all rules, orders and guidance of the Governor, the Department of Public Health and Board of Health relative to COVID-19 safety measures, including but not limited to, workplace safety requirements, gathering size limits, physical distancing, and face covering requirements.
10. The permit holder shall be solely responsible for sanitizing the tables and chairs after each use, cleaning the outdoor area and securing tables, chairs and equipment when the area is not in use.
11. All other regulations and permit conditions imposed by the Planning Board and/or Zoning Board of Appeals, including hours of operation, shall remain in effect, and the outdoor areas shall be subject to inspection by agents of the Board of Health.
12. The Board of Health reserves the right to impose additional requirements on a case-by-case basis as may be necessary to protect public health, safety and welfare.
13. Pursuant to the Governor's COVID-19 Order No. 35, on November 1, 2020, or the date the Governor's Order is rescinded, whichever is sooner, any approvals under this section shall automatically revert to its status prior to the approval of the change for expansion of outdoor table service or in the description of a licensed premise.
14. If any provision of this order or the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
15. The Board of Health or its designee, the Building Commissioner, and/or any Police Officer of the Town of Nantucket may enforce this Order.

16. Whoever violates any provision of this Order may be penalized by a noncriminal disposition process as provided in Massachusetts General Laws, Chapter 40, section 21D and the Town's non-criminal disposition by-law.
17. If non-criminal disposition is elected, then any person who violates any provision of this Regulation and Order shall be subject to a penalty in the amount of one hundred dollars (\$100) for the first offense; two hundred dollars (\$200) for the second offense; and three hundred dollars (\$300) for a third and subsequent offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
18. Whoever violates any provision of this Order may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. The Board of Health and/or the Select Board may seek to enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.
19. Notwithstanding the foregoing, agents and officers are encouraged to educate offenders and to exercise their judgment on a case-by-case basis, and they may issue verbal or written warnings prior to determining that an offense has occurred.

So Ordered by the Nantucket Select Board on this 3rd day of June, 2020

Dawn Hill Holdgate, Chair
Rita Higgins, Vice Chair
Jason M. Bridges
Matthew G. Fee
Kristie Ferrantella

So Ordered by the Nantucket Board of Health on this 4th day of June , 2020

Stephen Visco, Chair
Malcolm MacNab
Helene Weld
Rita Higgins
James Cooper