

Virginia Alcoholic Beverage Control Authority

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## Circular Letter

21-02

**To:** All Retail Licensees with Dining Facilities

**Subject:** Approval of Outdoor Dining Areas

**Purpose:** The purpose of this Circular Letter is to provide guidance to retail licensees with dining facilities regarding approval of outdoor dining areas following the expiration of Executive Order 51, Executive Order 61, and Executive Order 62.

**Background:** On May 13, 2020, the Virginia Alcoholic Beverage Control Authority (the "Authority"), acting under the abilities granted within Executive Order 51 and Virginia Regulation created an accelerated process for receiving requests for outdoor dining areas. The Authority permitted the temporary expansion of outdoor dining rooms or areas only until the expiration of Executive Order 61 and Executive Order 62. Due to ongoing concerns regarding the spread of the novel coronavirus, the Authority finds there is sufficient grounds to continue to permit the expansion of outdoor dining areas following the expiration of Executive Order 61 and Executive Order 62 in order to promote the safety and welfare of the public.

**Held:** Upon expiration of Executive Order 51, the Authority will permit any outdoor dining area(s) previously approved by the Authority while under Executive Order 51 to remain in effect, as well as permit the application and approval for any new or additional space subject to the terms and conditions below.

1. Licensees currently utilizing outdoor areas approved under the authority of Executive Order 51 who have no intention of modifying any aspect of how they currently utilize their approved outdoor areas upon the expiration of Executive Order 51, may continue to utilize those spaces as approved without submitting any additional paperwork to the Authority.
2. Licensees currently utilizing outdoor areas approved under the authority of Executive Order 51 who wish to expand their current privileges, to include extending the time the area may be used beyond 11 p.m. and/or permitting entertainment in the area, must resubmit their requests with the required documentation, including written approval for the expanded privileges from the locality where the business is located, to their ABC Agent upon the expiration of Executive Order 51.



3. Licensees seeking approval for new outdoor areas must submit the required documentation stated herein, including written approval from the locality where the business is located, for the use of the outdoor area.
4. 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 outdoor area(s).
5. 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. The additional area(s) shall not include any additional indoor space.
6. The licensee shall provide a diagram of the outdoor dining area to the Authority.
7. The licensee may not use the outdoor space until all documented evidence of items 4-7 is sent to the ABC Agent and the licensee has received written approval to use the space from the Authority.
8. The area may be used for the selling and consumption of alcohol between 6am and 2am unless such area is further limited by authorization from the locality pursuant to § 4.1-124 of the Code of Virginia or per the written approval of the locality where the business is located. Permission to utilize the outdoor area for any time after 11pm must be specified in the written approval from the locality.
9. Any area used after sunset must be illuminated in compliance with 3 VAC 5-50-70(A) of the Virginia Administrative Code. The lighting should be sufficient to determine the patron's age and sobriety, as well as to facilitate the consumption of food and beverages.
10. Entertainment may be permitted in the approved outdoor areas only if included in the written approval from the locality where the business is located.
11. 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).
12. 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.
13. Each licensee shall have their own exclusive outdoor dining area. There shall be no sharing or comingling of outdoor dining areas by any licensees. There will be no approval of any type of food court concepts.
14. Adequate tables and chairs must be provided. If it is a mixed beverage license and the additional seating causes the license to exceed its existing seating tax, the licensee shall be responsible for paying the additional tax.



15. 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 area.

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Should you have questions regarding the provisions of this Circular Letter, please contact the Special Agent in Charge located at your regional ABC office.

