

TOWN COUNCIL

Special
MEETING PACKET

May 26, 2020



**Town Council
Agenda
Special Meeting**
Tuesday, May 26, 2020
Remote Meeting
7:00 PM



MISSION STATEMENT-*"The mission of the government of the Town of Johnstown is to provide leadership based upon trust and integrity, commitment directed toward responsive service delivery, and vision for enhancing the quality of life in our community."*

*Members of the audience are invited to speak at the Council meeting. Public Comment (item No. 5) is reserved for citizen comments on items **not** contained on the printed agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position.*

- 1) **CALL TO ORDER**
 - A) Pledge of Allegiance
- 2) **ROLL CALL**
- 3) **AGENDA APPROVAL**
- 4) **RECOGNITIONS AND PROCLAMATIONS**
- 5) **PUBLIC COMMENT (three-minute limit per speaker)**

*The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to have an item discussed or if there is public comment on those ordinances marked with an *asterisk. The Council member may then move to have the subject item removed from the Consent Agenda for discussion separately.*

- 6) **NEW BUSINESS**
 - A) COVID 19 Discussion
- 7) **COUNCIL REPORTS AND COMMENTS**
- 8) **MAYOR'S COMMENTS**
- 9) **ADJOURN**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: May 26, 2020

ITEM NUMBER: 6A

SUBJECT: COVID-19 Update

ACTION PROPOSED: Consider changes and improvements to accommodate Restaurant and Liquor Licensing during COVID-19

ATTACHMENTS:

1. Colorado Department of Revenue (Liquor Enforcement Division) Bulletin 20-07
2. Modified Premises Permitting Process
3. Temporary Street/Sidewalk Use Permit Application

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Enclosed is Bulletin 20-07 Emergency Regulations 47-302 (f) COVID-19 Temporary Modification of on-premises licenses and 47-1102 compliance with Public Health Orders and Executive Orders issued during disaster Emergencies. These regulations extend to on-premises business such as hotel and restaurant; brew pub; distillery pub; vintners; restaurant; fermented malt beverage (FMB) on premise; tavern; beer and wine; lodging and entertainment; optional premise license; club license; art license; breweries; winery's; and distilleries with an approved sales room.

The bulletin includes regulations related to the softening of rules during the pandemic that businesses must follow if they desire to modify their premises. The modification and application must be submitted to the division for approval. Any temporary modification to an on-premises license must also comply with ADA requirements, social distancing requirements and applicably fees must be paid as well. The time period for which these temporary modifications of on-premises licenses may take place is for the next 120 days from the date the emergency regulation is adopted by the State Licensing Authority. The timeframe may also be extended by the State based on the condition of the pandemic at or near the 120-day mark. For those establishments who hold alcohol licenses, the premises modification process is handled administratively and can still be conducted in this manner. The Town will not be charging a fee related to the modification under the conditions of the pandemic. The state however is charging the \$150 fee for the establishment of the modified premises. The guidelines for the process are attached along with the Bulletin 20-07 and both will be made available on our website.

With respect to the restaurants modifying their premises (without alcohol sales), there is no state permitting necessary. The Town has historically prohibited the use of ROW or Town property for any retail or private purpose; the reasons are unknown. To help our businesses succeed, we have established an application process and general guidelines and requirements to use our sidewalks, streets or other Town property for this purpose. The permit will be called the

Temporary Street/Sidewalk Use Permit. The application and permitting fee are proposed to be \$0 during the pandemic. In the future, this fee may be modified and the permit expanded to general use. The general guidelines and requirements Staff would propose are included in this communication. A couple of items to note that we will have final determinations on at the meeting for your information:

1. Do we need a more formal agreement the applicant will need to sign given the extended duration of the use of public property.
 - a. If a more formal application is necessary, the indemnification and Town Property and Equipment acknowledgements would be removed and replaced with a more formal agreement.
2. Would a resolution adopting the regulations be more appropriate as these are guidelines we would enforce if a business was not keeping areas available for ADA compliance and/or social distancing.

At the time of this communication, Governor Polis had not yet released the Executive Order related to restaurants and it is anticipated to be issued on Monday and we are unclear about the effective date. We believe though that in the interest of helping our businesses succeed and begin generating a cash flow that timeliness to at least move forward on these items is critical for the restaurants. An additional memo with additional items for consideration may be provided on Monday or Tuesday prior to the meeting. Given our lack of fully understanding the order having not reviewed it, providing Council at this time with clear direction is difficult and I apologize for this. I do however believe Council should consider adoption of the Temporary Street/Sidewalk Use Permit to move this process forward.

LEGAL ADVICE:

FINANCIAL ADVICE:

Not applicable.

RECOMMENDED ACTION:

SUGGESTED MOTIONS:

For Approval:

I move to approve the Temporary Street/Sidewalk Use Permit regulations as presented.

For Denial:

I move that we deny the Temporary Street/Sidewalk Use Permit regulations as presented.

Reviewed and Approved for Presentation:

Town Manager



COLORADO

Department of Revenue

Enforcement Division – Liquor & Tobacco

Physical Address:
1697 Cole Boulevard, Suite 200
Lakewood, CO 80401

Mailing Address:
P.O. Box 17087
Denver, Colorado 80217-087
Fax: 303-866-2428

Bulletin 20-07

REFERENCE: EMERGENCY REGULATIONS 47-302 (F) COVID-19 TEMPORARY MODIFICATION OF ON-PREMISES LICENSES AND 47-1102 COMPLIANCE WITH PUBLIC HEALTH ORDERS AND EXECUTIVE ORDERS ISSUED DURING DISASTER EMERGENCIES

DATE: May 15, 2020

Due to COVID-19, liquor establishments licensed for on-premises sales and consumption of alcohol beverages were closed, and take out and delivery methods were put into place. As Colorado now starts to re-open certain businesses, the Liquor Enforcement Division has been collaborating with local licensing authorities, various state and county public health departments, and various stakeholders, to re-open with limited capacity for on-site consumption of alcohol beverages and food service. It is, after all, the Division's mission "[t]o promote public safety, support economic growth, and the responsible sale and consumption of liquor and tobacco products, through the fair administration of liquor and tobacco/nicotine laws."

Emergency Regulation 47-302(F) is being adopted to allow on-premises liquor licensed businesses to apply for temporary modifications with their local and state licensing authority and to pre plan for temporary outdoor seating areas that support social distancing requirements. If your local jurisdiction does not have an approved variance, you are still unable to open at this time for on-premises consumption of alcohol beverages and food service, but you can begin planning for outdoor seating areas. If your local jurisdiction has obtained a variance which includes on-premises consumption, or when a Statewide Executive Order or Public Health Order is entered allowing bars and restaurants to reopen including for on-premises alcohol consumption, the temporary modification can be approved by the Division to permit licensees to begin operations as soon as permitted by executive and/or public health orders.

If the Local Licensing Authority has a licensee that this model will not provide relief please reach out to the Liquor Enforcement Division so we can work in partnership to review these matters on a case by case basis.

[Emergency Regulation 47-302 \(F\)](#)

The temporary amendment to Regulation 47-302 1 C.C.R. 203-2, is available **only to on-premises businesses** such as Hotel and Restaurant; Brew pub; Distillery pub; Vintner's Restaurant; Fermented Malt Beverage (FMB) on-premises; Tavern; Beer and Wine; Lodging and Entertainment; Optional premises license; Club license; Arts license; Breweries, Wineries and Distilleries with an approved sales room. This emergency regulation permits these on-

premises licensees to temporarily expand their licensed premises into sidewalks, streets, and parking lots to increase social distancing measures while being able to operate a productive and economically sustainable business. This emergency regulation is not available to off-premises liquor licensees.

The emergency regulation requires that on-premises liquor licensees who want to apply for a temporary modification of premises must do so through both local and state licensing authorities, and pay all required fees upon submission of their application. For this COVID-19 relief measure of a temporary premise modification, licensees will only have to pay the initial application fee to turn the modification on. There will be no fee to turn this relief measure off as the local and state licensing authorities will work to notify licensees when this relief has been removed and the liquor licensed premises shall be returned to its original approved licensed premises diagram.

Both state and local licensing authorities need to review the modification and make sure that the following criteria are met prior to the final approval of the application:

1. Location and Public Thoroughfares

If the licensee wants to add outside seating/service areas to their current location, the location must be contiguous or adjacent to the currently licensed premises, and must be appropriately monitored by the licensee. Yes, public right-of-ways and the Americans with Disabilities Act (ADA) requirements remain in effect. Only liquor licensed servers may cross any public sidewalk to serve alcoholic beverages to the public. The public cannot consume alcoholic beverages on public sidewalks.

Regulation 47-302(A)(7) remains in effect. That regulation provides nothing herein shall prohibit a licensee from modifying its licensed premises to include in the licensed premises a public thoroughfare, if the following conditions are met:

- a. The licensee has been granted an easement for the public thoroughfare for the purpose of transporting alcohol beverages.
- b. The public thoroughfare is authorized solely for pedestrian and non-motorized traffic.
- c. The inclusion of the public thoroughfare is solely for the purpose of transporting alcohol beverages between licensed areas, and no sale or consumption will occur on or within the public thoroughfare.
- d. Any other conditions as established by the local licensing authority.

2. Boundaries

The area to be added/modified must clearly be delineated by barriers. Warning signs regarding laws against public consumption of alcohol beverages, for example, "No alcoholic beverages beyond this point," must be posted in areas visible to the public at all points of ingress and egress. A control plan must be submitted to address the following:

- Ingress and egress,
- Control of the licensed premises. No alcohol beyond the licensed premises and no outside alcoholic beverages to be brought onto the licensed premises,
- No alcoholic beverages sold to minors, and
- No alcoholic beverages sold to intoxicated parties.

3. Local building and zoning laws

The area to be added/modified must comply with local building and zoning laws and ordinances.

4. Authorization for statement of use or ownership of the area

The licensee must provide proof to both the state and local licensing authorities of their ability to use any street, sidewalk, parking area, or other area, which does not belong to them prior to expanding their licensed premises footprint. In addition to ownership and statement of use, acceptable proof of possession includes lease, rental, or another arrangement.

5. Nearby liquor licensed premises

The area to be added/modified must not encroach upon or overlap with the licensed premises of any other liquor licensed premises.

6. Colorado Liquor Code and Rules

The licensee and licensed premises comply with all other restrictions and requirements imposed by the Colorado Liquor Code and Rules.

Sidewalk Service Areas

Applications for COVID-19 Temporary Modification of Premises are separate from, and in addition to, sidewalk service area applications, as sidewalk service area permits are permanent changes to the licensed premises and can be renewed annually, which extends beyond the timeframe of the relief in this emergency regulation.

Licensees who would like to apply for a sidewalk service area in addition to COVID-19 Temporary Modification of Premises will need to submit an application to the local and state licensing authorities.

Social Distancing

In respect to public health orders, both local and state licensing authorities will review diagrams and safety plans submitted by licensees for the temporary modification of premises to ensure it will promote social distancing and public safety. This includes, and is not limited to, the distance between tables, the capacity of the premises and area to be added/modified, access to the area and premises, and the requirement for patrons and employees to wear masks to the extent required by executive or public health orders.

Expiration of the Emergency Rule 47-302 (F)

As mentioned in the emergency regulation, any temporary modification of premises, approved by both licensing authorities, expires 120 days from the date the emergency regulation is adopted by the State Licensing Authority. In the event that the emergency regulation is extended, or other actions are taken by the State Licensing Authority about this matter, no additional fee or further approval will be required from licensees to maintain the previously approved temporarily modified premises. Additionally, no fee or approval will be required upon the expiration of the emergency regulation, for licensees to remove the temporarily modified premises.

Temporary Modification of Premises After COVID-19

In the event that a licensee had been approved for a temporary modification of premises due to COVID-19, and later desires to make the modification permanent after the emergency rule expires, a new application for a permanent modification of premises would have to be submitted to, and approved by, both local and state licensing authorities along with the required fees.

Payments Online

The Liquor Enforcement Division is pleased to offer an online payment service. Any type of fee or fine owed to the LED can be paid through the service. Please visit the link below for more information and instructions. The payment site is only for state license fees or fines, and any required paperwork must be submitted to the LED via mail or email using dor_led_renewals@state.co.us.

Online payments can be made here: <https://secure.colorado.gov/payment/liquor>

Please consult your local licensing authority regarding available payment options for local licensing authority fees owed by retail applicants or licensees.

Compliance with Public Health Orders and Executive Orders Issued During Disaster Emergencies

Regulation 47-1102, 1 C.C.R. 1 203-2, has been adopted on an emergency basis to assist the Colorado Department of Public Health and Environment, County Health Departments, City and County Law Enforcement Partners and the Colorado Liquor Enforcement Division by providing for potential administrative action against a licensee that refuses to comply with the Public Health Orders and Executive Orders issued during this emergency. The Colorado Liquor Enforcement Division is committed to educating the public and liquor licensees about the evolving changes in public health orders related to the sale and consumption of alcoholic beverages on liquor license premises and the social distancing requirements that must be maintained during this pandemic for business to thrive while keeping everyone safe.

[Regulation 47-1102](#)

As a courtesy the Liquor Enforcement Division has provided signage as guidance to customers on social distancing measures and cloth face masks for licensees to post upon the licensed premises, if they so choose. See the link below for a printable sign.

[Social Distancing Guidance Signage](#)

If you see a violation, please make a report by email to dor_led@state.co.us. Our enforcement team takes these reports very seriously and will thoroughly investigate every complaint.

The Division reserves the right to amend or withdraw the relief provided in the emergency regulations or industry bulletins at any time but will provide at least three days' notice prior to any withdrawal of emergency rules or industry bulletin(s). If the Division determines that any licensee has violated any regulation or any of the relief provided in any industry bulletin or that the licensee's actions jeopardize public health, safety, or welfare, the Division may recommend that the State Licensing Authority pursue administrative action seeking to suspend or revoke such license.

We recommend all licensees sign up on our email subscription via

<https://www.colorado.gov/pacific/enforcement/liquor-enforcement-division-email-subscription>

If you have any further questions, please contact LED by sending an email to dor_led@state.co.us.

Colorado Liquor Enforcement Division



Town of Johnstown
450 S. Parish Avenue
Johnstown, CO 80534
970.587.4664

May 26, 2020

INSTRUCTION SHEET re: TEMPORARILY MODIFYING A LIQUOR LICENSED PREMISES DUE TO PUBLIC HEALTH CONCERNS RAISED BY THE PRESENCE COVID-19 IN COLORADO.

Pursuant to LED Regulation 47-302 F

A complete application shall include the following. Incomplete applications will not be accepted.

1. **Completed** State application form DR 8442. Please download and keep a copy for your records. In answering question #9 (a.), please describe the proposed changes proposed but do not fill out (b.) as these permits are only for how long the State allows them to be.
2. **Diagrams** (no larger than 8 ½ x11", does not have to be architectural) to include existing and proposed temporary addition, showing:
 - a. Please outline area to be included in bold, black marker.
 - b. How the areas are contiguous to the current facility, with a path of travel (if need be).
 - c. Confirming the new boundaries do not encroach or overlap another's liquor licensed premises.
 - d. Showing and labeling on the proposed diagram the types of barriers that will be utilized to denote the boundary (i.e. ropes, planters, blocks, etc.), ingress and egress points, along with the required warning sign postings.
3. **Possession** documents for the new areas will need to be included. This item could be a revised lease, contract, deed or a signed letter from the landlord, allowing the licensed entity to use the proposed area.
4. **Fees** in the amount of \$150 made payable to the Colorado Department of Revenue.
5. **Control plan** stating how you propose to control this area for items like checking I.D.'s, hours of service, no alcohol service to minors or intoxicated persons, not allowing consumption of alcohol in a service only corridor going to and from the proposed area, along with not allowing alcohol to be brought onto or removed from these areas.

Fees in the amount of \$150 can be sent electronically through the DOR Enforcement Liquor Division Payport online services site. After doing so, you must submit a copy of the confirmation of it being processed by them to the town's email, listed below. Please note that there are no additional fees required to remove this temporary addition. <https://secure.colorado.gov/payment/liquor> The Town would advocate for you to pay electronically to expedite the permitting process by the State.

This completed form packet can be scanned and emailed directly to the Town Clerk's office for processing at dseele@townofjohnstown.com. After being approved, we will submit it electronically to the Liquor Enforcement Division (LED)

If paying by check, please send it to Town of Johnstown PO Box 609, Johnstown, CO 80534 c/o Diana Seele, Town Clerk. This check will be mailed to the CO Liquor Enforcement Division along with the application packet, after it's been approved.



PERMIT: # _____

Town of Johnstown
450 S. Parish Avenue
Johnstown, CO 80534
970.587.4664

TEMPORARY STREET/SIDEWALK USE APPLICATION

APPLICANT INFORMATION - DATE: _____

NAME: _____

COMPANY: _____

ADDRESS: _____

EMAIL: _____ PHONE: _____

CLOSURE REQUESTED

CLOSURE TYPE: STREET SIDEWALK ALLEY
 PLAZA PARKING LOT OTHER _____

ADDRESS/AREA TO BE CLOSED (Map must be attached): _____

FROM: _____ TO: _____
(Cross Street) (Cross Street)

DATE(S) OF CLOSURE: FROM: _____ TO: _____

TIME OF CLOSURE: FROM: _____ UNTIL: _____
(No Later Than 12 midnight)

REASON FOR CLOSURE: _____

TOWN / OFFICIAL USE ONLY

Police Department: APPROVE DENY INITIALS: _____ DATE: _____

Public Works Department APPROVE DENY INITIALS: _____ DATE: _____

Planning Department APPROVE DENY INITIALS: _____ DATE: _____

Fire Department APPROVE DENY INITIALS: _____ DATE: _____

GENERAL CONDITIONS

1. Outdoor dining area must remain clear of litter at all times. No trash container shall be stored in the outdoor dining area when associated restaurant is closed.
2. Town-owned and maintained trash containers must not be used for restaurant waste.
3. Tables, chairs, umbrellas and other furnishing must be fully contained in the approved seating area and be sturdy enough to withstand weather and high winds.
4. Furniture must not be roped, cabled or otherwise secured to trees, street lights, street signs, hydrants or any other infrastructure, during operating hours or at times when the associated restaurant is closed.
5. The approved dining area may be located either directly in front of the associated restaurant, immediately adjacent to the building or detached from it in adjacent sidewalk space or parking stalls, or in a nearby public plaza.
6. Ensure that a minimum 6-foot wide continuous walkway is maintained across the public space, and to business entrances or exits, to provide safe ingress/egress, social distancing capability, and consistent ADA compliance.
7. Locate associated seating areas so that they do not encroach into the public frontage of another property or business unless written approval is provided in this application by both the affected tenant and property owner.
8. Design seating areas so that the outer limits of dining areas can be easily detected by visually impaired pedestrians.
9. Before any street, parking space, or lot closure is to be considered, the applicant shall notify the owners of property abutting that street, in writing, of the upcoming closure. The written notice must include a description of the area to be closed, the dates and times of the closure, and the name, address, and phone number of the applicant/permittee. Signatures from the abutting properties is required with at least 80% support. The applicant/permittee shall submit a copy of the notice and a list of the notified addresses to the Town with this application and prior to the closure.
10. The applicant shall keep this permit on site at all times during the sidewalk/lane/road closure.
11. Applicant shall notify the Public Works Department to obtain "No Parking" signs, if needed.
12. Direct ingress/egress to the business shall not be obstructed.
13. This permit DOES NOT provide for a temporary modified premises for alcohol consumption. Please contact dseele@townofjohnstown for additional information related to this application or go here.

APPLICANT AGREES TO THE FOLLOWING CONDITIONS BY INITIALING EACH PARAGRAPH

Indemnification and Hold Harmless: The Applicant and/or the signers of the petition, individually and collectively, shall indemnify and hold the Town of Johnstown, its officials and employees, from any and all loss, cost (including reasonable attorney fees and court costs), damages, expenses, and liability caused by any of the closed street, lane or sidewalk or by the revocation of permission to close the street, lane, or sidewalk arising from the use or occupancy of the closed street, lane, or sidewalk arising from the use or occupancy of the closed street, lane or sidewalk. The Town accepts no liability for any action(s) that may arise from the closing of the street, lane, or sidewalk, or from the revocation of permission to close the street, lane, or sidewalk. Any insurance protection that is necessary during the closing of the street, lane or sidewalk is the sole responsibility of the applicant and/or the signers of the petition.

INITIAL HERE _____

Town Property and Equipment: All property and equipment belonging to the Town, and located within and around the closed street, lane or sidewalk, is to be treated by the applicant and/or the signers of the petition and their invitees/contractors, with reasonable and due care. The applicant and/or the signers of

PERMIT: # _____

the petition assume, individually and collectively, complete and absolute liability for any loss and damage to the Town property and equipment which may result from any misuse or mistreatment of the property and/or equipment during the street, lane or sidewalk closure. No items of any kind shall be attached to any Town owned facilities. Electrical cords or any other access will not be allowed to be connected to any Town-owned poles or cabinets.

INITIAL HERE _____

Signature: _____

Date: _____



PERMIT: # _____

Town of Johnstown
450 S. Parish Avenue
Johnstown, CO 80534
970.587.4664

APPLICANT AGREES TO THE FOLLOWING CONDITIONS BY INITIALING EACH PARAGRAPH

Please submit the following information to the Planning Department. Town Staff will review your information for compliance with the eligibility criteria, applicable Municipal Code requirements, and program guidelines. To avoid delays, it is imperative that you provide an application that contains all of the required information.

_____ Application:

- Complete and sign the Application form.

_____ Narrative description:

- Provide a brief written description of your restaurant and how you intend to utilize the outdoor dining area. For instance, discuss hours of operation; location of your outdoor dining area; how many tables and chairs will you be adding; how will the furnishings be secured; do you plan to have music; will you be adding lighting, if so, where will the fixtures be located and how will you obtain electricity; are you constructing a platform; will you be adding any signs; and any other information that you want to include to help the Town understand how you intend to utilize the outdoor space.

_____ Diagram:

- Provide one or two diagrams to scale that include the following -
 - ✓ North arrow & property lines.
 - ✓ Dimensions of proposed dining area and length of building frontage.
 - ✓ Location and width of sidewalk or pedestrian pathway.
 - ✓ Location of tables and chairs, and other furnishings in your outdoor dining area.
 - ✓ Location of building entrance.
 - ✓ Barrier, with dimensions (provide height, width and length).

_____ Photos, Drawings, or Cut Sheets:

- Provide photos, drawings of manufacturer cut sheets of the furnishings you propose using in your outdoor dining area (ex: tables, chairs, barriers, umbrellas, light fixtures, and heaters).

_____ Construction details:

- If your project involves construction of a temporary or permanent platform, you will need to submit a building permit application and construction drawings. Building permit applications are [available here](#).

_____ Insurance:

- Provide proof of liability insurance in the amount of \$1 million, with the Town of Johnstown named as an additional insured party.

_____ Application Fee: \$0