STATE OF WEST VIRGINIA
DEPARTMENT OF REVENUE
ALCOHOL BEVERAGE CONTROL ADMINISTRATION

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REVISED

4th Revision per EO 74-20 Effective October 6, 2020

3rd Revision Effective July 24, 2020 per EO 56-20

2nd Revision Effective July 14, 2020 per EO 51-20

1st Revision - Effective only per Governor Declaring Week 10, July 1, 2020

Originally Effective only per Governor Declaring Week 2 may proceed on Monday, May 4, 2020

WVABCA LIMITED OUTDOOR DINING AREA and LIMITED OUTDOOR LIVE MUSIC ENTERTAINMENT ADVISORY

Per West Virginia Governor Jim Justice and the Executive Orders related to COVID-19 issued to date, the Governor has been working with WVABCA Commissioner Fred Wooton to permit outdoor dining at licensed businesses and restaurants who must serve "freshly prepared food and meals" (not bars with limited food service, such as a bag of chips or frozen tv dinner/meal) and who must follow the Governor's Guide to Safely Opening our Restaurants Through Takeaway Service & Outdoor Dining as well as any health department requirements (See https://coronavirus.wvgovstatus.com/2020.04.28%20Restaurant%20Guidelines.pdf).

A current licensee meeting the fresh food requirements and in good standing who also has a deck or patio already on its licensed floorplan or has a locally authorized/approved sidewalk dining area on its licensed floorplan may resume providing food and alcohol on the deck, patio or sidewalk area as authorized, subject to the outdoor dining area advisory and other requirements noted herein. No further action is necessary for this licensee. A current licensee with a licensed deck or patio area may have an outdoor live music performance (single acts or bands) when: (a) meeting the requirements in the Governor's Guide to Safely Hosting Live Performances, (b) meeting the requirements in this Advisory (see below); and (c) conducting the outdoor live music performance with proper social distancing and 6 foot or more spacing between tables and groups.

A current licensee (in good standing) without an approved temporary outdoor dining area who meets the freshly prepared food requirement will be permitted to apply for a **new or expanded temporary area** to conduct limited outdoor dining with the sale of freshly prepared food and meals, and the sale, service and consumption of alcoholic beverages, including nonintoxicating beer, wine and liquor, as applicable. Such current licensees may apply for a 30-day permit, which is renewable, during the State of Emergency (and which would expire at the end the State of Emergency or 30 days).

Note, approved temporary outdoor dining areas may be periodically closed as needed when COVID-19 circumstances dictate closure by the State, WVABCA or state and local health departments.

Current licensees may apply for **new or expanded temporary area** for limited outdoor dining as follows:

(a) a **Tavern licensee** may obtain, upon application and approval (on a form provided by the WVABCA Commissioner at www.abca.wv.gov), a nonintoxicating beer floor plan extension (W. Va. Code §11-16-3(14) and §11-16-9(g)) to conduct nonintoxicating beer sales for on-premises consumption only in a contiguous outdoor dining area to the licensee's licensed premises, as determined by the Commissioner, for no additional fee, where all sales, service and consumption of food and alcohol shall cease on or before the WVABCA's stated hours of operation;

(b) a **Private Wine Restaurant (including a Private Wine Bed And Breakfast or Private Wine Spa) (wine only) or a Private Wine Restaurant with beer licensee** may obtain, upon application and approval (on a form provided by the WVABCA Commissioner at www.abca.wv.gov), a Class S special fair and festival event beer and wine license (W. Va. Code§ 60-8-3(h)), to conduct wine only or nonintoxicating beer and wine sales for on-premises consumption only in a contiguous outdoor dining area to the licensee's licensed premises, as determined by the Commissioner, for no additional fee, where all food and alcohol sales, service and consumption shall cease on or before the WVABCA's stated hours of operation; and

(c) a **Private club (including a Private Resort Hotel, Private Hotel, Private Golf Club or Private 9-Hole Golf Course)** licensee may obtain, upon application and approval (on a form provided by the WVABCA Commissioner at www.abca.wv.gov), a Class S2 private fair and festival license (W. Va. Code §60-7-8a) to conduct nonintoxicating beer, wine and liquor sales for on-premises consumption only in a contiguous outdoor dining area to the licensee's licensed premises, as determined by the Commissioner, for no additional fee, where all food and alcohol sales, service and consumption shall cease on or before the WVABCA's stated hours of operation.

Requirements: (a) A current licensee must submit a temporary outdoor dining area application and be approved prior to food and alcohol operations in any new or expanded outdoor dining area.

(b) The WVABCA expects the licensee to verify that the age of the person purchasing alcohol is 21 years of age or over and that the person is not intoxicated.

(c) Further, the parties should complete the verifications noted above, comply with the Governor's Guide to Safely Opening our Restaurants Through Takeaway Service & Outdoor Dining, eliminate the use of lemons, limes and other such garnishing items for beverages and further attempt contact-less payment and service when possible.

(d) Follow all requirements in the Governor's Guide to Safely Opening our Restaurants Through Takeaway Service & Outdoor Dining in the licensed outdoor dining area, and all other Executive Orders and Guides issued by the Governor.

(e) Follow the Governor's mandatory mask requirements for staff and patrons, as applicable, and all state and local health department guidelines.

RESTRICTIONS: (a) The **new or expanded** temporary outdoor dining area must be cleared of all patrons and service items **on or before the WVABCA's stated hours of operation (the patrons must be dining in the temporary outdoor dining area**. All approved licensees may continue food and sealed alcohol take-away orders and or limited home delivery during normal hours of operation.

(b) *Effective October 6, 2020* – Per the Governor's EO 74-20 (See **https://governor.wv.gov/Pages/The-Comeback.aspx**)

– Carnivals, fairs, festivals, concert and music halls, adult entertainment venues and other similar businesses shall be closed, and indoor live music performances are generally prohibited, except that live music (single acts or bands) may be performed indoors for simulcast or other broadcast for remote audiences, where no audience is physically present where the live music is being performed (no simulcast from room to room in one location), and any live music performance whether the limited indoor exception or outdoors must be held in accordance with the Guide to Safely Hosting Live Performances - https://governor.wv.gov/Documents/Covid%20Additional%20Guidances/2020.10.5%20Guidance%20for%20Live%20Performances.pdf.

An outdoor live music performance should occur in licensed "outdoor or open-air settings" with:

1. Social distancing between and among the performers, and also from the patrons and Licensee's staff;
2. A physical barrier (such as a plexiglass partition, face shield or other wall type barrier) separating the performer(s) from any patron-viewers;
3. Social distancing and face mask wearing is maintained among the Licensee's staff and any patron-viewers, and performers should wear facemasks when possible and when off stage;
4. Equipment used by a performer(s) is sanitized between performances;
5. Capacity shall meet the requirements in the Governor's Guide and shall include the performer(s) and the Licensee's staff; and
6. Another option of "drive-in events" which may occur in licensed "outdoor or open-air setting" so long as such events are held in accordance with the *Guidance for West Virginia Drive-In Theaters* - *https://governor.wv.gov/Documents/2020%20Executive%20Orders/GUIDELINES-Drive-In-Movie-Theaters-WVSTC.pdf* .

A "temporary outdoor dining area" (this does not include "temporary outdoor street dining areas" or "authorized/approved sidewalk dining areas" due to the size, nature and purpose of these areas) may permit a single act or a band to perform live music subject to the Guide to Safely Hosting Live Performances. But all patrons must be dining, and once patrons have completed their dining. the patrons must leave the outdoor dining area. Patrons may not linger or congregate in order to listen to the live music. The outdoor dining area must meet social distancing requirements with tables at least 6 feet apart.

No live entertainment (for example, DJ, singer, karaoke, band, musician and etc.) is permitted in **any INDOOR area** of a licensed premises.

Licensees must **not** provide a dance floor and dancing is not permitted by patrons/viewers, as social distancing cannot be maintained.

(c) If a licensee is not following guidelines or who is abusing this privilege in a manner inconsistent with proper operation of the licensee, the Commissioner may fine, immediately suspend the licensee for the remainder of the State of Emergency or pursue a revocation of a licensee's license.