

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
BASALT, COLORADO, AMENDING ITS LOCAL DISASTER
EMERGENCY DECLARATION TO PROVIDE FOR ADMINISTRATIVE
APPROVAL OF TEMPORARY MODIFICATIONS OF LIQUOR LICENSE
PREMISES AND TEMPORARY ENCROACHMENT LICENSES IN THE
TOWN'S RIGHTS-OF-WAY TO FACILITATE COMPLIANCE WITH
SOCIAL DISTANCING AND APPLICABLE PUBLIC HEALTH ORDERS**

**Town of Basalt, Colorado
Resolution No. 18
Series of 2020**

WHEREAS, The Town of Basalt ("Town") is a Colorado home-rule municipality, duly organized and existing under the Town's Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado;

WHEREAS, the Governor of the State of Colorado has declared and extended a statewide emergency regarding the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from the COVID-19 Pandemic;

WHEREAS, pursuant to C.R.S. § 24-33.5-709 and by Resolution No. 6, 2020, the Town Council declared a local disaster emergency in relation to the COVID-19 Pandemic, which granted the Town Manager certain emergency powers ("COVID-19 Emergency Declaration");

WHEREAS, further, the Town has the authority to adopt emergency regulations and orders under the broad grant of police power reflected in Title 31, including but not limited to "...to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease." C.R.S. § 31-15-401(1)(b);

WHEREAS, pursuant to Chapter 6, Article II of the Town Code, the Town Council is the Local Licensing Authority for the Town and the Town Clerk is vested with certain administrative powers under the Code with respect to liquor licenses;

WHEREAS, on May 15, 2020, due to public health concerns raised by the presence of COVID-19 in the state, the Liquor Enforcement Division for the State of Colorado issued Emergency Regulation 47-302 in Bulletin 20.07 ("Emergency Regulation 47-302") establishing procedures and rules regarding temporary modification of licensed premises to facilitate social distancing and compliance with applicable public health orders, including into outdoor areas contiguous or adjacent to the existing licensed premises which may be in public rights-of-way;

WHEREAS, pursuant to Emergency Regulation 47-302, a licensee must seek permission of the relevant Local Licensing Authority in addition to the State Licensing Authority to temporarily modify its licensed premises;

WHEREAS, in order to facilitate the business of licensees and be consistent with Emergency Regulation 47-302, the Town Council wishes to authorize administrative review and approval of temporary modifications to licensed premises;

WHEREAS, further, in order to facilitate business needs during periods of mandated social distancing and comply with public health orders, the Town Council wishes to authorize administrative review and approval of temporary licenses to encroach in the Town's rights-of-way; and

WHEREAS, the Town Council finds and declares that it is in the best interests of the health, welfare, and safety of the residents of the Town of Basalt to permit administrative review and approval of temporary modifications of liquor licensed premises and temporary licenses to encroach in the Town's rights-of-way to accommodate businesses during the local disaster emergency and mandatory social distancing.

NOW, THEREFORE, IT IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, THAT:

Section 1. Recitals. The foregoing recitals are hereby incorporated as findings of the Town Council.

Section 2. COVID-19 Emergency Declaration. The Town Council hereby amends the COVID-19 Emergency Declaration, as follows:

A. Temporary Modification of Licensed Premises. The Town Clerk is authorized to administratively review and approve temporary modifications of premises licensed pursuant to Town of Basalt Municipal Code Chapter 6, Article II, in accordance with Emergency Regulation 47-302 and the following:

1. Applicants must submit legally complete temporary modification of licensed premises applications on forms provided by the State of Colorado along with payment of State fees, proof of permission from the property owner (Town property or private property), and two premises diagrams (one showing the existing premises and one showing the modified licensed premises). The diagram showing the modified licensed premises must include sufficient information to show containment of the expanded area, whether through temporary fencing, usage of walls/landscaping/planters, increased signage, or stationed restaurant staff assigned to outside expanded areas for control of alcohol so that the alcohol remains within the expanded area.
2. The Town will not charge a local fee for temporary modification of licensed premises applications.

B. Temporary Licenses to Encroach in Town's Rights-of-Way. The Town Manager is authorized to administratively review and approve in his discretion temporary licenses to encroach upon the Town's rights-of-way in order to facilitate

expansion of outdoor seating areas for dining, retail operations, or other activities, in accordance with Colorado Department of Public Health and Environment social distancing requirements, all applicable public health orders, and all other applicable laws (e.g. ADA, Colorado Liquor Code). In the event the Town Manager denies an application for a temporary license agreement, the applicant may appeal the Town Manager's decision to the Town Council for review at the next available Town Council meeting. Town Council's determination shall be final.

Section 3. Miscellaneous.

- A. Notwithstanding the foregoing, nothing herein shall excuse a licensee from complying with applicable provisions of Chapter 6, Article II of the Basalt Municipal Code or under state law, Sections 44-3-101 et seq. and 44-4-101 et seq., C.R.S, or other conditions of the license.
- B. This Resolution shall stay in effect until termination of the Town's emergency declaration.
- C. If any section, subsection, clause, phrase, or provision of this Resolution, or the application thereof to any person or circumstance shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Resolution, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

READ AND ADOPTED by a vote of 7 to 0 this 26th day of May 2020.

TOWN OF BASALT, COLORADO



William G. Kane, Mayor

ATTEST:



Pamela K. Schilling, Town Clerk



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.

[LED 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.

Best Regards,

Colorado Liquor Enforcement Division