

TOWN OF BROOKHAVEN

STATE OF NEW YORK

COUNTY OF SUFFOLK

DECLARATION OF STATE OF EMERGENCY

I, Edward P. Romaine, Supervisor of the Town of Brookhaven, pursuant to Article 2-B Section 24 of the New York State Executive law, hereby certify as follows:

WHEREAS, on January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern;

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19;

WHEREAS, cases of transmission of COVID-19 have been documented in the Town of Brookhaven and more are expected to continue; and

WHEREAS, the Town of Brookhaven is addressing the threat that COVID-19 poses to the health and welfare of its residents and visitors.

WHEREAS, the State of New York by Executive Order No. 202 dated March 7, 2020, has addressed the transmission of the cases of COVID-19.

WHEREAS, the Town of Brookhaven is desirous of assisting existing businesses and places of worship in the Town of Brookhaven which have been authorized to re-open and lack the indoor areas or facilities to accommodate COVID-19 social distancing requirements and/or occupancy restrictions, and wish to temporarily use existing outdoor areas, install pick-up windows or add parking lot signs.

Pursuant to the powers vested in me by Executive Law §24, I hereby declare a State of Emergency. This State of Emergency has been declared because there is a reasonable apprehension of transmission of COVID-19 cases in the Town of Brookhaven.

1. During this period, the following order shall be in effect:

- A. The Town Board hereby creates, authorizes and permits COVID-19 Social Distancing Accommodations. There shall be three types of said Accommodations permitted:
1. **Areas:** Changes to outdoor spaces on existing improved sites, with a Certificate of Occupancy for the principal use, to be used where said principal use has been authorized by the Governor of the State of New York to re-open, but the occupant does not have the indoor area to accommodate COVID-19 social distancing requirements or occupancy restrictions imposed by the Governor of the State of New York. The placement of outdoor seating tables and/or chairs, display racks, public assembly areas, equipment or other similar items shall be permitted in the COVID-19 Social Distancing Accommodation Areas.
 2. **Signs -** Changes to parking lot signage for designation and installation of curbside pickup signs or pick-up parking stalls signs.
 3. **Pick-Up Windows:** Changes to existing facades for the installation of pick-up windows or movable exterior walls or similar.
2. Only the following uses, hereinafter "permitted use(s)," shall be permitted to utilize COVID-19 Social Distancing Accommodations:
Assembly and social recreation halls; delicatessens; health clubs; large commercial retailer, except those deemed essential business; lodges; major restaurants; non-degree-granting instruction/program except those associated with manufacturing or driver training; offices; personal service shops; places of worship; restaurants; retail sales establishments; shops and stores for the sale at retail of consumer merchandise and services; take-out restaurants; community or regional movie theatres; and tasting rooms as an accessory to a permitted principal farm brewery, cidery, distillery, or winery use.
 3. COVID-19 Social Distancing Accommodations may be granted via administrative review and shall be subject to any conditions the Commissioner of Planning, Environment and Land Management, or his/her designee, deems appropriate. Submission of applications shall be on a form provided by the Commissioner of Planning, Environment and Land Management. Said application form shall replace current application forms used for land use applications, building permits and tent and membrane structures, as may be applicable.
 4. Nothing herein shall be deemed to supersede, alter or amend New York State Uniform Fire Prevention and Building Code requirements for inspections, permits and certificates.
 5. No fee shall be charged for said applications.
 6. The Commissioner of the Department of Planning, Environment and Land Management, or his/her designee, is hereby authorized to review and approve COVID-19 Social Distancing Accommodation Areas subject to the following:
 - a. The application must be for a legally existing permitted use with a valid Certificate of Occupancy.
 - b. Parking spaces may be used without penalty for loss of parking stalls, however, a physical barrier or separation to protect customers from vehicle

traffic, such as bollards, substantial planter boxes or similar barrier, must be installed. The Commissioner of the Department of Planning, Environment and Land Management, or his/her designee, may request a parking analysis to ensure that adequate parking for facility is always provided.

- c. COVID-19 Social Distancing Accommodations must meet Fire Code standards, including points of egress, access to fire extinguishers, and tent and awning ratings, if applicable. Nothing shall block entrances, exits, fire lanes, hydrants, sprinkler connection points, drive aisles, back-up areas, pedestrian or handicapped access.
- d. COVID-19 Social Distancing Accommodations, including generators used for said areas, shall not be located within 250 feet of a structure used for residential purposes, shall only be utilized between the hours of 8:00 AM and 9:00 PM and shall expire on November 1, 2020. Any owner of any residential structure within 250 feet of a COVID-19 Social Distancing Accommodation must consent to the location of for seating to be located closer than 250 feet from their residence. This consent may be revoked at any time.
- e. All items located within the COVID-19 Social Distancing Accommodation Areas shall be removed no later than November 10, 2020.
- f. COVID-19 Social Distancing Accommodation Areas must be maintained, free of trash and other debris, and trash receptacles provided.
- g. Take-out restaurants, restaurants and major restaurants utilizing COVID-19 Social Distancing Accommodation Areas must comply with all New York State Liquor Authority licenses, permits, approvals, guidance, and/or applicable laws. Nothing herein shall permit outdoor bars, taverns or nightclubs. Nothing herein shall be construed as to amend, repeal, supersede, override or alter the Alcoholic Beverage Control Law.
- h. If a tent or canopy is to be used, New York State and Town Code requirements for tent and membrane structures must be complied with.
- i. Handicapped/ADA parking stalls may not be used for Outdoor Social Distancing Accommodation Areas. The blocking of handicapped/ADA routes (path from ADA parking stalls to sidewalk curb ramps to store entrances) is prohibited. Do not reduce sidewalk widths to less than 36”.
- j. Removal of existing natural areas or required buffers is prohibited.
- k. Outside loudspeakers or exterior live entertainment COVID-19 Social Distancing Accommodation Areas shall be prohibited within 1,000 feet of any structure used for residential purposes. Town Code Chapter 50 must always be complied with.
- l. Installation of barriers, bollards, planters or other portable structures to prevent vehicles from entering the COVID-19 Outdoor Social Distancing Accommodation Areas if said area is located within a parking lot or grass area.
- m. The submission of a plan meeting the following requirements:
 - i. Depict the location of proposed tents, other membrane structures, and canopies, inclusive of support ropes and guy wires, outdoor

seating, display areas, public assembly areas, equipment or other items. Plans can be hand drawn on existing survey, site plan or aerial map from Google Maps/Earth, Bing, etc.

- ii. Depict the location within the COVID-19 Social Distancing Accommodation Areas, and the dimensions of, outdoor seating tables and/or chairs, display racks and/or tables, equipment or other items, service/customer aisles, and pathways from business to outdoor seating/area. Those occupying separate dining tables within COVID-19 Social Distancing Accommodation Areas must be spaced at least six (6) feet apart. All spacing within the outdoor areas must meet any other applicable current social distancing requirements.
 - iii. Indicate the total number of seats for take-out restaurants, restaurants, or major restaurants thereon. The County of Suffolk Guidance Memorandum for Outdoor Seating in Food Establishments must be complied with.
 - iv. Depict or provide a narrative of the steps to be taken to ensure overall site circulation is safe for vehicles, occupants and staff which may need to traverse drive aisles to access accommodation areas i.e.: pedestrian markings or signage.
 - n. The Commissioner of Planning, Environment and Land Management, or his/her designee, shall take existing improvements into consideration and determine whether or not additional on-site improvements are necessary and/or appropriate, including but not limited to drainage, parking, curbs and walks, landscaping and fencing, and may require such improvements as part of his/her approval of said.
 - o. The applicant shall provide any additional information and documentation which the Commissioner of Planning, Environment and Land Management, or his/her designee, deems necessary and appropriate for his/her review of the application.
 - p. The Commissioner Planning, Environment and Land Management, or his/her designee may, at his/her discretion, refer any COVID-19 Social Distancing Accommodations to the Planning Board as s/he deems appropriate.
7. The Commissioner of the Department of Planning, Environment and Land Management, or his/her designee, is hereby authorized to review and approve COVID-19 Social Distancing Accommodation Pick-up Windows subject to the following:
- a. The Commissioner of the Department of Planning, Environment and Land Management, or his/her designee, approval shall be for the façade changes only. Nothing herein shall be deemed to supersede, amend or otherwise affect the authority of the Chief Building Inspector as a Code Enforcement Official for compliance with all New York State Uniform Fire Prevention and Building Code requirements.
 - b. The application must be for a legally existing permitted use with a valid Certificate of Occupancy.

- c. If located within an Historic District or Historic District Transition Zone, the application shall be referred to the Historic District Advisory Committee for comment only. Approval from same shall not be required before approval of COVID-19 Social Distancing Accommodation Pick-up Windows.
 - d. Submission of plans showing location of proposed pick-up window.
 - e. Submission of one set of professional, detailed, dimensioned plans in a digital format.
 - f. Submission of Workers Compensation and Disability Insurance for the contractor. The only Certificates of Insurance forms accepted are: Workers Compensation - C-105.2, SI-12, U-26.3, GSI-12, WC/DB-100, WC/DB-101.
 - g. Submission of Disability forms- DB-120.1, DB-155. Town of Brookhaven must be named as Certificate Holder. Accord Form 101 will not be accepted.
 - h. Any other documentation necessary, as determined by the Chief Building Inspector.
8. The Commissioner of the Department of Planning, Environment and Land Management, or his/her designee, is hereby authorized to review and approve COVID-19 Social Distancing Accommodation Signs subject to the following:
 - a. Submission of a plan showing location of proposed sign(S). Plans can be hand drawn on existing survey, site plan or aerial map from Google Maps/Earth, Bing, etc. Signs should not be larger than 4 square feet per sign face (i.e. 2' x 2', 1' x 3').
 - b. Handicapped/ADA parking stalls for curb side/parking lot pick-up is prohibited.
 - c. Blocking of handicapped/ADA routes (path from ADA parking stalls to sidewalk curb ramps to store entrances) is prohibited.
 - d. Sidewalk widths may not be reduced to less than 36".
9. The Commissioner of Planning, Environment and Land Management, or his/her designee, shall take existing improvements into consideration and determine whether or not additional on-site improvements are necessary and/or appropriate, including but not limited to drainage, parking, curbs and walks, landscaping and fencing, and may require such improvements as part of his/her approval of said.
10. The Commissioner Planning, Environment and Land Management, or his/her designee may, at his/her discretion, refer any COVID-19 Social Distancing Accommodations to the Planning Board as s/he deems appropriate.
11. The applicant shall provide any additional information and documentation which the Commissioner of Planning, Environment and Land Management, or his/her designee, deems necessary and appropriate for his/her review of the application.
12. All COVID-19 Social Distancing Accommodations approvals shall expire on November 1, 2020 and all items located in said area shall be removed no later than November 10, 2020.
13. Approval for a COVID-19 Social Distancing Accommodations shall not negate or permit any violation which may exist on the subject premises at the time of approval of such accommodation.

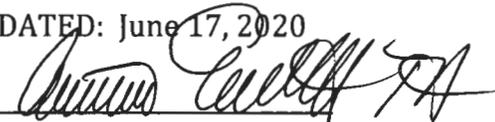
14. I hereby temporarily suspend or modify, for the period from the date of this

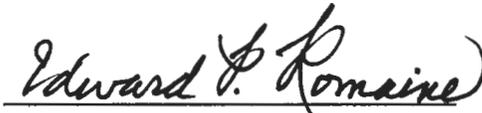
Executive Order through November 1, 2020 the following:

- a. Town Code Section 3-1(1) is hereby suspended to the extent that a take-out restaurant, restaurant or major restaurant with an authorized COVID-19 Social Distancing Accommodation area shall be permitted to serve alcohol in a place open to the general public limited to the COVID-19 Social Distancing Accommodation area only.
- b. Town Code Section 16-3(L) is suspended to the extent that permits issued for said accommodation shall be valid until November 1, 2020.
- c. Town Code Section 16-4(C) is suspended to the extent that debris affidavits shall not be required to obtain a Certificate of Occupancy, Certificate of Compliance, or their equivalent.
- d. Town Code Sections 85-113 and 114 are hereby suspended to the extent that applications for a COVID-19 Social Distancing Accommodation shall not require an amended site plan application or new site plan application or change of use application or special permit application and shall not be subject to a public hearing. COVID-19 Social Distancing Accommodation applications shall be on a form approved by the Commissioner of Planning, Environment and Land Management, or his/her designee. Said application reviewed and approved via an administrative approval of the Commissioner of Planning, Environment and Land Management, or his/her designee. Building permits and Certificates of Compliance shall be required.
- e. Town Code Section 85-107 is hereby suspended and shall not apply to a COVID-19 Social Distancing Accommodation Area.
- f. Town Code Section 85-190(A) is hereby suspended to the extent that outdoor places of worship shall be permitted.
- g. Town Code Sections 85-190(A) and (B) are hereby suspended to authorize a COVID-19 Social Distancing Accommodation area to be used in conjunction with legal pre-existing non-conforming permitted uses.
- h. Town Code Sections 85-190D(1), (2), (3) and (6) are suspended to the extent that a Board of Appeals special permit shall not be required and is subject to administrative review by the Commissioner of Planning, Environment, and Land Management, or his/her designee, pursuant to this Order as a COVID-19 Social Distancing Accommodation area.
- i. Town Code Section 85-430(E) and (F) are hereby suspended to the extent that outdoor display and outdoor seating as an accessory use to a restaurant, take-out restaurant or major restaurant shall not require a Planning Board Special permit and is instead subject to administrative review by the Commissioner of Planning, Environment and Land Management, or his/her designee, as a COVID-19 Social Distancing Accommodation area.
- j. Town Code Section 85-849A is hereby suspended to the extent necessary to permit COVID-19 Social Distancing Accommodation areas.
- k. Town Code Section 85-461 and 85-464 are hereby suspended to the extent that outdoor display shall not require a Planning Board special permit and is instead subject to

- administrative review by the Commissioner of Planning, Environment, and Land Management, or his/her designee, as a COVID-19 Social Distancing Accommodation.
- I. Town Code Section 85-541 is hereby suspended to the extent that outdoor seating shall not require a Planning Board special permit and is instead subject to administrative review by the Commissioner of Planning, Environment and Land Management, or his/her designee, as a COVID-19 Social Distancing Accommodation area.

DATED: June 17, 2020


Annette Eaderesto, Witness


Edward P. Romaine, Supervisor
Town of Brookhaven