



TOWN OF FALMOUTH

ORDINANCE NO 36-2021

Re-enactment of Ordinance No.128-2020

Emergency Ordinance to Temporarily Suspend Certain Provisions of the Falmouth Code of Ordinances Relating to Outdoor Eating Areas and Outdoor Retail Display to Assist Businesses Suffering Economic Loss Due to COVID-19 in a Manner Consistent with the Governor's Re-opening Plan

WHEREAS, the Governor of the State of Maine declared a Civil State of Emergency due to the spread of the Coronavirus Disease ("COVID-19") on March 15, 2020, which remains in effect, and

WHEREAS, COVID-19 is a communicable disease that is easily contracted through personal contact with infected individual in the community; and

WHEREAS, the Centers for Disease Control ("CDC") has issued guidance limiting the size of in-person gatherings and strongly urging members of the public to practice social distancing in their everyday interactions with members of the public, and Governor Mills so ordered pursuant to Executive Orders 14, 28, 34 and 49; and

WHEREAS, the Town is working with businesses to encourage compliance with the CDC's guidance and the Governor's various Executive Orders and, to establish practices to prevent the spread of COVID-19 to members of the community; and

WHEREAS, the Governor has implemented a phased re-opening plan intended to reduce the spread of COVID-19, which includes restrictions on indoor activities at many of Falmouth's businesses such as retail establishments and restaurants; and

WHEREAS, these businesses may find it beneficial to make temporary changes to their traditional operations to allow outdoor business services, such as outdoor seating and outdoor sales areas, due to COVID-19; and

WHEREAS, businesses located in the Town of Falmouth have experienced reduced patronage and commercial activity as a result of COVID-19, which has created corresponding economic hardship that could be mitigated to some extent by allowing expanded outdoor business services; and

WHEREAS, expanded outdoor business services may also help to promote the public health and welfare, by allowing patrons of these businesses to observe social distancing guidelines by avoiding shopping or dining in close proximity to other patrons; and

WHEREAS, Section 213.1 of the Falmouth Town Charter provides for the adoption of emergency ordinances as may be necessary to meet a public emergency affecting life or health or property or the public peace; and

WHEREAS, the Town Council declares that an emergency exists that necessitates the adoption of an emergency ordinance; and

WHEREAS, during this State of Maine declared emergency, the Town Council must consider the economic welfare of Falmouth businesses while at the same time protecting the health and welfare of its citizens; and

WHEREAS, the temporary suspension of certain ordinance standards and restrictions governing outdoor business activities is immediately necessary to protect the health, safety and welfare of businesses and their employees, and the patrons of those businesses, in light of the Governor's current phased reopening plan which allowed a number of affected businesses to reopen in a limited fashion starting on June 1, 2020; and

WHEREAS, in light of the foregoing, the Town Council deems it proper and necessary to temporarily suspend certain provisions of the Town's Code of Ordinances relating to outdoor eating areas and outdoor retail display areas for the purpose of allowing businesses to reopen or continue operating without undue hardship while also allowing for compliance with social distancing guidelines.

NOW, THEREFORE, BE IT HEREBY ORDAINED THIS 9TH DAY OF NOVEMBER, 2020 BY THE FALMOUTH TOWN COUNCIL, FALMOUTH MAINE, IN TOWN COUNCIL ASSEMBLED, AS FOLLOWS:

1. The provisions of the Code related to the operation of outdoor eating areas and outdoor retail display (together referred to as "outdoor services") shall be temporarily suspended in order to allow these uses to temporarily occur in outdoor areas on private property subject to the requirements of this ordinance.
2. Notwithstanding the procedural requirements for Conditional Uses under Div. II-19-1-8 of the Code and the procedural requirements for Site Plan Review under Div. II-19-1-9 of the Code, outdoor services may be temporarily permitted by the Community Development Director or designee (collectively, the "Director") in coordination with, to the extent the Director deems necessary, the Code Enforcement Officer, Land Use Planner, and Fire/EMS Department, and in accordance with the requirements of this ordinance including, without limitation, as follows:
 - a. Outdoor eating areas may be temporarily established or expanded on private property by obtaining a Temporary Outdoor Eating Area Permit in accordance with the requirements of this ordinance. Notwithstanding CH.II-19-1-2 of the Code, outdoor eating areas may be permitted in association with any food service establishment, including retail and service establishments and neighborhood variety/convenience stores as those land uses are defined in the Code.

- b. Outdoor retail display areas may be temporarily established or expanded on private property by obtaining a Temporary Outdoor Retail Display permit in accordance with the requirements of this ordinance.
3. Notwithstanding the definitions and performance standards for outdoor eating areas and outdoor retail display in CH.II-19 of the Code, the Director may issue Temporary Outdoor Eating Area Permits and Temporary Outdoor Retail Display Permits in the event that the applications for such permits demonstrate conformity with the requirements of this ordinance and adhere to the following requirements:
 - a. Only existing businesses, properly licensed and/or permitted by the appropriate state and local agencies shall be entitled to apply for a Temporary Outdoor Eating Area Permit or a Temporary Outdoor Retail Display Permit;
 - b. Applications shall include the written consent of the property owner;
 - c. Applications shall include a narrative describing the nature of the use, including responses or illustrations demonstrating how the proposal meets the requirements stated herein. Applications shall include a layout plan, survey, or aerial of the area to be used for outdoor services showing the dimensions and capacity of the proposed outdoor services area, property lines, fixed objects such as signs, trees, benches, light poles, trash receptacles, and the proposed location of any tables, chairs, barriers, landscaping, and any other site components proposed for the outdoor services activity;
 - d. Applications shall show what measures, if any, will be taken in order to minimize the impact of the outdoor services on surrounding properties and nearby business establishments and to ensure that the outdoor services will not disturb public health, safety, or welfare;
 - e. Applications shall address how outdoor services shall be operated in conformance with all applicable safety and social distancing guidelines or requirements as established by both the Maine and Federal Centers for Disease Control and Prevention (the “CDC Guidelines”) and by all applicable provisions of the Governor’s Executive Orders then in effect;
 - f. Outdoor services shall provide for safe pedestrian and vehicular access, safe fire and emergency access, and shall not interfere with Americans with Disabilities Act (“ADA”) accessible parking spaces;
 - g. Outdoor services may only be operated between the hours of 7am and 9pm Sunday to Thursday and between the hours of 7am and 10pm Friday and Saturday;
 - h. Appropriate lighting of outdoor services is required if operating outside of daytime hours;
 - i. Barriers or demarcations to delineate outdoor services may be required for safety purposes;
 - j. Temporary awnings, tents or other temporary structures may be temporarily permitted to protect outdoor services from the elements. Details of any such improvements shall be provided with the application. (Additional permits may be required depending on the nature of the proposed improvements);

- k. Additional application materials may be required by staff if, in staff's judgment, the additional materials are necessary to ensure compliance with this ordinance.
- 4. Effective Date; Term. This ordinance is a re-enactment of Emergency Ordinance No.128-2020, an emergency ordinance enacted pursuant to Section 213.1 of the Town Charter, which first became effective on June 3, 2020 and which was re-enacted by Ordinance No.18-2021 on July 20, 2020, and re-enacted by Ordinance No. 23-2021 on September 14, 2020. Unless otherwise further re-enacted, with or without changes, this ordinance, and any temporary permits issued hereunder, shall expire on January 8, 2021 or at such time this ordinance may be repealed, whichever occurs first.
- 5. Enforcement/Penalties. Violation of or failure to comply with this ordinance is subject to the enforcement mechanisms, fines, and penalties established in 30-A M.R.S. § 4452, including daily fines in the amount of \$100 to \$5,000 per violation. In addition, in the event that the holder of a Temporary Outdoor Retail Display Permit or a Temporary Outdoor Eating Area Permit violates any provision of the social distancing or other safety protocols established in the CDC Guidelines and/or the applicable provisions of the Governor's Executive Orders then in effect, the permit holder will be subject to the enforcement provisions thereof, which specify that a violation of said orders may be charged as a Class E crime subject to a penalty of up to six months in jail and a \$1,000 fine.
- 6. Additional Enforcement: Suspension or Revocation of Permit or License. Additional measures for enforcement of this ordinance may include the immediate suspension or revocation of the temporary outdoor services permits issued under this ordinance, and/or the suspension or revocation of the permit holder's business license pursuant to Section Art. II-84, section 8-156 of the Code for, without limitation, the following reasons:
 - a. In the event the outdoor service has resulted in unforeseen hazards for public health, welfare, and safety, or unforeseen disturbance to surrounding properties or nearby business establishments;
 - b. In the event that proper social distancing or other safety guidelines or requirements, as established in the CDC Guidelines and/or applicable provisions of the Governor's Executive Orders then in effect, are not being maintained;
 - c. In the event that the permit holder or licensee is found in default of any of the terms of this ordinance or the terms or conditions of a temporary permit issued hereunder.

Attest: _____

Ellen Planer
Town Clerk