

BOS POLICY TITLE:

**INTERIM USE POLICY –
YARMOUTH DRIVE-IN
SITE**

POLICY CODE AND NUMBER:

19-02

EFFECTIVE DATE:

October 22, 2019

The intent of this Interim Use Policy is to establish some initial policies describing the applicable standards, procedures, and fees for the use of the Town owned Drive-In Site, located at 669 Route 28, West Yarmouth. This Interim Use Policy relates to the property in its current undeveloped state with limited infrastructure and will be revised as needed to reflect improvements made to the site over time and to better accommodate the utilization of the site for users.

A. Objective:

1. To encourage utilization of the Drive-In Site as a venue for festivals and special events, to promote the area as a destination location and generate economic benefits by drawing people to the area and to the Town of Yarmouth.
2. To manage this Town owned asset to ensure safe and responsible use of the property for a variety of events sponsored by qualified Event Sponsors.

B. Responsibility:

The Board of Selectmen or their designee is responsible for ensuring that this policy is upheld, the procedures followed, and the applicable fees received. To ensure consistency with the objectives of this policy as well as the appropriateness of the event for the site, the use of the site shall be permitted at the sole discretion of the Board of Selectmen.

C. Definitions:

EVENT – A municipal, cultural, educational, religious, social, charitable, or other program, occasion or activity including, but not limited to carnivals, festivals, arts and craft fairs, car or boat shows, recreational activities, theatrical productions, or concerts.

EVENT SPONSOR – the organization responsible for all aspects of an event.

D. Applicability:

This policy shall apply to any individuals, businesses, groups or organizations wishing to use the Drive-In Site for an Event in accordance with this Policy and all other applicable Town or State licenses, ordinances and codes.

E. Rules and Regulations:

1. Use of the site shall be in compliance with all applicable laws, rules, ordinances, regulations, and by-laws pertaining to said facilities, including but not limited to the Massachusetts General Laws (MGL), By Laws of the Town of Yarmouth, and Rules and Regulations of the Yarmouth Board of Health and Yarmouth Department of Public Works (DPW); the Yarmouth Conservation Commission; and Policies of the Yarmouth Board of Selectmen and Recreation Commission as they now exist or may hereafter be altered, amended, or promulgated.
2. Licensing for service of alcoholic beverages and/or entertainment shall be applied for and obtained from the Yarmouth Board of Selectmen.
3. The Event Sponsor shall use the site in a safe and proper manner and only for the purposes for which they presented and approved by the Town. No unauthorized use of the premises shall be made by the Event Sponsor or any of its representatives, participants, servants, agents, or employees.
4. A representative of the Event Sponsor must be present on site during the event/use of site.
5. Neither the Event Sponsor nor its members, servants, agents, or employees shall cause, permit, or suffer any damage or waste (except normal wear and tear) to the site and/or surrounding premises, structures, outbuildings, vegetation, or Town signage or equipment. In the event of any breach of the terms of this paragraph, the Event Sponsor shall be responsible to do the following:
 - a. Immediately report said damage or waste to the DPW.
 - b. Repair such damage or remove waste under the supervision of the DPW in a good and workmanlike manner within such time limits and upon such terms and conditions as may be required. In the event that the Event Sponsor shall fail to repair such damage or waste as foresaid, the Town shall at its election either repair the damage or contract with outside agents for the repair of same and the reasonable charges for such repair work shall become the responsibility of the Event Sponsor which shall pay the same forthwith upon presentation of the bill/invoice from the Town or agent.
 - c. No Event Sponsor shall do or cause to be done any maintenance or repairs on the site thereto without the express permission of DPW or their designee.
6. Event Sponsors are required to recycle. All rubbish, trash, or litter created by users of the site must not be left on site and shall be placed in proper refuse and recycling containers. Event Sponsors will be responsible for cleaning, trash/recyclables removal, and restoring the entire site to its original condition within three (3) business days from the end of an event/use of site. Multi-day events are required to empty trash and recycling bins into closed and secure dumpsters or other proper containers daily and to remove accumulated materials at the end of the event.
7. No Event Sponsor shall allow any other group, individual, or entity not a member or affiliate of the Event Sponsor's organization to utilize the site during the time it is reserved by the Event Sponsor. It is expressly agreed and understood that any rights to the site conferred by this agreement are not assignable by the Event Sponsor without the express written permission of the Town and only upon such terms and conditions acceptable to the Town, including but not limited to the payment of fees and charges.
8. The Town of Yarmouth assumes no liability for any injuries to persons or damage to

property resulting from the use of the site by an individual, group, association, entity, or Event Sponsor, resulting from the use of Town property, facilities, or equipment.

9. Except as provided herein, the Town shall not be responsible for providing any user of the site with any equipment. Any such equipment provided by the user shall be in safe condition, proper working order, and shall be used in a manner consistent with manufacturers suggested use/recommendations. Event Sponsors shall be responsible for staffing and equipment as necessary to safely conduct an event at the site including, but not limited to, generators, lighting, sanitary facilities, police details, fire department/EMT personnel, safety equipment and first aid station(s).
10. The Event Sponsor, or their representative(s) shall be responsible to inspect the fields and attendant structures prior to usage thereof to insure that the same are in a safe condition and ready for use. Concerns about safety conditions should be promptly reported to the DPW.
11. No person shall possess or consume any alcoholic beverages as defined by MGL Chapter 138-1, as amended, within the limits of the site without proper licensing.
12. In emergency circumstances, use of the site may be suspended, including but not limited to emergency maintenance by the Town, its servants, agents, or employees. The Town has discretionary authority to postpone or cancel any and all events under such circumstances to insure the safety of the general public, including participants.
13. The Town may request a reasonable security deposit to be determined on a case by case basis by the Board of Selectmen to insure compliance with the terms hereof. In determining whether or not a security deposit should be charged, the Board of Selectmen shall consider the following:
 - a. The level of responsibility demonstrated by the Event Sponsor in the past with respect to rental/use of municipal facilities;
 - b. Whether the particular Event is sponsored by the Town;
 - c. The facility being reserved with due consideration being given to its condition;
 - d. The length of time that the Event Sponsor has been in existence and its composition of residents from the Town; and
 - e. The nature and duration of the activity to be conducted on site.
14. In the event that a security deposit is required, and the user of the site causes damage to the same, all or part of the security deposit shall be forfeited to the Town. If the cost of repair exceeds the amount of the security deposit, the Event Sponsor shall be responsible for the balance and forthwith pay the same upon presentation of a bill for such damage by the Town. Damage to the site or unlawful or improper use of same by an Event Sponsor may eliminate or limit the Event Sponsor's ability to obtain site usage permits in the future and/or may result in increased security deposits for future site utilization.
15. A post-event inspection of the site shall be held no later than three (3) business days after the event has concluded. In the event that the site is not damaged by the Event Sponsor and is left in good condition, the security deposit shall be returned following an inspection by the DPW. Refunds of security deposits will be processed as soon as practical.
16. Parking shall be in approved, designated areas away from the Parkers River and upweller, and shall not impact entrance/egress to the site for emergency personnel.
17. Designated pedestrian routes and bike racks shall be defined as needed.
18. Permits may be revoked if an Event Sponsor does not abide by the aforementioned rules and regulations, or allows the grounds to be damaged through its actions or lack of

action. Event Sponsors with revoked permits may be denied future permits for the site.
19. The person signing on behalf of the Event Sponsor represents and warrants that he/she has the authority to enter into this agreement on behalf of said Event Sponsor.

F. Procedure & Permits:

Event Sponsors requesting to use the Drive-In Site for events are required to fill out the Application for Use of Town-owned Property available at the Town Hall (and online at www.yarmouth.ma.us) and to pay all applicable fees. Applications for use of the site must be submitted to the Town designee a minimum of sixty (60) days prior to the date of the requested event. The Board of Selectmen or their designee reserves the right to reject any and all requests.

On the scaled drawing of the Drive-In Site provided, Event Sponsors shall show the proposed location of all the event components (stage, vendors, food trucks, tents, entertainment activities, etc.), vehicular access/egress, pedestrian routes, sanitary facilities, trash receptacles, parking, etc. The completed Site drawing shall be submitted concurrently with the Application.

Applications will be reviewed by Staff and an event review meeting may be required in order to get feedback from various Town departments and better identify local permit requirements. Staff review meetings shall be coordinated by the Community Development Department.

Requests to utilize the site shall be reviewed by the Board of Selectmen on a first come, first served basis.

Event Sponsors shall acquire, at their own expense, all necessary permits and licenses for the event. This includes (but is not limited to) any necessary permits/licenses from the Yarmouth Health Department, Police Department, Fire Department, Building Department, Department of Public Works, Yarmouth Conservation Commission, and Board of Selectmen for Alcohol and Entertainment Licenses. .

G. Security Deposit:

A security deposit shall be required as outlined in the Rules and Regulations. For events that take place over a series of dates, post-event site inspection shall occur after each event date and additional security deposit may be required.

In addition to the security deposit, the Event Sponsor shall reimburse the Town for the cost of all Town services requested by the Event Sponsor or required by the Town as a condition of approval. The cost of services shall include any equipment charges, required minimum payment to employees for callbacks, private duty fees, police details, boat details, fire department/EMT personnel, etc.

H. Other conditions

As a condition of approving this application, the Town, at its sole discretion, may impose additional conditions as it determines are reasonably necessary to protect the interests of the Town.

I. Indemnification

The Town of Yarmouth assumes no liability for either injuries to persons who are on town premises or damage to property. The Event Sponsor agrees to accept all equipment and property as is and waives any and all claims against the Town of Yarmouth, the, its, representatives, servants, agents, and employees including but not limited to its Board of Selectmen (collectively “the Town of Yarmouth”) from and against any injury, accident, illness, expense of claim of any nature whatsoever whether to persons or property which arise out of or are in any way related to the use of town property by said holder or its representative, agents, servants, or employees or by others acting under the holder’s express, implied, or apparent authority. Event Sponsor further agrees to assume all liability and to indemnify and hold harmless, the Town of Yarmouth for any and all damage to the grounds, equipment, or other property arising out of or related to the use of town land by the Event Sponsor or by others acting on the holder’s behalf or under its express, implied, or apparent authority. The above waiver, assumption of liability, and indemnification shall be effective and binding, notwithstanding that the condition of the facilities may have caused or contributed to the injury, damage, expense, or claim. The indemnification provisions set forth herein shall include reasonable attorney’s fees.

J. Insurance

The Event Sponsor shall keep the event insured with a minimum of \$500,000 in Comprehensive General Liability for each occurrence and \$2,000,000 aggregate for bodily injury. All policies shall identify the Town as an additional insured (except Workers' Compensation and Professional Liability). The Event Sponsor shall notify the Town immediately upon the cancellation or amendment to any policy. Certificates evidencing all such coverage shall be provided to the Town upon approval and prior to the event, and upon the renewal of any such coverage.

K. The provisions set forth in this Policy are severable and in the event that any provision or part thereof is deemed invalid, the remaining provisions shall not be affected thereby and shall remain valid and in full force and effect to the fullest extent permitted by law..