

**TOWN OF FALMOUTH**  
**SELECT BOARD**

**AGENDA**

**Thursday, AUGUST 27, 2020 – 5:00 P.M.**

**SELECT BOARD MEETING ROOM**

**TOWN HALL**

**59 TOWN HALL SQUARE, FALMOUTH, MA 02540**

*In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, the August 24, 2020 public meeting of the Falmouth Select Board shall be physically closed to the public to avoid group congregation.*

*Alternative public access to this meeting shall be provided in the following manner:*

1. *The meeting will be televised via Falmouth Community Television.*
2. *Real-time public comment can be addressed to the Select Board utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.*
  - a. *Zoom Login instructions:*
    - i. *Instructions and the meeting link for this specific meeting can be found at the following web address: <http://www.falmouthmass.us/BOS>.*
    - ii. *Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.*
3. *Additionally public comments may be sent in advance of the meeting to [selectboard@falmouthma.gov](mailto:selectboard@falmouthma.gov) at least 5 hours prior to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.*
4. *Applicants, their representatives and individuals with enforcement matters before the Board may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Board may contact the Town Manager/Select Board's Office to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to the Town Manager's Office at [townmanager@falmouthma.gov](mailto:townmanager@falmouthma.gov) so they may be displayed for remote public access viewing.*

**AGENDA**

**5:00 p.m. OPEN SESSION**

1. Call to Order
2. Pledge of Allegiance

**5:00 p.m. BUSINESS**

1. Application for New Entertainment License for drive-in style entertainment including live performances and movies; Monday – Saturday, 2:00pm – 11:00pm; Cape Cod Fairgrounds, 1220 Nathan Ellis Hwy, Falmouth – Kevin Pacheco Vivid Event Productions LLC
2. Request for special permit for concert on Saturday, August 29th at Cape Cod Fairgrounds, 1220 Nathan Ellis Hwy, Falmouth – Kevin Pacheco Vivid Event Productions LLC

3. Authorize submission of application to MA Energy and Environmental Affairs FY2021 Food Security Infrastructure Grant Program for feasibility study of potential uses of Town-owned land located at 398 Old Meeting House Rd. adjacent to Tony Andrews Farm.
4. Adjourn

Megan English Braga, Chair  
Select Board

## Julian Suso

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**From:** Julian Suso  
**Sent:** Tuesday, August 25, 2020 4:49 PM  
**To:** Falmouth Selectboard  
**Cc:** Diane Davidson; Peter Johnson Staub (peter.johnson-staub@falmouthma.gov); Frank Duffy (frank.duffy@falmouthma.gov); Irie Mullin; 'Edward Dunne (Edward.dunne@falmouthpolicema.gov)'; Timothy Smith; Scott McGann  
**Subject:** Select Board Agenda - Thursday, August 27  
**Attachments:** Select Board Agenda Virtual Meeting Thursday, 8-27-2020 at 5PM.pdf

Dear Board Members,

FYI, the attached for your upcoming meeting at 5PM on Thursday. We will be forwarding some supplemental information in advance as well, including an effort to secure expedited internal review from respective Town departments (for this Special Event) in advance of your meeting. As you will note, it includes two alternate items for the Board to consider regarding Vivid Event Productions: (1) a new, revised Entertainment License which would permit either live music or a drive-in movie as a main event (rather than only limited to a drive-in movie as a main event); (2) a Special Event application under the existing Entertainment License approved by the Board in July – which would authorize a single, main event live concert on Saturday, August 29 only. Lastly, also included is the opportunity for expanded information/authorization on the potential Andrews Farm grant proposal from Farming Falmouth (we are attempting to gather further information on this).

Julian

## Julian Suso

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**From:** Irie Mullin  
**Sent:** Wednesday, August 26, 2020 9:27 AM  
**To:** Julian Suso; Scott McGann  
**Cc:** Peter Johnson-Staub; Kim Fish; Frank Duffy  
**Subject:** RE: Select Board Agenda - Thursday, August 27

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Julian,

The Drive-In Movie Theater Guidance states the following:  
Drive-In Theaters are not restricted in what they show and may show content in addition to movies (e.g., pre-recorded concerts, graduation ceremonies, etc.) • Live performances must follow the rules for performers in the Theaters and Performance Venues guidance located on the Reopening Website, including distance between performers and between performers and audience members.

As we discussed in our phone call on Friday, the wording of this guidance is ambiguous, where it states that live performances must follow “the rules for *performers*” applicable to outdoor Performance Venues, but also states that drive-in theaters “*may show content in addition to movies (e.g. pre-recorded concerts)*”. The latter suggests that only the performer spacing requirements, and not broader requirements like the capacity cap, apply to a live music concert at a drive-in. However, the former suggests the opposite: that only *pre-recorded* concert videos, not live performances, are treated under regular drive-in standards, and live music concerts must comply with all outdoor venue standards including 50 person capacity.

The simul-cast of video of the live music performance on a second screen at a remote location is also not clearly addressed in the guidance. The lack of live performers present would suggest that it is closer to a display of a “pre-recorded concert” video, but the simul-cast nature does not fit into “pre-recorded”.

Given the ambiguity in the Guidance documents, there is a reasonable basis to interpret them as 1) capping both “screens/stages” to 50 people as an “outdoor performance venue”; 2) capping the “live” stage/screen to 50 people as an “outdoor performance venue” but no cap on the “simul-cast” stage/screen as a “drive in theater”; or 3) no cap on either stage/screen as a “drive in theater,” with just performer-audience (20ft) and performer-performer (10 ft) spacing requirements in place.

If the Board is inclined to decide the ambiguity in favor of allowing the event without capacity limitations, perhaps one solution would be to use special event permits for the music concerts without modifying the on-going drive-in entertainment license, and condition the special event permits for the concerts on all spectators remaining in their cars when not using concessions/bathrooms, to keep the character of the music events similar to movie-watching behavior (static sitting in cars viewing) rather than outdoor music festival behavior (congregating standing crowds interacting with performers and other spectators).

Thanks,  
Irie

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**From:** Julian Suso <julian.suso@falmouthma.gov>  
**Sent:** Wednesday, August 26, 2020 8:19 AM  
**To:** Scott McGann <scott.mcgann@falmouthma.gov>

**Cc:** Irie Mullin <irie.mullin@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>  
**Subject:** RE: Select Board Agenda - Thursday, August 27

Thank you Scott and Irie. A lingering question for me in regard to this Fairgrounds venue. My understanding is that, although this is planned to be a "live music performance," the viewers will be remaining in their vehicles and will be observing this "live performance" on adjacent movie screens (utilizing the set-up in place for the drive-in movies). Presuming that the audience will be remaining in their vehicles (other than bathroom or concession visits), how does the 50-person limit apply or does it not arguably apply? For instance, if it does apply regardless of whether in or not in a vehicle, with say 4-persons in each vehicle then only 12 or 13 vehicles could be permitted to attend the venue? I am confident that this drive-in movie venue has regularly admitted more than 12 or 13 vehicles, with will in excess of 50 persons total inside those same vehicles.  
Julian

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**From:** Scott McGann <scott.mcgann@falmouthma.gov>  
**Sent:** Tuesday, August 25, 2020 4:52 PM  
**To:** Julian Suso <julian.suso@falmouthma.gov>  
**Cc:** Irie Mullin <irie.mullin@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>  
**Subject:** RE: Select Board Agenda - Thursday, August 27

My comments were best outlined by Irie –see below. Am I missing something?

*From Irie  
Scott*

*You are correct, the 50 person maximum would apply to the planned live music concert at the Fairgrounds described below. A live music performance does not meet the Phased Reopening definition of a Drive In Movie Theater. As far as I know, the Fairgrounds only received a special event permit for drive-in movies, not drive-in music festivals.*

*The apparent lack of permitting for such an event makes it difficult to categorize, but regardless of category, the 50 person limit applies. Where there is no permit to be an outdoor performance space, the event could be seen as an uncategorized outdoor gathering subject to the broader restrictions in Covid Order 46 requiring "never more than 50 persons in a gathering in a single outdoor space." Even if the organizers were to argue that the Fairgrounds should be categorized as an Outdoor Theater or Performance Venue, and therefore subject to the sector-specific standards for operation and not the broader Order 46, there is still a 50-person cap. The Outdoor Performance Venue standards (attached) state that "Each outdoor venue must monitor customer entries and exits and limit occupancy at all times to 25% of the venue's maximum permitted occupancy as documented in its occupancy permit on record with the municipal building department or other municipal record holder, but in no event may the venue admit or host more than 50 persons."*

*For those reasons, I conclude that there is a clear 50 person cap on this event under either the Phased Reopening standards or Order 46. The rationale for the Governor's distinction between drive in movies and other outdoor performances is likely related to the passive nature of movie watching versus the interactive, crowd-based nature of a live music performance.*

*I think it is also appropriate to bring this to the attention of Town Manager's Office/Select Board as the special event licensing entity, where this does not appear to be in keeping with the permit as I remember it being voted.*

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**From:** Julian Suso <julian.suso@falmouthma.gov>  
**Sent:** Tuesday, August 25, 2020 4:49 PM  
**To:** Falmouth Selectboard <selectboard@falmouthma.gov>  
**Cc:** Diane Davidson <diane.davidson@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>;

Frank Duffy <[frank.duffy@falmouthma.gov](mailto:frank.duffy@falmouthma.gov)>; Irie Mullin <[irie.mullin@falmouthma.gov](mailto:irie.mullin@falmouthma.gov)>; Edward Dunne <[edward.dunne@falmouthpolicema.gov](mailto:edward.dunne@falmouthpolicema.gov)>; Timothy Smith <[timothy.smith@falmouthfirema.gov](mailto:timothy.smith@falmouthfirema.gov)>; Scott McGann <[scott.mcgann@falmouthma.gov](mailto:scott.mcgann@falmouthma.gov)>

**Subject:** Select Board Agenda - Thursday, August 27

Dear Board Members,

FYI, the attached for your upcoming meeting at 5PM on Thursday. We will be forwarding some supplemental information in advance as well, including an effort to secure expedited internal review from respective Town departments (for this Special Event) in advance of your meeting. As you will note, it includes two alternate items for the Board to consider regarding Vivid Event Productions: (1) a new, revised Entertainment License which would permit either live music or a drive-in movie as a main event (rather than only limited to a drive-in movie as a main event); (2) a Special Event application under the existing Entertainment License approved by the Board in July – which would authorize a single, main event live concert on Saturday, August 29 only. Lastly, also included is the opportunity for expanded information/authorization on the potential Andrews Farm grant proposal from Farming Falmouth (we are attempting to gather further information on this).

Julian

## Julian Suso

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**From:** Noreen Stockman  
**Sent:** Tuesday, August 25, 2020 2:20 PM  
**To:** Julian Suso  
**Subject:** RE: Select Board Entertainment License - EXCEEDING LIMITS OF PERMIT

Good afternoon,  
The ZBA approved an annual special permit for non-agricultural events, and parking for a fee at 1220 Nathan E. Ellis Highway, East Falmouth, with Condition #2: The events shall not be held until the Federal, State and Town's Covid-19 directive and restrictions are removed or repealed, to allow public events to resume." That being said, there would be no activity outside special event permission from the Select Board.

Apologies that we are not more helpful here.

Noreen  
Noreen H. Stockman  
Zoning Administrator  
Town of Falmouth  
59 Town Hall Square  
Falmouth, MA 02540  
508-495-7462

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**From:** Julian Suso <julian.suso@falmouthma.gov>  
**Sent:** Tuesday, August 25, 2020 12:32 PM  
**To:** Edward Dunne <edward.dunne@falmouthpolicema.gov>; Timothy Smith <timothy.smith@falmouthfirema.gov>; Boyd Demello <boyd.demello@falmouthfirema.gov>; Rod Palmer <rod.palmer@falmouthma.gov>; Jonathan Dickinson <jonathan.dickinson@falmouthma.gov>; Peter McConarty <peter.mcconarty@falmouthma.gov>; Scott McGann <scott.mcgann@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>; Irie Mullin <irie.mullin@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>; Noreen Stockman <noreen.stockman@falmouthma.gov>; Thomas Bott <thomas.bott@falmouthma.gov>  
**Cc:** Megan English Braga <megan.english-braga@falmouthma.gov>  
**Subject:** FW: Select Board Entertainment License - EXCEEDING LIMITS OF PERMIT

Dear Colleagues,  
We have received the attached "Entertainment License Application" from Vivid Entertainment which is requesting approval from the Select Board to conduct "Drive-in style entertainment including live performances & movies." This is intended to REPLACE the existing License already approved by the Select Board back on July 1 which (as you will recall) limits primary entertainment to Drive-In Movies, with music only "...serving as background music while cars enter, order concessions and get ready for the movie." The intention is to begin scheduling main event musical performances as opposed to a drive-in movie venue alone. This inquiry is anticipated to be considered by the Select Board at a Special virtual Meeting planned for 5PM on Thursday, August 27. As this is indeed time sensitive, your thoughts, comments and recommendations on this matter are greatly appreciated. If possible, I am asking for your input no later than 12 noon on Thursday, August 27. Lastly, also be aware that the Select Board may also choose to consider as a single, stand-alone Special Event application a planned VIVID musical concert set for this Saturday evening, August 29 (see attached Vivid Events Advertising). Thank you.

Julian

**From:** Kevin Pacheco <[kevin@vivid-ep.com](mailto:kevin@vivid-ep.com)>

**Sent:** Friday, August 21, 2020 1:19 PM

**To:** Julian Suso <[julian.suso@falmouthma.gov](mailto:julian.suso@falmouthma.gov)>

**Cc:** [wendy@barnstablecountyfair.org](mailto:wendy@barnstablecountyfair.org); Rod Palmer <[rod.palmer@falmouthma.gov](mailto:rod.palmer@falmouthma.gov)>; Jonathan Dickinson <[jonathan.dickinson@falmouthma.gov](mailto:jonathan.dickinson@falmouthma.gov)>; Boyd Demello <[boyd.demello@falmouthfirema.gov](mailto:boyd.demello@falmouthfirema.gov)>; Timothy Smith <[timothy.smith@falmouthfirema.gov](mailto:timothy.smith@falmouthfirema.gov)>; Edward Dunne <[edward.dunne@falmouthpolicema.gov](mailto:edward.dunne@falmouthpolicema.gov)>; Scott McGann <[scott.mcgann@falmouthma.gov](mailto:scott.mcgann@falmouthma.gov)>; Frank Duffy <[frank.duffy@falmouthma.gov](mailto:frank.duffy@falmouthma.gov)>; Irie Mullin <[irie.mullin@falmouthma.gov](mailto:irie.mullin@falmouthma.gov)>; Diane Davidson <[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)>; Peter Johnson-Staub <[peter.johnson-staub@falmouthma.gov](mailto:peter.johnson-staub@falmouthma.gov)>; Megan English Braga <[megan.english-braga@falmouthma.gov](mailto:megan.english-braga@falmouthma.gov)>; Doug Brown <[doug.brown@falmouthma.gov](mailto:doug.brown@falmouthma.gov)>; JAY ZAVALA <[jayzavala@comcast.net](mailto:jayzavala@comcast.net)>; Elena Rodgers <[elena@vivid-ep.com](mailto:elena@vivid-ep.com)>

**Subject:** Re: Select Board Entertainment License - EXCEEDING LIMITS OF PERMIT

Julian and Town of Falmouth Officials,

Looking forward to working through this with you with safety in the forefront of our intention. We'd like to address your email item by item.

We are, in fact, showing a movie tonight and these acts are a bigger budget name that require per contract they be the largest or sole font. Thus they are highlighted in our event listing.

As far as the crowd goes, there will be no difference between this showing than any other we've previously had in the past weeks since opening.

People must remain in their 18' car parked space with enforced security roaming and enforcing the regulations which have been very successful so far.

We are with you and the community on keeping everyone safe and are trying to offer everyone a safe way to enjoy entertainment. As you know, there is very little profit to be made here and that is obviously not our focus - it is the best interest of our community. We are learning a lot from you as we are a new venue and appreciate the guidelines you enforce.

There is also another matter at hand. We have a rather large discrepancy with what we are being told about the new Apex screen / stage. I have been told by the building department from day 1 along with the fire department on the same conference call that we did not need a permit for this particular type of platform. Myself and our business manager reached out again yesterday to both the building department and the fire department within the past 24 hours that the platform / stage we are using to house our second screen as well as performers does not need a permit.

This exact stage has been used on this property multiple times without a permit as it is a manufactured hydraulic mobile stage. It is unnecessarily stressful and costly for us to be told that we are ok to use it and then have Jonathan tell us we can not use it until permits are in place. We are prepared to use the existing set up, but have been building the other based off what we were told by Rod (who is unavailable to confirm) and other town officials. We're hoping to have a larger solo act unveil the opening of our second screen.

We have been emphatic about adhering to the rules and will continue to do so. Our movie opener being a bigger name should not come into play and does not stray from our original permitting.

We are happy to re-evaluate and get on the same page about our allowances on Monday when we meet with the Board of Selectman.

Attached is an updated application for entertainment that matches the Sunday allowances already granted.

Who is available to talk to in person to ensure that we are on the same page for today? We would love to be able to use our safe and impressive second screen / stage for tonight's event.  
Our patrons will fall under the guidance set forth, we are not having a non- drive in outdoor venue as set to the 50 person max.

There is no difference between a massive aluminum truss structure we have had engineered, and approved by Mr. Palmer per the very same conference call regarding this APEX

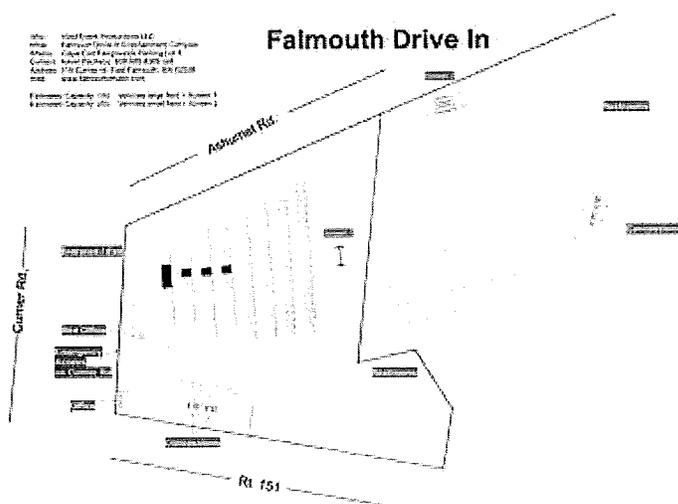
stage / screen design..

I understand the visual of a stage makes some folks nervous and sets off a red flag, however it is the same footprint and concept of the other movie screen.

To our production team this is Screen 2, with a solo performer booked for tonight whom will be projected on our second screen.

Lastly, we just wanted to add that our electrical permits are in place for the Apex structure.

Thank you for working with us on this.



Sincerely,  
Kevin Pacheco  
508.985.8369 cell  
888-420-6411 office  
Providing over 20 years of Live Production and Design  
[www.vivid-ep.com](http://www.vivid-ep.com) - Event Design  
[www.concertsoundandlighting.com](http://www.concertsoundandlighting.com) - Dry Rentals

On Fri, Aug 21, 2020 at 10:11 AM Julian Suso <[julian.suso@falmouthma.gov](mailto:julian.suso@falmouthma.gov)> wrote:

Hello Mr. Kevin Pacheco and Wendy,

To confirm, the attached Entertainment License specifies that this venue is for drive-in movies with any music only “serving as background music while cars enter, order concessions and GET READY FOR MOVIE.” It has come to the Town’s attention that there is an intention to host one or more live musical performances as stand-alone, main events at the Fairgrounds, including such a musical event being advertised for this evening. Be advised that this is NOT LICENSED nor approved under the Town’s Approval Process as acted upon the Falmouth Select Board. Further, any outdoor gatherings in excess of 50 persons would be in violation of Governor Baker’s current emergency orders requiring “never more than 50 persons in a gathering in a single outdoor space.” Given the foregoing, you are hereby put on notice to cease any intention to proceed with stand-alone music events at this location. Kindly confirm as soon as possible that you are taking the appropriate action in recognition of avoiding any such threat to Public Health. Thank you.

Julian M. Suso

## Julian Suso

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**From:** Brian Reid  
**Sent:** Tuesday, August 25, 2020 2:21 PM  
**To:** Julian Suso  
**Cc:** Edward Dunne  
**Subject:** RE: Select Board Entertainment License - EXCEEDING LIMITS OF PERMIT

Julian,  
Chief Dunne and I have discussed the request. We do not expect that these events will require a police detail, but would encourage the Select Board to consider the noise impact to the Fairground neighbors. The application indicates entertainment will be available until 11:00 pm. We have no other objections, as long as the coordinators conform with Governor Baker's guidelines.

Respectfully,

**Captain Brian L. Reid**

Operations Division  
Falmouth Police Department  
750 Main Street  
Falmouth, MA 02540  
Office 774-255-4527 Ext. 4502  
Fax 508-457-2566  
[brian.reid@falmouthpolicema.gov](mailto:brian.reid@falmouthpolicema.gov)

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**From:** Edward Dunne  
**Sent:** Tuesday, August 25, 2020 12:37 PM  
**To:** Brian Reid <[brian.reid@falmouthpolicema.gov](mailto:brian.reid@falmouthpolicema.gov)>  
**Subject:** FW: Select Board Entertainment License - EXCEEDING LIMITS OF PERMIT

*Edward A. Dunne*  
Chief of Police

Falmouth Police Department  
750 Main Street  
Falmouth, MA 02540

[edward.dunne@falmouthpolicema.gov](mailto:edward.dunne@falmouthpolicema.gov)

Ph. 774-255-4527  
Fax 508-457-2513



**Town of Falmouth**

Office of the Town Manager/Selectmen  
59 Town Hall Square, Falmouth, MA 02540  
508-495-7320

**ENTERTAINMENT LICENSE APPLICATION**

Massachusetts General Laws, Chapter 140, Section 183A as amended by Chapter 694 of 1981

NAME OF ESTABLISHMENT Falmouth Drive-in at Cape Cod Fairgrounds

ADDRESS 1220 Nathan Ellis Hwy, East Falmouth, MA 02536

NAME OF OWNER/MANAGER Kevin Pacheco - General Manager of Vivid Event Productions LLC

TELEPHONE # 508-985-8369 888-420-6411 EMAIL kevin@vivid-ep.com

NARRATIVE DESCRIBING ENTERTAINMENT: Drive-in style entertainment including live performances & movies

\*\*LOCATION OF ENTERTAINMENT Cape Cod Fairgrounds, 1220 Nathan Ellis HWY

**\*\*Attach a Floor Plan showing where on the premises Live Music or Dancing will take place.**

DAYS OF OPERATION, check all that apply: MON  TUE  WED  THUR  FRI  SAT

Hours entertainment is offered: 2:00 PM - 11:00 PM

SUNDAY ENTERTAINMENT: Y/N Y (complete State application+ fee)

PLEASE CHECK THE APPROPRIATE BOX FOR ALL TYPES OF ENTERTAINMENT:

1. DANCING By Patrons Y/N N Other Dancing Y/N N

2. MUSIC Recorded Y/N Y Live Y/N Y No. of Musicians VARIOUS Amplification Y/N Y

Type of Instruments PRIMARILY ACOUSTIC Acts & small groups

I certify that this application contains a true description of the entertainment provided by this establishment and that I have complied with M.G.L. Chapter 140, Section 183A, Paragraph 3, by stating whether as part of the concert, dance exhibition, cabaret and public show any person will be permitted to appear on the premises in any manner or attire as to expose to public view any portion of the pubic area, anus, or genitals, or any simulation thereof, or whether any female person will be permitted to appear on the premises in any manner or attire as to expose to public view any portion of the breast below the top of the areola, or any simulation thereof.

DATE 8/21/20

Kevin Pacheco  
 Kevin Pacheco  
OWNER, MANAGER OR AUTHORIZED AGENT

Town Fees:  
FILING FEE: \$10.00  
PERMIT FEE: \$100.00

BOARD OF SELECTMEN