

Guidance for Licensees in All Counties (9th update)

On May 27, 2020, the Governor's office issued additional guidance as part of its ongoing response to the COVID-19 public health crisis. This additional guidance included the designation of several counties as green counties, effective May 29, 2020; previously, all counties had been designated as red or yellow counties. The Governor's office also provided some additional guidance for businesses in the restaurant industry, which it updated on June 10 and June 17, 2020.

On July 15, 2020, the Governor issued an [additional order directing targeted mitigation measures \(July 15th Order\)](#) and again updated its additional guidance for businesses in the restaurant industry. On July 17, 2020, the Department of Health provided additional guidance, which was updated on September 9, 2020. On September 8, 2020, the Governor [announced](#) that restaurants that certify that they are complying with all public health safety guidelines and orders may increase indoor capacity to 50%, starting September 21, 2020. [Frequently asked questions and answers](#) about the [self-certification program](#) were provided and most recently updated on November 23, 2020. In addition, by [order effective September 21, 2020](#), all sales of alcohol for on-premises consumption must cease at 11:00 p.m., regardless of whether the licensee chooses to self-certify, and no patrons may possess alcohol after midnight. On October 6, 2020, the Governor issued an additional order ([October 6th Order](#)), amending the [July 15th Order](#) and updating the [FAQs](#) dealing with the Governor's July 15th and October 6th orders. On November 23, 2020, the Governor issued an additional order ([November 23rd Order](#)), which became effective at 12:01 a.m. on November 27, 2020. The [additional guidance for businesses in the restaurant industry](#) was further updated on November 23, 2020.

On December 10, 2020, the Governor and Secretary of Health Levine issued limited-time mitigation orders ([December 10th Order](#) and [Secretary Levine's Order](#), respectively), effective at 12:01 a.m. on December 12, 2020 through 8:00 a.m. on January 4, 2021. Also, the Governor and Secretary Levine provided [FAQs](#) addressing the orders.

On December 30, 2020, the Governor [announced](#) that the time-limited mitigation orders put in place on December 12, 2020, expire at 8 a.m. on January 4, 2021. Therefore, at 8 a.m. on January 4, 2021, the Governor's mitigation efforts reverted back to the mitigation orders in place on December 11, 2020 (i.e., [November 23rd Order](#)).

On March 1, 2021, the Governor issued an additional order ([March 1, 2021 Order](#)) effective immediately, amending the [November 23rd Order](#). Also, the [FAQs](#) were updated to reflect the [March 1, 2021 Order](#).

The following information supplements such direction for licenses in all counties.

Indoor Seating for Restaurant, Retail Dispenser and Hotel Licensees

Indoor seating in all counties is allowed but not required for restaurant, retail dispenser and hotel licensees. Seating is subject to maximum occupancy limits to be determined by using the most restrictive number when comparing Method 1 against Method 2 in the Governor's [additional guidance for businesses in the restaurant industry](#). The percentage to be used will depend on whether the licensee has chosen to self-certify that they are complying with all public health safety guidelines and orders. Under Method 1, for those who will not be self-certifying, if there is a known fire code capacity number, the licensee should calculate 25% of that number and compare the result against the number in Method 2. While all indoor locations should have a fire code capacity number, if there is no known fire code capacity number for an outdoor dining area, the licensee must use the 25 persons per 1,000 square feet calculation for Method 1. For those licensees that choose to self-certify, the licensee should calculate 50% of the known fire code capacity number and compare the result against the number in Method 2.

Under Method 2, a licensee is limited to the maximum number of customers that can be accommodated when tables are arranged so that no customer at one table is less than six feet away from a customer at another table in any direction.

Further, the [March 1, 2021 Order](#) provides new limits for discrete indoor and outdoor events. To calculate the maximum number of people who may attend an event, you must first calculate the maximum occupancy. The maximum occupancy is a percentage of the fire code capacity number as set forth below; if there is no known fire code capacity number, the licensee can calculate the maximum occupancy by multiplying each 1,000 square feet of space available by 67 ($67 \times (\text{square feet} / 1000) = \text{maximum occupancy}$). After identifying the maximum occupancy, the following would be utilized to calculate the allowable number of people who may attend a discrete event (hereinafter referred to as "MAE," for "may attend event"):

- For indoor events, multiply the maximum occupancy by 15% (0.15).
- For outdoor events, multiply the maximum occupancy by 20% (0.20).

The [March 1, 2021 Order](#) also provides the following requirements for hosting discrete events:

- For discrete events being held at fixed-seating venues:
 - Selling reserved seating that allows groups of up to 10 attendees to sit together, with the recommendation that the group be from the same household.
 - Allowing groups of more than 10 attendees only if they are all from the same household.
 - Separating each grouping by at least six feet.
 - Implementing best practices, such as timed entry; multiple entry and exit points; pathways that allow for physical distancing; multiple restrooms; and hygiene stations.

- Requiring attendees to comply with physical distancing requirements (six feet apart) when not seated.
- Requiring attendees and workers to wear masks or face coverings in compliance with the Secretary of Health’s [Updated Order Requiring Universal Face Coverings](#).
- For all other discrete events:
 - Requiring attendees to comply with the six-foot physical distancing requirements.
 - Requiring attendees and workers to wear masks or face coverings in compliance with the Secretary of Health’s [Updated Order Requiring Universal Face Coverings](#).

Please note that during discrete events, a licensee’s total number of patrons (i.e. persons attending events and other persons patronizing the licensee’s establishment) cannot exceed the licensee’s total maximum occupancy (utilizing the more restrictive value calculated by Method 1 and Method 2) for its entire building.

A discrete event is defined in the [additional guidance for businesses in the restaurant industry](#) as:

a temporary grouping of individuals for defined purposes, that takes place over a limited timeframe, such as hours or days. For example, events and gatherings include fairs, festivals, concerts, or shows and groupings that occur within larger, more permanent businesses, such as shows or performances within amusement parks, individual showings of movies on a single screen/auditorium within a multiplex, business meetings or conferences, or each party or reception within a multi-room venue.

When calculating the number of persons attending a discrete indoor event, employees providing services for the event and directly interacting with guests – such as waiters and bartenders – must be included in the count; employees not directly interacting with guests – such as cooks in a separate kitchen – are not counted.

Examples for calculating capacity are offered below.

Example 1 (When fire code capacity is known under Method 1): Under Method 1, you have a known fire code capacity of 40 persons and are not self-certifying. Therefore, you are limited to 25% capacity, which is 10 persons (25% of 40). Under Method 2, when tables are arranged so that no customer at one table is less than six feet away from a customer at another table, it is determined that you can accommodate 30 persons. Because 10 persons under Method 1 is more restrictive than 30 persons under Method 2, the maximum occupancy limit that must be followed is 10 persons.

Conversely, if you are self-certifying, you are limited to 50% capacity. Therefore, under example 1, the maximum occupancy limit that must be followed is 20 persons (50% of 40).

Example 2 (When fire code capacity is unknown under Method 1): Under Method 1, fire code capacity is unknown, but your building is 2,000 square feet in size and you are not self-certifying. Using the required ratio of 25 persons per 1,000 square feet, this means that under Method 1 you could accommodate 50 persons. Under Method 2, when tables are arranged so that no customer at one table is less than six feet away from a customer at another table, it is determined that you can accommodate 30 persons. Because 30 persons under Method 2 is more restrictive than 50 persons under Method 1, the maximum occupancy limit that must be followed is 30 persons.

Conversely, if you are self-certifying, you are limited to 50% indoor capacity. However, under example 2, the maximum occupancy limit that must be followed is still 30 persons because Method 2 is more restrictive than Method 1.

Example 3 (Involving a large discrete event): A wedding party wishes to rent a large licensed hall for a reception. Two waiters will be serving the guests, along with three cooks in a separate kitchen. You are not self-certifying. Under Method 1, the hall has a known fire code capacity of 540 persons, 25% of which is 135 persons. Under Method 2, when tables are arranged so that no customer at one table is less than six feet away from a customer at another table, it is determined that you can accommodate 300 persons. Under MAE, the hall has a known fire code capacity of 540 persons (maximum occupancy), 15% of which is 81 persons. Therefore, even though 135 persons could attend under Method 1 and 300 persons could attend under Method 2, the limit of 81 persons utilizing MAE would apply, which in this case means 79 guests plus two waitstaff.

Conversely, if you are self-certifying, you are limited to 50% indoor capacity. However, under example 3, the MAE limit of 81 persons must be followed because this is a discrete indoor event and the MAE limit (81 persons) is more restrictive than Method 1 (270 persons) and Method 2 (300 persons).

Example 4 (Involving a discrete event being held while licensee is still open for normal business): Your licensed building consists of two rooms that are available to the public. Your licensed building has a known fire code capacity of 200 persons with each room having a known fire code capacity of 100 persons. A wedding party wishes to rent one of your rooms for a reception. Two waiters will be serving the guests, along with three cooks in a separate kitchen. You are not self-certifying.

Under Method 1, the rented room has a known fire code capacity of 100 persons, 25% of which is 25 persons. Under Method 2, when tables are arranged so that no customer at one table is less than six feet away from a customer at another table, the rented room can

accommodate 40 persons. Under MAE, the rented room has a known fire code capacity of 100 persons (maximum occupancy), 15% of which is 15 persons. Therefore, even though 25 persons could attend under Method 1 and 40 persons could attend under Method 2, the limit of 15 persons utilizing MAE would apply, which in this case means 13 guests plus two waitstaff.

In addition, since you are open for normal business during the discrete event, your total number of patrons (i.e. persons attending event and other persons patronizing the licensee's establishment) cannot exceed your total maximum occupancy (utilizing the more restrictive value calculated by Method 1 and Method 2) for your entire building. Under Method 1, the licensed building has a known fire code capacity of 200 persons, 25% of which is 50 persons. Under Method 2, when tables are arranged so that no customer at one table is less than six feet away from a customer at another table, the building can accommodate 100 persons. Therefore, since Method 1 is more restrictive than Method 2, you must ensure that the total number of persons at your licensed premises during the event does not exceed 50 persons; this total includes the persons attending the event and other persons patronizing your establishment during the event.

Please note that certain licensees – such as holders of Performing Arts Facility licenses – may only provide alcohol before, during and after a performance. While such entities may seek self-certification, the limit calculated using MAE for a discrete event must also be followed and will likely be the determining factor in establishing maximum occupancy.

If a licensee chooses to provide seating for on-premises consumption of alcohol, then they must also provide for on-premises consumption of food. Further, sales of alcohol for on-premises consumption is only permissible as part of a larger transaction that includes a meal purchase. Specifically, a customer who wishes to consume alcohol on the premises must also purchase a meal; a group of customers that wish to consume alcohol on the premises may do so as long as a meal is part of the purchase made by the group. As noted in the [additional guidance on the targeted mitigation efforts](#), the term “meal” is defined in section 406 of the Liquor Code as “food prepared on the premises, sufficient to constitute breakfast, lunch or dinner.” The definition expressly states that a snack, such as pretzels, popcorn, chips or similar food does not meet the definition of a meal. Additional drinks may be purchased while the customer or a member of the customer's group is consuming their meal, but no further drinks may be purchased after the meal is finished. A meal purchase is not required when a hotel guest is accessing a minibar in a private hotel room that they have rented or when being provided room service to that private hotel room. A private hotel room is a room being rented for overnight accommodation; it is not a room being rented for an event such as a wedding, funeral or business meeting.

Further, all sales of alcohol for on-premises consumption must end by 11:00 p.m. All patrons must finish their alcoholic beverages by midnight. A licensee may remain open to serve food until its normal closing time, but no alcohol may be served or retained by patrons after midnight. Sales of beer-to-go, [mixed-drinks-to-go](#) and wine-to-go may continue

for those licensees eligible to make such sales. As a reminder, beer-to-go sales must end by 2:00 a.m., mixed-drinks-to-go sales must end at 11:00 p.m. and wine-to-go sales by holders of wine expanded permits must end by 11:00 p.m. No consumption of alcohol sold to-go may occur on the licensed premises after midnight.

In addition to the seating and food requirements set forth above, all additional restrictions in the [additional guidance for businesses in the restaurant industry](#) and the [additional guidance on the targeted mitigation efforts](#) must be adhered to. These restrictions include:

- All customers and groups of customers must be at least six feet away from each other or be separated by physical barriers; spouses can be at the same table and less than six feet away, while strangers cannot.
- Customers must wear masks while entering, exiting and traveling through the premises, unless the customer has a medical condition which prevents them from wearing one; children under the age of two years do not have to wear masks. Masks can be removed while the customers are seated.
- Bar service of food or alcohol is prohibited, except for event venues where bar/concessions stand service is permissible, but patrons must return immediately to their seats with the food/alcohol.
- Casinos may no longer provide drink service on the casino floor

If live music is being provided, then the musicians must be at least six feet away from the customers; all existing restrictions on entertainment (the need for an amusement permit, no amplified sound beyond the property line unless the municipality has opted out of the Liquor Code statute on noise, etc.) remain.

Finally, the Governor's office's [additional guidance for businesses in the restaurant industry](#) specifically notes that licensees are encouraged but not required to close or remove amenities and congregate areas non-essential to the preparation and service of food or beverages such as dance floors, game areas, playgrounds, small games of chance and tavern gaming, etc.

Outdoor Seating for Restaurant, Retail Dispenser and Hotel Licensees

Outside seating in both licensed and unlicensed locations is permitted. The same restrictions imposed on indoor seating, such as no purchase of alcohol for on-premises consumption unless a meal is also purchased by that customer or by member of the customer's group and a minimum of six feet or a physical barrier between customers or groups of customers, apply to outdoor seating as well. Further, as discussed above for indoor seating, there are limits for discrete outdoor events.

If the outside area is licensed, then service of food and alcohol there is permitted. **However, all sales of alcohol for consumption on the licensed premises must end by 11:00 p.m. All**

patrons must finish their alcoholic beverages by midnight. A licensee may remain open to serve food until its normal closing time, but no alcohol may be served or retained by patrons after midnight.

Sales of beer-to-go, [mixed-drinks-to-go](#) and wine-to-go may continue for those licensees eligible to make such sales. As a reminder, beer-to-go sales must end by 2:00 a.m., mixed-drinks-to-go sales must end at 11:00 p.m. and wine-to-go sales by holders of wine expanded permits must end by 11:00 p.m. No consumption of alcohol sold to-go may occur on the licensed premises, including the outdoor licensed premises, after midnight.

Please note, as outlined in [Advisory Notice No. 26](#), that the Board has adopted a procedure to expediate temporary outdoor extensions of licensed premises.

If the outside area is not licensed, then service of food is permitted, but service of alcohol is not permitted.

- However, patrons may purchase up to 192 ounces of beer to go on the licensed premises, then carry it to and consume it on the unlicensed service area.
- Further, if the licensee holds a wine expanded permit, then patrons may purchase up to 3 liters of wine on the licensed premises, then consume it on the unlicensed service area.
- Finally, if the licensee [qualifies to sell prepared beverages and mixed drinks to go](#), then a patron may purchase a prepared beverage and mixed drink of between 4 and 64 ounces in a closed container on the licensed premises, open the container once they leave the licensed premises and consume it on the unlicensed service area.

Clubs and Catering Clubs

Holders of club and catering club licenses may allow members to purchase alcohol on the licensed premises, but only if a meal is also purchased, either by the customer or, if the customer is part of a group, by someone that is part of the group. Also, the occupancy limitations and social distancing limitations set forth above must be adhered to. Further, clubs and catering clubs cannot sell any alcohol for off-premises consumption. Therefore, if a club does not sell food, either directly or through a concessionaire, it cannot utilize its liquor license.

Further, all sales of alcohol for on-premises consumption must end by 11:00 pm. All patrons must finish their alcoholic beverages by midnight. A licensee may remain open to serve food until its normal closing time, but no alcohol may be served or retained by patrons after midnight.

As noted in the [additional guidance on the targeted mitigation efforts](#), the term “meal” is defined in section 406 of the Liquor Code as “food prepared on the premises, sufficient to constitute

breakfast, lunch or dinner.” The definition expressly states that a snack, such as pretzels, popcorn, chips or similar food does not meet the definition of a meal. Additional drinks may be purchased while the customer or a member of the customer’s party is consuming their meal, but no further drinks may be purchased after the meal is finished.

If a club decides to allow members on the licensed premises, it must follow the social distancing rules set forth above for restaurant industry members, such as limiting occupancy.

As noted earlier, the Governor’s office’s [additional guidance for businesses in the restaurant industry](#) specifically notes that licensees are encouraged but not required to close or remove amenities and congregate areas non-essential to the preparation and service of food or beverages such as dance floors, game areas, playgrounds, small games of chance and tavern gaming, etc.

Nightclubs

The Governor’s [November 23rd Order](#) specifically prohibits businesses that meet the definition of a “nightclub” under the Clear Indoor Air Act from operating. The Clear Indoor Air Act defines a nightclub as a “public hall or hall for which admission is generally charged and which is primarily or predominantly devoted to dancing or to shows or cabarets as opposed to a facility that is primarily a bar, tavern or dining facility.” Since the Liquor Code does not use the term nightclub, and since the Department of Health regulates the Clean Indoor Air Act, licensees should contact that agency if they have specific questions regarding this prohibition.

Breweries, Limited Wineries, Distilleries and Limited Distilleries

Many manufacturers – such as breweries, limited wineries, distilleries and limited distilleries – also offer food and drink for on-premises consumption. The rules applicable to restaurant, retail dispenser and hotel licensees are likewise applicable to them. Specifically, on-premises consumption of food and alcohol in green counties is permissible so long as the occupancy limitations, social distancing limitations and the other limitations set forth above are adhered to. In addition, sales of alcohol for on-premises consumption are only permissible as part of a larger transaction that includes a meal purchase by the customer or by a member of the customer’s group. **However, as noted in the [additional guidance on the targeted mitigation efforts](#) a meal purchase is not required when a manufacturer provides samples of alcohol. No more than five one-ounce samples may be provided and they must be provided for free; otherwise, the meal requirement remains.**

Further, all sales of alcohol for on-premise consumption must end by 11:00 p.m. All patrons must finish their alcoholic beverages by midnight, except that limited distilleries and distilleries must have their patrons to leave at 11:00 p.m. because their license normally requires that. A licensee may remain open to serve food until its normal closing time, but no alcohol may be served or retained by patrons after midnight. Sales of beer-to-

go, [mixed drinks-to-go](#) and wine-to-go may continue for those licensees eligible to make such sales. Business-to-business sales may continue as before.

As noted in the [additional guidance on the targeted mitigation efforts](#), the term “meal” is defined in section 406 of the Liquor Code as “food prepared on the premises, sufficient to constitute breakfast, lunch or dinner.” The definition expressly states that a snack, such as pretzels, popcorn, chips or similar food does not meet the definition of a meal. Additional drinks may be purchased while the customer or a member of the customer’s party is consuming their meal, but no further drinks may be purchased after the meal is finished. Meals may be provided by the licensee or by a third party such as a food truck.

Please note that refilling food and beverage containers or implements brought in by customers is prohibited, unless the container or implement can be refilled without contact with the tap or dispenser, containers are sanitized before use or the tap or dispenser is sanitized before and after each use.

As a reminder, breweries, limited wineries, distilleries and limited distilleries may sell their own alcoholic products for off-premises consumption but may not sell alcoholic products acquired from other breweries, limited wineries, distilleries and limited distilleries to go, although such products may be sold for on-premises consumption.

Special Occasion, Off-Premises Catering, Exposition and Farmers Market Permits

Licensees are reminded that permits such as special occasion permits, off-premises catering permits, exposition permits and farmers market permits each have specific eligibility requirements and those requirements must be followed or licensees risk citation. Further, the Governor’s [March 1, 2021 Order](#) provides limits for discrete indoor and outdoor events.

Further, all sales of alcohol for on-premises consumption must end by 11:00 p.m., and all patrons must finish their alcoholic beverages by midnight, unless the underlying permit requires sales and/or consumption to end prior to that time.

Golf Courses

[Licensees that are located at golf courses were previously informed that they may provide alcohol service to individuals playing golf.](#) While that remains true, the [additional guidance on the targeted mitigation efforts](#) notes that golf courses may not allow golfers to consume those alcoholic beverages in locations where people may congregate such as picnic tables or patios, unless that specific sale of alcohol is part of a larger transaction that includes a meal purchase by the customer or by a member of the customer’s group and all the other requirements for such purchases are met.

Further, all sales of alcohol for on-premises consumption must end by 11:00 p.m. All patrons must finish their alcoholic beverages by midnight. A licensee may remain open to serve food until its normal closing time, but no alcohol may be served or retained by patrons after midnight.