

Guidance for Licensees in All Counties (7th 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.

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

Indoor Seating for Restaurant, Retail Dispenser and Hotel Licensees

All indoor dining, including catered events, is prohibited until 8:00 a.m. on January 4, 2021. Outdoor dining, take-out food service, and take-out alcohol sales (under the appropriate authority) are permitted and may continue.

Hotel guests are still able to access 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.

Outdoor Seating for Restaurant, Retail Dispenser and Hotel Licensees

Outside seating in both licensed and unlicensed locations is permitted. 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](#). Under Method 1, if there is a known fire code capacity number, the licensee should calculate 50% of that number and compare the result against the number in Method 2. 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.

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.

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. Therefore, you are limited to 50% capacity, which is 20 persons (50% 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 20 persons under Method 1 is more restrictive than 30 persons under Method 2, the maximum occupancy limit that must be followed is 20 persons.

Example 2 (When fire code capacity is unknown under Method 1): Under Method 1, fire code capacity is unknown, but your licensed outdoor area is 2,000 square feet in size. 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.

If a licensee chooses to provide seating for outdoor on-premises consumption of alcohol, then they must also provide for outdoor on-premises consumption of food. Further, sales of alcohol for outdoor on-premises consumption are 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.

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. Also, outdoor gatherings and events are limited to no more than 50 persons.

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.

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. and 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 outdoor licensed premises after midnight.

Please note, as outlined in [Advisory Notice No. 26](#), 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.

Events for Restaurant, Retail Dispenser and Hotel Licensees

Indoor Events

All indoor events are prohibited until 8:00 a.m. on January 4, 2021.

Outdoor Events

Facilities that host events may have a maximum of no more than 50 people attending an outdoor event, unless the previous restrictions require a smaller number.

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, the licensee's staff count towards the maximum number of people.

An example for calculating capacity is offered below.

Example (Involving an outside discrete event): A party wishes to rent a licensee's outside licensed area for a wedding. One of the licensee's staff will be present at the event. The wedding event may have 50 people because it is being held outside the establishment, which means 49 guests plus licensee's employee.

Clubs and Catering Clubs

Indoor Seating for Clubs and Catering Clubs

All indoor dining, including catered events, is prohibited until 8:00 a.m. on January 4, 2021.

Outdoor Seating Restaurant, Retail Dispenser and Hotel Licensees

If the club or catering club has an exterior licensed premises, it may allow members to purchase alcohol on the outside 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 outside on-premises consumption must end by 11:00 pm. and 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 outside 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

Indoor Seating

All indoor dining, including catered events, is prohibited until 8:00 a.m. on January 4, 2021.

Outdoor Seating

If a manufacturer has an exterior licensed premises, it may offer food and drink for outside on-premises consumption. The rules applicable to restaurant, retail dispenser and hotel licensees are likewise applicable to producers. Specifically, outside on-premises consumption of food and alcohol 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 outside 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 outside on-premise consumption must end by 11:00 p.m. and 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 outside on-premises consumption.

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

Indoor Seating

All indoor dining, including catered events, is prohibited until 8:00 a.m. on January 4, 2021.

Outdoor Seating

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 [December 10th Order](#) provides limits for discrete indoor and outdoor events.

Further, all sales of alcohol for outside 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

Indoor Seating

All indoor dining, including catered events, is prohibited until 8:00 a.m. on January 4, 2021.

Outdoor Seating

[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 outside 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.