



ADVISORY NOTICE NO. 26 (4th Revision)

TEMPORARY CESSATION OF THE SALE OF FOOD AND ALCOHOL FOR ON-PREMISES CONSUMPTION RELATIVE COVID-19 PUBLIC HEALTH EMERGENCY

Issued March 18, 2020, Revised May 13, 2020, June 3, 2020, July 17, 2020 and September 23, 2020

TO: All License Holders

The PLCB, upon authorization from the Governor, has the authority under the Liquor Code (47 P.S. §4-462) to mandate the closure of licensed establishments in times of emergency. Section 7101 of the Emergency Management Services Code (35 Pa.C.S. § 7101) gives the Governor wide latitude in dealing with disasters such as the public health crisis precipitated by the outbreak of the COVID-19 coronavirus. As part of that authority and in response to the current public health emergency, the Wolf Administration had previously asked all retail establishments to cease selling food and alcohol for on-premise consumption. The Board had indicated that, pursuant to the Governor's directive, licensees no longer needed to sell food and alcohol for on-premise consumption as a precondition to sell alcohol for off-premise consumption.

On March 18, 2020, the Board directed that all retail licensees, clubs, permittees and producers cease the sale of food and alcohol for on premises consumption, effective at 8 p.m. that day and until further notice, in the interest of slowing the spread of the COVID-19 virus and mitigating the unprecedented public health crisis the commonwealth faces. The Board provided additional guidance in the form of this Advisory Notice, Advisory Notice No. 26.

On April 27, 2020, the Governor authorized golf courses to open, effective May 1. In response, the Board provided [additional guidance for golf courses](#).

Subsequent to the original emergency declaration, the Governor indicated that he intended to use a phased approach in lifting the emergency declaration by designating counties in red, yellow and green phases of recovery. On May 13, 2020, the Board revised this Advisory Notice to address that issue and to make clear that the Board will only recognize the Governor's designation of a county, since only the Governor can make such designations.

On May 21, 2020, Act 21 of 2020 went into effect, allowing certain restaurant and hotel licenses to sell prepared beverages and mixed drinks to go. In response, the Board provided guidance on [what licensees should know about Act 21 of 2020](#).

On May 27, 2020, the Governor's office provided additional guidance on what activities are permissible in green counties and further indicated a change in what is permissible in yellow counties.

On May 29, 2020, the Board provided guidance as to what is permissible in green counties, and subsequently updated that advice on June 8. On June 18 the Board updated the [guidance to address what is permissible in yellow and green counties](#) and revised such guidance on July 17, following the Governor's issuance of another order.

On July 15, 2020, the Governor issued an [additional order directing targeted mitigation measures](#) and again updated its [additional guidance for businesses in the restaurant industry](#). On July 17, 2020, the Department of Health provided guidance on the Governor's July 15, 2020 order. The new order expressly prohibits the sale of alcohol for on-premises consumption without the purchase of a meal within the same transaction and orders the closure of "nightclubs" as that term is defined by the Clean Indoor Air Act. Additionally, the order limits maximum occupancy of indoor gatherings to the lesser of 25% of stated fire code maximum capacity (or 25 persons for 1,000 square feet for those locations without a stated fire code capacity number), or the maximum seating possible when tables are arranged so that no one at one table is less than six feet away from someone at another table in green counties. Indoor seating may still not occur in yellow counties. In addition, no more than 25 individuals (including wait staff attending those individuals) may attend a discrete event (such as a wedding reception) in green counties. Examples of how to calculate seating can be found in [guidance on what is permissible in all counties](#).

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. Guidance on the self-certification program was provided and most recently updated on [September 21, 2020](#). In addition, all sales of alcohol for on-premise consumption must now cease at 11:00 pm, regardless of whether the licensee chooses to self-certify, and no patrons may possess alcohol after [midnight](#).

All counties are currently designated as GREEN counties. Licensees are encouraged to follow the PLCB's [guidance as to what is permissible in all counties](#).

Temporary Board Procedures Expediting Extensions of Licensed Premises for Additional Outdoor Serving Areas

The Governor's decision to encourage outside dining has led the Board to adopt temporary procedures to expedite the process for licensees that want to temporarily extend their licensed premises to include additional outside areas. These temporary procedures only apply to applications for outdoor serving areas, and effective with the adoption of this notice, the following applies:

- Emergency temporary authority for outside areas may be requested by clubs, catering clubs, restaurants, retail dispensers, hotels, distilleries, limited distilleries, wineries, limited wineries and breweries.
- Licensees that wish to apply for a temporary extension of the licensed premises to include outside serving areas, with said extension to expire at the end of the current public health emergency, may do without incurring a filing fee. If the applicant wishes to

permanently extend the licensed premises, it must follow the normal application process and pay the requisite fee.

- The application process for temporary extension of premises to include an outdoor seating area is similar to a regular application to extend premises and will require a plan. If the area to be licensed is an area not previously under the applicant's control – such as a municipal sidewalk – then proof that the applicant has the right to occupy the location must be provided.
- A licensee may only submit an application for an outdoor area immediately adjacent to, abutting and contiguous to the existing licensed premises. Applications for locations not meeting these criteria will be summarily rejected, and no temporary extensions are authorized for any locations separated from a licensed premises by a public thoroughfare.
- Upon submission of the application in PLCB+, the licensee will see a confirmation screen that the application was successfully submitted for processing. The licensee must print this confirmation page and display it as evidence the application was received, and at that point, the licensee will automatically have temporary authority to operate on the proposed outdoor area. Additionally, the licensee will be directed to post a Notice of Application. Distilleries, limited distilleries, wineries, limited wineries and breweries do not need to post a Notice of Application but must display the email acknowledging the application was accepted.
- The initial authority to operate will last until one of the following occurs: (1) The COVID-19 Emergency Declaration ends, (2) a protest or petition to intervene in opposition to the application is received by the PLCB, or (3) the Board informs the applicant that authority has come to an end.
- Licensees that don't wish to extend the licensed premises to include additional outdoor areas, but instead allow customers to congregate on an unlicensed portion of the premises, must still adhere to the Governor's guidelines on social distancing.

Enforcement

Any licensee that fails to comply with the Governor's guidance risks citation by the Pennsylvania State Police Bureau of Liquor Control Enforcement (BLCE). Further, BLCE has agreed to notify the PLCB if any citations are issued relative to this issue. The PLCB may suspend a licensee's operating authority under section 462 based on the circumstances. A licensee who continues to operate after its operating privileges have been suspended risk further enforcement action by the BLCE.

Ultimately, citations may put the business's liquor license at risk, both through the citation process and upon application for renewal to the PLCB. Further, licensees are reminded that, pursuant to section 494(a) of the Liquor Code, any person who violates the applicable sections of Article IV of the Liquor Code may be charged criminally with a misdemeanor.

Complaints regarding licensees not complying with these mandates may be directed to the BLCE at 1-800-932-0602 or reported through the [BLCE's online complaint form](#).

The Board will constantly re-evaluate this policy, guided by the strategy developed by the Governor's Office and the Pennsylvania Department of Health, and lift restrictions at the appropriate time.

Any issues not covered by this Advisory Notice may be resolved by writing to the Office of Chief Counsel, ra-lblegal@pa.gov.

**BY ORDER OF:
PENNSYLVANIA LIQUOR CONTROL BOARD**

A handwritten signature in black ink, appearing to read "John K. Stark". The signature is written in a cursive, flowing style.

JOHN K. STARK
Secretary to the Board