

Guidance for Licensees in Yellow and Green Counties (3rd update)

On May 27, 2020, the Governor's office issued additional guidance as part of his 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](#) and again updated its [additional guidance for businesses in the restaurant industry](#). On July 17, 2020, the Department of Health provided [additional guidance on the targeted mitigation efforts](#). The following information supplements that direction for licenses in yellow and green counties.

Indoor Seating for Restaurant, Retail Dispenser and Hotel Licensees

Indoor seating in yellow counties is NOT allowed.

Indoor seating in green 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](#). Under Method 1, 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. If there is no known fire code capacity number, the licensee must use the 25 persons per 1,000 square feet calculation for Method 1 and compare the result against the number in Method 2.

Further, there is an absolute limit of 25 persons for a discrete indoor event in green counties and an absolute limit of 250 persons for a discrete outdoor event in green counties. A discrete event is an event such as a wedding reception. 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 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, 25% of which is 10 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 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.

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. 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.

Example 3 (Involving a large discrete event): A wedding party wishes to rent a large licensed hall for a reception. Approximately 2 waiters will be serving the guests, along with 3 cooks in a separate kitchen. 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. However, since all the guests are attending a discrete indoor event, only 25 persons may be part of the event, including the waitstaff (but not the cooks). Therefore, even though 135 persons could attend under Method 1 and 300 persons could attend under Method 2, the absolute limit of 25 person would apply, which in this case means 23 guests plus 2 waitstaff.

The [additional guidance on the targeted mitigation efforts](#) notes that theaters have particular occupancy rules. Theaters may operate up to 50% of their total occupancy but each individual theater is limited to no more than 25 persons.

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 premise must also purchase a meal; a group of customers that wish to consume alcohol on premise 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.

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, strangers cannot.
- Customers must wear masks while entering, exiting or 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.
- 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.

Further, the [additional guidance for businesses in the restaurant industry](#) specifically prohibits the operation of amenities and congregate areas non-essential to the preparation and service of food or beverages such as child play areas, interactive games and video arcades in yellow counties. In green counties, licensees are encouraged to close and remove these amenities, but it is not required.

Outdoor Seating for Restaurant, Retail Dispenser and Hotel Licensees

Outside seating in both licensed and unlicensed locations is permitted in both yellow and green counties. 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. No more than 250 persons may attend a discrete outdoor event.

If the outside area is licensed, then service of food and alcohol there is permitted. Further, as outlined in [Advisory Notice No. 26](#), the Board recently 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

Indoor seating and activities in yellow counties are still NOT allowed. Outdoor seating in yellow counties is subject to the same restrictions applicable to indoor seating in green counties including no purchase of alcohol for on-premises consumption unless 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 and a minimum of six feet or a physical barrier between customers or groups of customers. No more than 250 persons may attend a discrete outdoor event.

Holders of club and catering club licenses in green counties 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. 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.

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 prohibits the operation of amenities and congregate areas non-essential to the preparation and service of food or beverages such as child play areas, interactive games and video arcades in yellow counties. In green counties, licensees are encouraged to close and remove these amenities, but it is not required.

Nightclubs

The Governor’s [additional order directing targeted mitigation measures](#) 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, indoor seating and activities in yellow counties is still not allowed. 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.

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 in yellow counties, while outdoor seating is permissible, using self-service food or drink options, such as buffets, salad bars and condiments is not permissible. Further, refilling food and beverage containers or implements brought in by customers in yellow counties 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. Sales of alcohol for on-premises consumption in outside serving areas 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.

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 [additional order directing targeted mitigation measures](#) limits events and gatherings to 25 persons for discrete indoor events and 250 persons for discrete outdoor events.

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.