

Guidance for Licensees in Yellow and Green Counties (2nd 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. On June 10 and June 17, 2020, the Governor's office updated its [additional guidance for businesses in the restaurant industry](#). 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 50% 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 24 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 250 persons per discrete event in green counties. A discrete event is an event such as a wedding reception. When calculating the number of persons attending a discrete 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, 50% of which is 20 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 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 building is 2,000 square feet in size. Using the required ratio of 24 persons per 1,000 square feet, this means that under Method 1 you

could accommodate 48 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 48 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 10 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, 50% of which is 270 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 event, only 250 persons may be part of the event, including the waitstaff (but not the cooks). Therefore, even though 270 persons could attend under Method 1 and 300 persons could attend under Method 2, the absolute limit of 250 person would apply, which in this case means 240 guests plus 10 waitstaff.

If a licensee chooses to provide seating for on-premises consumption of alcohol, then they must also provide for on-premises consumption of food. All additional conditions set forth in the [additional guidance for businesses in the restaurant industry](#) must be adhered to. These restrictions include the requirement that customers must be at least six feet away from each other or be separated by physical barriers. In addition, standing in a bar area is not permitted, alcohol service is limited to table or bar service (except for golf courses) and no more than four customers with a common relationship (a family, for example) may sit together at a bar.

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 in yellow counties 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 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 more than four customers sitting together, no more than 25 persons for a discrete event and a minimum of six feet or a physical barrier between customers, apply to outdoor seating as well.

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 more than four customers sitting together, no more than 25 persons for a discrete event and a minimum of six feet or a physical barrier between customers.

Holders of club and catering club licenses in green counties may allow members to be served on the licensed premises. Food sales are permitted, but not required, at club locations. 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 and limiting seating at a bar to no more than 4 members with a common relationship.

As noted earlier, the Governor’s office’s [additional guidance for businesses in the restaurant industry](#) specifically prohibits in yellow counties 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 green counties, licensees are encouraged to close and remove these amenities, but it is not required.

As a reminder, clubs and catering clubs cannot sell any alcohol for off-premises consumption.

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 now permissible so long as the occupancy limitations, social distancing limitations and the other limitations set forth above are adhered to. In addition, the rules for social gathering for outside locations likewise apply. This includes the absolute limit of no more than 25 (yellow counties) or 250 (green counties) individuals for any discrete event.

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.

As a reminder, the holder of a brewery license in a green county who also holds a brewpub license must offer food for on-premises consumption if they are offering beer for on-premises consumption.

As a further reminder, breweries, limited wineries, distilleries and limited distilleries may sell their own products for off-premises consumption, but may not sell 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.

Golf Courses

Licensees that are located at golf courses were previously informed that they may provide alcohol service to individuals playing golf. That remains true even though such service would not be at a table.