



## **ADVISORY NOTICE NO. 26 (Second Revision)**

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

**June 3, 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](#).

Following is a summation of what is and is not permitted in the counties in Pennsylvania, depending on their color designation.

#### **In RED Counties:**

- Restaurant, retail dispenser and hotel licensees may not allow the service or consumption of food or alcohol on the licensed premises. Beer and food sales to go are still permitted, as are hotel sales of food and alcohol for consumption in private rooms. Sales of prepared beverages and mixed drinks to go are permitted, by those licensees that are eligible to make such sales.
- Licensees holding wine expanded permits authorizing the sale of wine to go may not allow the service or consumption of food or alcohol on the licensed premises. Sales to go are still permitted, as are the operation of a grocery store, convenience store or gas station next to the licensed premises.
- Airport restaurant license holders may not allow the service or consumption of food or alcohol on the licensed premises. Sales to go are still permitted.
- Clubs and catering clubs may not allow the service or consumption of food or alcohol on the licensed premises, and such licensees are not authorized to sell any alcohol to go. They may continue selling food to go.
- Permittees including special occasion, off-premise catering, exposition and farmers markets may not allow the service or consumption of food or alcohol on the licensed premises or at public gatherings. It is incumbent upon the permit holder to ensure that the event qualifies as a bona fide exposition/event before conducting sales of alcohol or offering tastings under authority of the permit.
- Breweries, distilleries/limited distilleries and limited wineries may not allow the service or consumption of food or alcohol on the licensed premises. Sales of the producer's own alcohol for off-premises consumption is permitted.
- Sacramental wine licensees may not allow food or beverage consumption on premise but may sell sacramental wine for consumption off premise.

#### **In YELLOW Counties:**

- Until June 5, 2020, licensees in yellow counties must adhere to the same rules as those for red counties as set forth above.
- Beginning June 5, 2020, licensees in yellow counties may allow dine-in service in outdoor seating areas consistent with the [restaurant industry guidance issued by the Governor's office](#) on May 27, 2020.

**In GREEN Counties:** Licensees are encouraged to follow the PLCB's [guidance as to what is permissible in green 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.

Finally, the PLCB has received a number of inquiries as to how beer distributors should react to business closure guidance. As suppliers to grocery stores, convenience stores and other retail licensees permitted to sell beer to go, distributors' continued operation will preserve beer accessibility for consumers. As such, the Board is not limiting distributors' operations at this time but encourages these businesses to employ social distancing best practices and avoid large public gatherings.

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](mailto:ra-lblegal@pa.gov).

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

A handwritten signature in black ink that reads "John K. Stark". The signature is written in a cursive style and is positioned above the printed name and title.

JOHN K. STARK  
Secretary to the Board