

December 30, 2020

RE: Restaurant and Liquor Industry Advisory Letter

Dear Licensee:

As we draw to the close of a tough year for so many Minnesotans, we want to acknowledge the ongoing economic challenges facing many small businesses - particularly public-facing businesses such as bars and restaurants. Alleviating the pressure on these businesses and their employees is a key priority that requires federal and state actions, as well as the efforts of all Minnesotans to reduce the spread of COVID-19 in our communities. With numerous COVID-19 indicators looking better in recent weeks and with vaccines becoming more readily available, we know there is light at the end of the tunnel. We need to continue doing what we can to keep things moving in the right direction.

While the vast majority of Minnesota establishments continue to comply with state executive orders and guidance, we are aware that some restaurants and bars are considering opening for indoor service on New Year's Eve in violation of Executive Order 20-103 *Extending and Modifying Executive Order 20-99*¹. This letter serves as a reminder that establishments that violate this provision will be subject to numerous sanctions and legal actions, up to and including significant fines and revocation of their food and liquor licenses.

Executive Order Provisions

- Pursuant to EO 20-103, all restaurants and bars are **prohibited from allowing on-premises consumption of food or alcohol indoors**, through Sunday, Jan. 10, 2021 at 11:59 p.m.
- Establishments **may provide outdoor service** if they adhere to the applicable guidance available on the Stay Safe Minnesota website (staysafemn.gov) and the requirements of EO 20-103, which includes:
 - Ensuring physical distancing of at least six feet is maintained between parties at different tables;
 - Not exceeding 50 percent capacity, with a maximum of 100 people;
 - Allowing no more than four customers seated at one table; and
 - Closing and remaining closed each day for outdoor on-premises consumption between the hours of 10:00 pm and 4:00 am.
 - Less than 50 percent of the perimeter space between the floor and ceiling are enclosed by solid material. For more information on outdoor dining requirements, see page 6 in [Executive Order 20-103 Frequently Asked Questions](https://mn.gov/covid19/assets/eo20103_faq_tcm1148-458389.pdf) (https://mn.gov/covid19/assets/eo20103_faq_tcm1148-458389.pdf)
- Establishments may, and are encouraged to, offer food and beverage using delivery, window, walk-up, drive-through, or drive-up services.
- Establishments with on-sale liquor licenses **are allowed** to sell beer and wine with takeout orders pursuant to legislation signed by Governor Walz in April of this year.

¹EO-103 has "the full force and effect of law" during a peacetime emergency. Minnesota Statutes section 12.32 (2020).

Liquor License Impacts

In previous advisories on May 14, 2020, and again on Dec. 12, 2020, the Department of Public Safety Alcohol and Gambling Enforcement Division (DPS-AGED) has reminded bars and restaurants that any liquor licensee found to be in violation of EO 20-103 may face a 60-day liquor license suspension, pending a hearing before an administrative law judge. An establishment will be notified of the intent to revoke its license for five years, including the subsequent revocation of the establishment's retail identification card (buyer's card), if there are further violations. Minn. Stat. § 340A.415

DPS-AGED has notified eight establishments of the intention to suspend their license for 60 days suspensions for violations of EO 20-99, as modified and extended by EO 20-103. Hearings for these cases have been scheduled with the Office of Administrative Hearings. Several other establishments are currently under investigation for violations of the executive order.

Restaurant Licensing Impacts

Restaurants and bars that operate in violation of EO 20-99, as modified and extended by EO 20-103, may face a cease-and-desist order and a 60-day license suspension. Since Dec. 1, MDH has issued cease-and-desist orders to 16 establishments and license suspension to 14 establishments. For establishments that do not comply with the cease-and-desist or license suspension, additional actions may be taken. MDH has revoked the license for one establishment, issued administrative penalties to two establishments, and filed a lawsuit against one establishment.

Attorney General Actions

The Attorney General's Office has directly brought lawsuits against nine establishments for violations of EO 20-99, as modified and extended by EO 20-103. The Attorney General's Office has sought and won temporary restraining orders in eight of those nine cases. In one case it did not seek a temporary restraining order because the restaurant complied with the ban on on-premises dining once it was served with the lawsuit.

We recognize this is a difficult time for the bar and restaurant industry, and we appreciate the vast majority of establishments that are helping to slow the spread of COVID-19 by complying with the executive orders. Our strong preference is to educate and inform you about the requirements of the executive orders so there is no need to take enforcement actions.

Sincerely,



Thomas P. Hogan
Director
Environmental Health Division

Minnesota Department of Health
Environmental Health Division
625 Robert St. North
PO Box 64975
St. Paul, MN 55164-0975



Carla Cincotta
Director
Alcohol and Gambling Enforcement Division

Minnesota Department of Public Safety
Alcohol and Gambling Enforcement Division
Suite 1600
445 Minnesota Street
Saint Paul, Minnesota 55101-2156