

Township of

DENVILLE

1 St. Mary's Place
Denville, New Jersey 07834

Thomas Andes
Mayor
mayor@denvillenj.org



(973) 625-8300
Fax: (973) 625-2491

Wesley Sharples
Emergency Management
Coordinator
wsharples@denvillepolice.org

LOCAL EMERGENCY ORDER 4-2020

WHEREAS, the Township of Denville (hereinafter "Township") declared a local emergency as a result of the COVID-19/Coronavirus Pandemic on March 18, 2020; and

WHEREAS, the State laws permitting the local emergency declaration authorize the promulgation of orders, rules and regulations necessary to meet challenges which have or may present themselves during an emergency; and

WHEREAS, *Executive Order No. 150 ("EO-150")*, issued by Governor Murphy on June 3, 2020 allows for food or beverage establishments to offer in-person service at outdoor areas effective June 15, 2020 provided that a series of requirements are met; and

WHEREAS, supplementary requirements associated with EO-150 to allows for food or beverage establishments to offer in-person service are contained in NJ Department of Health's *Executive Directive No. 20-014* and NJ Department of Law and Public Safety Division of Alcohol Beverage Control Special Ruling 2020-10; and

WHEREAS, based upon the requirements contained in EO-150 and subsequent requirements as established in the NJ Department of Health's *Executive Directive No. 20-014*; the Sidewalk Café Licenses issued by the Denville Health Department in 2020 have been deemed invalid and have been revoked due to the fact they do not comply with the aforementioned requirements; and

WHEREAS, in an effort to facilitate the success of the local food and beverage establishments in Denville while ensuring the health, safety and wellbeing of their customers, their staff and the general public, the following order shall go into effective immediately and remain in effect until revoked by a future Executive Order or law from a higher authority, which may supersede the local emergency order, until revoked by a future Local Emergency Order repealing all or part of this order; or until the local emergency is deemed to have ended.

NOW, THEREFORE, BE IT ORDERED,

1. All general ordinances, land use ordinances and site plan approvals of the Township of Denville in direct conflict with EO150, supplementary regulations as detailed in Department of Health's *Executive Directive No. 20-014* and NJ Department of Law and Public Safety Division of Alcohol Beverage Control *Special Ruling 2020-10* or with this order shall be temporarily suspended effective June 15, 2020 at 6:00 A.M. until further notice; and
2. A food or beverage establishment may be permitted to expand to outdoor eating or drinking during 2020 upon the issuance of a permit from the Township subject to meeting the following conditions:
 - a. All applicants must already have a Food Establishment license issued by the Denville Health Department and that shall sign acknowledging they still subject to the conditions of that license; and
 - b. The restaurant must submit an application with a map detailing the location, number of tables/chairs and seating capacity of the outdoor dining space; and
 - c. All maps/plans shall fully comply with EO-150 and supplementary regulations as detailed in NJ Department of Health's *Executive Directive No. 20-014* and NJ Department of Law and Public Safety Division of Alcohol Beverage Control *Special Ruling 2020-10*; and
 - d. Food Establishments shall be required to sign that they have read and shall comply with the provisions of EO-150 and NJ Department of Health's *Executive Directive No. 20-014*;
 - e. Food Establishments and other establishments possessing a license to sell alcoholic beverages shall be required to sign that they have read and shall comply with the provisions of EO-150, NJ Department of Health's *Executive Directive No. 20-014* and NJ Department of Law and Public Safety Division of Alcohol Beverage Control *Special Ruling 2020-10*.
3. The following local standards are hereby created in connection with the outdoor dining area:
 - a. The applicant and/or operator shall fully comply with all plans submitted and approved by the Division of Health, Construction

Official/Zoning Officer and Police Department under the terms of the permit issued. Upon a finding by the Division of Health, Construction Official/Zoning Officer or Police Department that an applicant has violated any provisions of this Emergency Order, notice shall be given to the applicant to correct said violation. Upon failure to immediately correct said violation the Health Officer, Construction Official/Zoning Officer or Police Department may revoke the applicant's license to operate a sidewalk café; and


- b. An awning or umbrella may be utilized within an outdoor dining area; however, tents shall not be permitted; and
 - c. Outdoor dining and beverage consumption shall be permitted from 6:00 AM to 10:00 P.M.; and
 - d. In the event of forecasted high-probability inclement weather (50% or greater), food or beverage establishments should not take reservations or seat patrons in the period of 30 minutes prior to said inclement weather event; and
 - e. Permits holders for outdoor dining or beverage consumption shall comply with all sections §4-11.1 thru §4-11.7 of the General Code of the Township of Denville which are not in conflict with the provisions contained herein.
4. The following standards are adopted for those desiring to expand seating area beyond sidewalk or in areas where sidewalks do not exist or do not provide adequate space to meet social distancing requirements:
- a. Outdoor dining or beverage consumption may be conducted on a premise-owned parking lot or premise-owned property provided the parking lot is exclusively owned and used by the subject food or beverage establishment;
 - b. Outdoor dining and beverage consumption may be conducted on a privately-owned parking lot or privately-owned property used in common by multiple business provided that the food and beverage establishment provides a signed letter of permission from the property owner and the businesses immediately adjacent to the proposed outdoor dining and beverage consumption area;
 - c. Outdoor dining and beverage consumption may be conducted in the public parking stalls located immediately in front of the food and

beverage establishment (i.e. - parklets) as long as the following conditions are met:

- i. Only permitted in cases where the public parking spots in front of the food and beverage establishment are either perpendicular or diagonal spots (not applicable in cases where there are parallel parking spots) and shall not extend beyond the limits of the parking space as delineated; and
 - ii. Not permitted in parking spaces reserved for disabled/handicap vehicle, in designated crosswalks or in designated fire or no parking areas.
 - iii. The dining and beverage consumption area in the street must be adequately protected with rigid barriers, fencing or other means necessary not to exceed three (3') feet in height along with adequate means of ingress/egress to ensure the safety and protect of the patrons, staff, pedestrians and motorist.
5. Each permit applicant shall sign an agreement indemnifying and holding the Township harmless against loss, including costs and expenses, resulting from injury to person(s) or property as a direct or indirect result of the operation of their outdoor dining or beverage consumption or for injury to person(s) or property occurring on the premises occupied by the cafe. The applicant shall provide a certificate of insurance as evidence of the required general liability policy to the Township, and naming the Township as a named insured, in the amount of not less than \$1,000,000.
6. There shall be no cost associated with seeking such a permit.



OEM Coordinator Wesley Sharples



Mayor Thomas W. Andes

DATE:

DATE:

c/2/201

EXECUTIVE ORDER NO. 150

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119 and 138 (2020), issued on April 7, 2020, and May 6, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, and Nos. 140-149 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, on March 16, 2020, I signed Executive Order No. 104, which limited all restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, to

offering food delivery and/or take-out services only, meaning that they could not allow the on-premises consumption of food or beverages; and

WHEREAS, on March 21, 2020, I signed Executive Order No. 107, which superseded Executive Order No. 104 (2020) in full but continued the prohibition of on-premises consumption of food or beverages; and

WHEREAS, given the decrease in the rate of reported new cases of COVID-19 in New Jersey, in the total number of individuals being admitted to hospitals for COVID-19, and in the rate of reproduction for COVID-19 infections in New Jersey, the State can begin to take certain steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that many of the State's current measures must remain in place, both to reduce additional new infections and to save lives; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan ("Plan") for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, the State is implementing its reopening process and has begun to relax restrictions on certain businesses, including the authorization of curbside pickup at retail establishments, the resumption of non-essential construction, and the allowance of a number of lower-risk outdoor activities; and

WHEREAS, consistent with this Plan, I have issued a number of Executive Orders, including Executive Order Nos. 133, 142, 143, 146, and 147 (2020), which authorized the openings of parks, beaches, lakefronts, and several outdoor recreational facilities and activities, with social distancing, cleaning, sanitizing, and hygiene practices in place, given repeated observations from public health experts, including but not limited to the Centers for Disease Control and Prevention ("CDC"), that outdoor environments present reduced risks of COVID-19 transmission as compared to indoor environments; and

WHEREAS, consistent with this Plan, I issued Executive Order No. 148 (2020), which allowed additional numbers of individuals to gather outdoors, consistent with the same repeated observations from public health experts, and Executive Order No. 149 (2020), which authorized the gradual restart of ordinary child care services, certain youth sporting activities, and summer camps, with social distancing requirements; and

WHEREAS, consistent with this Plan, non-essential retail businesses can begin to open their brick-and-mortar premises to the public, but should be held to the same minimum requirements that have applied to essential retail businesses since Executive Order No. 122 (2020) was signed in early April; and

WHEREAS, given the reduced risks of COVID-19 transmission outdoors, the State can begin to allow restaurants, bars, and other food or beverage establishments to provide in-person service at areas designated for food and/or beverage consumption ("outdoor dining") in accordance with CDC and DOH safeguards, but indoor dining still poses a higher risk of transmission at this time than outdoor dining; and

WHEREAS, indoor dining also entails a higher risk than indoor retail operations, as indoor dining typically involves individuals sitting together in one location for a prolonged period of time, while in indoor retail settings, individuals neither congregate in large groups nor remain in close proximity for extended periods and so the risk of COVID-19 spread is reduced; and

WHEREAS, to limit the spread of COVID-19 and thus to protect public health, establishments can only open to the public to offer outdoor dining where such food and/or beverage consumption is conducted in a way that ensures groups of individuals will be appropriately spaced apart, and there must be strict limits in place governing when individuals may enter the premises; and

WHEREAS, to limit the spread of COVID-19 and thus to protect public health, establishments can only open to the public to offer outdoor dining where such food and/or beverage consumption is conducted in a way that ensures critical Statewide health standards are met, which are being issued simultaneously by DOH; and

WHEREAS, because this Order establishes options for outdoor food and/or beverage consumption that accommodate the lack of indoor dining options as a result of COVID-19, individuals must have access to the same smoke-free options that they would have had under State law at the indoor premises of a food or beverage establishment, and which will continue to ensure that individuals can access in-person dining options without exposure to second-hand smoke during the Public Health Emergency; and

WHEREAS, many restaurants or bars will not have sufficient outdoor space to serve their patrons, and thus may seek to use additional space for outdoor food and/or beverage consumption,

including other areas of their property, such as parking lots, and shared spaces, such as sidewalks, streets, and parks; and

WHEREAS, municipalities are in the best position to make decisions on allowing restaurants or bars to expand their service footprint on their property and potentially into shared spaces in a way that comports with public safety; and

WHEREAS, if municipalities choose to make shared spaces available to restaurants or bars, it is incumbent upon them to distribute these spaces equitably among restaurants or bars who may feasibly seek to use them; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Effective at 6:00 a.m. on Monday, June 15, 2020, restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, bars, and all other holders of a liquor license with retail consumption privileges, collectively referred to as "food or beverage establishments," are permitted to offer in-person service at outdoor areas, provided that the establishment complies with the following requirements:

- a. Ensure all areas designated for food and/or beverage consumption are in conformance with applicable local, State, and Federal regulations;
- b. Limit capacity to a number that ensures all patrons can remain six feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table;
- c. Satisfy all standards issued by DOH pursuant to Paragraph 3 of this Order;
- d. Ensure that tables seating individual groups are six feet apart in all directions and that individual seats in any shared area that is not reserved for individual groups, such as an outdoor bar area, are also six feet apart in all directions;
- e. Prohibit patrons from entering the indoor premises of the food or beverage establishment, except to walk through such premises when entering or exiting the food or beverage establishment in order to access the outdoor area, or to use the restroom;
- f. Require patrons to wear a face covering while inside the indoor premises of the food or beverage establishment, unless the patron has a medical reason for not doing so or is a child under two years of age; and
- g. Prohibit smoking in any outdoor areas designated for the consumption of food and/or beverages. The requirement that food or beverage establishments impose this prohibition shall automatically sunset

once food or beverage establishments are permitted to offer in-person service in indoor areas.

2. Nothing in this Order shall prevent a food or beverage establishment that offers take-out options from allowing an individual who is seeking take-out rather than table service to enter the indoor premises of the establishment to place an order, make payment, and pick up food or beverages, including in situations where a food or beverage establishment makes outdoor areas without table service available. As noted in Paragraph 1(f), such individuals shall wear a face covering while inside the indoor premises of the food or beverage establishment, unless the individual has a medical reason for not doing so or is a child under two years of age.

3. The Commissioner of the DOH is directed, consistent with her authority under the Emergency Health Powers Act, to issue health and safety standards for use by food or beverage establishments in order to serve patrons consistent with this Order.

4. Picnic Areas and Pavilions may be open to the public. Picnic Areas and Pavilions shall be open to the public at all State Parks and Forests.

5. Municipalities are permitted to use their existing authority to allow food or beverage establishments to expand their footprint to outdoor areas, both within their property and among municipally-governed areas, including but not limited to sidewalks, streets, or parks. Any additional density and social distancing requirements imposed by municipalities on food or beverage establishments offering in-person service at outdoor areas are not inconsistent with Executive Order No. 108 (2020).

If a municipality seeks to close off a roadway for which it would need county or State approval, it still must obtain that approval.

6. Municipalities that make outdoor shared spaces such as sidewalks, streets, or parks, available for use by food or beverage establishments should equitably divide these spaces among food or beverage establishments that can feasibly use it.

7. Paragraph 8 of Executive Order No. 107 (2020), Paragraph 2 of Executive Order No. 133 (2020), Paragraph 2 of Executive Order No. 143 (2020), Paragraph 2 of Executive Order No. 147 (2020), and Paragraph 10 of Executive Order No. 148 (2020) are superseded to the extent inconsistent with this Order.

8. Effective at 6:00 a.m. on Monday, June 15, 2020, the brick-and-mortar premises of non-essential retail businesses that were closed to the public by Executive Order No. 107 (2020) can reopen to the public, provided that such businesses adopt policies that include, at minimum, the requirements that were applied to essential retail businesses in Paragraph 1 of Executive Order No. 122 (2020).

9. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

10. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

11. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions and exclusions to the terms of this Order.

12. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of Executive Order No. 150 (2020), or which will or might in any way interfere with or impede its achievement.

13. This Order shall take effect immediately.

GIVEN, under my hand and seal this
3rd day of June,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor



State of New Jersey
DEPARTMENT OF HEALTH

PO BOX 360
TRENTON, N.J. 08625-0360

www.nj.gov/health

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

EXECUTIVE DIRECTIVE NO. 20-014

**COVID-19 PROTOCOLS FOR FOOD OR BEVERAGE ESTABLISHMENTS
OFFERING SERVICE IN OUTDOOR AREAS PURSUANT TO EXECUTIVE
ORDER NO. 150**

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), Coronavirus disease 2019 (COVID-19) is a respiratory illness caused by a virus called SARS-CoV-2; and

WHEREAS, COVID-19 is thought to spread mainly through close contact from person to person through respiratory droplets produced when an infected person coughs, sneezes or talks; and

WHEREAS, because COVID-19 is also known to spread by people who do not show any symptoms, it is crucial that all retail establishments follow good personal hygiene practices and take necessary steps to promote a healthy work environment to assist in lowering the further spread of COVID-19; and

WHEREAS, to promote healthy hygiene practices and healthy environment, at minimum, employers should provide training in handwashing, cleaning/disinfection, social distancing, use of face coverings, and monitoring for signs and symptoms of COVID-19 in the workplace; and

WHEREAS, if there is a confirmed case of COVID-19 among employees, food or beverage establishments should immediately notify and cooperate with their local public health departments on next steps, while maintaining confidentiality; and

WHEREAS, on June 3, 2020, Governor Murphy, moving the state forward into phase 'Stage 2', issued Executive Order No. 150 (2020), allowing service by food or beverage establishments at outdoor areas; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order 103, declaring the existence of a Public Health Emergency, pursuant to the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., and a State of Emergency, pursuant to the Disaster Control Act, N.J.S.A. App A:9-33 et seq., in the State of New Jersey for COVID-19; and

WHEREAS, the Public Health Emergency was extended by Governor Murphy under Executive Orders 119 and 138; and

WHEREAS, under the declared Public Health Emergency, the Commissioner of the Department of Health is empowered, pursuant to N.J.S.A. 26:13-12, to take all reasonable and necessary measures to prevent the transmission of infectious disease and apply proper controls for infectious disease; and

NOW, THEREFORE, I, JUDITH PERSICILLI, Commissioner of the Department of Health, pursuant to the powers afforded to me under the Emergency Health Powers Act, hereby ORDER and DIRECT the following:

1. Food or beverage establishments offering service at outdoor areas pursuant to Executive Order No. 150 (2020) must adhere to the protocols listed below:
 - a. Obtain all required municipal approvals and permits before offering food and/or beverage consumption at outdoor areas;
 - b. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 should enter the food or beverage establishment;
 - c. Limit seating to a maximum of eight (8) customers per table and arrange seating to achieve a minimum distance of six feet (6 ft) between parties;
 - d. Rope off or otherwise mark tables, chairs and bar stools that are not to be used;
 - e. Demarcate 6 feet of spacing in patron waiting areas;
 - f. Provide physical guides, such as tape on floors, sidewalks, and signage on walls to ensure that customers remain at least 6 ft apart in line for the restroom or waiting for seating;
 - g. Eliminate self-service food or drink options such as buffets, salad bars, and self-service drink stations;
 - h. Disinfect all tables, chairs and any other shared items (menus, condiments, pens) after each use;
 - i. Install physical barriers and partitions at cash registers, bars, host stands and other area where maintaining physical distance of 6 ft is difficult;
 - j. Ensure 6 ft of physical distancing between workers and customers, except at the moment of payment and/or when employees are servicing the table;
 - k. Require infection control practices, such as regular handwashing, coughing and sneezing etiquette, and proper tissue usage and disposal;
 - l. Require frequent sanitization of high-touch areas like credit card machines, keypads, and counters to which the public and workers have access;
 - m. Place conspicuous signage at entrance alerting staff and customers to the required 6 ft of physical distance; and
 - n. Require all food or beverage establishments to have an inclement weather policy that, if triggered, would require the food or beverage establishment


to adhere to Executive Order No. 125 (2020) and offer takeout or delivery service only.

2. Food or beverage establishments offering service at outdoor areas pursuant to Executive Order No. 150 (2020) must impose the following requirements on employees:
 - a. Require employees to wash and/or sanitize their hands when entering the food or beverage establishment;
 - b. Conduct daily health checks (e.g. temperature screening and/or symptom checking) of employees safely and respectfully, and in accordance with any applicable privacy laws and regulations;
 - c. Require employees with symptoms of COVID-19 (fever, cough, or shortness of breath) be sent home;
 - d. Require all employees to wear face coverings, except where doing so would inhibit the individual's health, and require employees to wear gloves when in contact with customers and when handing prepared foods or serving food, utensils, and other items to customers;
 - e. Provide all employees with face coverings and gloves;
 - f. Provide employees break time for repeated handwashing throughout the workday; and
 - g. Provide sanitization materials, such as hand sanitizer and sanitizing wipes to staff.

3. Food or beverage establishments offering service at outside areas pursuant to Executive Order No. 150 (2020) must institute the following policies with respect to customers:
 - a. Inform customers that safety measures such as social distancing, wearing face coverings when they are away from their table and unable to social distance or when they are inside the indoor portion of the premises of the food or beverage establishment (unless the customer has a medical reason for not doing so or is a child under two years of age), and hygiene practices must be adhered to while in the food or beverage establishment;
 - b. Encourage reservations for greater control of customer traffic/volume;
 - c. Require customers to provide a phone number if making a reservation to facilitate contact tracing;
 - d. Recommend customers wait in their cars or away from the food or beverage establishment while waiting for a table if outdoor wait area cannot accommodate social distancing;
 - e. Alert customers via calls/texts to limit touching and use of shared objects such as pagers/buzzers;
 - f. Encourage the use of digital menus;
 - g. Decline entry to the indoor portion of the establishment to a customer who is not wearing a face covering, unless the customer has a medical reason for not doing so or is a child under two years of age; and

- h. Provide a hand sanitizer station for customers.

This Directive shall take effect immediately. The provisions of this Directive shall remain in force and effect for the duration of the public health emergency originally declared in Executive Order No. 103 (2020), and as extended by Executive Order, unless otherwise modified, supplemented and/or rescinded.



Judith Persichilli, R.N., B.S.N., M.A.
Commissioner

6/3/2020

Date

**NJ DEPARTMENT OF HEALTH
PUBLIC HEALTH AND FOOD PROTECTION PROGRAM**

<https://www.nj.gov/health/ceohs/food-drug-safety/>

Resources available from US Food & Drug Administration, Center for Disease Control and Prevention and EPA.

[FDA Best practices for Re-opening Retail Food Establishments During the COVID-19 pandemic checklist](#)

[FDA Food Safety and COVID-19 Questions and Answers for Industry: Food Supply Chain; Social Distancing, Disinfecting & Other Precautions; Workers Testing Positive](#)
[CDC Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a person with Suspected or Confirmed COVID-19](#)

[CDC Interim Guidance Resuming Operations for Restaurants and Bars](#)

[CDC Considerations for Restaurants and Bars](#)

[List of EPA registered surface disinfectants for use against COVID-19](#)

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF THE EXPANSION)	
OF CERTAIN LICENSED PREMISES)	SR 2020-10
TO ACCOMMODATE SOCIAL DISTANCING)	SPECIAL RULING ESTABLISHING
REQUIREMENTS DUE TO THE COVID-19)	TEMPORARY COVID 19 PERMIT TO
PANDEMIC)	EXPAND LICENSED PREMISES
_____)	

BY THE ACTING DIRECTOR:

By Executive Order No. 150 (2020), Governor Murphy announced that, given the reduced transmission of COVID-19 outdoors, licensees or permittees with on-premises retail consumption privileges would be permitted to reopen their establishments and serve patrons in outdoor areas. To facilitate this reopening, which is to become effective on June 15, 2020, the Director of the Division of Alcoholic Beverage Control (the "Division") has determined it necessary to create a temporary permit, known as the COVID-19 Expansion of Premises Permit ("COVID-19 Expansion Permit"), to enable licensees and permittees to expand their licensed premises into outdoor areas, either contiguous or non-contiguous to their permanently licensed premises. This Special Ruling will establish which licensees are eligible for the permit, the application process, and the privileges and limitations of the permit. Licensees may apply immediately through the POSSE ABC Online Licensing System ("POSSE"), but no permit that is issued shall be effective before June 15, 2020. All licensees and permittees with on-premises retail consumption privileges are eligible to apply for this permit, and if they meet the criteria set forth herein, the Division will issue a permit.

The Director of the Division has broad authority to regulate the alcoholic beverage industry and receives heightened deference from the courts to allow for the exercise of the Director's

discretion in the “delicate area” of alcohol regulation. Circus Liquors, Inc. v. Middletown, 199 N.J. 1, 12-13 (2009). The Director is authorized to provide for contingencies “where it would be appropriate and consonant with the spirit of this chapter to issue a license but the contingency has not been expressly provided for,” and the Director may, for special cause shown, issue temporary permits. N.J.S.A. 33:1-74. It is under this authority that the Director is authorizing creation of a COVID-19 Expansion Permit.

I. New Permit.

The COVID-19 Expansion Permit will allow licensees to expand their premises onto areas adjacent to or contiguous with the licensed premises, where they may provide for the sale and service of alcoholic beverages as on the primary licensed premises. The Director may also permit a licensee to expand its premises onto non-contiguous property, provided the property is in reasonable proximity to the licensed premise and the licensee has safeguards in place to ensure that alcoholic beverages will be sold and served in a manner that protects public health, safety and welfare. In both contiguous and non-contiguous expansions, the licensee must demonstrate that it has a possessory interest and control over those areas, and that it will exercise the same privileges afforded to it on its existing licensed premises. Specifically, licensees that offer food service on their licensed premises must offer *bona fide* food service on the expanded premises. This permit would also allow Class A manufacturers, such as plenary and farm wineries, limited breweries, craft distilleries and cideries and meaderies, to expand their licensed tasting rooms into outdoor areas, but would not otherwise expand their existing privileges.

Examples of permissible expansion areas include, but are not limited to: decks, patios, sidewalks, and parking lots adjacent to or contiguous with the licensed premises, or parks, “parklets” established by a municipality, and other public rights-of-way, as long as these areas are

accessible from the licensed premises and comply with all provisions of the Governor's Executive Orders and Administrative Orders concerning public health and social distancing requirements.

A COVID-19 Expansion Permit would not be required if a licensee sells a cocktail-to-go, as authorized by P.L. 2020, c. 33, to a patron who consumes it off of the licensed premises (e.g., on a public roadway closed off to traffic, sidewalk, park or beach) in accordance with local laws. Off-premises consumption of alcoholic beverages in public areas is within the jurisdiction of each municipality. See N.J.S.A. 40:48-1.

II. Eligible Licensees and Permittees.

The following licensees or permittees with on-premises retail consumption privileges may apply for the COVID-19 Expansion Permit:

1. Plenary Retail Consumption licensees ("33");
2. Plenary Retail Consumption licensees with the "broad package privilege" operating primarily as a bar/restaurant ("32");
3. Seasonal Retail Consumption licensees ("34");
4. Plenary Retail Consumption licensees operating under the Hotel/Motel exception ("36");
5. State Concessionaire permittees ("14");
6. Golf Facility permittees ("40");
7. Club licensees ("31");
8. Limited Brewery licensees ("11");
9. Restricted Brewery licensees ("08")
10. Plenary Winery licensees ("21");
11. Farm Winery licensees ("22");
12. Cidery and Meadery licensees ("02"); and
13. Craft Distillery licensees ("07").

Holders of Temporary Authorization Permits ("TAP"), with on-premises retail consumption privileges, are also eligible to apply. However, licensees that do not have on-premises retail consumption privileges are not eligible to apply for the COVID-19 Expansion Permit. As noted above, applications must be submitted exclusively through POSSE.

III. Application Requirements.

The application for the COVID-19 Expansion Permit will require the applicant to provide, at a minimum, the following information:

1. Name, address and license number of the applicant;
2. A description of the property that is the subject of the application (as well as a sketch or photographs of the property);
3. Written approval or documentation from the property owner authorizing the temporary use of the expanded property by a licensee;
4. Proposed security plan for sale and service of alcoholic beverages on the expanded premises including prevention of pass-offs, underage drinking, and over-consumption; and
5. Acknowledgement by the licensee that it has reviewed all applicable local and State safety and social distancing guidelines, including Executive Order No. 150 (2020) and the COVID-19 Outdoor Dining Guidelines for Retail Food Establishments, and will operate the proposed expanded premises in accordance with those guidelines or any that may be promulgated during the term of the permit.

The fee for the COVID-19 Expansion Permit will be \$75.00, in accordance with N.J.A.C. 13:2-5.5. The COVID-19 Expansion Permit will be effective as of the date of issuance by the Division, but not before June 15, 2020, and the term will run until November 30, 2020, which coincides with the month in which seasonal retail consumption licenses expire and the possibility of appropriate seasonal weather conditions. The expiration date of the COVID-19 Expansion Permit may be extended by the Director in a supplementary Special Ruling should circumstances warrant.

IV. Review Procedure.

Upon submission of a complete COVID-19 Expansion Permit application in POSSE and payment of the permit fee, the application will be transmitted to the municipal clerk and police chief (or designee) of the locality where the license is issued, whether the license is municipally-issued or State-issued. For licensed premises located on property owned by or under the control of any political subdivision of the State of New Jersey, the application will be reviewed and approved

by a designated administrative official and the chief law enforcement officer (or designee) responsible for the licensed property. The Division will not take action on any application until it receives an endorsement or approval by the appropriate governing body officials. For municipalities that do not consider permit applications on their regularly scheduled business meetings, municipalities may consider posting notices of applications received on their website. Again, all eligible licensees and permittees with on-premises retail consumption privileges, as described above, may apply for this permit, and if they meet the criteria set forth herein, the Division will grant their application.

The Division will issue the COVID-19 Expansion Permit through POSSE. The Division may impose special conditions on the permit if it determines that they are necessary and proper to accomplish the purposes of Title 33, including the protection of public health, safety and welfare. See N.J.S.A. 33:1-32. The Division will seek to ensure that municipal concerns regarding hours, proximity to neighbors, structures, and other issues of local concern are appropriately addressed in the COVID-19 Expansion Permit. It is the responsibility of the licensee to comply with local ordinances and site plan requirements.

A licensee who receives a COVID-19 Expansion Permit may exercise only those privileges authorized by the licensee's existing license and shall comply with all provisions of Title 33 and the implementing regulations. Violations of these provisions, as well as the terms and conditions of the COVID-19 Expansion Permit, may be grounds for suspension or revocation of the license, as though the violation occurred on the licensed premises.

A handwritten signature in black ink, appearing to read 'James B. Graziano', written over a horizontal line.

JAMES B. GRAZIANO
ACTING DIRECTOR

Dated: June 03, 2020