

**Colorado Department of Revenue
Liquor Enforcement Division
Adoption of Rule on an Emergency Basis
Colorado Liquor Rules, 1 C.C.R. 203-2**

Emergency Rule

Regulation 47-1103 – Communal Outdoor Dining Areas to Promote Social Distancing

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103, 44-3-201, and 44-3-202, C.R.S., I, Heidi Humphreys, Interim Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned Colorado Liquor Rule, which is attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

I find: (1) the adoption of this rule, effective immediately, is imperatively necessary to comply with the statutory mandates of the Colorado Liquor Code sections 44-3-101 to 44-3-1002, C.R.S.; (2) the adoption of this rule is imperatively necessary to preserve the public health, safety, and welfare; and (3) compliance with the notice and public hearing requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Statutory Authority

The statutory authority for this rule includes but is not limited to subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(F), 44-3-202(2)(a)(I)(L), 44-3-202(2)(a)(I)(M), 44-3-202(2)(a)(I)(R), 44-3-601, and 24-4-104(4)(a), C.R.S. Authority for this regulation also includes executive order D 2021 018 – Extending Executive Orders D 2020 011, D 2020 029, D 2020 052, D 2020 084, D 2020 093, D 2020 118, D 2020 147, D 2020 173, D 2020 201, D 2020 229, D 2020 257, and D 2020 283 Concerning the Temporary Suspension of Certain Regulatory Statutes Due to the Presence of COVID-19.

Purpose

The State Licensing Authority is adopting this rule on an emergency basis due to the ongoing threat to public health in the state of Colorado caused by the spread of novel coronavirus 2019 (COVID-19). On March 11, 2020, the Governor of Colorado declared a State of Emergency related to the presence of COVID-19 in the state of Colorado. On March 13, 2020, the President of the United States declared a National Emergency due to COVID-19.

In order to minimize the economic impacts of the governmental response to the COVID-19 pandemic, the Governor of Colorado has issued Executive Order D 2021 018 – Extending Executive Orders D 2020 011, D 2020 029, D 2020 052, D 2020 084, D 2020 093, D 2020 118, D 2020 147, D 2020 173, D 2020 201, D 2020 229, D 2020 257, and D 2020 283 Concerning the Temporary Suspension of Certain Regulatory Statutes Due to the Presence of COVID-19. As relevant to emergency Regulation 47-1103, Executive Order D 2021 018 suspends certain provisions of articles 3 and 4 of title 44 to allow certain persons licensed to sell alcohol beverages for on-premises consumption to participate in communal outdoor dining areas. The Order further suspends prohibitions on public consumption of alcohol beverages on duly authorized public right of ways.

In accordance with the legislative declaration of section 44-3-102, C.R.S., the Colorado Liquor Code is deemed an exercise of the police powers of the State of Colorado for the protection of the economic and social welfare and the health, peace, and morals of the people of the State of Colorado. Regulation of the manufacture, distribution, and sale of alcohol beverages is regulated by the Colorado Liquor Code, Colorado Beer Code, and Special Event Liquor Permits Code as a matter of statewide concern. In light of Executive Order D 2021 018, the adoption of this emergency rule is imperatively necessary to ensure continued proper regulation and control over the administration and enforcement of articles 3, 4, and 5 of title 44 to meet these legislative charges and responsibilities in order to preserve the public health, safety, and welfare of the State of Colorado. In particular, adopting this rule on an emergency basis will ensure the preservation of the public health, safety, and welfare of the State of Colorado by establishing requirements for businesses licensed under articles 3 and 4 of title 44 to participate in communal outdoor dining areas. The requirements established in this emergency rule address topics including acceptable service control plans for alcohol consumed in communal outdoor dining areas and licensee liability for violations of the Liquor Code and Rules.

Adoption, Effective Date, and Expiration

The State Licensing Authority hereby adopts the forgoing rule on an emergency basis, effective immediately. The attached emergency rule which will remain in effect until its expiration upon 120 days from the adoption date unless sooner terminated or replaced by a permanent rule.

Mark Ferrandino
Executive Director/CEO
Colorado Department of Revenue
State Licensing Authority

Date

Regulation 47-1103. Communal Outdoor Dining Areas To Promote Social Distancing.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(F), 44-3-202(2)(a)(I)(L), 44-3-202(2)(a)(I)(M), 44-3-202(2)(a)(I)(R), 44-3-601, and 24-4-104(4)(a), C.R.S. Authority for this regulation also includes executive order D ~~2020-204~~ 2021 018. The purpose of this regulation is to address operation of communal outdoor dining areas as a temporary measure intended to promote public health, safety and welfare through greater social distancing in accordance with relevant Public Health Orders issued by the Colorado Department of Public Health & Environment.

- A. For purposes of this Regulation 47-1103, “Communal Outdoor Dining Area” means an outdoor space used for food and alcohol beverage service by two or more on-premises liquor licensees, including approved sales room licensees, operating in accordance with an applicable public health order issued in response to COVID-19.
1. No licensee shall sell or serve alcohol beverages in a communal outdoor dining area unless the state and local licensing authorities have approved a temporary modification of licensed premises pursuant to Regulation 47-302(F) that includes the communal outdoor dining area.
 2. A licensee shall cease selling or serving alcohol beverages in a communal outdoor dining area once the approved temporary modification of licensed premises expires or Executive Order D ~~2020-204~~ 2021 018 —or a subsequent order extending Executive Order D ~~2020-204~~ 2021 018— expires, whichever occurs first.
 3. Licensees selling or serving alcohol beverages in an approved communal outdoor dining area in compliance with the requirements of this Regulation 47-1103 are not subject to the restrictions in Regulation 47-302(F)(1)(b) and (d).
 4. A retail food establishment that does not have a liquor license may also serve food in a communal outdoor dining area approved under this regulation 47-1103.
- B. A communal outdoor dining area must be within 1000 feet of the permanent licensed premises of each of the licensees associated with the communal outdoor dining area. this distance shall be computed by direct measurement from the nearest property line of the land used for the communal outdoor dining area to the nearest portion of the building in which the permanent licensed premises is located, using a route of direct pedestrian access.
- C. If allowed by the local licensing authority, all licensees who wish to be associated with a communal OUTDOOR dining area may submit a joint application to temporarily modify their licensed premises to include the communal outdoor dining area. Each licensee is responsible for paying the modification of licensed premises fee set forth in Regulation 47-506. See also Regulation 47-302(F)(2).
- D. All licensees associated with a communal outdoor dining area pursuant to this Regulation 47-1103 must adopt and agree to a security and control plan for the communal outdoor dining area that is approved by the state and local licensing authorities. The security and control plan shall ensure:
1. The licensees associated with the communal outdoor dining area have a method of identifying which licensee is selling or serving food and alcohol beverages to a particular table at any given time;
 2. All customers at a table may only purchase or consume food and alcohol beverages from a single licensee associated with the communal OUTDOOR dining area;
 3. Any retail food establishments associated with the communal outdoor dining area that does not hold a liquor license acknowledges and agrees that alcohol beverages will be sold in the communal outdoor dining area only by, and under the control of, the licensees associated with the communal outdoor dining area;

4. One or more licensees will supervise or provide security within the communal outdoor dining area during all hours of operation to ensure compliance with this Regulation 47-1103 and all relevant requirements of article 3 of title 44 and the Colorado liquor rules; and
 5. All licensees associated with the communal outdoor dining area agree they are jointly responsible for complying with this Regulation 47-1103 and all relevant requirements of article 3 of title 44 and the Colorado liquor rules.
- E. A licensee associated with a communal outdoor dining area shall not:
1. Permit customers to leave the communal outdoor dining area with any alcohol beverage except as permitted under Regulation 47-918;
 2. Permit customers to bring food into the communal OUTDOOR dining area that was purchased outside of the communal OUTDOOR dining area;
 3. Permit takeout or delivery orders to be ordered from or delivered to the communal outdoor dining area;
 4. Sell, serve, or permit consumption of alcohol beverages in the communal outdoor dining area during hours the licensed premises cannot sell alcohol under article 3 of title 44 or the limitations imposed by the local licensing authority;
 5. Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, giving, or procuring of an alcohol beverage to a visibly intoxicated person or to a known drunkard;
 6. Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, or giving of an alcohol beverage to a person under twenty-one years of age;
 7. Permit a visibly intoxicated person to remain within the communal outdoor dining area without an acceptable purpose; or
 8. Permit a person to consume an alcohol beverage within the communal outdoor dining area unless it was purchased within the communal outdoor dining area from a licensee associated with the communal outdoor dining area.
- F. Licensees associated with a communal outdoor dining area shall promptly remove all alcohol beverages from the communal outdoor dining area at the end of the hours of operation.
- G. This Regulation 47-1103 does not apply to a special event permit issued under article 5 of title 44 unless the permit holder desires to use an existing communal outdoor dining area and agrees in writing to the requirements of article 3 of title 44 and the local licensing authority concerning the communal outdoor dining area.
- H. A violation of this regulation by a licensee, or by any of the agents, servants, or employees of a licensee, may result in disciplinary action, up to and including license revocation, pursuant to section 44-3-601(1), C.R.S., and may result in summary suspension of a license pursuant to section 44-3-601(2) and Regulation 47-602. *See also* Regulation 47-1102 - Compliance with executive orders and public health orders issued during disaster emergencies.