

# Phase 2 Reopening – On-Premise Consumption of Alcoholic Beverages

## Related Professionals

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Executive Order 141 went into effect on May 22 at 5:00 p.m. allowing restaurants, breweries, wineries and distilleries to open for on-premise alcohol consumption.

The Order can be viewed at: <https://files.nc.gov/governor/documents/files/EO141-Phase-2.pdf>

## A few takeaways from the Executive Order 141:

1. The Sanitation requirements found in Section C.2.d. are required even if your restaurant decides to not open for in-service dining at this time, but only open (or remain open) for to-go and delivery.
2. For in-service dining, the Order requires that restaurant limit indoor/ outdoor seating areas to the lowest number produced by applying the following three tests:
  1. Limit the number of customers in the restaurant to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) customers for every one thousand (1000) square feet of the location's total square footage, including the parts of the location that are not accessible to customers or guests).
  2. Limit the number of people in the space so that groups can stay six (6) feet apart.
  3. Arrange the restaurant so that customers sitting at a table are not within six (6) feet of any customers sitting at another table. Moreover, each group of customers sitting at a counter should be separated from each other groups by six (6) feet.
1. For in-service dining, the Order restricts that no more than ten (10) people shall be seated together at the same table. More than ten (10) people may sit together at same table if they are members of the same household.

2. Section C.4. of the Order specifies that restaurants are considered an “Essential Business” for purposes of NC Sess. L. 2020-03, Sec. 4.14(a). This legislation provides that essential businesses shall have immunity from civil liability for COVID-19 related injuries so long as the harm is not caused by the gross negligence, reckless misconduct, or intentional infliction of harm of the essential business’s employees.
3. For all other retail permit holders, who are deemed permitted to open, but not necessarily defined as a restaurant must:
  1. Limit the number of customers in the restaurant to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) customers for every one thousand (1000) square feet of the location’s total square footage, including the parts of the location that are not accessible to customers or guests).
  2. Limit the number of people in the space so that groups can stay six (6) feet apart.

Various other retail on-premise permittees are not permitted to open under Phase 2, such as: bowling alleys, movie theaters, skating rinks, bingo parlors, bars, amusement parks, night clubs, dance halls, music halls, and venues for receptions or parties. These facilities are expected to be part of Phase 3 opening. The proposed date for Phase 3 opening has not yet been stated.

## In response to Executive Order 141, the ABC Commission issued “ABC Commission Guidance for Executive Order 141” and a “Memorandum of Guidelines – Temporary Extension of Premises for On-Premises Consumption.”

The ABC Commission Guidance for Executive Order 141 provided guidance as to how to differentiate between breweries v. bars and restaurants v. bars and private clubs with restaurant/food service operations v. private clubs with primary purpose of on-premise consumption. Executive Order 141 specifically prohibits businesses that are considered to be a place principally engaged in the business of selling alcoholic beverages for onsite consumption. In comparison, a brewery, winery or distillery is considered a location that primarily produces beverages pursuant to a commercial permit and is also authorized to have retail sales to consumers, thus not principally engaged in business of on-premise sales and consumption, and therefore, permitted under Phase 2. Additionally, locations whose primary purpose is to sell at retail alcohol beverages for off-premise consumption, such as bottle shops and wine shops, are permitted to open under Phase 2. For more guidance see: <https://abc.nc.gov/PublicResources/LegalAnnouncement/274>.

The Memorandum of Guidelines – Temporary Extension of Premises for On-Premises Consumption affords on-premises permittees the ability to temporarily extend their licensed premise for on-premise alcoholic beverage consumption without seeking formal approval from the Commission. Below is a summary of key points.

1. This allows on-premise permittees to obtain additional outdoor seating either in adjacent yards or parking areas.

2. The area to be extended must be part of the permittee's deed or leased premises. If not currently a part of the leased premises as evidenced under permittee's lease, the permittee must obtain written approval for the extension from its landlord.
1. A permittee should keep a diagram of the extended area on the permitted premises at all times. The diagram should indicate size and location of temporary extensions, types of barriers used, and how many tables and chairs will be added to the temporary area.
1. The extension of premises does not permit any increase to the establishment's maximum occupancy nor does this contradict or compete with the requirements under Executive Order 141, which limit capacity of on-premise retailers to 50% capacity (or as otherwise detailed in the Order). This simply allows an on-premise permittee to increase its outdoor dining ability without requiring formal approval from the Commission.
1. The permittee must notify its ALE agent, district ALE office, or law enforcement before extending the area. To determine the appropriate person to contact visit: <https://www.ncdps.gov/our-organization/law-enforcement/alcohol-law-enforcement/about-ale>.
1. If extending into public property (such as park or sidewalks or street closures) the permittee must confirm with the local governing authority that the extension is permitted and written guidance should be available for Commission or ALE inquiry.
1. The temporary area must be visibly and vertically marked off (planters, bike racks, walls) so that the average citizen can distinguish between the extended licensed premises and the public walkway. Consumers are not allowed to take open containers of alcohol outside the temporary extension of premises area.

We will continue to provide COVID updates relating to alcohol sales in NC as the information is received. For any additional questions, please feel free to email Erin Mosley at [ecmosley@nexsenpruet.com](mailto:ecmosley@nexsenpruet.com).

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