

MARYLAND RESTAURANT & BAR RECOVERY ADVISORY GROUP

April 28, 2020

Restaurants & Bars understand the need to take public safety seriously. The safety of employees and the public will continue to be a priority as we move through the phases of reopening fully. Thorough consideration was given to the economic, medical and societal impact of each of the recommendations. References to restaurants and bars throughout this document is intended to include all foodservice operations. The contents of this report were in consultation with restaurants, bars, private clubs, catering facilities, the National Restaurant Association, the Restaurant Association of Maryland, the Maryland State Licensed Beverage Association, the Maryland Hotel & Lodging Association, Grow and Fortify, the Maryland Department of Health and various industry consultants.

OPERATIONAL PRACTICES

Restaurant & Bar Best Practices and Guidance

The National Restaurant Association has published a COVID-19 Reopening Guidance document that addresses the ongoing best practices for restaurants and bars as a result of COVID-19. This document contains information that is currently being utilized by businesses that are currently open for curbside pickup, takeout and delivery. This information will also be used when businesses are permitted to reopen for dine-in customers.

This document was created in consultation with officials from the Food and Drug Administration and University Food Science Representatives. It outlines guidance in the following areas:

- Food Safety
- Cleaning and Sanitizing
- Employee Health Monitoring
- Social and Physical Distancing

Governor Hogan has often referenced collaboration with other states in order to enact a regional approach to reopening. Therefore, the Advisory Group is recommending this document as the best practice guidance for the entire region because it is comprehensive and applies to all foodservice industry segments.

The National Restaurant Association Reopening Guidance document is included in the reference section.

Phase 1 - Maryland Strong: Roadmap to Recovery

The Advisory Group would like the Governor to consider the following for restaurants and bars during Phase One:

- Maintain the current order allowing for restaurants and bars to offer carryout and delivery including alcohol.
- Restaurants and bars will adhere to the guidelines in the National Restaurant Association

COVID-19 Reopening Guidance document.

- All employees will complete a health screening prior to their shift.
- Allow restaurants and bars to reopen for dine-in customers for OUTDOOR SEATING only.
- Hand sanitizer will be available upon entry and exit for guests and employees, or hand washing facilities will be readily available.
- Employees interacting with customers will be required to wear face coverings.
- Physical distancing of at least 6 feet between outdoor seating tables shall be maintained.
- The maximum total of dine-in customers at one time in any outdoor seating area during Phase One shall be 50 people, regardless of physical distanced seating capacity.
- The maximum number of customers at any one outdoor table setting during Phase One shall be 6 people. Customers will not be permitted to stand in the outdoor seating area and must be assigned a table.
- While waiting to be seated, appropriate physical distancing guidelines will be maintained. If space does not allow for appropriate physical distancing, customer will be asked to wait in their cars or other off-premise area.

On April 24, 2020, John Inglesby from Johns Hopkins University stated during Governor Hogan's press conference that "outdoors will be safer than indoors" when referring to Phase One. The Advisory Group understands that the Governor has a desire to reopen in the safest manner possible, however we would like the Governor to consider these points while making the decision:

- Outdoor seating provides for a safer environment for employees and customers.
- Significantly restricting customer capacity to 50 people and restricting table capacity to 6 people helps prevent large gatherings during Phase One.
- Most restaurants do not have outdoor seating spaces, therefore will not be able to open for dine-in customers during Phase One. This will help create a gradual phase in of customers returning to restaurants and bars after the stay at home order is lifted. This also allows for businesses across the state to reopen at a more gradual pace, rather than all at once.
- Outdoor activities are expected to reopen as part of phase one. Allowing for outdoor seating enables golf courses, marinas and other outdoor venues to offer food and beverages in a limited manner upon reopen rather than waiting for phase two.
- Allowing outdoor seating in Phase One allows for the public to have a gradual return to dine-in options and participating in societal functions in a more controlled manner.
- Allowing some restaurants and bars to reopen during Phase One will help bring more employees back to work and allow struggling businesses to begin generating more income.
- An early reopening, albeit very limited, will allow for restaurants in destination locations to begin the process of safely re-attracting in-state tourism as people begin to adjust to the lifting of the stay-at-home order.

Phase 2 - Maryland Strong: Roadmap to Recovery

Phase Two allows for restaurants and bars to reopen with restrictions. The Advisory Group would like to offer the following conditions for reopen:

- Maintain the current order allowing for restaurants and bars to offer carryout and delivery including alcohol.

- Restaurants and bars will adhere to the guidelines in the National Restaurant Association COVID-19 Reopening Guidance document.
- All employees will complete a health screening prior to their shift.
- Hand sanitizer will be available upon entry and exit for customers and employees, or hand washing stations facilities will be readily available.
- Employees interacting with customers will be required to wear face coverings or utilize other protective equipment, such as plexiglass barriers, in keeping with public health guidelines relating to COVID-19.
- Physical distancing of at least 6 feet between tables for customers shall be maintained. Businesses shall design their seating areas to accommodate these minimum specifications. If possible, tables should be removed or clearly marked as not available for service to ensure they are not used.
- Executive Order allowing for restaurants and bars to expand their dine-in seating to existing outdoor areas, such as parking lots or other usable space, without the current restrictions from zoning boards, health departments, liquor boards and other agencies. A permissible expansion of seating will allow businesses to offer more space for proper physical distancing among guests and the opportunity to operate at a capacity that will incentivize opening rather than remaining closed.
- Seating with physical barriers between guests, such as in booths, may be utilized without the 6 feet distance requirement between booths provided that the physical distancing intent is maintained, and the physical barrier prevents guests from coming into contact with one another.
- Operations that have self-serve buffets will continue to utilize protective barriers and shall provide and require all customers to use hand sanitizer or protective gloves before serving themselves and touching utensils. Signage of this customer requirement shall also be posted at each buffet table or station. Directional signage, ropes or stanchions will be required to manage the flow of customers through the buffet lines that ensure proper physical distancing. A dedicated employee(s) will be assigned to ensure compliance and monitor, manage and control the flow of customers.
- The maximum number of customers at any one table setting shall be 10 people. Ten people allows for large families to sit together, but also helps avoid large gatherings.
- While waiting to be seated, appropriate physical distancing guidelines will be maintained. If space does not allow for appropriate physical distancing, customer will be asked to wait in their cars or other off-premise area.
- Child play areas located inside and outside of restaurants shall remain closed.
- Bar seating located within establishments that serve food may be utilized provided that customers are seated and comply with the appropriate physical distancing guideline of at least 6 feet. Standing in a bar area will not be permitted. A maximum of four customers that have a common relationship may sit together at the bar, while adhering to the physical distancing guideline between other customers.

Phase 3 - Maryland Strong: Roadmap to Recovery

Phase Three allows for all businesses to reopen without restrictions.

The Advisory Group agrees that “High Capacity” restaurants and bars should be defined as those

establishments that generally accommodate significant standing room only and cannot offer seating for all of their customers in a proper physical distance setting due to the nature of their business model, such as nightclubs and event venues that offer entertainment.

Restaurants and bars that are able to provide seating for all customers while adhering to the physical distancing requirements under Phase Two, should not be unnecessarily penalized for owning a large building and considered high risk. These restaurants should be allowed to open in Phase Two, provided they are able to meet the requirements.

FINANCIAL CONSIDERATIONS

Liability Protection - Maryland Must Consider Safe Harbors and Grants of Immunity

The restaurant and bar industries face liability challenges that governments do not. Given the critical role played by Maryland's restaurants in a time of great need, the state should provide reasonable liability protections in response to the COVID-19 pandemic. Liability protections need not extend to acts or omissions that constitute crime, fraud, malice, gross negligence or willful misconduct. Such protections must, however, prevent lawsuits alleging that guests or workers were exposed and/or infected during the pandemic, which would impede restaurants, bars or other foodservice operations' ability to economically recover.

The state-based liability protections that should be considered fall into three non-mutually exclusive buckets: safe harbor, immunity, and indemnification. Appropriate legal protections are set out below as concepts:

- **Safe Harbor** – A “safe harbor” establishes a legal defense from liability for injury or death resulting from alleged or actual coronavirus exposure for any person or entity that adheres to federal and state orders and guidance affecting restaurants and bars.
- **Immunity** – Similar to the “safe harbor”, owners and managers of properties, including restaurants, bars and other foodservice operations, that adhere to federal and state orders and guidance affecting restaurants and bars, are granted immunity from liability for claims for injury or damages based on actual or alleged COVID-19 exposure. This immunity should also apply to employees, customers, and subsequent users of the property.
- **Indemnification of Worker's Claims** – Workers' compensation claims, claims based on occupational disease or similar law, and claims for employer liability based on an actual or potential exposure to COVID-19 brought by workers against a bar or restaurant employer shall be indemnified by the government.

Direct Financial Relief

- Rent or mortgage payment forbearance/abatement, no commercial evictions for 180-days.
- Establish a Maryland Restaurant and Foodservice Industry Relief Fund. Restaurants and bars will need stipends and/or grants that provide access to cash for reopening purposes. The purchase of food, settling of accounts in arrears, employee re-training and other necessary expenses in order to reopen will be difficult to secure without a consistent source of revenue from the previous months.
- Capex Reimbursement Fund: Similar to the West Virginia modernization fund program, this would develop a \$1 for \$1 capex spend reimbursement fund for precautionary measures, public

safety, sanitation, physical distancing modifications, protective gear, and other requirements resulting from the current crisis.

- Unemployment Insurance – Maryland should fund (or obtain Federal funds) to replenish the Unemployment Trust Fund. Employers should not be subject to an increased rate schedule or an increased unemployment “experience rating” due to Covid-19 related layoffs.
- Business Interruption Insurance - Clarification regarding business interruption insurance claims, triggered by declarations of state of emergency and business closure orders by government agencies, is necessary since claims are being denied.
- Minimum Wage – The Board of Public Works should exercise its authority to temporarily suspend the increase scheduled for January 1, 2021 until January 1, 2022.

DRIVING DEMAND BACK TO RESTAURANTS AND BARS

Suggested Initiatives

- A sales and alcohol tax holiday to encourage Marylander’s to dine-out.
- Establish a state-wide and state funded “restaurant week”.
- Fund a consumer confidence and preferences survey to assist businesses to adapt to the potential changes in dine-out and foodservice preferences.
- Destination marketing fund enhancement - Recommend a State and/or Federal Grant program for all Destination Marketing Organizations. Restaurants and bars benefit from tourism, whether in-state or out-of-state travelers.
- Elimination of any state and local indirect taxes for six months, where appropriate and without negative impact on broader destination marketing.
- Temporary travel tax credit for both business and leisure travel. If other states institute this practice, we would need to do the same.
- Place targeted advertising in drive in-markets. More localized outreach to get the locals to support travel-related businesses.

REQUESTED ACTIONS FROM GOVERNOR HOGAN

The Advisory Group requests that the Governor take the following actions to help restaurants and bars reopen in a safe and efficient manner, while also providing incentive to reopen and rehire employees rather than remain closed and provide consistent standards across the entire state.

1. Executive Order that prohibits local jurisdictions from enacting their own reopening standards and guidelines that are in conflict with the state order to ensure consistency for all businesses and customers.
2. Provide as much notice as possible to restaurants and bars regarding potential reopen dates under the three phases. These businesses need adequate time to rehire employees, order supplies and prepare their operations for dine-in customers.
3. Ensure that the State and Local Health Departments enact reasonable and efficient reopening requirements that are not burdensome and counterproductive to the intent of opening businesses and bringing employees back to work.

4. Executive Order allowing for the suspension of zoning, health department, liquor departments and other agency prohibitions to enable restaurants and bars to seat and serve customers in areas outside of their approved building, such as in parking lots and other available spaces, provided customer and employee safety can be maintained. Maintain this Executive Order until Phase Three is implemented.
5. Maintain the current Executive Order allowing for restaurants and bars to sell alcohol for takeout and delivery until Phase Three is implemented.
6. Because of the disproportionate economic impact on restaurants, foodservice and bar businesses, establish a Maryland Restaurant and Foodservice Industry Relief Fund. These businesses will need stipends and/or grants that provide access to cash for reopening purposes.
7. Executive Order that requires landlords of restaurants and bars in locations with comingled parking with other businesses to dedicate spaces in close proximity to entrances for the continuation of curbside pickup. This is with the understanding that many customers will be uncomfortable with dine-in and takeout services while in phase one and two, however will still want to utilize curbside pickup options.
8. Encourage consistency of these recommendations across the entire region, specifically Virginia, Delaware and Washington, D.C.

REFERENCES

National Restaurant Association COVID-19 Reopening Guidance

What kind of questions should an employer ask an employee during a pre-shift health screening?

- Do you have any of these symptoms: fever, aches, cough, shortness of breath, chills, repeated shaking with chills, muscle pain, new loss of taste or smell? (*Consistently check the CDC website for changes in COVID-19 symptoms and adapt your questions accordingly*)
- Have you come in contact with anyone diagnosed with COVID-19 or suspected to have COVID-19?
- Are you currently waiting for the results of a COVID-19 test?
- Have you traveled outside Maryland over the last 14 days?
- I understand my responsibility to not come to work if I have symptoms of COVID-19 or have recently come into contact with someone who has COVID-19 or suspected to have COVID-19.
- I understand my responsibility to comply with the restaurant's health and sanitation standards.

If an employee should become ill or present signs of illness, the employer should identify that during a pre-work health screening and follow their established policies on when the employee will be permitted to return to work. At a minimum, follow CDC guidelines: self-isolate for seven days from the onset of symptoms and be symptom free for 3 days without medication.