

ALCOHOLIC BEVERAGE CONTROL COMMISSION

400 East Tryon Road
Raleigh, NC 27610



July 2, 2020

The below guidance was issued on May 24th and updated on July 2nd to remind restaurants that food must be available at all times that alcoholic beverages are being served. (14B NCAC 15B.0105)

ABC Commission Guidance for Executive Order 141

Some restaurants call themselves “breweries” or “bars”; some breweries call themselves “restaurants” or “bars”; and some bars call themselves “restaurants” or “breweries.” As a result, we have received questions about how to interpret whether an establishment is within the Executive Order’s definition of “bar” and must remain closed.

The following are categories of establishments that are exempt from the closure order, and so may legally operate now, if fully compliant with applicable safety guidelines ([Section 6, Executive Order 141](#)). This guidance does not override any order from Governor Cooper, the NC Department of Health and Human Services, any ABC laws or regulations, or any local ordinances.

Excluded from definition of Bar:

An establishment shall not be deemed “principally engaged in the business of selling alcoholic beverages for onsite consumption” (and thus **may be open under Executive Order No. 141**) if it meets one of the following tests:

- It produces alcoholic beverages pursuant to a commercial permit issued by the ABC Commission (G.S. §§ 18B-1101 to 18B-1105) and is authorized by such permit to also have retail sales to consumers.
 - Examples: Breweries, Wineries, Distilleries
- Its primary business purpose is to sell at retail alcohol beverages for consumption off the premises. Occasional tastings or consumption during an educational seminar, as authorized by ABC permits, may be a part of the business model, so long as the majority of total sales are not derived from alcohol for on-premises consumption.
 - Examples: Bottle Shops, Wine Shops

Included within definition of Restaurant:

Certain Private Clubs and Members-only Clubs may be included within the EO141 definition of “Restaurant” (Sec. 1.7.) and so **may continue to serve food and drink** if:

- Their pre-Emergency Declaration normal operations typically included service of food and drink, and
- They are in full compliance with applicable safety requirements of EO141 (Sec. 6).
- Example establishments that may operate if they satisfy the above requirements:
 - VFW Posts, American Legions, Elks/Moose Lodges, Country Clubs

NOTE:

Any restaurant that is open and serving alcohol should have an open kitchen. Food from the restaurant must be available at all times that alcoholic beverages are being served. Please see [14B NCAC 15B .0105](#) (SPECIAL REQUIREMENTS FOR RESTAURANTS) for more information.

Additionally, if any customers or guests consume food and/or beverages on-premises at any of the establishments identified above during this Emergency Declaration, the Emergency Maximum Occupancy requirements for restaurants under Executive Order No. 141 apply. Therefore, any customers consuming food or beverages on-premises must be in seated groups that are spaced at least six feet apart, and customers or guests will be limited to 50% fire capacity.

Private Club Guidance

Am I a Private Club or a Bar? May I open & operate safely & legally?

Bars are closed by Section 8.A.2 of EO141. The following criteria are intended to help determine if a private club business is acting more like a bar or more like a restaurant. The more these criteria are satisfied by a permittee, the more likely an establishment will be treated as a restaurant that may operate pursuant to Section 1.7.

- **Avoids people congregating on premises simply to drink alcoholic beverages and socialize**
 - Observes spacing & group sizes per EO141.
- **Avoids patrons sharing touched spaces**
 - Bar counter, pinball/games, etc.
- **Patrons remain seated at tables**
 - Spaced according to EO141 health & safety guidance.
- **Does not exceed Emergency Maximum Occupancy (Section 1.3)**
 - In most cases this will be 50% of stated fire capacity.
- **Has some type of food/health inspection for on-site food preparation**
 - Provided food services prior to Declaration of Emergency

In these unprecedented times, **the health of all of us depends on the actions of each of us.** These guidelines are intended to provide clarity for ABC Commission Permittees that may legally operate their businesses during this COVID-19 emergency period. If ABC Permittees in the identified categories of business follow the health guidelines set forth in EO141, businesses may safely operate while minimizing risk to their patrons and their employees. Responsible businesses and responsible patrons will help make Phase 2 a success. **We all must do our part to be healthy!**