



Naperville

OFFICE OF THE MAYOR

Steve Chirico

June 3, 2020

Second Amended Executive Order 2020 – 3

EXECUTIVE ORDER OF THE MAYOR OF THE CITY OF NAPERVILLE

RECITALS

1. **WHEREAS**, on January 30, 2020, the World Health Organization declared the COVID-19 outbreak to be a public health emergency of international concern; and
2. **WHEREAS**, on March 13, 2020, the President of the United States issued a proclamation declaring a national emergency concerning the COVID-19 outbreak, and
3. **WHEREAS**, on March 9, 2020, the Governor of the State of Illinois issued a disaster proclamation due to the impact of the COVID-19 outbreak and activated the State Emergency Operations Center; and
4. **WHEREAS**, on March 16, 2020, the Governor of the State of Illinois issued Executive Order 2020-07, suspending on-premise consumption of food and beverages in places of public accommodation and prohibiting gatherings of 50 people or more; and
5. **WHEREAS**, on March 17, 2020, at an emergency Naperville City Council meeting a local state of emergency and disaster related to the COVID-19 outbreak was declared and on April 21, 2020 at a Naperville City Council meeting the local state of emergency and disaster was extended (see, *Mayor of Naperville's Declaration of a Local State of Emergency and Disaster*, *City of Naperville Ordinance 20-028 pertaining to a local state of emergency and disaster*, and *City of Naperville Ordinance 20-040 pertaining to a local state of emergency and disaster*); and
6. **WHEREAS**, on March 19, 2020, as a result of Governor Pritzker's Executive Order 2020-07, the Illinois Liquor Control Commission ("ILCC") issued guidance on whether a license holder authorized to conduct on-premises alcoholic liquor sales only may sell alcoholic liquor for consumption off of the licensed premises. The guidance states that the ILCC will accept the decision of a local liquor control commission to authorize an on-premises only retailer to sell alcoholic liquor for consumption off the licensed premises and that state retail licenses that authorize on-premises only sales will be authorized to sell alcoholic liquor for off-premises



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consumption if such sales are authorized by the local liquor control commission;
and

7. **WHEREAS**, on May 5, 2020, the Governor of the State of Illinois established a five-phase plan, Restore Illinois, for the reopening of the State; and
8. **WHEREAS**, on May 29, 2020, the Governor of the State of Illinois issued Executive Orders 2020-38 and 2020-39, extending and continuing prior executive orders, and marking the state's entry into Phase 3 of the Restore Illinois plan allowing certain activities to resume in a limited fashion; and
9. **WHEREAS**, on June 2, 2020, the Governor of the State of Illinois signed House Bill 2682 into law, which allows certain retail liquor licensees to sell and deliver a mixed drink or cocktail for off-premises consumption; and
10. **WHEREAS**, hardships have been placed on businesses and residents because of the COVID-19 virus outbreak and the Governor of the State of Illinois' Executive Orders impacting businesses; and
11. **WHEREAS**, the City of Naperville is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare, including taking immediate emergency measures to protect the public welfare in response to the COVID-19 outbreak;

THEREFORE, by the powers vested in me as the Mayor of the City of Naperville, and pursuant to 65 ILCS 5/11-1-6 of the Illinois Municipal Code, 20 ILCS 3305/11 of the Illinois Emergency Management Agency Act, Sections 10-1-1 and 1-8D of the Naperville Municipal Code, the Mayor of Naperville's Declaration of a Local State of Emergency and Disaster and City of Naperville Ordinances No. 20-028 and 20-040, I hereby order the following:

SECTION 1: Recitals. The Recitals set forth above are found to be true and correct and are hereby incorporated herein and made part hereof in their entirety by reference as though fully set forth in this Section1.

SECTION 2: Package Sale of Alcoholic Liquor. Section 3-3-11:1 of the Naperville Municipal Code is amended to allow Class A – Restaurant, Class B – Restaurant and Tavern, Class J – Hotel/Motel and Tavern, and Class P - Manufacturer



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liquor license holders to allow the sale of alcoholic liquor in its original package for off-premise consumption by means of in-house delivery, third-party delivery, drive-through, curbside pick-up and carryout. Licensees remain responsible for complying with all other requirements of the Naperville Municipal Code and Illinois state law. This includes ensuring, at a safe social distance, that the alcoholic liquor is sold or delivered to an individual at least twenty-one years of age or older by verifying the ages and identities of the person(s) purchasing the packaged alcoholic liquor and/or receiving the packaged alcoholic liquor upon delivery.

SECTION 3: Sale of Mixed Drinks. Section 3-3-11:1 of the Naperville Municipal Code is amended to allow Class A – Restaurant, Class B – Restaurant and Tavern, and Class J – Hotel/Motel and Tavern liquor license holders to sell cocktails or mixed drinks, as defined in 235 ILCS 5/6-28.8(a) for off-premises consumption by means of in-house delivery, carryout and curbside delivery by an employee of the licensee. Licensee shall comply with all other requirements of 235 ILCS 5/6-28.8. Illinois Liquor Control Commission’s COVID-19 Related Action Sales and Delivery of “To Go” Mixed Drinks/Cocktails dated June 2, 2020 is appended hereto as Exhibit A and made a part hereof.

SECTION 4: Crawlors. Section 3-3-11:1 of the Naperville Municipal Code is amended to allow Class B – Restaurant and Tavern liquor license holders to fill crowler containers with craft beer pursuant to and provided the licensee complies with 235 ILCS 5/6-6.5, et. seq.

SECTION 5: Insurance Requirements. Licensees are advised that dramshop/liquor liability insurance policies may need to be updated and/or revised to undertake the actions described in this Order. By undertaking the sale of alcoholic liquor in its original package, the Licensee certifies the sufficiency of their dramshop/liquor liability insurance policy and indemnifies the City of Naperville and its employees and agents from any and all liability related to any and all claims that arise directly or indirectly from this Order and any activities undertaken by the Licensee pursuant to this Order.

SECTION 6: Sole Discretion. The Mayor of the City of Naperville, in his sole discretion, shall have the authority to approve, suspend, revoke, or make conditional any activities permitted under this Order, at any time, if deemed necessary in the interest of public health, safety or welfare.

SECTION 7: Duration. This Order shall be effective until this Order is terminated as such date as later provided in writing, by the Liquor Commissioner. All amendments,



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activities, and authorizations permitted pursuant to this Order shall cease and become void upon termination of this Order. Any action or prosecution of a violation of this Order and any Code section impacted by this Order shall continue in full force and effect.

SECTION 8: Savings clause. If any provisions of this Executive Order or its application to any person or circumstance is held invalid or unenforceable by any court of competent jurisdiction, this invalidity or unenforceability does not affect any other provisions or application of this Executive Order, which can be given effect without the invalid or unenforceable provision or application. To achieve this purpose, the provisions of the Executive Order are declared to be severable.

SECTION 9: Effective Date. This Executive Order shall be in full force and effect from 12:00 A.M. on the date listed atop page one of this Order.

APPROVED this 3rd day of June 2020.

/s/ Steve Chirico

Steve Chirico
Mayor



EXHIBIT A

Governor JB Pritzker
Cynthia Berg, Chair
Chimaobi Enyia, Executive Director

100 West Randolph Street, Suite 7-801, Chicago, IL 60601
300 West Jefferson Street, Suite 300, Springfield, IL 62702

Illinois Liquor Control Commission
COVID-19 Related Action
Sales and Delivery of "To Go" Mixed Drinks/Cocktails
June 2, 2020

Local municipalities may prohibit or further restrict the sales and delivery of "to go" mixed drinks/cocktails. Licensed retailers should contact the local liquor control commissioner prior to engaging the sales and delivery of "to go" mixed drinks/cocktails to ensure compliance with local laws.

A State of Illinois retailer's licensee (1A License holders) may sell and deliver "to go" mixed drinks/cocktails for off-premises consumption strictly under the following conditions:

1. A mixed drink/cocktail is any alcoholic liquor (beer, wine, spirits) mixed with a non-alcoholic beverage such as "fruit juice, lemonade, cream, or a carbonated beverage."
2. The mixed drink/cocktail container shall be:
 - a. New/unused and rigid. A rigid container includes glass, metal, or ceramic material. A rigid container does not include plastic, paper, or Styrofoam;
 - b. Sealed with a secure cap or lid that is tamper-proof or tamper-evident (includes wax-dip seals and heat shrink wrap covers). The lid shall not have sipping holes or holes designed for straws.
 - c. Filled and sealed by the retailer's employee;
 - d. Labeled in the following manner:
 - i. The name of the mixed drink/cocktail ingredients, type, and name of the alcohol;
 - ii. The name, license number, and address of the retail licensee that filled the container and sold the product;
 - iii. The volume of the mixed drink/cocktail in the container; and
 - iv. The date the container was sealed. The sealed container must be filled less than 7 days before the date of sale.
3. The mixed drink/cocktail **may** be transferred to the consumer in the following manner:
 - a. Inside the licensed business over the counter; or
 - b. Curbside delivery by a retailer employee; or
 - c. Home delivery by a retailer employee.
4. The mixed drink/cocktail **shall not** be transferred to the consumer:
 - a. By way of drive-through service; or
 - b. Home delivery by a third-party delivery company. **Delivery by third party delivery companies is not permitted.**
5. The retailer employee transferring the mixed drink/cocktail shall:

- a. Hold a valid server training certificate by a certified Beverage Alcohol Sellers and Servers Education and Training (BASSET) trainer;
 - b. Be 21 years of age or older;
 - c. Comply with any requirements of the Governor's executive orders declaring a disaster, including, but not limited to, wearing gloves and a mask and maintaining distancing requirements when interacting with the public.
 - d. Verify the age to whom the mixed drink/cocktail is delivered **(if the employee delivering the cocktail is not able to safely verify a person's age and level of intoxication upon delivery, the employee shall cancel the sale of alcohol and return the product to the retail license holder).**
 - e. For curbside or home deliveries, place the sealed container in the vehicle trunk or (if no trunk) other vehicle compartment not readily accessible to the passenger area.
6. Mixed drink/cocktail delivery is limited to holders of State of Illinois retailer liquor licenses ("1A Licenses").
 7. No licensee authorized by law to manufacture alcoholic liquor shall conduct mixed drink/cocktail deliveries pursuant to 235 ILCS 5/6-28.8. This prohibition includes all manufacturer class license holders (as defined in Section 5/5-1(a) of the Liquor Control Act), wine-maker's premises, brew pubs, and distilling pubs.
 8. Licensees authorized to manufacture alcoholic liquor may continue to temporarily deliver alcoholic liquor pursuant to guidance issued by the State Commission on March 19, 2020 Entitled "Illinois Liquor Control Commission, COVID-19 Related Actions, Guidance on Temporary Delivery of Alcoholic Liquor."

The authority to sell mixed drinks/cocktails (under the conditions set forth herein) is scheduled to expire on June 2, 2021