

COVID-19 Guidance 20-16-2 **April 11, 2020**

Clarifying that Restaurants and Bars May Not Reopen for Dine-In Service

This guidance is offered by KDEM for the benefit of emergency managers, health officers, law enforcement, affected businesses, and individual Kansas citizens.

Executive Order 20-16, "Establishing a statewide 'stay-home' order in conjunction with the Kansas Essential Function Framework for COVID-19 response efforts," directs Kansans stay in their homes to slow the spread of COVID-19 and allows Kansans to leave their homes only to perform an "essential activity." Executive Order 20-18, "Temporarily prohibiting mass gatherings of more than 10 people to limit the spread of COVID-19 and rescinding Executive Order 20-14," addresses when and under what circumstances restaurants or bars may exceed the mass gathering limit of no more than 10 people in an enclosed or confined space. This guidance clarifies that dine-in service at restaurants and bars is not an essential function or essential activity and therefore remains prohibited notwithstanding any language in Executive Order 20-18.

Analysis

Executive Order 20-16 only allows people to leave their homes to do an essential activity or to perform an essential function. "Prepare or serve meals for takeout or delivery" is an essential function under KEFF 400.6.b. There is no provision in EO 20-16 that would allow people to leave their homes to consume food or drink at a restaurant or bar or to allow people to leave their homes to operate dine-in service at a restaurant or bar.

Executive Order 20-18 does not displace those provisions of Executive Order 20-16. While EO 20-18 notes in Paragraph 2.s that restaurants and bars are excluded from the mass gathering prohibitions of EO 20-18, that simply means that more than 10 people can be in a restaurant at the same time (as long as they are properly socially distanced and other health directives are followed) – it does not allow them to be in that restaurant for purposes of dining in.¹

Example: If there are 5 people working at the restaurant and 6 people in a properly socially distanced line waiting to pick up carryout orders, that is permissible.

Paragraph 4 of EO 20-18 also makes clear that the provisions of EO 20-18 are to be read "in conjunction with previous executive orders responding to the COVID-19 pandemic." And the only mention of superseding provisions in a previous EO is the sentence stating that "[a]ny less restrictive provision in previous executive orders is superseded by this order." The limitations on leaving one's home in EO 20-16 for obtaining food or working at restaurants or bars are specific and more restrictive provisions that are not superseded by EO 20-18.

¹ Additionally, this provision was left in EO 20-18 just as it was in EO 20-14 (the previous mass gathering order) in order to avoid confusion and to retain this provision if appropriate after EO 20-16 is rescinded.

Restaurants and bars may not reopen for dine-in service.

DATED: April 11, 2020