



July 8, 2020

The Honorable Lourdes A. Leon Guerrero
I Maga'hågan Guåhan
Ricardo J. Bordallo Complex
513 West Marine Corps Drive
Hagatna, Guam 96910

Hafa Adai Governor Leon Guerrero,

Si Yu'os Ma'ase for your efforts to keep our community safe during this unprecedented COVID-19 crisis. The Guam Hotel and Restaurant Association (GHRA) and the Guam Women's Chamber of Commerce (GWCC) appreciate and support your actions to slow the spread of this virus while trying to safely reopen our island economy.

We are also painfully aware of the toll this crisis has taken on our island's businesses. Accordingly, the GHRA and the GWCC would like to propose for your consideration a possible executive order that may bring some economic relief to our restaurant industry during this COVID-19 pandemic.

The National Institute on Alcohol Abuse and Alcoholism and the National Restaurant Association have on their websites pdf documents that list the states currently allowing off-premises takeout alcoholic beverage sales. Forty-four states, or 88 percent of the states, do allow off-premises takeout sales of alcoholic beverages, either temporarily through executive order or by permanent statute. Examples of executive orders issued by the governors of California, New York, Vermont, Colorado, Kentucky, Illinois, Florida, several other states and the District of Columbia are linked below. These executive orders allow restaurants that have a liquor license and sell alcoholic beverages to patrons on site, to be able to sell those alcoholic beverages in an unopened or pre-packaged state to patrons as takeout or delivery items included with food orders during the course of the COVID-19 pandemic shutdown and reopening.

According to an online article from Modern Restaurant Management dated April 19, 2020, alcohol sales often have the highest profit margins for restaurants, as alcohol can have a much larger markup and a longer shelf life than food items, as well as lower labor costs than restaurant kitchens.

During this unprecedented time on our island, when our economy is struggling and many restaurants have resorted to takeout or delivery in order to stay afloat, we feel that allowing the temporary sale of pre-packaged or unopened alcoholic beverages along with food items for takeout or delivery would provide some measure of increased income for these restaurants and their staff.

Based on the executive orders issued by New York Gov. Andrew Cuomo and California Gov. Gavin Newsom, an executive order issued by your office for this purpose could outline the following parameters:

- 1) The food establishment must possess a current ABC license;
- 2) Licensees with on-sale privileges may sell those alcoholic beverages for off-sale consumption in pre-packaged containers as to which their license permits on-sale consumption (only the alcoholic beverages that were offered on the menu pre-coronavirus shutdown will be offered for off-site sales);
- 3) Any such alcoholic beverages must be packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap (e.g., no lids with sipping holes or openings for straws).
- 4) Any such alcoholic beverages may be sold only in conjunction with meals prepared for pickup or delivery, with a limit of three alcoholic beverages per every meal ordered.
- 5) Any licensee selling such beverages for off-sale consumption shall prominently post an open container warning in a manner that puts consumers on notice of limitations regarding open container laws, which will still absolutely be in effect.

We realize that an executive order allowing the temporary sale of alcoholic beverages as takeout or delivery items by restaurants may spark criticism regarding the dangers of alcohol consumption while driving or other abuses of alcoholic beverages. The GHRA and the GWCC contend that alcoholic beverages served at restaurants normally cost more than the type of alcoholic beverages one can purchase at a grocery or “mom and pop” store. Therefore, the clientele that would order such items would presumably not be doing so to imbibe at a rate that could cause excessive intoxication, especially since the executive order would specifically state that the alcoholic beverages must be ordered in conjunction with food items. Additionally, all open container and DUI laws will still be in effect. Patrons ordering takeout food and alcoholic beverages will not be able to “drink and drive,” and will still be subject to all DUI and open container laws with respect to operating or being a passenger in a vehicle.

We urge you to consider this proposal as one way to help our island’s restaurant industry stay afloat as we navigate this pandemic. We have included draft language for the pertinent portion of the executive order below for your review. This language is based on the links provided regarding various state temporary regulations guiding these temporary off-premises sales, and links to articles highlighting states’ executive orders with regard to such activity. Should you have any questions, please do not hesitate to contact us at the numbers or emails listed below.

Again, Governor Leon Guerrero, thank you for your efforts to keep our population safe during this crisis.

Sincerely,



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cc: Senator Therese Terlaje

Sources:

Various state ABC board regulations:

<https://www.abc.ca.gov/notice-of-regulatory-relief/>

<https://sla.ny.gov/Restrictions-in-Response-to-COVID-19>

<https://www.tabc.state.tx.us/coronavirus/>

<https://www.thenewstribune.com/entertainment/restaurants/tnt-diner/article241480136.html>

List of states that allow takeout alcoholic beverages to be sold:

State Alcohol-Related Laws During the COVID-19 Emergency: alcoholpolicy.niaaa.nih.gov

[https://alcoholpolicy.niaaa.nih.gov/sites/default/files/static/apis_covid-](https://alcoholpolicy.niaaa.nih.gov/sites/default/files/static/apis_covid-19_memo_05.15.20_508C.pdf)

[19_memo_05.15.20_508C.pdf](https://alcoholpolicy.niaaa.nih.gov/sites/default/files/static/apis_covid-19_memo_05.15.20_508C.pdf)

<https://restaurant.org/downloads/pdfs/business/assoc-state-covid19-resources.pdf>

Online articles about the temporary sale of alcoholic beverages for takeout or delivery by restaurants:

<https://www.abc.ca.gov/notice-of-regulatory-relief/>

https://www.upi.com/Top_News/US/2020/04/01/Alcohol-sales-up-makers-hope-to-make-relaxed-rules-permanent/2231585761058/

<https://thehill.com/business-a-lobbying/business-a-lobbying/490514-coronavirus-brings-quick-changes-to-state-alcohol>

<https://modernrestaurantmanagement.com/growing-your-restaurants-profit-margins/>

Draft Executive Order:

Executive Order No. 2020-__

WHEREAS, as a result of the COVID-19 pandemic, on March 14, 2020, I declared there to be an emergency in existence within the island of Guam pursuant to my authority under the Organic Act of Guam and Chapter 19 of the Guam Code Annotated; and

WHEREAS, the total lockdown of our island community to include establishments such as restaurants, with the exception of takeout and delivery orders, has taken a huge economic toll on our community and caused many workers to be either furloughed or forced to work reduced hours; and

WHEREAS, the sale of alcoholic beverages at restaurants and bars is known to bring the highest profits to such establishments; and

WHEREAS, if establishments providing alcoholic beverages as part of the establishment's menu prior to the government-ordered lockdown were allowed to temporarily serve those alcoholic beverages in conjunction with food orders in a takeout or delivery capacity, so long as said alcoholic beverages were unopened or pre-packaged in a secure manner, this would provide the establishment some measure of economic relief by way of increased profits and possibly allowing more workers to be brought back on staff;

Now, therefore I, Lourdes A. Leon Guerrero, I Maga'hågan Guåhan, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, to hereby order:

Notwithstanding any provisions of Guam law, a retail restaurant on-premises licensee shall be authorized for the duration of this Executive Order to sell alcoholic beverages for off-premises consumption in conjunction with a food order from said restaurant for either takeout or delivery, subject to the following conditions:

- a) The food establishment must possess a current Department of Revenue and Taxation Alcoholic Beverage Control license;
- b) Licensees with on-sale privileges may sell those alcoholic beverages for off-sale consumption in pre-packaged containers as to which their license permits on-sale consumption (i.e. only the alcoholic beverages that were offered on the establishment's menu pre-coronavirus shutdown can be offered for off-site sales);
- c) Any such alcoholic beverages must be packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap (e.g., no lids with sipping holes or openings for straws);
- d) Any such alcoholic beverages may be sold only in conjunction with meals prepared for pickup or delivery, with a limit of three alcoholic beverages per every meal ordered;
- e) Any licensee selling such beverages for off-sale consumption shall prominently post the following warning in a manner that puts consumers on notice of limitations regarding open container laws:

Alcoholic beverages that are packaged by this establishment are open containers and may not be transported in a motor vehicle except in the vehicle's trunk; or, if there is no trunk, the container may be kept in some other area of the vehicle that is not normally occupied by the driver or passengers (which does not include a utility compartment or glove compartment) (9 GCA Ch. 92 §92114). Further, such beverages may not be consumed in public or in any other area where open containers are prohibited by law.

“Post” means to prominently display on the premises, post online, or present in whatever manner is necessary to ensure that the consumer purchasing or delivery person transporting such beverages is given notice of this warning.

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