



South Carolina Law Enforcement Division

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SLED GUIDANCE ON THE ENFORCEMENT OF EXECUTIVE ORDER 2020-10

On March 17, 2020, Governor McMaster issued Executive Order 2020-10, a copy of which is attached hereto in its entirety. In this Order, the Governor found as follows:

WHEREAS, on March 16, 2020, based on updated information and recommendations from the CDC, the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)”—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President’s Coronavirus Guidelines for America recommend, inter alia, that the American people “avoid social gatherings in groups of more than 10 people” and “[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options”; and WHEREAS, COVID-19 represents an evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate action.

WHEREAS, for the aforementioned and other reasons, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and other extraordinary measures deemed necessary to cope with the existing or anticipated situation.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows: ...

Section 4. Pursuant to the aforementioned authorities and other applicable law, as well as the following specific provisions, I hereby order and direct that any and all restaurants or other food-service establishments (collectively, “Restaurants”), as set forth below, which prepare, produce, or otherwise offer or sell food or beverages of any kind for on-premises consumption in the State of South Carolina, shall suspend services for, and may not permit, on-premises or dine-in consumption, beginning Wednesday, March 18, 2020, and through Tuesday, March 31, 2020. Notwithstanding the foregoing directive and prohibition, I hereby authorize, permit, and encourage Restaurants to prepare, produce, or otherwise offer or sell food or beverages for off-premises consumption to the extent currently authorized,

permitted, or otherwise allowed by law, whether via delivery, carry-out or drive-thru distribution, curbside pick-up, or other alternate means.

For purposes of this Section, Restaurants are defined as “retail food establishment[s],” pursuant to citation 1-201.10(B)(106) of Regulation 61-25 of the South Carolina Code of Regulations, licensed or permitted by DHEC in accordance with section 44-1-140 of the South Carolina Code of Laws, as amended, or other applicable law, with the exception of “independent living food service operations” or “licensed healthcare facilities,” which are expressly excluded from the definition of Restaurants. This Section does not apply to grocery stores, pharmacies, convenience stores, gas stations, or charitable food distribution sites to the extent that such businesses, entities, or operations prepare, produce, or otherwise offer, sell, or distribute prepared food. **However, on-premises, sit-down food or beverage service within these facilities is prohibited.** This Section does not direct the closure of retail beverage venues that currently provide for the sale of alcoholic beverages for off-site consumption and does not require the closure of production operations or wholesale distribution at breweries, wineries, or distilleries. Notwithstanding the foregoing, to the extent that Restaurants are licensed or permitted by the South Carolina Department of Revenue (“DOR”) for the on-premises sale of “alcoholic liquors” or “alcoholic beverages,” as defined by section 61-6-20(1)(a) of the South Carolina Code of Laws, as amended, **DOR and the South Carolina Law Enforcement Division are authorized to administer the provisions of this Order, and enforce compliance with the same, as necessary and appropriate.** Pursuant to section 1-23-370(c) of the South Carolina Code of Laws, as amended, “[i]f the agency finds that public health, safety[,] or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.” Pursuant to sections 1-3-430 and 1-3-440 of the South Carolina Code of Laws, the undersigned is authorized to enforce the provisions of this Order, as well as Executive Order No. 2020-08, “by use of all appropriate available means,” to include, inter alia, “[o]rder[ing] any and all law enforcement officers of the State or any of its subdivisions to do whatever may be deemed necessary to maintain peace and good order” and “order[ing] or direct[ing] any State, county[,] or city official to enforce the provisions of such proclamation in the courts of the State by injunction, mandamus, or other appropriate legal action.” In addition to the foregoing authorities, noncompliance with this Section shall be further governed by the provisions of section 16-7-10(A) of the South Carolina Code of Laws. ...

This Order is effective immediately and, with the exception of **Sections 4** and **5**, **shall remain in effect for a period of thirty (30) days** unless otherwise modified, amended, or rescinded by subsequent Order.

S.C. Code Ann. § 16-7-10, which is directly referenced in this Order provides that

In any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: (1)(a) **violate a provision in the proclamation** including, but not limited to, any curfew set forth by the proclamation; (b) congregate, unless authorized or in their homes, in groups of three or more and **to refuse to disperse upon order of a law enforcement officer**; or (c) **wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer.**

A person violating the provisions of this item is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

S.C. Code Ann. § 16-7-20 provides for additional enforcement authorization for these Emergency Provisions. It states, “[a]ll law enforcement officers of the State or any of its subdivisions who may be called to duty in the area designated by the Governor in his proclamation, when engaged in the performance of duties in such area, shall have the full powers of constable at all places within such area and may pursue and arrest offenders against the laws of this State or the provisions of the proclamation.”

In addition, S.C. Code Ann. § 61-4-580(A) states that “[n]o holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder’s permit: ...

(5) permit any act, the commission of which tends to create a public nuisance **or which constitutes a crime under the laws of this State;**

(6) sell, offer for sale, or possess any beverage or alcoholic liquors the sale or possession of which is prohibited on the licensed premises under the law of this State; ...

(B) a violation of any provision of this section is a ground for the revocation or suspension of the holder’s permit.”

With regard to the practical application of this Executive Order, SLED would offer the following guidance, understanding that each law enforcement agency has the discretion to enforce the laws of the State of South Carolina as the agency deems appropriate:

In the event a law enforcement officer encounters a violation of Section 4 of Executive Order 2020-10, including those occurring at private clubs, the officer should affirmatively notify all involved in the commission of the violation and provide a direct order to immediately cease the violating conduct. After such direct notice, any continued non-compliance would be violate S.C. Code Ann. § 16-7-10 as this conduct would violate a provision of the Governor’s proclamation (Executive Order 2020-10) and would constitute a willful failure or refusal to comply with any lawful order or direction of any law enforcement officer.

If this is an establishment with a DOR issued liquor license or beer and wine permit, and there is no immediate compliance, SLED's position would be that this is a violation that would subject the licensed premises to immediate revocation or suspension of the holder's permit in accordance with S.C. Code Ann. § 61-4-580. In that event, the officer should immediately notify SLED so that appropriate administrative action can be taken. If the Department of Revenue takes an additional action, including an immediate emergency suspension, SLED will communicate such to the law enforcement officer in question so that the order can be appropriately served on any and all offenders. Any continued sales with a suspended license would constitute continued violations of South Carolina law and further violations of S.C. Code Ann. § 61-4-580.