



City of Philadelphia

LAW DEPARTMENT
One Parkway
1515 Arch Street
17th Floor
Philadelphia, PA 19102

M e m o r a n d u m

TO: Doctor Thomas Farley, Commissioner, Department of Public Health

FROM: Jo Rosenberger Altman, Senior Attorney

DATE: October 14, 2020

SUBJECT: FIFTEENTH SUPPLEMENTAL EMERGENCY REGULATION
GOVERNING THE CONTROL AND PREVENTION OF COVID-19
(INDOOR DINING ACTIVITIES)

I have reviewed the Fifteenth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19, attached hereto. I find the regulation to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these regulations to the Department of Records where they will be made available for public inspection.

Consistent with Mayor Kenney's March 11, 2020 Declaration of Extraordinary Circumstance: Suspending the Formal Regulatory Process for Regulations Concerning a Novel Coronavirus, you may promulgate the amendment effective immediately upon delivery to the Department of Records as a temporary regulation, while the remaining procedures and formalities of Section 8-407 are followed to promulgate the amendment.

A handwritten signature in black ink, appearing to be "JA", written in a cursive style.

Jo Rosenberger Altman
Senior Attorney



**FIFTEENTH SUPPLEMENTAL EMERGENCY REGULATION GOVERNING
THE CONTROL AND PREVENTION OF COVID-19
(INDOOR DINING ACTIVITIES)**

WHEREAS, the Pennsylvania Disease Control and Prevention Act of 1955, 1956, April 23, P.L. 1510, 35 P.S. § 52.1 *et seq.*, (the DCPA) and Chapter 6-200 of The Philadelphia Code authorize the Board of Health to establish lists of reportable diseases and conditions, and further provide that the Board and the Department of Public Health are responsible for implementing appropriate disease control and prevention measures in order to limit the spread of disease in an epidemic emergency; and

WHEREAS, Sections 6-205 and 6-206 of The Philadelphia Code provide that the Department of Public Health may by order forbid the congregation of persons when necessary to prevent the further spread of a communicable and quarantinable disease and may take such other measures as are necessary to prevent the spread of such disease; and

WHEREAS, on March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, or global epidemic; and

WHEREAS, on March 12, 2020, the City's Board of Health by emergency regulation added COVID-19 to the City's list of reportable and quarantinable diseases; and

WHEREAS, beginning on March 17, 2020, the Mayor and the Commissioner of Health as well as the Governor of the Commonwealth of Pennsylvania issued a series of orders ordering certain businesses to close across the City and Commonwealth, respectively, and requiring individuals to remain at home with certain exceptions.

WHEREAS, on March 26, 2020, the Board of Health approved an Emergency Regulation Governing the Control and Prevention of COVID-19 (effective March 27, 2020), which adopted the Mayor and the Health Commissioner's March 22, 2020 Prohibition on Non-Essential Business and expressly authorized the Health Commissioner to issue such additional orders as the Commissioner determines are necessary or appropriate control or prevention measures to limit the spread of COVID-19; and

WHEREAS, on April 15, 2020, the Secretary of Health of the Commonwealth of Pennsylvania issued an Order requiring comprehensive safety measures to be employed in all businesses maintaining physical operations, including standards for cleaning and disinfecting high-touch areas, establishing protocols for businesses exposed to probable or confirmed cases of

COVID-19, limiting the numbers of employees on the premises and ensuring access to protective and sanitary equipment and supplies; and

WHEREAS, on May 14, 2020, the Board of Health approved the “Fourth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Delegation of Authority),” which expressly authorized the Health Commissioner to relax the requirements and modify all emergency regulations adopted by the Board for the purpose of governing the control and prevention of COVID-19 that the Health Commissioner determines in good faith are no longer necessary or appropriate control or prevention measures; and

WHEREAS, on May 29, 2020, the Mayor and Health Commissioner issued an “Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They Are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19)”; and

WHEREAS, the Mayor and Health Commissioner, in recognition that cautious reopening with constant review of potential impacts on public health is in the best interests of Philadelphia, have issued a series of Orders gradually easing restrictions with respect to, *inter alia*, outdoor dining, use of pools, personal grooming services, retail businesses, outdoor sports, and other activities; and

WHEREAS, while daily COVID-19 case counts have fallen significantly from their peak earlier in the year, risk of community spread of COVID-19 remains, necessitating continued vigilance; and

WHEREAS, on September 8, 2020, the Mayor and Health Commissioner issued the “Third Amendment Regarding Additional Permitted Activities to the Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They Are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19), Further Changes to Modified Green Phase,” which allowed indoor dining activities to commence, subject to certain limitations, including a 25% indoor capacity limitation consistent with state requirements effective at the time; and

WHEREAS, effective September 21, 2020, the Governor and Secretary of Health via orders permitted indoor dining facilities to increase indoor capacity to 50% of state fire code maximum occupancy subject to certain requirements; and

WHEREAS, the Mayor and Health Commissioner have determined that it is appropriate to modify the occupancy limitations on indoor dining activities under the foregoing circumstances; and

WHEREAS, to that end, the Mayor and Health Commissioner issued on October 1, 2020 a “Further Amendment Regarding Indoor Dining Activities to the Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They Are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19), Further Changes to Modified Green Phase,” (the “October 1, 2020 Order”) which increased the permissible indoor dining occupancy for establishments that enroll in and comply with the

Pennsylvania Open & Certified program administered by the Pennsylvania Department of Community and Economic Development, subject to further applicable restrictions, guidance, and requirements; and

WHEREAS, the Board of Health agrees with these determinations, and recognizes that the situation involving the COVID-19 pandemic is fast moving and often requires changes to control measures both to impose additional measures and to roll back required measures when appropriate; and

WHEREAS, consistent with the foregoing, the Board hereby promulgates the below Fifteenth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Indoor Dining Activities) to adopt the October 1, 2020 Order, as a temporary regulation effective upon delivery to the Department of Records, while the remaining procedures and formalities of Section 8-407 are followed to promulgate the amendment as a permanent regulation;

NOW, THEREFORE, the Board of Health hereby adopts the following regulation, effective immediately:

1. This Emergency Regulation supplements the Philadelphia Department of Public Health’s *Regulations Governing the Control of Communicable and Non-communicable Diseases and Conditions* and its other emergency regulations governing the control and prevention of COVID-19.

2. The Board hereby fully adopts the October 1, 2020 “Third Amendment Regarding Additional Permitted Activities to the Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They Are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19), Further Changes to Modified Green Phase,” which increased the permissible indoor dining occupancy for establishments that enroll in and comply with the Pennsylvania Open & Certified program administered by the Pennsylvania Department of Community and Economic Development, and which is attached hereto as Attachment A.

3. This Emergency Regulation shall be effective upon filing with the Department of Records and remain effective until expressly superseded or repealed by the Board at the conclusion of the COVID-19 emergency.

ATTACHMENT A



CITY OF PHILADELPHIA

OFFICE OF THE MAYOR
DEPARTMENT OF PUBLIC HEALTH

FURTHER AMENDMENT REGARDING INDOOR DINING ACTIVITIES TO THE

EMERGENCY ORDER ALLOWING LIMITED REOPENING OF BUSINESSES,
ADVISING PHILADELPHIANS THAT THEY ARE SAFER AT HOME, AND
ESTABLISHING SAFETY MEASURES TO PREVENT THE SPREAD OF
2019 NOVEL CORONAVIRUS (COVID-19)

FURTHER CHANGES TO
MODIFIED GREEN PHASE

WHEREAS, on September 8, 2020, the Mayor and Health Commissioner issued the “Third Amendment Regarding Additional Permitted Activities to the Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That they are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19) – Further Changes to Modified Green Phase,” which allowed indoor dining activities to commence, subject to certain limitations (“September 8, 2020, Order Allowing Limited Indoor Dining”); and

WHEREAS, the introductory clauses from the September 8, 2020, Order Allowing Limited Indoor Dining are incorporated herein by reference; and

WHEREAS, effective September 21, 2020, the Governor amended his July 15, 2020, Order Directing Targeted Mitigation Measures, and the Secretary of Health amended her July 15, 2020, Order Directing Mitigation Measures to permit indoor dining facilities to increase capacity limitations to 50% of state fire code maximum occupancy for such establishments that enroll in and comply with the Open & Certified Pennsylvania program administered by the Pennsylvania Department of Community and Economic Development; and

WHEREAS, because of social-distancing actions and compliance with the various City Orders protecting the public health, daily COVID-19 case counts have fallen from counts in July and August; and

WHEREAS, the Mayor and Health Commissioner have determined that, it is appropriate to modify the occupancy limitations on indoor dining activities under such circumstances; and

NOW, THEREFORE, James F. Kenney, Mayor of the City of Philadelphia, and Dr. Thomas A. Farley, Health Commissioner of the City of Philadelphia, pursuant to all authority granted under the Philadelphia Home Rule Charter, The Philadelphia Code, the Regulations of the Board of Health of the City of Philadelphia and applicable state law, hereby **ORDER** as follows:

Section A. Section 1(a)(viii) of the September 8, 2020, Order Allowing Limited Indoor Dining is hereby amended as follows (~~strike through~~ indicates matter deleted; **bold** indicates new matter added):

Section 1. Operation of Indoor Dining.

Indoor on-site dining activities at restaurants, cafes, retail food service businesses, and catering halls and event spaces may operate ~~in the beginning on September 8, 2020,~~ subject to the following:

* * *

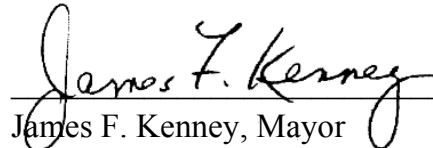
viii. Occupancy limits and spacing requirements: (1) Indoor occupancy must be limited to 25% of the stated fire code occupancy, **provided that an establishment that enrolls in and complies with the Pennsylvania Open & Certified program administered by the Pennsylvania Department of Community and Economic Development may operate at up to 50% of the stated fire code occupancy**, and (2) tables must be arranged as follows unless impermeable physical barriers are used that extend at least 6 feet from the floor separate a table in any given direction: customers sitting at a table must not be within six feet of any customer sitting at another table or customers passing by, in all directions.

* * *

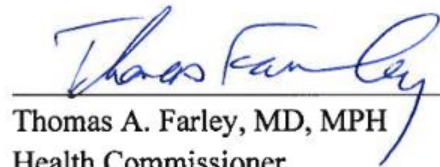
Section B. All applicable restrictions and guidance with respect to indoor on-site dining operations remain in full force and effect and are not otherwise impacted by this amendment.

Section C. This Order shall be effective October 2, 2020 and shall remain in effect until rescinded, superseded, or amended by further Order.

Date: October 1, 2020



James F. Kenney, Mayor
City of Philadelphia



Thomas A. Farley, MD, MPH
Health Commissioner
City of Philadelphia