



Arizona Restaurant Association

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May 11, 2020

The Honorable Ramón Valadez
Chairman, Pima County Board of Supervisors
130 W. Congress St., 11th Fl.
Tucson, AZ 85701

Dear Chairman Valadez,

I am writing you on behalf of the Arizona Restaurant Association (ARA) and our industry to express concerns about the recently issued Temporary Measures related to the Pima County Food Code (attached). While we applaud Pima County's efforts to try to educate consumers and operators about best practices during the COVID-19 crisis, many of the points adopted by the county are counter to science, overly burdensome, and create inequities within the Pima County restaurant industry. I respectfully ask that you review the concerns below and to amend your guidance document to align with best practices.

Item 1: Wellness/symptom checks, including temperature checks for all restaurant personnel, vendors, contractors, third party delivery service workers, etc. as they arrive on premises and before opening of a restaurant

The Governor's guidance and ARA guidance already advise restaurants to have a health screening protocol in place for employees in accordance with the CDC recommendations. The CDC, OSHA, EEOC, and AZDHS all have parameters around employee health screening and legal guidance to help protect employers. However, the inclusion of contractors, suppliers, and third-party delivery drivers would create a hotbed of liability for the restaurant and potentially illegally interfere in preexisting contracts.

While restaurants do have authority over their own employees (i.e. to require them to go home and follow CDC isolation guidance), no such authority exists for suppliers or third-party delivery drivers. Restaurants would be placed in a situation where they are gathering health information on an individual not within their employ and would be left with no options for follow-up if the contractor or driver failed a wellness check. Wellness checks for these individuals should be the responsibility of their employer. For example, a delivery driver should receive a wellness check prior to starting their shift, not at every restaurant they visit. Similar, third-party delivery drivers should be doing their own wellness checks prior to signing on. Again, that should be the responsibility of those employers and platforms to ensure their workers are healthy enough to work. Restaurants cannot be turned into healthcare experts for anyone who enters their building. This structure would create unrealistic expectations for small business operators to serve as a police force and opens the door to litigation and mounting liability with the CDC, OSHA, EEOC, and AZDHS recommendations on the subject.

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The ARA opposes requiring restaurants to perform wellness checks on anyone except their own employees.

Item 2: Cloth masks and gloves and frequent hand-washing is required for all servers and restaurant personnel (except gloves not required for servers if hands are sanitized between servings)

The FDA food code, as adopted by Pima County already has strict glove use and sanitation protocols in place for staff. Restaurants are aware of the increased sanitation needs and social distancing requirements in the COVID-19 environment. The requirement to have front of the house staff wear gloves is overly burdensome on the already stretched supply chain and counter to scientific evidence that shows consistently wearing gloves creates a more dangerous environment than regular washing of hands. In fact, a [2004 study](#) found that 50% of the time, those who were wearing gloves failed to notice punctures or tears in their gloves. A separate [CDC study](#) reported that workers are far less likely to wash their hands when wearing gloves. Proper glove use would require discarding gloves every time an object is touched, washing your hands, and donning a new pair of gloves. While this process works well in a healthcare setting, it is not translatable to the food service industry and cannot practically be implemented with our current supply chain limitations. The recommendations for restaurants should be to adopt an enhanced handwashing schedule for front of the house employees and/or designate specific employees as food runners to lower contact points. This is the exact guidance suggested by the Arizona Restaurant Association that was developed with industry and public health experts.

The ARA opposes any requirement placed on restaurants that do not have scientific backing and will in fact create a more dangerous environment.

Item 3: Any patron exhibiting symptoms of COVID-19 is prohibited from entering the facility

Again, this recommendation places restaurants in a position as serving as healthcare providers and a police force. There is no CDC guidance on checking customers, and restaurant employees are not trained clinicians and are not in a position to differentiate between the symptoms of COVID-19 or a high pollen count. While it is perfectly acceptable, for a restaurant to post a sign listing the symptoms of COVID-19 and asking customers to not enter the establishment if they are experiencing any of these, it is inappropriate to ask restaurant employees to diagnose an individual. This too would place added liability on the restaurant and open them up to litigation, especially under the ADA. No other business type (grocery stores, retailers, etc.) has this type of requirement and that is because it is an inappropriate function of that business unit.

The ARA opposes the inclusion of item 3.

Item 4: Physical and electronic signage posting at the restaurant entrance of public health advisories prohibiting individuals who are symptomatic from entering the premises.

The posting of signs informing the public to not enter if they are symptomatic is a good suggestion for operators. However, the phrasing of “physical and electronic” is duplicative. Our suggestion is to say “physical or electronic.”

Item 5: Indoor occupancy limited to 50 percent or lower

A one size fits all approach to occupancy is counterproductive and tends to hurt smaller establishments more. Building occupancy levels are not based on the space between people but rather a calculation based on square footage and fire exits. This means that two similarly sized buildings can have very different occupancy ratings. The current guidance of keeping parties separated by at least 6-feet will already have the effect of limiting the number of individuals inside the building. A 6-foot standards allows restaurants to restructure their layout to keep everyone safe without creating the unintended consequence of a competitive disadvantage based on the type of building you are in.

The ARA opposes the inclusion of an occupancy-based limitation that is not based on scientific evidence and is not applied equally. The 6-foot standard is easily enforceable and can be applied equally.

Item 6: Service by take out, reservation or call ahead seating only, including Text and/or telephone notification of patrons requesting restaurant in-person service, allowing restaurant patrons to physical distance until called for service

Restaurants have the ability to keep everyone socially distant while waiting for a table. While reservations should be encouraged, it should not be a requirement. Many restaurants are not set up to take reservations. Instead, the focus should be on employing technology solutions and utilizing outdoor space to keep any parties waiting for a table separated. For example, a party can simply put their name on the list and go wait in their car until their table is ready. Any recommendations must recognize that many restaurants are not set up to take reservations (which over 20% of reservations are never seated) but do have the ability to keep patrons from congregating.

Item 7: Physical distancing of 6 feet minimum between tables

This is in alignment with CDC guidance and should be included

Item 8: Clearly marked 6-foot spacing marks throughout the restaurant, along entrances, hallways, restrooms and any other location within a restaurant

Markings should only be used where required (e.g. checkout counters, etc.). However, many sit-down restaurants will utilize other ways to keep patrons separate (e.g. empty tables, traffic flow measures) and physical markers would be duplicative in this scenario. Instead, consider rephrasing to state “restaurants should take measures to ensure patrons or groups of patrons remain 6-feet apart when moving through the restaurant.”

Item 9: Parties no larger than 10 allowed per table

This is in line with CDC guidance and should be included

Item 10: Menus must be in a format that does not promote potential virus transmission e.g. menu boards, single use menus

This is in line with public health and ARA guidance and should be included.

Item 11: Elimination of self-service stations including salad bars, buffets, soda refill stations

While self-service stations do present a potential avenue for transmission, the overall prohibition of them does not recognize the evolving reality of restaurant industry. Many technology solutions can be implemented to ensure that certain self-service stations (e.g. napkin dispensers, refill stations, etc.) are completely touchless. Consider rephrasing to allow for the utilization of technology solutions for self-service with an increased sanitation schedule.

Item 12: Expansion of outdoor service areas to increase physical distancing standards

This is a great idea, and the Pima County Health Department should institute an accelerated way for restaurants to extend their permitted area.

Item 13: Hand sanitizers available at entrances to the facility, restrooms and in employee work areas

It would be great to have hand sanitizing station in front of every doorway. Unfortunately, the reality of the situation is hand sanitizer is an allocated item. Restaurants will have a difficult time procuring enough hand sanitizer to maintain all those stations. The supply chain will eventually be able to provide the product, but we do not have a clear understanding of when that will be. By including this requirement, you are setting restaurants up for failure. There may be some larger restaurant groups that have preexisting relationships with suppliers of hand sanitizer and may be able to continue to receive an allocation, but the smaller restaurants will suffer under this requirement.

Item 14: Sanitize customer areas after each sitting with EPA-registered disinfectant, including but not limited to: Tables, Tablecloths, Chairs/booth seats, Table-top condiments and condiment holders.

This is in line with CDC, AZDHS, and ARA guidelines and should be included.

Item 15: Post documentation cleaning logs online and at the entrance documenting cleaning of all public areas (inclusive of counter tops, door handles, waiting areas, etc.) at least every 2 to 3 hours

The posting of documentation of cleaning logs online and at the restaurant entrance is overly burdensome and adds little in the way of increased safety. Restaurants should be encouraged to post their cleaning protocols for customers to see, but the requirement that we post logs online and at the entrance is overkill. The food code already provides sufficient guidance on this and patrons will want to see restaurant staff actively cleaning. This requirement just adds unnecessary costs and administrative overhead to an industry that is already struggling. Additionally, many restaurants do not have an online presence and would be placed in a competitive disadvantage.

The ARA opposes the inclusion of this provision.

Item 16: Implement touchless payment methods

While a great idea, this too will create a competitive disadvantage for smaller restaurants and will disenfranchise a portion of our customer base. Depending on a restaurant's current POS system and credit card processor, a completely new system may be required to implement totally touchless

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payment systems. This is a cost a restaurant cannot afford right now. Additionally, touchless payments only work with certain credit cards and phone-based payment apps. This means that customers that do not have access to such credit cards or smart phones will be unable eat at restaurants.

While touchless payment systems should be encouraged, there should also be alternatives such as sanitation after each use, etc.

The ARA opposes the requirement that restaurants implement touchless payment systems without flexibility for smaller operators and our customers.

Item 17: Restaurant personnel to have a national certification in food safety and handling, as well as specific training in the prevention of COVID-19.

The food code already requires restaurant employees to have national certification in food safety and handling so the inclusion here, while fine, is also duplicative. However, the requirement for restaurant employees to have specific training in the prevention of COVID-19 is an interesting thought. Where is this training? Who provides it? What level of training? This is not something that is as easily done as it is written. The two main ways to prevent the spread of COVID-19 is physical distancing and proper sanitation. Both of which employees will already need to be trained on. The inclusion of the training requirement may cause confusion about standards and should be left out.

Sincerely,

Dan Bogert
Chief Operating Officer
Arizona Restaurant Association

Cc:

The Honorable Sharon Bronson, Vice Chair, Pima County Board of Supervisors
The Honorable Ally Miller, Member, Pima County Board of Supervisors
The Honorable Steve Christy, Member, Pima County Board of Supervisors
The Honorable Betty Villegas, Member, Pima County Board of Supervisors
Dr. Cara Christ, Director, Arizona Department of Health Services
Chuck Huckelberry, County Administrator, Pima County
Jan Leshner, Chief Deputy County Administrator, Pima County
Dr. Francisco Garcia, Deputy County Administrator, Health & Community Services, Pima County
Dr. Bob England, Director, Health Department, Pima County
Craig Sullivan, Executive Director, County Supervisors Association

Attachment: Temporary Measures Guidelines or Best Practices for Phase Reopening

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