



## **ORDER OF THE PROVINCIAL HEALTH OFFICER**

(Pursuant to Sections 30, 31, 32, and 39 (3) *Public Health Act*, S.B.C. 2008)

### ***FOOD AND LIQUOR SERVING PREMISES - MARCH 31, 2021***

The *Public Health Act* is at:

<http://www.bclaws.ca/civix/content/complete/statreg/08028/?xsl=/templates/browse.xsl>  
(excerpts enclosed)

- TO: OWNERS AND OPERATORS OF RESTAURANTS, COFFEE SHOPS, CAFES, CAFETERIAS AND FOOD PRIMARY AND LIQUOR PRIMARY ESTABLISHMENTS, INCLUDING PUBS, BARS, LOUNGES AND NIGHTCLUBS, LIQUOR MANUFACTURING FACILITIES THAT HAVE TASTING ROOMS AND PRIVATE CLUBS**
- TO: PATRONS OF RESTAURANTS, COFFEE SHOPS, CAFES, CAFETERIAS AND FOOD PRIMARY AND LIQUOR PRIMARY ESTABLISHMENTS, INCLUDING PUBS, BARS, LOUNGES AND NIGHTCLUBS, LIQUOR MANUFACTURING FACILITIES THAT HAVE TASTING ROOMS AND PRIVATE CLUBS**

#### **WHEREAS:**

- A. On March 17, 2020 I provided notice under section 52 (2) of the *Public Health Act* that the transmission of the infectious agent SARS-CoV-2, which has caused cases and outbreaks of a serious communicable disease known as COVID-19 among the population of the Province of British Columbia, constitutes a regional event as defined in section 51 of the *Public Health Act*;
- B. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
- C. The gathering of people in close contact with one another can promote the transmission of SARS-CoV-2 and increase the number of people who develop COVID-19 and become seriously ill; in particular, social mingling coupled with the consumption of alcohol which increases risky behavior, and/or the presence of loud background sound which causes people to move closer together to be heard or to speak more forcefully, is associated with significant increases in the transmission of SARS-CoV-2 and increases in the number of people who develop COVID-19 and become seriously ill;
- D. People spending time together indoors significantly increases the risk of the transmission of SARS-CoV-2 in the population, thereby increasing the number of people who develop COVID-19 and become seriously ill;

- E. Virus variants of concern which are more transmissible and have the potential to cause more serious illness, including among younger populations, are now present in Canada and the Province, and have heightened the risk to the population if people gather together.
- F. Over the past week, the number of COVID-19 infections has increased significantly raising the risk of rapid exponential growth in cases which would result in increased hospitalization, intensive care admissions and deaths, and would put increased pressure on the health care system to care for people, increased pressure on the public health system to carry out contact tracing for the purpose of preventing further transmission, and put at risk the continued operation of schools, which is critical to the physical, mental and emotional health of children and youth.
- G. For certainty, this Order is directed at restaurants, coffee shops, cafes, cafeterias and food primary and liquor primary establishments, including pubs, bars, lounges and nightclubs, manufacturing facilities that have tasting rooms and private clubs and retail establishments which sell liquor.
- H. For certainty, this Order is not directed at hospitals, licensed care facilities, assisted living residences, independent living facilities, correctional facilities, industrial camps, school and workplace cafeterias, cafeterias for residents, students, staff and faculty attending or working at educational institutions, cafeterias on ferries operated by BC Ferries or at BC Ferries' shore terminals or cafeterias, or food services in post-security areas in airports.
- I. For further certainty, this Order does not apply to events as defined in the *Gatherings and Events* Order, or to meetings or conferences held in hotels or anywhere else;
- J. You belong to the class of persons to whom this notice is addressed;
- K. I have reason to believe and do believe that
  - i. the risk of an outbreak of COVID-19 among the public constitutes a health hazard under the *Public Health Act*;
  - ii. because the risk of clusters and outbreaks arising from people gathering to eat or drink in restaurants, coffee shops, cafes, cafeterias and food primary and liquor primary establishments, including pubs, bars, lounges and nightclubs, manufacturing facilities that have tasting rooms and private clubs extends beyond the authority of one or more medical health officers, and coordinated action is needed to protect the public from contracting COVID-19, it is in the public interest for me to exercise the powers in sections 30, 31, 32 and 39 (3) of the *Public Health Act* **TO ORDER** as follows:

**THIS ORDER REPEALS AND REPLACES MY ORDER MADE ON MARCH 12, 2021 AND CONFIRMS MY ORAL ORDER OF MARCH 29, 2021.**

**Definitions in this Order:**

“**full meal service**” includes food provided by a caterer to the premises or available from a food truck located beside or on the premises, but does not include snacks, appetizers or tapas on their own;

**“nightclub”** means a liquor primary establishment at which the main activities are selling liquor and providing music to which patrons can dance;

**“patio”** means a space completely open to outdoor air on at least two sides;

**“patron”** means anyone being provided with food or liquor services in a restaurant, coffee shop, café, cafeteria or food primary or liquor primary establishment, including a pub, bar, lounge, nightclub, liquor manufacturing facility with a tasting room or private club, or who purchases liquor at a retail establishment, but does not include staff;

**“physical barrier”** means a barrier which is designed, installed and maintained in accordance with WorkSafeBC guidelines;

**“premises”** includes both inside and outside areas.

**A. OWNERS AND OPERATORS OF LIQUOR PRIMARIES OPERATING AS NIGHTCLUBS**

1. No person may operate a premises as a nightclub.
2. No person may be a patron at a premises operating as a nightclub.

**B. OWNERS AND OPERATORS OF RESTAURANTS, COFFEE SHOPS, CAFES, CAFETERIAS AND FOOD PRIMARY AND LIQUOR PRIMARY ESTABLISHMENTS, INCLUDING PUBS, BARS, LOUNGES, LIQUOR MANUFACTURING FACILITIES THAT HAVE TASTING ROOMS AND PRIVATE CLUBS (HEREINAFTER REFERRED TO AS “PREMISES”)**

In this Part, for the purposes of section 32,

**“accommodated safely”** means that in the part of the place to which the public has access, there are five square metres of unencumbered space available for each person present, including patrons and staff members.

1. No person may provide food or drink services inside.
2. A person may provide food or drink takeout or delivery services, subject to the following conditions:
  - a. A patron may only be inside the premises for the purposes of ordering, purchasing or collecting food or drink for takeout or delivery.
  - b. A patron and staff member must be able to maintain a distance of two metres from one another, unless there is a physical barrier between them which blocks the transmission of droplets.
  - c. A patron must maintain a distance of two metres from other patrons and from staff members, unless there is a physical barrier between them which blocks the transmission of droplets.

3. Premises which are licensed to serve liquor, and which do not have full meal service, must be closed, if they do not have a patio or other outside area in which to serve patrons.
4. No person may permit a place to be used for, operate or be a patron at a place to which section 3 applies.
5. A person may provide food or drink services outside, including on a patio, subject to the conditions which follow.
6. Patrons must be able to maintain a distance of two metres from other patrons, unless they are separated by physical barriers.
7. Patrons must be assigned to a table and shown to their seats.
8. Patrons must stay in the seat to which they are assigned, or at which they seat themselves, and must not move from table to table.
9. Liquor may only be served to patrons who are seated.
10. A patron must remain seated, except to use a self-serve food or drink station, use a self-serve lottery ticket dispenser, pay at a pay station, use washroom facilities or when leaving the premises. A patron may use washroom facilities inside the premises and may walk through a premises in order to reach an outside place or a patio.
11. There must be a sufficient number of staff at premises, to ensure that patrons remain seated.
12. There must be a sufficient number of staff at premises, to ensure that patrons do not congregate in areas of the premises.
13. Patrons who are not in the same party must be seated two metres apart from one another, unless they are separated by a physical barrier.
14. There must be no more than six patrons seated at a table, even if they belong to the same party.
15. There must be a distance of two metres between the backs of the seats of patrons seated at adjacent tables, even if members of the same party are seated at adjacent tables, unless the adjacent tables are separated by physical barriers.
16. If there is a self-serve food or drink station,
  - a. hand washing facilities or alcohol-based sanitizers must be within easy reach of the station;
  - b. signs reminding patrons to wash or sanitize their hands before touching self-serve food, drink or other items, and to maintain a two metre distance from other patrons, must be posted at the self-serve station; and
  - c. high touch surfaces at the station, and utensils that are used for self-serve, must be frequently cleaned and sanitized.

17. The operator must determine the maximum number of patrons who can be accommodated outside, taking into consideration the requirements set out in the sections above, and must document this maximum number in the safety plan.
18. The operator must monitor the number of patrons present and ensure that the number present does not exceed the maximum number in the safety plan.
19. The operator must take steps to prevent the congregation of patrons waiting to be seated, such as by taking reservations and requesting patrons to remain in their cars or elsewhere until notified by telephone or an App that there is seating available for them.
20. The operator must assess the premises for places where patrons may congregate and take steps to avoid congregation, including outside washroom facilities.
21. The operator must use physical devices, install markers or use other methods to guide and assist patrons in maintaining a distance of two metres from other patrons if they are not seated.
22. The operator must monitor the premises and remind patrons to maintain a distance of two metres from one another.
23. If there are physical barriers between tables, the tops and bottoms of the physical barriers must be positioned so that the physical barriers block the transmission of droplets produced by breathing, talking, coughing or sneezing between patrons who are seated at adjacent tables.
24. Dance floors must be closed with physical barriers or occupied with tables.
25. Patrons must not sing, engage in Karaoke or dance on the premises.
26. Jam and open mic sessions must not be held on the premises.
27. Background music, including live solo and live group or band music, and any other background sounds, including from televisions and electronic sound producing devices, must not be amplified and must be no louder than the volume of normal conversation.
28. If background music is provided by a live performer or performers, or a disc jockey, a physical barrier must be installed between the performers or disc jockey and the patrons which blocks the transmission of droplets produced by the performers or the disc jockey, or there must be at least a three metre separation between performers and patrons.
29. If liquor is served
  - a. the obligations under sections 61 (2) of the *Liquor Control and Licensing Act* must be complied with,
  - b. the directives and guidance provided by the Liquor and Cannabis Regulation Branch to ensure that patrons do not over order, overconsume or binge drink must be followed, and
  - c. the authority under section 61 (3) of the *Liquor Control and Licensing Act* must be exercised when appropriate. (see [Liquor and Cannabis Regulation Branch website](#))

30. No person may sell liquor between 10:00 pm and 9:00 am on the following day.
31. No person, including a patron, owner, operator or staff member may consume liquor on the premises after 11:00 pm.
32. A tasting room with a liquor manufacturer licence may have patrons inside for the purpose of tasting, subject to the following conditions:
  - a. the operator must calculate the maximum number of patrons who can be accommodated safely inside and must document this number in the COVID-19 safety plan;
  - b. the operator must ensure that the number of patrons present does not exceed the maximum number who can be accommodated safely, as documented in the COVID-19 safety plan;
  - c. no indoor seating is permitted, except on the request of or for a patron who is unable to stand while tasting;
  - d. patrons in one party must not congregate with patrons in another party;
  - e. a patron and staff member must be able to maintain a distance of two metres from one another, unless there is a physical barrier between them which blocks the transmission of droplets.
  - f. a patron must maintain a distance of two metres from other patrons who are not in the same party and from staff members, unless there is a physical barrier between them which blocks the transmission of droplets.
  - g. hand sanitation supplies are provided and readily available to patrons,
33. Sections 1, 7, 8, 9, and 11 do not apply to a tasting room with a liquor manufacturer licence.
34. The *Gatherings and Events* Order applies to events on premises to which this Order applies.
35. For certainty, anything that is promoted for the purpose of encouraging patrons to attend at a premises to which this Order applies, such as a movie, film, televised sport or other televised event, a live or virtual musical, theatrical or dance performance, a live solo, group or band musical performance, a disc jockey performance or strip dancing, constitutes an event for the purposes of the application of the *Gathering and Events* Order.
36. No person may engage in, permit or promote any of the following with respect to or on premises to which this Order applies:
  - a. an event that is prohibited under the *Gathering and Events* Order;
  - b. the sale of advance tickets;
  - c. an entrance cover charge;

- d. door prizes or give aways;
  - e. raffles;
  - f. 50/50 draws;
  - g. decorations which are associated with an event;
  - h. staff in costumes which are associated with an event;
  - i. promotion of the sale of food or drink associated with an event.
37. No person may permit a place to be used for or may operate premises which provide food or drink services, unless the conditions in this Part are met.
38. No person may be a patron at premises which provides food or drink services, unless the conditions in this Part are met.

### **C. PATRONS**

1. A patron must not be present in premises operating as a nightclub, in which an event is taking place contrary to the provisions of the *Gatherings and Events Order*, or which is required to be closed under Part B.
2. A patron must comply with the distancing and other requirements in Part B, and with guidance and directions from owners, operators or staff members designed to avoid the congregation of patrons, and must not enter or remain in a place if advised by an operator or staff member that there is not sufficient room inside to accommodate them

### **D. RELATED MEDICAL HEALTH OFFICERS ORDERS**

Recognizing that the risk differs in different regions of the province, and that medical health officers are in the best position to assess local circumstances and to determine whether additional or more restrictive steps need to be taken to reduce the risk of the transmission of COVID-19,

#### **I FURTHER ORDER:**

1. A medical health officer may issue an order further to this Order for the purpose of having the provisions of the order incorporated into this Order. Such an order may add further prohibitions, or impose more restrictive limitations or conditions in the whole or part of the geographic area of the province for which the medical health officer is designated and, subject to section 2, the provisions of the order are incorporated into this Order when posted on my website. For certainty, a contravention of an order of a medical health officer issued further to this Order and posted on my website is a contravention of this Order.
2. While it is in force, a provision in an order made by a medical health officer further to this Order and posted on my website, which adds further prohibitions or imposes more restrictive limitations or requirements than this Order, applies in the whole or part of the geographic area of

the province for which the medical health officer is designated, despite the provisions of this Order.

This Order expires at midnight (24:00 hours) on April 19, 2021.

You are required under section 42 of the *Public Health Act* to comply with this Order. Failure to comply with this Order is an offence under section 99 (1) (k) of the *Public Health Act*.

Under section 43 of the *Public Health Act*, you may request me to reconsider this Order if you:

1. Have additional relevant information that was not reasonably available to me when this Order was issued,
2. Have a proposal that was not presented to me when this Order was issued but, if implemented, would
  - (a) meet the objective of the order, and
  - (b) be suitable as the basis of a written agreement under section 38 [may make written agreements]
3. Require more time to comply with the order.

Under section 43 (6) an order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.

If you fail to comply with this Order, I have the authority to take enforcement action against you under Part 4, Division 6 of the *Public Health Act*.

You may contact me at:

Dr. Bonnie Henry, Provincial Health Officer  
 4<sup>th</sup> Floor, 1515 Blanshard Street  
 P O Box 9648 STN PROV GOVT, Victoria BC V8W 9P4  
 Fax: (250) 952-1570  
 Email: [ProvHlthOffice@gov.bc.ca](mailto:ProvHlthOffice@gov.bc.ca)

DATED THIS: 31<sup>st</sup> day of March 2021

SIGNED:   
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 Bonnie Henry  
 MD, MPH, FRCPC  
 Provincial Health Officer

Delivery By: Posting on the BC Government and the BC Centre for Disease Control websites.

Enclosure: Excerpts of the *Public Health Act* and the *Liquor Control and Licensing Act*.

**ENCLOSURE****Excerpts of the *Public Health Act* [SBC 2008] c. 28*****Definitions***

**1** In this Act:

**"health hazard"** means

- (a) a condition, a thing or an activity that
  - (i) endangers, or is likely to endanger, public health, or
  - (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or
- (b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that
  - (i) is associated with injury or illness, or
  - (ii) fails to meet a prescribed standard in relation to health, injury or illness;

**When orders respecting health hazards and contraventions may be made**

**30** (1) A health officer may issue an order under this Division only if the health officer reasonably believes that

- (a) a health hazard exists,
- (b) a condition, a thing or an activity presents a significant risk of causing a health hazard,
- (c) a person has contravened a provision of the Act or a regulation made under it, or
- (d) a person has contravened a term or condition of a licence or permit held by the person under this Act.

(2) For greater certainty, subsection (1) (a) to (c) applies even if the person subject to the order is complying with all terms and conditions of a licence, a permit, an approval or another authorization issued under this or any other enactment.

**General powers respecting health hazards and contraventions**

**31** (1) If the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, a health officer may order a person to do anything that the health officer reasonably believes is necessary for any of the following purposes:

- (a) to determine whether a health hazard exists;
- (b) to prevent or stop a health hazard, or mitigate the harm or prevent further harm from a health hazard;
- (c) to bring the person into compliance with the Act or a regulation made under it;

(d) to bring the person into compliance with a term or condition of a licence or permit held by that person under this Act.

(2) A health officer may issue an order under subsection (1) to any of the following persons:

(a) a person whose action or omission

(i) is causing or has caused a health hazard, or

(ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;

(b) a person who has custody or control of a thing, or control of a condition, that

(i) is a health hazard or is causing or has caused a health hazard, or

(ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;

(c) the owner or occupier of a place where

(i) a health hazard is located, or

(ii) an activity is occurring that is not in compliance with the Act or a regulation made under it, or a term or condition of the licence or permit of the person doing the activity.

### **Specific powers respecting health hazards and contraventions**

**32** (1) An order may be made under this section only

(a) if the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, and

(b) for the purposes set out in section 31 (1) [*general powers respecting health hazards and contraventions*].

(2) Without limiting section 31, a health officer may order a person to do one or more of the following:

(a) have a thing examined, disinfected, decontaminated, altered or destroyed, including

(i) by a specified person, or under the supervision or instructions of a specified person,

(ii) moving the thing to a specified place, and

(iii) taking samples of the thing, or permitting samples of the thing to be taken;

- (b) in respect of a place,
  - (i) leave the place,
  - (ii) not enter the place,
  - (iii) do specific work, including removing or altering things found in the place, and altering or locking the place to restrict or prevent entry to the place,
  - (iv) neither deal with a thing in or on the place nor dispose of a thing from the place, or deal with or dispose of the thing only in accordance with a specified procedure, and
  - (v) if the person has control of the place, assist in evacuating the place or examining persons found in the place, or taking preventive measures in respect of the place or persons found in the place;
- (c) stop operating, or not operate, a thing;
- (d) keep a thing in a specified place or in accordance with a specified procedure;
- (e) prevent persons from accessing a thing;
- (f) not dispose of, alter or destroy a thing, or dispose of, alter or destroy a thing only in accordance with a specified procedure;
- (g) provide to the health officer or a specified person information, records, samples or other matters relevant to a thing's possible infection with an infectious agent or contamination with a hazardous agent, including information respecting persons who may have been exposed to an infectious agent or hazardous agent by the thing;
- (h) wear a type of clothing or personal protective equipment, or change, remove or alter clothing or personal protective equipment, to protect the health and safety of persons;
- (i) use a type of equipment or implement a process, or remove equipment or alter equipment or processes, to protect the health and safety of persons;
- (j) provide evidence of complying with the order, including
  - (i) getting a certificate of compliance from a medical practitioner, nurse practitioner or specified person, and
  - (ii) providing to a health officer any relevant record;
- (k) take a prescribed action.

(3) If a health officer orders a thing to be destroyed, the health officer must give the person having custody or control of the thing reasonable time to request reconsideration and review of the order under sections 43 and 44 unless

(a) the person consents in writing to the destruction of the thing, or

(b) Part 5 [*Emergency Powers*] applies.

### **May make written agreements**

**38** (1) If the health officer reasonably believes that it would be sufficient for the protection of public health and, if applicable, would bring a person into compliance with this Act or the regulations made under it, or a term or condition of a licence or permit held by the person under this Act, a health officer may do one or both of the following:

(a) instead of making an order under Division 1, 3 or 4, enter into a written agreement with a person, under which the person agrees to do one or more things;

(b) order a person to do one or more things that a person has agreed under paragraph (a) to do, regardless of whether those things could otherwise have been the subject of an order under Division 1, 3 or 4.

(2) If, under the terms of an agreement under subsection (1), a health officer conducts one or more inspections, the health officer may use information resulting from the inspection as the basis of an order under this Act, but must not use the information as the basis on which to

(a) levy an administrative penalty under this Act, or

(b) charge a person with an offence under this Act.

### **Contents of orders**

**39** (3) An order may be made in respect of a class of persons.

### **Duty to comply with orders**

**42** (1) A person named or described in an order made under this Part must comply with the order.

(2) Subsection (1) applies regardless of whether the person leaves the geographic area for which the health officer who made the order is designated.

### **Reconsideration of orders**

**43** (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person

(a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,

(b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would

(i) meet the objective of the order, and

(ii) be suitable as the basis of a written agreement under section 38 [*may make written agreements*], or

(c) requires more time to comply with the order.

(2) A request for reconsideration must be made in the form required by the health officer.

(3) After considering a request for reconsideration, a health officer may do one or more of the following:

(a) reject the request on the basis that the information submitted in support of the request

(i) is not relevant, or

(ii) was reasonably available at the time the order was issued;

(b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;

(c) confirm, rescind or vary the order.

(4) A health officer must provide written reasons for a decision to reject the request under subsection (3) (a) or to confirm or vary the order under subsection (3) (c).

(5) Following a decision made under subsection (3) (a) or (c), no further request for reconsideration may be made.

(6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.

(7) For the purposes of this section,

(a) if an order is made that affects a class of persons, a request for reconsideration may be made by one person on behalf of the class, and

(b) if multiple orders are made that affect a class of persons, or address related matters or issues, a health officer may reconsider the orders separately or together.

(8) If a health officer is unable or unavailable to reconsider an order he or she made, a similarly designated health officer may act under this section in respect of the order as if the similarly designated health officer were reconsidering an order that he or she made.

### **Review of orders**

**44** (1) A person affected by an order may request a review of the order under this section only after a reconsideration has been made under section 43 [*reconsideration of orders*].

(2) A request for a review may be made,

(a) in the case of an order made by a medical health officer, to the provincial health officer, or

(b) in the case of an order made by an environmental health officer, to a medical health officer having authority in the geographic area for which the environmental health officer is designated.

(3) If a review is requested, the review is to be based on the record.

(4) If a review is requested, the reviewer may do one or more of the following:

(a) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;

(b) confirm, vary or rescind the order;

(c) refer the matter back to the person who made the order, with or without directions.

(5) A reviewer must provide written reasons for an action taken under subsection (4) (b) or (c), and a person may not request further review of an order.

### **Offences**

**99** (1) A person who contravenes any of the following provisions commits an offence:

...

(k) section 42 [*failure to comply with an order of a health officer*], except in respect of an order made under section 29 (2) (e) to (g) [*orders respecting examinations, diagnostic examinations or preventive measures*];

**Excerpts of the *Liquor Control and Licensing Act* [SBC 2015] Chapter 19**

**Conduct at event site or in establishment, service area or liquor store**

- 61** (2) A licensee or permittee or an employee of either must not
- (a) sell or serve liquor to an intoxicated person or a person showing signs of intoxication, or
  - (b) allow
    - (i) a person in a service area to become intoxicated,
    - (ii) an intoxicated person to enter or remain in a service area,
- (3) A licensee or permittee or an employee of either may,
- (a) if he or she believes a person is intoxicated,
    - (i) request that the person leave a service area, or
    - (ii) forbid the person from entering a service area,