

KNOX COUNTY BOARD OF HEALTH

Regulation No. 2020-5

Curfew Regarding the Sale or Consumption of Alcoholic Beverages in Certain Establishments

WHEREAS, on March 11, 2020, the novel Coronavirus 2019 Disease (COVID-19) was declared a global pandemic by the World Health Organization; and

WHEREAS, as of July 6, 2020, a group of 241 scientists published an open letter in the journal *Clinical Infectious Diseases* concerning COVID-19, saying, "There is significant potential for inhalation exposure to viruses in microscopic respiratory droplets (microdroplets) at short to medium distances (up to several meters, or room scale);" and

WHEREAS, as of September 13, 2020, Knox County was defined as a county in the Red Zone by the White House Coronavirus Task Force, meeting the requirements of "counties during the last week reported both new cases of 10 to 100 per 100,000 population, and a diagnostic test positivity result between 5% and 10%;" and

WHEREAS, as of September 16, 2020, the Tennessee Department of Health determined that Knox County is above the "threshold for acceptable disease transmission within the community" using the metric of the average rate of new COVID-19 cases per 100,000 county residents over the last 14 days; and

WHEREAS, as of July 27, 2020, the Coordinator of the White House Coronavirus Task Force, Dr. Deborah Birx, stated, "I can tell you in every red state, and Tennessee is now in the Red State category, it flipped from being in the Yellow State category, what does that mean? They had under 10% test positivity, they're now over 10% test positivity and the number one bullet is mandate masks, close your bars, enhance social distancing, tell every Tennessean to not socially gather with more than 10 people, to not socially gather even with your relatives if they've been elsewhere because of the chance of spreading this virus;" and

WHEREAS, pursuant to Knox County Code § 38-33(a), the Knox County Board of Health has all of the powers and duties as required and provided for by state law; and

WHEREAS, pursuant to T.C.A. § 68-2-601(f), the powers and duties of the Knox County Board of Health include adopting rules and regulations as may be necessary or appropriate to protect the general health and safety of the citizens of Knox County and governing the policies of the Knox County Health Department; and

WHEREAS, pursuant to T.C.A. § 68-2-603(b) and Knox County Code § 38-32(f), the Knox County Health Director, as head of the Knox County Health Department, shall act in concert with, and meet all applicable policies established by, the Knox County Board of Health; and

WHEREAS, pursuant to T.C.A. § 68-2-609, the Knox County Health Officer is empowered to order (1) the quarantine of any place or person, if the county health officer finds that the quarantine is necessary to protect the public from an epidemic, (2) the closure of any public establishment, facility or building if the county health officer finds unsanitary conditions of such a nature and extent to significantly threaten the public health, or (3) the closure of any public establishment, facility or building, if the county health officer is otherwise authorized by law to take that action; and

WHEREAS, by Opinion No. 20-07 issued on April 27, 2020, the Attorney General of Tennessee confirmed that “local health officers confronted with an epidemic [have] the power—*indeed, the obligation*—to ‘[e]stablish appropriate control measures which may include examination, treatment, isolation, quarantine, exclusion, disinfection, immunization, disease surveillance, closure of establishment, education, and other measures considered appropriate by medical experts for the protection of the public’s health’” (quoting Tenn. Comp. R. & Regs. 1200-14-01-.15) (emphasis added); and

WHEREAS, pursuant to Executive Order No. 38 issued by the Governor of Tennessee on May 22, 2020, the Knox County Health Department has the authority to issue additional orders or measures related to the containment or management of the spread of COVID-19, which may permit to a greater degree, or restrict to a greater degree, the opening, closure, or operation of businesses, organizations, or venues or the gathering of persons in Knox County, except with respect to certain subjects; and

WHEREAS, as of September 16, 2020, the foregoing authority remains in effect pursuant to Executive Order No. 59 issued by the Governor of Tennessee on August 28, 2020; and

WHEREAS, the Knox County Board of Health finds it necessary and appropriate to limit the probability of COVID-19 spread in droplet and airborne transmission in order to protect the general health and safety of the citizens of Knox County during the COVID-19 pandemic; and

WHEREAS, the Knox County Board of Health finds that the consumption of alcoholic beverages over time leads to the removal of social inhibitions, which can result in lessened social distancing and a failure to wear face coverings, which in turn can lead to an increased chance to transmit COVID-19; and

WHEREAS, the Knox County Board of Health enacted Regulation No. 2020-3 on July 30, 2020, which recited in part “all persons who own, manage, operate, or otherwise control any bar in Knox County shall suspend offering food and drink, including both alcoholic and non-alcoholic beverages, for any on-premises consumption;” and

WHEREAS, the Knox County Board of Health, enacted Regulation No. 2020-3, defined a “bar” to mean “any establishment permitted to offer alcoholic beverages for on- or off-premises consumption and which generates 50% or more of its revenue through the sale of such alcoholic beverages;” and

WHEREAS, the Knox County Board of Health now finds that certain establishments which permit the on-site consumption of alcohol do not sell alcoholic beverages or beer as defined under state law; and

WHEREAS, the Knox County Board of Health enacted Regulation No. 2020-4, which replaced Regulation No. 2020-3, and limited the hours in which “bars” could sell alcoholic beverages, but did not otherwise alter which establishments were regulated; and

WHEREAS, the Knox County Board of Health finds that law enforcement faces difficulty in enforcing previous Regulations because they cannot identify how establishments derive their income; and

WHEREAS, the Knox County Board of Health desires to regulate establishments that permit the on-site consumption of alcoholic beverages and beer in approximately the same manner as it does those entities which sell alcoholic beverages and beer for on-site consumption:

NOW, THEREFORE, the Knox County Board of Health, by virtue of the power and authority vested in it, to protect the general health and safety of the citizens of Knox County, does hereby declare that a continuing public health emergency exists in Knox County, Tennessee, due to the COVID-19 pandemic, and adopts the following regulation:

1. This Regulation should be cited as the “Curfew Regarding the Sale or Consumption of Alcoholic Beverages in Certain Establishments Regulation.”
2. This Regulation shall take effect at 12:01 a.m. on September 18, 2020, and shall remain in effect until amended, superseded, or rescinded by the Knox County Board of Health.
3. The words, terms, and phrases used in this Regulation shall have the same meanings ascribed to them in Paragraph 3 of the COVID-19 Face Covering Regulation, Knox County Board of Health Regulation No. 2020-1 (adopted July 1, 2020). In addition, the following words are defined:
 - a. The phrase “alcoholic beverage” shall have the same definition as in Tenn. Code Ann. §57-4-102(1).
 - b. The word “beer” shall have the same definition as in Tenn. Code Ann. §57-5-101(b).
 - c. The word “Establishment” means any restaurant, club, or any other business of any kind.
4. This Regulation shall apply to the following “Establishments”, except as provided in Paragraph 5 of this Regulation. All persons who own, manage, operate, or otherwise control any of these following “Establishments” in Knox County shall close, at 11:00 p.m. daily.
 - a. Any restaurant, club, or any other business of any kind, which offers for sale “alcoholic beverage” or “beer” for on-premises consumption.
 - b. Any restaurant, club, or any other business of any kind, which allows any customers, patrons, or invitees to bring in, possess, or consume “alcoholic beverages” or “beer” inside or on the premises which were not sold by the establishment.

5. Paragraph 4 of this Regulation shall not apply to any of the following:
 - a. Nursing homes, retirement homes, long-term care facilities, or assisted-living facilities;
 - b. Places of worship; and
 - c. Places owned, leased, or managed by, or are on the property of, the government of the United States or the government of the State of Tennessee.
6. This Regulation shall not be construed to prohibit offering food and drink for off-premises consumption through such means as in-house delivery, third-party delivery, and walk-up, drive-up, drive-through, curbside pick-up, and carry-out services, provided that such deliveries and services are offered consistent with applicable law.
7. A person who owns, manages, operates, or otherwise controls any "establishment" in Knox County, and who knowingly fails to comply with any provision of this Regulation, may be subject to such orders and/or penalties as are provided by law, including, but not limited to, the penalty provided in T.C.A. § 68-2-602 and/or the revocation, suspension, or imposition of conditions on licenses or permits as provided in T.C.A. § 68-2-608 and/or T.C.A. § 68-2-609.
8. The Knox County Health Director may issue orders, request injunctions, and seek any other remedy available at law or equity to require compliance with this Regulation as provided in T.C.A. § 68-2-608 and, as Knox County Health Officer, as provided in T.C.A. § 68-2-609.
9. The Knox County Board of Health requests and authorizes all officers, including constitutional and charter officers, boards, commissions, departments, offices, and agencies of Knox County government, the City of Knoxville, and the Town of Farragut to cooperate with, aid, consult with, advise, and coordinate with the Knox County Board of Health, the Knox County Health Director, and the Knox County Health Department in furthering the intent of, enforcing, explaining, and clarifying this Regulation.
10. Consistent with Executive Order No. 38 issued by the Governor of Tennessee on May 22, 2020 ("Order"), as most recently extended by Executive Order No. 59 issued by the Governor of Tennessee on August 28, 2020, this Regulation shall not be construed as regulating the provision of medical, dental, or oral procedures; places of worship; or nursing homes, retirement homes, long-term care facilities, or assisted-living facilities. This Regulation does not alter, limit, or abridge the Order's requirement that persons who test positive for COVID-19 or who are suffering from COVID-19 symptoms shall stay at home, except to receive medical care, until satisfying the conditions set forth by the Centers for Disease Control and Prevention (CDC) for discontinuing home isolation. This Regulation does not alter, limit, or abridge the Order's requirement that an employer, through its supervisors or appropriate management personnel, shall not require or allow an employee who the employer knows has tested positive for COVID-19 to report to work until that employee has satisfied the conditions for discontinuing home isolation under CDC guidelines.


11. The intent of this Regulation is to suspend the on-premises consumption of food and drink in “establishments” within Knox County after 11:00 p.m. daily in order to protect the general health and safety of the citizens of Knox County during the COVID-19 pandemic. This Regulation shall be liberally construed so as to further this intent, and all provisions of this Regulation shall be interpreted to effectuate this intent.
12. If any provision of this Regulation or its application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Regulation which can be given effect without the invalid provision or application, and to that end the provisions of this Regulation are declared to be severable.
13. This regulation replaces Regulation 2020-4, which is hereby abrogated by this Regulation 2020-5 upon its adoption.
14. This regulation shall remain in effect until 12:01 AM October 1, 2020, and may be extended by the Board of Health if indicated by the current data.

ADOPTED this 16th day of September, 2020.

KNOX COUNTY BOARD OF HEALTH

 9/17/2020
Jack Gotcher, DMD, PhD/Chair Date

ATTEST:


9/17/2020
Martha Buchanan M.D./Secretary Date