MEMORANDUM

Date: May 12, 2020

To: The Honorable Chairman and Members
   Pima County Board of Supervisors
From: C.H. Huckelberry
   County Administrator

Re: May 11, 2020 Letter from the Arizona Restaurant Association Regarding Pima County’s Temporary Measures Developed by the Pima County Back to Business Taskforce and Operators of Restaurants in Pima County

The attached concerns of the Arizona Restaurant Association (ARA) requires a response. I greatly disagree that the “points adopted by the county are counter to science.” We believe it is quite the opposite, they are directly in line with the best public health guidance provided by public health professionals and physicians. I will attempt to respond to each of the concerns of the ARA outlined in their letter.

1. **Wellness and Symptom Checks** – Apparently, their concern is over wellness checks associated with those other than restaurant personnel such as vendors, contractors and third-party deliverers. If we could be assured that each contractor, supplier and third-party delivery service provided wellness checks, this requirement could be eliminated at the restaurant level. However, our experience has been that at wellness check we have been performing over the last three weeks, we have now conducted over 25,000 wellness checks. The only elevated temperatures above 100.4F have come from outside public individuals or in the case of one individual who tested positive for COVID-19 was a visitor to a specific employee within a County building. The comment of the ARA assumes that vendors, contractors or third parties will not be cooperative. Our experience has been the opposite. Most understand the fact that this needs to be a cooperative effort among all parties.

   Hence, I do not share the same concern as the ARA in Item 1.

2. **Cloth Masks and Gloves** – The ARA cites studies and documents that are nearly 16 years out of date and/or published prior to the COVID-19 public health emergency. In our requirement, we do indicate there is an exception for gloves not being required if servers sanitize or wash their hands between servings. There is nothing in the guidance that would prevent the restaurant from designating specific employees as food runners to lower contact points, provided those same individuals wash and sanitize their hands between deliveries.

   The ARA indicates that these requirements do not have “scientific backing.” In fact, to not require both cloth masks and gloves or frequent hand washing is not an acceptable public health control measure to prevent the spread of COVID-19.
3. **Patrons Exhibiting Symptoms of COVID-19** – We do not place the restaurant in the position of being a police force. It is simply a standard cautionary notification that clearly indicates, at the front of a restaurant, that any person exhibiting COVID-19 symptoms cannot enter a facility. This is a typical warning similar to warning signs on highways where a vehicle approaches a sharp curve and there is a warning sign placed as an advanced notice and warning to the public. These signs, if posted, could provide some level of liability protection. It allows operations to deny service to a patron if they have a good faith belief that the individual is ill.

4. **Physical and Electronic Signage Posting at Restaurant Entrance of Public Health Advisories and/or web signage.** – If the suggestion is to place the same information on the restaurant’s webpage or other means of electronic communication, we have agreed and included that in our Item 4.

5. **Indoor occupancy limited to 50 percent or lower** – This is a measure that simply implies or requires that social distancing will be achieved within the confines of a restaurant where food service had previously occurred. It is likely the six foot standard will result in occupancy that may be less than 50 percent.

6. **Service by Take out, Reservation or Call Ahead Seating Only** – This is an important measure to keep patrons from congregating at the entrance of a restaurant. To simply tell patrons to physically distance at an entrance is problematic, particularly when the entrance may have limited space available that would preclude physical distancing.

7. **Physical Distancing of 6 feet Minimum between Tables** – It is appropriate that this standard be in place. I notice that the ARA indicated and complied with “CDC guidance.” Please note that is dated guidance and the CDC has not released what would be the latest guidance to anyone.

8. **Clearly Marked 6-foot Space Throughout Restaurants** – This item has been modified to require to be in those locations where it is likely patrons would que and potentially violate spacing marks. This would be applicable most likely to hallways leading to serving areas and/or restrooms.

9. **Parties no Larger than 10** – No Comment

10. **Menus in a format that does not promote potential virus transmission** – No Comment

11. **Elimination of Self-service stations including salad bars and buffets, and soda refill stations** – There are no technical solutions regarding the elimination of self-service stations, including salad bars to minimize the spread of COVID-19.

12. **Expansion of Outdoor Service Areas to Increase Physical Distancing Standards** – Please note we have not limited the combined outdoor and indoor service area to be
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... at or less the previously occupancy limit. If possible, restaurants that could exceed those occupation limits should be able to do so in order to improve profitability.

13. **Hand Sanitizer Available at Entrances to the Facility, Restrooms and in Employee Work Areas** – Hand sanitizer should be a requirement. As we have indicated previously, the County is in the process of purchasing large quantities of personal protective equipment as well as hand sanitizer. If our purchases become available, they will be made available to local restaurants.

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** – No Comment

15. **Post documentation of cleaning logs online and at the entrance documenting cleaning of all public areas** - Given the present public health emergency, this additional documentation to ensure the restaurant provides the highest degree of sanitation standards is reasonable.

16. **Implement Touchless Payment Methods** – We indicated this is optional

17. **Restaurant Personnel to have a national certification in food safety and handling, as well as specific training in the prevention of COVID-19** – There are currently national standards regarding training and certification for food safety. We are in the process of developing a contract with SERVSAFE national certification trainers to include COVID-19 training.

In summary, we do not agree with the May 11, 2020 letter from the ARA and we support the temporary regulations recommended by the Pima County Back to Business Steering Committee and various subcommittees. I should note that there were members of the restaurant and bar subcommittee who believe that reopening on May 11, 2020 was premature; however, it has occurred and it is incumbent upon Pima County as the public health agency of the region to recommend these temporary control measures, which in our view, represent the best practices recommended by public health officials.

CHH/anc

Attachment

c: Jan Lesher, Chief Deputy County Administrator
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer, Health and Community Services
Dr. Bob England, Director, Health Department
Dr. Terry Cullen, Appointed Public Health Director, Health Department
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.
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, whose 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 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 oppose 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 to is 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 standard 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 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,

[Signature]

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 Huckleberry, 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