

Miami-Dade restaurants should avoid these pitfalls as they reopen dining rooms, experts say



By **Matthew Arrojas** – Reporter, South Florida Business Journal
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Restaurants in Miami-Dade County will reopen dining rooms Monday for the first time **since July 7**.

But this time will be a tad different.

County Mayor Carlos Giménez's latest executive order **places new requirements** on restaurants returning to indoor service. New cases of Covid-19 and the two-week positivity rate have declined. Giménez's order aims to keep those numbers from increasing again like they did in early July leading to indoor restrictions.

Here are a few tips from legal experts on how to stay in compliance with the order:

Crack open a window

The mayor said Tuesday it is necessary for restaurant operators to further ventilate their establishments. One item that will be in the order will require eateries to keep air conditioners on at all times while they are open. All doors and windows will also be required to remain open.

Omar Ali-Shamaa, partner at Miami-based law firm Wolfe Pincavage, said open windows and doors will likely be used as red flag indicator for county and city code enforcement.

"If an enforcer is driving by a row of five restaurants, all side-by-side, and only two of those restaurants have their windows closed, those are the ones they're probably going to go in and check," he said. "If they see the doors or windows not open, enforcers are going to think there could potentially be more violations inside."

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He added that it's unlikely officials will go as far as to check the thermostat at every restaurant they visit, but it's always advisable to air on the side of caution and comply.

Six feet of separation

Marbet Lewis, founding partner at Coral Gables-based Spiritus Law, said she believes when Miami-Dade reopened restaurants initially in May, understanding the county's capacity rule was the top struggle for her restaurant clients.

Many misunderstood the county's rule for six feet of separation between tables meant, she said. Some restaurant operators were measuring from table to table, but the rule requires the measurement be from the back of one chair to the back of a chair at the nearest other table.

While that may not seem like a big difference in distance, it makes it more difficult to reach 50% capacity, Lewis said. The distancing rule will always trump capacity requirements, she added, so many restaurants may only be able to operate at 30% to 40% capacity indoors or else face possible citations.

“Capacity is the biggest barrier, and I think that’s why jurisdictions have been **very flexible in allowing extra seating outside**,” she said.



Marbet Lewis, founding partner at Spiritus Law.

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Lewis added that in other states and counties, restaurants have been allowed to skirt the six-foot distance requirement if they add plexiglass or plastic barriers between tables. It's unclear if this will be the case with this new executive order, and Mayor Giménez's office did not respond to a request for clarification.

No shoes, no shirt, no mask, no service

Masks were just a recommendation when restaurants reopened dining rooms in May, but it is no longer a suggestion. Restaurants must require customers to wear masks until they are served drinks or food as part of the Mayor's order.

Lewis suggests that in order to enforce this requirement, restaurant operators need to be clear from the get-go what the rules are. If guests can make reservations ahead of time on a third-party service like OpenTable, owners need to be clear even there what the mask rules are when the reservation is made.

"Restaurant owners can make it clear that this is the county's order, and it's not at the restaurant's discretion," she said. "It gives restaurant owners the chance to [tell patrons], 'Hey, we're just following the guidelines.'"

Still, potential customers are sure to not be in compliance, said Ali-Shamaa of Wolfe Pincavage, as some may arrive at a restaurant without a mask or may get up from their table without wearing one. Restaurant owners should have disposable masks on hand to give to patrons in case these scenarios happen.

He added that if a code enforcer could issue a citation to the restaurant and the customer if they see a guest walking around without a mask, but the business is more likely to be cited than the person.

"At the end of the day, it's best to look at all the guidelines as the floor," Ali-Shamaa said, "because you should do more than what the county and [Center for Disease Control and Prevention] tells you to do to save yourself from being liable."