

## TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

September 16, 2022

### NOTICE OF PROPOSED RULEMAKING

The Department of Alcoholic Beverage Control (ABC) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### PUBLIC HEARING

ABC has scheduled a public hearing on this proposed action on Tuesday, November 1, 2022, from 10:00 a.m. to 2:00 p.m. at ABC Headquarters at 3927 Lennane Drive, Suite 100, Sacramento, CA 95834. This public hearing will also be livestreamed with the link to the meeting available two weeks prior to the meeting on the ABC website here: <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to ABC. The written comment period closes at 5:00 p.m. on Tuesday, November 1, 2022. ABC will consider only comments received at ABC Headquarters by that time. Submit comments to:

Law and Policy Unit  
Department of Alcoholic Beverage Control  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834

Comments may also be submitted by email to [rpu@abc.ca.gov](mailto:rpu@abc.ca.gov). Please include “Licensing of Permanent Non-Contiguous Areas” in the subject line of your email.

#### AUTHORITY AND REFERENCE

Authority: Section 25750.5, Business and Professions Code.

Reference: Sections 23300, 23399, 24041, 24042.5, 24045.17, 25607, and 25750.5, Business and Professions Code; Section 65907, Government Code; and Sections 114067, Health and Safety Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### **Summary of Existing Laws and Regulations**

During the COVID-19 pandemic, ABC instituted a regulatory relief notice that allowed licensees who sell alcohol to consumers for consumption on the licensed premises to obtain a COVID-19 Temporary Catering Authorization (TCA). The TCAs allowed expansions of licensed premises to limit the spread of COVID-19 while allowing licensees to remain open for business. These expansions were done without prior ABC investigation, but also could be revoked through complaints or objection by local law enforcement without a formal administrative hearing process. This led to licensees seeking a large amount of premises expansions in a short amount of time, some of them non-contiguous to the licensed premises. In the past, ABC issued some limited non-contiguous expanded premises on a limited case-by-case basis while making sure each one was not a danger to the public health, safety, or welfare. Pursuant to AB 61 (Gabriel, Chapter 651, Statutes of 2021) and SB 314 (Wiener, Chapter 656, Statutes of 2021), the Legislature temporarily continued the TCA program by referring to the Fourth Notice of Regulatory Relief implemented by ABC within Business and Professions Code section 25750.5. ABC anticipates many requests for permanent extensions of licensed premises for non-contiguous areas due to the large influx of temporary non-contiguous premises expansions pursuant to the new law, it is necessary for ABC to establish a standard policy for permanent non-contiguous licensed premises away from the main previously licensed premises to protect the public health, safety, and welfare.

### **Summary of Effect**

The proposed regulations seek to formally implement standards ABC has used on a case-by-case basis for the approval of non-contiguous licensed premises. The regulatory package was created in response to the influx of non-contiguous TCAs requested pursuant to the Fourth Notice of Regulatory Relief instituted by ABC in response to the COVID-19 state of emergency, and the Legislature's subsequent codification of the program in Business and Professions Code section 25750.5. ABC anticipates many licensees will seek to make TCA's permanent prior to when they expire pursuant to Business and Professions Code section 25750.5. The regulatory package will notify the public, ABC licensees, local governments, and local law enforcement agencies of the standards that ABC will apply when approving permanent non-contiguous licensed areas for continued use by licensees, and how those permanent non-contiguous licensed areas must operate after their approval. However, this proposed regulatory package has no effect upon the currently operable TCAs instituted by the Legislature that are set to expire pursuant to Business and Professions Code section 25750.5.

## **Comparable Federal Statute or Regulations**

ABC has determined that this proposed regulation does not have a comparable federal statute or regulation.

## **Policy Statement Overview**

The mission of ABC is to provide the highest level of service and public safety to the people of the State through licensing, education, and enforcement. This proposed regulation will provide transparency to licensees subject to the laws and regulations regarding a permanent non-contiguous premises expansion under their license. It also informs the public, local governments, and local law enforcement agencies how to navigate notifying ABC if any non-contiguous premises expansion poses a threat or danger to the public health, welfare, or safety by non-compliance with the ABC standards pursuant to the proposed regulation.

## **Benefits Anticipated**

By establishing the policies and procedures for the issuance and administration of permanent non-contiguous licensed premises within a regulation, ABC can ensure uniform enforcement and transparent interactions with the public, local governments, local law enforcement agencies and ABC licensees. This will provide benefits to ABC licensed businesses while also protecting the public health, safety, and welfare.

## **Determination of Inconsistency/Incompatibility with Existing State Regulations**

ABC has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations.

## **Effect Upon Small Businesses in California**

Although licensees are often small business owners, this proposed regulation will have negligible regulatory effect on them. It only seeks to make clear and concise ABC's policy for the issuance and administration of permanent non-contiguous premises expansions. This regulatory package has no effect upon the currently operable TCAs instituted by the Legislature that are set to expire pursuant to Business and Professions Code section 25750.5.

## **Disclosures Regarding the Proposed Action**

The ABC has made the following initial determinations:

1. Mandate on local agencies or school districts: None.
2. Costs or Savings to any state agency: None.

3. Cost to any local agency or school district that is required to be reimbursed by the state: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impacts on housing costs: None.

### **Determination of Statewide Adverse Economic Impact on Business**

The ABC initially determines that the adoption of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

### **Results of the Economic Impact Assessment:**

ABC concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) unlikely that the proposal will create an unknown number of jobs, (3) unlikely that the proposal will create an unknown number of new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

ABC does anticipate the proposed regulations will facilitate some small business licensees continuing to maintain staff that would otherwise have been let go at the expiration of the TCA's due to not having a permanent non-contiguous premises expansion.

ABC has determined that the proposed regulation has a minimal effect upon the current health and welfare of California residents due to the permanent non-contiguous expansion of licensed premises because many of these permanent approvals are already currently in use. However, it will ensure the ongoing use of non-contiguous licensed premises will not cause any harm to the health, safety, or welfare of California residents and this protection will provide a benefit.

ABC has determined that with the proper delineation of non-contiguous licensed premises required by the proposed regulation, it will have no effect upon worker safety because the licensed areas will remain subject to the same rules as all current premises licensed for the consumption of alcoholic beverages.

ABC has determined this proposed regulation will have no effect upon the environment because it does not change a licensee's current duty to keep their licensed premises free of debris and trash that might harm the environment from activity on a permanently licensed non-contiguous premises.

## **Description of All Economic Impacts That a Representative Private Person or Business Would Necessarily Incur in Reasonable Compliance with the Proposed Action**

The ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on private persons or businesses. There is no foreseeable impact on private persons or businesses based on the process laid out in the proposed regulation.

Thus, ABC is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

## **The Need to Require Report from Businesses**

The proposed regulation does not require any reports from ABC licensees or any other business.

## **Consideration of Alternatives**

ABC must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to effected private persons, than the proposed action, or would be more cost-effective to effected private persons and equally effective in implementing the statutory policy or other provision of law. ABC invites interested persons to present statement or arguments with respect to alternatives to the proposed regulation during the written comment period.

## **Agency Contact Person**

Inquiries concerning the proposed regulatory action may be directed to the agency representative Robert de Ruyter, Assistant General Counsel, (916) 419-8958, (designated backup contact) Sarah Easter, Associate Governmental Program Analyst, Law and Policy Unit, (916) 823-1310 or via email at [rpu@abc.ca.gov](mailto:rpu@abc.ca.gov).

## **Availability of Documents**

ABC prepared an Initial Statement of Reasons for the proposed action. Copies of the Initial Statement of Reasons, and the full text of the proposed regulations may be accessed on ABC's website listed below or may be obtained from the Law and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after Monday, September 16, 2022.

ABC staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

### **Change to the Proposed Full Text of the Regulation Action**

If there is any change to the proposed full text of the regulation action in a substantial, or sufficiently related way, it will be made available for comment for at least 15 days prior to the date on which the department adopts the resulting regulation.

### **Final Statement of Reasons Availability**

Upon its completion, the Final Statement of Reasons will be available, and copies may be requested, from the department contact persons in this notice or may be accessed on ABC's website listed below.

### **Internet Access**

This notice, the Initial Statement of Reasons, and all subsequent regulatory documents, including the Final Statement of Reasons, when completed, are available on ABC's website for this rulemaking at <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>