

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS

Text of proposed language for adoption.

Authority cited: Section 25750.5, Business and Professions Code.

§ 70. Licensing of permanent non-contiguous areas.

- (a) The intent of this regulation is to establish parameters for the permanent licensing of additional areas that are in reasonable proximity to, but not contiguous to, a primary licensed premises within which alcoholic beverages are served for consumption on the premises.
- (b) For purposes of this section, “non-contiguous area” means an area of the licensed premises that is adjunct to, and separated from, the main or primary area of the licensed premises in such a way that alcoholic beverages sold in the licensed premises must pass through an unlicensed area for delivery to the separate licensed area under a single alcoholic beverage license.
- (c) For purposes of this section, “open and operating” means that the licensee, its agent, or employees are present and either preparing for, participating in, or cleaning up for the service of food or alcoholic beverages to customers. This definition is not limited to any operating hours signs and will be liberally applied when enforced.
- (d) The following requirements shall apply to any permanently licensed non-contiguous area:
 - (1) The non-contiguous area must be actively monitored at all times license privileges are being exercised.
 - (A) For purposes of this provision, “actively monitored” means that the licensee, or an employee or agent of the licensee, shall always be able to observe the non-contiguous licensed area from the interior of the primary or main area of the licensed premises in such a manner as to be readily able to discern the appearance and conduct of all persons and patrons in the non-contiguous area of the licensed premises. Such observation may include the use of electronic video surveillance, except that it shall not be the exclusive method of observation. A portion of the non-contiguous licensed area shall be visible and observable, without obstruction, from the interior of the primary or main area of the licensed premises.
 - (2) The non-contiguous area shall not be separated from the main licensed premises by a public roadway that is open to vehicular traffic during times that the non-contiguous area is open and operating.
 - (3) Patrons may not leave the licensed premises with an open container of any alcoholic beverage, even to traverse from the primary or main area to the non-contiguous area. The licensee, or an employee of the licensee, shall deliver all alcoholic beverages to patrons in the licensed non-contiguous area.
 - (4) The licensee shall have the authority to always exercise full control over the non-contiguous area during which the licensed business is open and operating in the non-contiguous area, or the non-contiguous area cannot be licensed. This control

shall include the right to prohibit any person from entering or remaining in the licensed area.

- (5) The non-contiguous area shall be clearly delineated in a manner prescribed by the Department such that any person may be readily able to discern the non-contiguous area within which alcoholic beverages may be served or consumed.
- (6) Except as otherwise authorized by law, only licensees holding licenses authorizing the exact same privileges for on-sale consumption may share a common non-contiguous area. All licensees shall be responsible for activities that occur in the common area.
- (7) If a licensed non-contiguous area may be accessed by members of the public at times during which a licensed business is not open and operating, the licensee shall only be responsible for all activities occurring in the non-contiguous area during such times that the non-contiguous area is open and operating.
- (8) All sales of alcoholic beverages shall be made from within the main or primary area of the licensed premises. No bar, dispensing point, or other fixture or equipment of any kind, whether permanent or temporary, shall be used in the non-contiguous licensed area for the purpose of selling or delivering alcoholic beverages to consumers, directly or indirectly. This prohibition excludes only the taking of orders by the licensee, or an employee of the licensee, for persons seated in the non-contiguous area.

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 Section 114067, Health and Safety Code.