

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS

Text of proposed language for adoption.

Text to be removed from the proposed regulation by the first modification is in ~~strikethrough~~.

Text to be added to the proposed regulation by the first modification is in underlined italics.

Text to be added to the proposed regulation by the second modification is in **bold italics**.

Text to be removed from the proposed regulation by the third modification is in ~~underlined italics strikethrough~~.

Text to be added to the proposed regulation by the third modification is in underlined bold.

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, and not operating independently from, a ~~primary~~ **main** licensed ~~area premises~~ within which alcoholic beverages are served for consumption on the premises.
- (1) **For purposes of this section, “reasonable proximity” means that the closest distance from the main licensed area to the non-contiguous area shall not exceed twenty-five (25) feet.**
- (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 area, but is separated therefrom by an unlicensed area in such a way that alcoholic beverages sold in the licensed premises must pass through an unlicensed area for delivery or consumption to the a separate licensed area under a single alcoholic beverage license.~~
- (c) For purposes of this section, “open and operating” means all times during which an area of the licensed premises is open to patrons for the purpose of receiving services from the licensed business ~~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 by any operating hours advertised by the licensee signs and will be liberally applied when enforced. A non-contiguous area is not necessarily open and operating during all times the main licensed premises is open and operating.~~
- (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 in such a manner to readily discern the appearance and conduct of all persons in the non-contiguous area of the licensed premises while it is open and operating ~~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.~~

A. For purposes of this provision, “actively monitored” means ~~any~~ either of the following:

i. **The non-contiguous area is observable by the licensee, or an employee or agent of the licensee, from within the interior of the main licensed area.** ~~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, or~~

ii. ~~that the~~ **The licensee, or an employee or agent of the licensee, shall be is physically present within the non-contiguous area at all times the non-contiguous area is open and operating.** ~~or~~

a. **The non-contiguous area may be unattended for periods of time not to exceed five (5) minutes. This exception does not apply if there is an approved bar or dispensing point in the non-contiguous area and there are unsecured alcoholic beverages present pursuant to Title 4 California Code of Regulations section 70 (d) (8).**

iii. ~~the licensee maintains regular and consistent bona fide service within the non-contiguous area while it is open and operating.~~

B. Active monitoring may include the use of electronic video surveillance, except it shall not be the exclusive method of observation.

(2) The non-contiguous area shall not be separated from the main licensed **area** ~~premises~~ by a public roadway that is open to vehicular traffic during times that the non-contiguous area is open and operating.

(3) Unless otherwise prohibited by law, persons may traverse an unlicensed area between the main ~~or primary~~ licensed area and a ~~licensed~~ non-contiguous area in possession of an open alcoholic beverage container. The licensee shall not permit any person to consume alcoholic beverages in an unlicensed area used for the traversal from the main ~~or primary~~ licensed area and a ~~licensed~~ non-contiguous area. The licensee shall not **permit** ~~allow~~ persons to leave the licensed areas with an open alcoholic beverage container, except for the express purpose of **traversing an unlicensed area as allowed by this subsection.** ~~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 ~~licensed~~ non-contiguous area ~~during which the licensed business~~ *when the non-contiguous area* 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 **boundaries of the** non-contiguous area shall be ~~clearly~~ **identified delineated** in a manner ~~prescribed~~ *approved* by the ~~Department~~ *department in connection with a specific application for a license that includes a non-contiguous area* such that any person may be readily able to discern the non-contiguous area within which alcoholic beverages may be served or consumed.
 - A. **The department shall consider the following when evaluating the indication of boundaries proposed by the licensee in its application for a license that includes a non-contiguous area:**
 - i. **The clarity of the separation of the non-contiguous area from unlicensed areas surrounding it,**
 - ii. **Any city or county zoning requirements for the jurisdiction within which the licensed premises is located,**
 - iii. **The use, if any, of the non-contiguous area when it is not open and operating,**
 - iv. **The proximity to neighboring businesses or residences, and**
 - v. **The location of the licensed premises, both the main licensed area and the non-contiguous area, and the anticipated foot traffic around it, especially the unlicensed area connecting the main licensed area to the non-contiguous licensed area, both by patrons and the public.**
 - B. *Signs shall be posted to remind patrons that they cannot consume alcoholic beverages in unlicensed areas, including between the main licensed area premises and ~~any~~ the non-contiguous licensed area.*
 - i. *The signs required by the above subsection shall be conspicuously posted at all entrances and exits of both the main licensed area and the non-contiguous area, ~~and~~ shall be written in no smaller than size **thirty-six (36)** font, and shall measure at least five **(5)** inches wide and five **(5)** inches tall.*
- (6) Except as otherwise authorized by law, only licensees holding licenses authorizing the exact same privileges for ~~on-sale~~ *the consumption of alcoholic beverages on their licensed premises* may share a common non-contiguous area. All licensees shall be responsible for activities that occur in **a shared non-contiguous shared area** ~~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 ~~a non-contiguous licensed~~ **it** is not open and operating, the licensee shall ~~only~~ not be responsible for ~~all~~ activities occurring in the non-contiguous area during such times that the non-contiguous area is not open and operating, even if the main portion of the licensed area premises is open and operating. This limitation on responsibility only applies to the department's administrative actions.
- (8) If an approved bar or dispensing point is located within the non-contiguous area, it shall be always staffed by the licensee when unsecured alcoholic beverages are present in the non-contiguous area. For the purpose of this subsection, "unsecured alcoholic beverage" means any alcoholic beverage container **not secured within a locked fixture, even if manufacturer sealed, that is unattended by the licensee or a patron, and not secured within a locked fixture. The fixture referenced in this subsection does not need to be permanently affixed within the non-contiguous area.** 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.
- (e) Nothing in this section changes the licensing requirements and procedures as otherwise mandated **required** by law.
- (f) Nothing in this section restricts or precludes the imposition of ~~additional~~ conditions for the operation of a licensed non-contiguous area as may be required by the department for a specific licensed premises pursuant to **Business and Professions Code section 23800. Conditions may be placed solely upon the non-contiguous space, or upon the entire licensed premises as determined by the needs of each application.**
- (g) The non-contiguous area shall **not be reasonably close to open and operating at any time that the main licensed area is not open and operating, and shall not function independently as a as an independent licensed area while open and operating. If the non-contiguous area can function functions independently when open and operating, it should be licensed as appropriate under a separate license.**
- (h) **Notice A distance established for any notice required to the public by law in connection with an application for an alcoholic beverage license that includes a non-contiguous area shall be measured from the absolute boundaries of both the main licensed area and the non-contiguous area. The boundaries shall be established by the premises diagram filed with the department pursuant to Title 4, California Code of Regulations, section 64.2(a). This includes any areas where either employees or patrons may be present with alcoholic beverages that may be unlicensed.**
- (i) **Posting of The notice of intention to engage in the sale of alcoholic beverages upon the licensed premises in connection with an application for an alcoholic beverage license that includes a non-contiguous area, as required by law, must be present both posted**

*at both the main **licensed** area and the non-contiguous area for the entire period required by law.*

- (j) **The main licensed area shall at all times satisfy the requirements necessary for the particular license issued. This shall include maintaining such facilities or equipment as may be required by law for the specific license or to exercise any of the privileges under the license. The non-contiguous area shall not be used to satisfy any of the requirements that are necessary to the licensing or continued operation of the main licensed area.**

The main licensed area shall at all times, independently of activities being conducted in the non-contiguous area, be maintained such that it satisfies all requirements for the exercising of privileges under the license.

- (k) **Nothing in this section permits exercising any privileges or engaging in any activities in the non-contiguous area that are not authorized by the license issued.**

Authority: **Article XX, Section 22 California Constitution, ~~Section 25750.5~~ Section 25750**
Business and Professions Code.

Reference: Section **23012, 23013, 23015, 23038, 23038.1, 23038.2, 23038.3, 23300, 23357, 23358, 23358.2, 23363.1, 23363.3, 23386, 23389, 23390, 23390.5, 23392, 23396, 23396.3, 23396.5, 23398, 23399, 23399.65, 23400, 23401, 23401.5, 23403, 23502, 23508, 23550, 23552, 23800, 23801, 23802, 23803, 23804, 23805, 23815, 23816, 23950, 23951, 23952, 23953, 23954, 23957, 23958, 23985, 23985.5, 23986, 23987, 24013, 24013.1, 24013.2, 24040, 24041, 24042, 24042.5, 24044, 24044.5, 24045, 24045.17, 24072, 25607, and 25750.5** Business and Professions Code; Section 65907 Government Code; and Section 114067 Health and Safety Code; **Title 4 California Code of Regulations sections 61.4 and 64.2.**