



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: April 25, 2023
FROM: Jane P. Sawyer, Program Coordinator RE: Licensed Premises – outdoor seating

At the March 2023 meeting, the board sent the draft – as amended at the meeting – out for public comment. Public comment closed April 24, 2023. It received one comment.

The intent of this regulation is, upon application and approval from both the local government and the board, to allow for outdoor seating areas to be designated as licensed premises for consumption of alcoholic beverages even if the areas are not contiguous.

3 AAC 304.185 is proposed to be amended to try to accomplish the goal:

- (b) inserts “with the exception of...an outdoor seating area on a street or sidewalk authorized by the local government for sole control by an alcoholic beverage licensee,” ...
- (g) is repealed. This was a COVID-19 Emergency Declaration regulation.
- (h) is new language that would allow a licensee with an approved outdoor seating area on a public right of way to take an alcoholic beverage across a portion of the public right of way...
- (i) it further defines “licensed premises” under AS 04.21.080(b)(15) for the purpose of this project.

(Words in boldface and underlined indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 304.185 is amended to read:

3 AAC 304.185. Licensed premises. (a) A license is issued for a specific place which is the licensed premises and which must be clearly designated in a line drawing accompanying an application. The address of the licensed premises and the business name under which the licensee is doing business at that address must be indicated on the license application.

(b) With the exception of a recreational site license,₂ [AND] a destination resort license, **and an outdoor seating area on a street or sidewalk authorized by the local government for sole control by a alcoholic beverage licensee,** the licensed premises must be one area, but may include separate rooms if the rooms are adjacent to one another or if they are rooms described in AS 04.11.090(d). If the licensed premises consist of more than one room in which a fixed counter or service bar is regularly maintained, a duplicate license is required for the additional rooms. A recreational site license,₂ [AND] a destination resort license, **and a licensee for whom a local government has approved use of an adjoining public right of way** may have multiple separate licensed premises areas with the approval of the board.

(c) The licensee shall conspicuously post the license within the licensed premises.

(d) A licensee may not alter the functional floor plan, reduce or expand the area, or change the business name of the licensed premises without the prior written approval of the director. The licensee must provide a new line drawing showing the proposed changes in the premises. A licensee must pay a fee of \$250 for changing the business name or line

drawing of the licensee's licensed premises when the name or line drawing change is not part of a transfer of ownership or location. A request for a business name or line drawing change for licensed premises not part of a transfer must be made on a form prescribed by the board.

(e) If a business establishment or facility consists of both licensed premises and an unlicensed area, the licensee shall clearly segregate the licensed premises and the unlicensed area.

(f) A licensee may request to have a portion of its licensed premises alternate as licensed or unlicensed premises on a seasonal basis under the following conditions:

(1) the request is made on a form prescribed by the board, accompanied by a detailed premises diagram and \$250 fee;

(2) a debt that is incurred during times when the identified area is unlicensed will be considered a debt incurred in the operation of the licensed business for purposes of transfer of license under AS 04.11.360;

(3) at any time with written notice to the licensee, the board may withdraw its approval of use of the identified area as alternating premises; and

(4) during times the identified area is designated as an unlicensed premises, all alcoholic beverages must either be removed from the identified area or be stored in a location approved by the board to be secure from the public.

(g) Repealed ___/___/____. [NOTWITHSTANDING (A) – (F) OF THIS SECTION, A LICENSEE MAY PERMIT AN AGENT OR EMPLOYEE TO TAKE AN ALCOHOLIC

BEVERAGE OFF OF A LICENSED PREMISES AND BRING IT TO A PURCHASER FOR CURBSIDE PICKUP OR HOME DELIVERY, UNDER THE CONDITIONS DESCRIBED IN 3 AAC 304.920 OR 3 AAC 304.925.]

(h) Notwithstanding (a) – (f) of this section , a licensee with an approved outdoor seating area on a public right of way may permit an agent or employee to take an alcoholic beverage across a portion of the public right of way still open for public access and the outdoor seating area for which the local government has granted sole control to the licensee during the licensee’s business hours.

(i) For purposes of applying the definition of “licensed premises” at AS 04.21.080(b)(15), the outdoor seating area the local government approves for use on a public right of way in front of or otherwise adjacent to a licensed establishment shall be considered at the specific address for which the license is issued. (Eff. 11/29/81, Register 80; am 12/13/2009, Register 192; am 7/1/2018, Register 226; am 8/17/2018, Register 227; am 4/16/2020, Register 234; am 8/23/2020, Register 235; am 11/17/2020, Register 236; am ___/___/____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 26.23.020

From: [Tiffany Hall](#)
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Outdoor seating regs
Date: Friday, April 21, 2023 2:55:47 PM
Attachments: [image001.png](#)
[04-21-23 Recover Alaska Outdoor Seating Comment.pdf](#)

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Hello,

Attached please find Recover Alaska's comments re: outdoor seating for the ABC Board meeting next week.

Thank you,
Tiffany

Tiffany Hall

[Executive Director](#) | she/her



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Dena'inaq elnen'aq' gheshtnu ch'q'u yeshdu. (Dena'ina)
I live and work on the land of the Dena'ina. (English)
Translation by J. Isaak and S. Shaginoff-Stuart



April 21, 2023

Public Comment on Draft Regulations: 3 AAC 304.185

To the Alcoholic Beverage Control (ABC) Board and Alcohol & Marijuana Control Office (AMCO):

Thank you for the opportunity to provide comments on draft regulations published March 21, 2023.

Recover Alaska is a multi-sector action group working to reduce excessive alcohol use and its harms across the state. Our vision is for Alaskans to live free from the harms of substance misuse, so we are all empowered to achieve our full potential. There are many paths toward recovery and well-being. Our organization supports effective policies and programs, including regulating alcohol production, distribution, sales, and service in ways that balance the economic benefits of the hospitality industry with the measurable harms that alcohol causes and contributes to families, communities, and our state as a whole.

As you are aware, Recover Alaska was also an integral stakeholder throughout the Title 4 Rewrite process, including passage of Senate Bill 9 (2022) as well as Senate Bill 165 (2016). We continue to support the effective implementation of this important legislation, and participate as a stakeholder to ensure that the resulting regulations, policies, and processes put into place reflect the legislative intent of this project, including protection of public health.

1. Recover Alaska has no objection to this limited update to regulations for outdoor seating areas.

We understand that this regulation was originally proposed in December 2022, and has been updated to reflect the broader list of licenses who may utilize this provision to allow outdoor dining, including in a portion of a public right of way (such as a sidewalk outside a bar or restaurant) where the licensee has secured permission from the local government to maintain limited control over this area. We also understand this policy was first enacted on a temporary basis during the COVID-19 pandemic, addressing the need to mitigate the public health risks of congregation indoors and spreading disease for businesses with onsite consumption of food and beverages.

While the level of risk has been lessened, this policy provides more opportunities for businesses to provide food and beverage service in an open-air setting, which continues to be a best practice for reducing risk of the spread of airborne diseases, and protect public health. Consumption of alcohol, in any setting, continues to present risks to public health, both the direct risks to physical health as well as its causal and contributing role to many alcohol-related harms. However, offering opportunities to safely consume outside on licensed premises in a setting typically involving dining, on licensed premises and subject to all other existing laws and regulations regarding safe service and consumption, does not appear to represent a significant health risk. And as with all licensed establishments, minimizing risk of this activity in practice through compliance and enforcement is the shared responsibility of the licensee, local law enforcement, AMCO enforcement staff and the ABC Board when considering actions for violations and license renewals.

2. Recover Alaska supports the currently-drafted language: only a server (“agent or employee”) may transport an alcoholic beverage across a public right of way to an area under control of the licensee.



Having a defined licensed premises where sales, service and consumption may occur ensures that the licensee maintains control of the area where alcohol is consumed, and that patrons do not create additional risk to themselves or others. Many communities also prohibit public consumption of alcohol except as allowed through a permit, including in public spaces and rights of way. The language as drafted, allowing a licensee's employee to transport alcohol from the establishment to a designated seating area where people are dining, addresses the practical situation of delivering a beverage to a patron, while not allowing patrons to remove beverages from a licensed premises (prohibited under AS 04.16.120) and reducing risk of a person violating other state or local laws, from public consumption to providing alcohol to a minor who is not allowed on premises.

Thank you for consideration of our comments, and for thoughtful implementation of the Title 4 Rewrite.

A handwritten signature in black ink, appearing to read "Tiffany Hall", is positioned above the printed name.

Tiffany Hall
Executive Director