

**OREGON LIQUOR CONTROL COMMISSION
CHAPTER 845
PROPOSED AMENDMENTS**

Note: **Bold and underlined** = new text; *italics and strikethrough* = deleted text

845-005-0329

Licensing Outdoor Areas Not Abutting a Licensed Building; Licensing Non-Abutting Intermittent and Limited Duration Expansion Areas

(1) This rule applies to an outdoor area that does not abut **an** applicant's or licensee's licensed building. ~~This rule~~ **and** establishes the licensing qualifications for such an outdoor area. **This rule also establishes licensing requirements for expanding the premises to non-abutting indoor and outdoor areas for a limited duration or on an intermittent basis.** This rule does not apply to Temporary Sales Licenses issued under OAR 845-005-0440; Special Events Brewery-Public House licenses issued under OAR 845-005-0414; Special Event Brewery Licenses issued under OAR 845-005-0412, Special Event Winery licenses issued under OAR 845-005-0415; Special Events Grower licenses issued under OAR 845-005-0415; Special Events Distillery licenses issued under OAR 845-005-0413; Small-Scale Private Catering licenses issued under OAR 845-005-0405; and Temporary Use of An Annual License licenses issued under 845-005-0410.

(2) The Commission shall refuse to license an outdoor area, and may cancel the license for an outdoor area, for any of the following reasons:

(a) The outdoor area is controlled by a public entity and the public entity provides the Commission with written proof that the sale, service or consumption of alcohol in the outdoor area is not an authorized use under the applicable rules and regulations governing the public entity;

(b) The outdoor area is privately owned and the applicant or licensee fails to provide, **as required by** the Commission **or upon request by the Commission.** ~~with~~ written proof of legal access to the outdoor area;

(c) ~~The outdoor area fails to qualify for a Number 3 or Number 5 minor posting;~~

(d) **(c)** The applicant or licensee fails to define the boundaries of the outdoor area;

(e) ~~The applicant or licensee fails to identify and obtain Commission approval of a designated area for alcohol consumption within the outdoor area; or~~

(f) **(d)** The applicant or licensee fails to demonstrate there is or will be adequate supervision of the outdoor area so as to prevent violations of the liquor laws.

(3) Non-abutting limited duration or intermittent expansion of licensed premises.

(a) For the purposes of this subsection of the rule:

(A) Limited duration means the licensee received authorization to use the expansion area as a part of the licensed business from the landowner for a period of 180 days or less.

(B) Intermittent means the licensee received authorization from the landowner to use the expansion area for something less than all days of the week.

(b) A licensee may expand its premises on a limited duration or intermittent basis to one area that does not abut the licensee's annually licensed premises to sell and serve alcohol at retail as allowed by the license provided the following are met:

(A) The expansion area is within 500 feet (measured property line to property line) of the annually licensed premises.

(B) The licensee has the permission of the landowner (private or public) to use the expansion area and the licensee has defined the boundaries of the expansion area on a floor plan. Licensees must provide proof of permission to use the area and the floor plan for the expansion area to the Commission upon request (within 72 hours of the request).

(C) The licensee uses the expansion area only during the days and times approved by the landowner.

(D) The licensee operates the current premises and the limited duration or intermittent expansion area as one licensed business.

(E) The licensee shares the limited duration or intermittent expansion area with other licensees only if the licensees share the current licensed premises.

(c) Expansion areas used by the licensee as described in this section are part of the annually licensed premises during the days and times that the landowner has given the licensee permission to use the expansion area as a part of the business. Licensee is subject to all OLCC liquor laws and rules in the expansion area for the days and times of use of the area as a part of the licensed business. Licensee must cease the sale and service of alcohol in the limited duration or intermittent expansion area once the authorization from the landowner has expired.

(d) A licensee using an expansion area as described in this section must follow the regulations of all regulating bodies.

(e) No minor posting will be assigned to a limited duration or intermittent expansion area. However, if the licensee wants to expand the premises to an expansion area not

abutting the premises on a limited duration or intermittent basis, the licensee will ensure that either:

(A) The primary activity in the expanded area is patrons consuming food: or

(B) If the primary activity in the expanded area is not patrons consuming food, the area MUST NOT have a combination of several factors that would not be appropriate for minors, such as dim lighting and the conspicuous display of multiple alcohol signs, banners, and posters or entertainment that is not appropriate for minors.

(f) If the licensee holds a restricted license, licensee must follow the restrictions in the limited duration or intermittent expansion area.

(g) For an expansion to an area not abutting the premises that does not qualify as limited duration or intermittent, a licensee must submit a request to, and receive approval from, the Commission prior to exercising license privileges in the proposed area.

(h) Operation in an expansion area not abutting the licensed premises without permission from the landowner is a Category III violation.

Statutory/Other Authority: ORS 471, 471.040 & 471.730

Statutes/Other Implemented: 471.030, 471.313 & 471.315

845-005-0331

Licensing Outdoor Areas Abutting a Licensed Building; Licensing Abutting Intermittent and Limited Duration Expansion Areas

(1) This rule applies to an outdoor area that ~~does abut~~ **abuts an** applicant's or licensee's licensed building. ~~This rule~~ **and** establishes the licensing qualifications for such an outdoor area. **This rule also establishes licensing requirements for expanding the premises to abutting indoor and outdoor areas for a limited duration or on an intermittent basis.** This rule does not apply to Temporary Sales Licenses issued under OAR 845-005-0440; Special Events Brewery-Public House licenses issued under OAR 845-005-0414; Special Event Brewery Licenses issued under OAR 845-005-0412, Special Event Winery licenses issued under OAR 845-005-0415; Special Events Grower licenses issued under OAR 845-005-0415; Special Events Distillery licenses issued under OAR 845-005-0413; Small-Scale Private Catering licenses issued under OAR 845-005-0405; and Temporary Use of An Annual License licenses issued under 845-005-0410.

(2) The Commission shall refuse to license an outdoor area, and may cancel the license for an outdoor area, for any of the following reasons unless the applicant or licensee shows good cause that outweighs the refusal or cancellation basis:

(a) The outdoor area is controlled by a public entity and the public entity provides the Commission with written proof that the sale, service or consumption of alcohol in the outdoor area is not an authorized use under the applicable rules and regulations governing the public entity;

(b) The outdoor area is privately owned and the applicant or licensee fails to provide, **as required by** the Commission, **or upon request by the Commission,** ~~with~~ written proof of legal access to the outdoor area;

~~(c) The outdoor area does not abut the applicant's proposed licensed building or the licensee's existing licensed building;~~

(d) **(c)** The applicant or licensee fails to define the boundaries of the outdoor area;

(e) **(d)** The applicant or licensee fails to demonstrate there is or will be adequate supervision of the outdoor area so as to prevent violations of the liquor laws; or

(f) **(e)** The applicant or licensee will allow amplified entertainment in the outdoor area between 12:00 a.m. and 7:00 a.m. **on the same calendar day.**

(3) Abutting limited duration or intermittent expansion of licensed premises.

(a) For the purposes of this subsection of the rule:

(A) Limited duration means the licensee received authorization to use the expansion area as a part of the licensed business from the landowner for a period of 180 days or less.

(B) Intermittent means the licensee received authorization from the landowner to use the expansion area for something less than all days of the week.

(b) A licensee may expand its premises on a limited duration or intermittent basis to one expansion area that abuts the licensee's licensed premises to sell and serve alcohol at retail as allowed by the license provided the following are met:

(A) The licensee has the permission of the landowner (private or public) to use the expansion area and the licensee has defined the boundaries of the expansion area on a floor plan. Licensees must provide proof of permission to use the area and the floor plan for the expansion area to the Commission upon request (within 72 hours of the request).

(B) The licensee uses the expansion area only during the days and times approved by the landowner.

(C) A licensee shares the limited duration or intermittent expansion area with other licensees only if the licensees share the current licensed premises.

(c) Expansion areas used by the licensee as described in this section are part of the annually licensed premises during the days and times that the landowner has given the licensee permission to use the expansion area as a part of the business. Licensee is subject to all OLCC liquor laws and rules in the expansion area for the days and times of use of the area as a part of the licensed business. Licensee must cease the sale and service of alcohol in the limited duration or intermittent expansion area once the authorization from the landowner has expired.

(d) A licensee using an expansion area as described in this section must follow the regulations of all regulating bodies.

(e) No minor posting will be assigned to a limited duration or intermittent expansion area. However, if the licensee wants to expand the premises to an expansion area abutting the premises on a limited duration or intermittent basis, the licensee will ensure that either:

(A) The primary activity in the expanded area is patrons consuming food; or

(B) If the primary activity in the expanded area is not patrons consuming food, the area MUST NOT have a combination of several factors that would not be appropriate for minors, such as dim lighting and the conspicuous display of multiple alcohol signs, banners, and posters or entertainment that is not appropriate for minors.

(f) If the licensee holds a restricted license, licensee must follow the restrictions in the limited duration or intermittent expansion area.

(g) For an expansion to an area abutting the premises that does not qualify as limited duration or intermittent, a licensee must submit a request to, and receive approval from, the Commission prior to exercising license privileges in the proposed area.

(h) Operation in an expansion area abutting the licensed premises without permission from the landowner is a Category III violation.

Statutory/Other Authority: ORS 471, 471.040 & 471.730

Statutes/Other Implemented: ORS 471.001, 471.030, 471.159, 471.313 & 471.315

845-006-0309

Requirements for Outdoor Areas Not Abutting a Licensed Building

(1) This rule applies to an outdoor area that does not abut applicant's or licensee's licensed building. ~~This rule~~ **and** establishes the ~~licensing qualifications~~ **requirements** for **operating in** such an outdoor area. This rule does not apply to Temporary Sales Licenses issued under OAR 845-005-0440; Special Events Brewery-Public House licenses issued under OAR 845-005-0414; Special Event Brewery Licenses issued under OAR 845-005-0412, Special Event Winery licenses issued under OAR 845-005-0415; Special Events Grower licenses issued under OAR 845-005-0415; Special Events Distillery licenses issued under OAR 845-005-0413; Small-Scale Private Catering licenses issued under OAR 845-005-0405; and Temporary Use of An Annual License licenses issued under 845-005-0410.

(2) One patron shall not possess more than two open containers of alcohol at the same time in the outdoor area, and the amount of alcohol in each container shall not exceed 16 ounces of malt beverages, 6 ounces of wine, 16 ounces of cider or 2 ounces of distilled spirits except under the following circumstances:

(a) Two or more patrons may possess one open standard 750 ml bottle of wine in the outdoor area; or

(b) Three or more patrons may possess one standard 64 oz. pitcher of malt beverages in the outdoor area.

(c) Violation of this section is a Category V violation.

(3) Only a licensee or permittee may carry open containers of alcohol through an unlicensed area to reach a licensed outdoor area not abutting the licensed building or abutting outdoor area. Violation of this section is a Category V violation.

~~(3) The outdoor area must meet the requirements for a Number 3 or a Number 5 minor posting. Violation of this section is a Category III violation.~~

~~(4) The sale of alcoholic beverages for off-premises consumption is not allowed except under the following circumstances:~~

~~(a) The container or bottle is capable of holding 22 ounces or more of malt beverages or cider; or~~

~~(b) The container or bottle is capable of holding 750 milliliters or more of wine.~~

~~(c) Violation of this section is a Category V violation.~~

(5) **(4)** Amplified entertainment is not allowed in the outdoor area from 10:00 p.m. to 7:00 a.m. on the succeeding calendar day. Violation of this section is a Category III Violation.

(6) **(5)** The sale, service and consumption of alcoholic beverages in the outdoor area is not allowed from ~~10:00 p.m.~~ **12:00 a.m.** to 7:00 a.m. on the ~~succeeding~~ **same** calendar day. Violation of this section is a Category III Violation.

(7) **(6)** The licensee must maintain and adequately control the defined boundaries of the outdoor area ~~and the approved, designated alcohol consumption area~~. Violation of this section is a Category V violation.

Statutory/Other Authority: ORS 471, 471.040 & 471.730

Statutes/Other Implemented: ORS 471.030 & 471.315

845-006-0345

Prohibited Conduct

(1) Drinking on Duty: No licensee, permittee, or agent of a licensee will drink alcoholic beverages or be under the influence of intoxicants while on duty.

(a) "On duty" means from the beginning of a work shift that involves the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including any breaks.

(b) "On duty" also means, for those working outside a scheduled work shift, having the authority to put himself or herself on duty and performing acts on behalf of the licensee which involve the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises. Whether a person is paid or scheduled for work is not determinative of whether the person is considered "on duty" under this subsection.

(c) "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who mix, sell or serve, check identification or control the premises.

(d) Being under the influence of intoxicants on duty is a Category II violation.

(e) Drinking on duty is a Category III violation.

(2) Despite subsection (1) of this rule, a person may self-serve and may taste malt beverages, wine, or cider while on duty or as an agent of a licensee only under the following conditions:

(a) The person is not a minor.

(b) The person is not visibly intoxicated.

(c) The time the alcoholic beverage is consumed is between 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

(d) The alcoholic beverage consumed is only malt beverages, wine, or cider.

(e) The amount of alcoholic beverage consumed per serving does not exceed one ounce.

(f) The person does not consume more than a total of six ounces of alcoholic beverages pursuant to this section between 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

(g) The purpose of the consumption is for educational purposes or to test the quality of the alcoholic beverage to ensure the product is not flawed or deteriorated.

(3) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call. Violation of this section is a Category II violation.

(4) Evidence:

(a) No licensee or permittee will:

(A) Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;

(B) Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or

(C) Ask or encourage another person to do subsections (a) or (b) of this section.

(b) Violation of this section is a Category III violation.

(5) Access to Premises:

(a) Both during regular business hours and when a premises is closed, no licensee or permittee will refuse to admit or fail to immediately admit to the licensed premises a Commission regulatory employee or police officer who identifies him/herself and who enters or wants to enter to conduct a reasonable search to ensure compliance with alcoholic beverage law. Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring.

(b) Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(c) Violation of this section is a Category II violation.

(6) Open Containers: No licensee or permittee will permit a ~~person~~ **patron** to take an open container of alcoholic beverages from the licensed premises **or through an unlicensed area**, except as ORS 471.175, 471.178, 471.186, 471.190, 471.200, 471.220, 471.223 and 471.227 allow. Except for tastings as allowed in OAR 845-006-0450, no Off-Premises Sales licensee will permit an open container of alcoholic beverages on the licensed premises unless the licensee also holds another license at the premises that allows on-premises consumption. Violation of this section is a Category V violation.

(7) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the license does not allow the licensee to sell or serve. Notwithstanding this requirement, a limited on-premises or brewery-public house sales licensee may have distilled spirits on the premises if the distilled spirits are used only for cooking, are kept in a container only in the food preparation area, and the container is clearly marked "for cooking only." Violation of this section is a Category V violation.

(8) Drive-up Window: No licensee or permittee will sell or deliver any alcoholic beverages through a drive-up window. Violation of this section is a Category III violation.

(9) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises. Violation of this section is a Category V violation.

(10) "Good Faith Effort": ORS 471.315(1)(a)(H), and 471.412(1) prohibit a licensee or permittee from allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a good faith effort to remove the alcoholic beverage does not violate these statutes.

(a) As used in ORS 471.412(2) and this rule, "good faith effort" means:

(A) Placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance;

(b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).

(11) Promotions.

(a) The following practices are prohibited:

(A) The sale, offer or service to any person of an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price;

(B) The sale, offer or service of alcoholic beverages by the drink for a price per drink that is less than the licensee's cost for the alcohol to any person paying a fixed "buy in" price, entry fee, cover or door charge;

(C) Price reductions on alcoholic beverages by the drink from 12:00 midnight until 2:30 a.m. A price reduction is a lower price as compared to the usual, customary, or established non-discounted price the licensee charges for a drink of that type on the licensed premises;

(D) The sale, offer or service of distilled spirits by the bottle for consumption on the premises, except as allowed in OAR 845-006-0433 (Minibars in Hotel Guest Rooms) and 845-006-0434 (Minibars in Arena Suites). This subsection does not prohibit a Full On-Premises Public Location Sales Licensee (F-PL) or Full On-Premises Catering Sales Licensee (F-Cat) from charging clients by the bottle for distilled spirits that are served by the drink at hotel suites, banquets, receptions or catered events where the reasonably projected attendance is at least 20 patrons;

(E) Operating, encouraging or permitting games of chance or skill, contests, exhibitions, or competitions of any kind on the licensed premises that involve drinking alcoholic beverages, (e.g., beer pong, "21 for 21");

(F) Dispensing, pouring or otherwise serving any alcoholic beverage directly into a person's mouth, including through any device such as a "bong"; and

(G) The use of any device or serving technique that produces an alcoholic mist or vapor for consumption by inhalation. An alcohol vaporization device, for example, also called an alcohol without liquid machine, is a device, machine or process which mixes spirits, alcoholic liquors or any product containing alcoholic liquor with oxygen or any other gas to produce a

vaporized product for consumption by humans by inhalation.

(b) Violation of this section is a Category III violation.

(12) Self-Service. No licensee or permittee will permit any patron to mix, dispense or serve an alcoholic beverage for or to himself or herself for on-premises or off-premises consumption. Violation of this section is a Category III violation.

(13) Marijuana Use. No licensee or permittee will permit the use, consumption, ingestion, or inhalation of marijuana items as defined in ORS 475B.015 and OAR 845-025-1015 on a premises licensed to sell or serve alcoholic beverages. Violation of this section is a Category III violation.

(14) No licensee or permittee will manufacture, store, transport, sell, or offer to sell an alcoholic beverage that is manufactured with any substance derived from cannabis, or cannabinoids derived from any source, unless the substance has been approved for use in alcoholic beverages by the Alcohol and Tobacco Tax and Trade Bureau (TTB) and the U.S. Food and Drug Administration (FDA). Violation of this section is a Category III violation.

~~(15) No licensee or permittee will engage in or permit any activity that violates an order issued by the Governor relating to the manufacture, possession, sale, purchase, transportation, importation or delivery of alcoholic liquor. Violation of this rule is a Category II violation and shall apply to any conduct that occurs on or after March 17, 2020, 5:01 p.m. local time.~~

~~(16) **(15)** A licensee located in a county that has been approved for a phased opening in accordance with Executive Order 20-25 must comply with guidelines created by the Oregon Health Authority (OHA) relating to the hours that a business may serve alcoholic beverages for on-premises consumption on the licensed premises. These guidelines may be found at <https://govstatus.egov.com/or-covid-19/>. Failure to comply with OHA guidelines is a Category II violation and shall apply to any conduct that occurs on or after May 15, 2020. **No licensee or permittee will engage in or permit any activity relating to the manufacture, possession, sale, purchase, transportation, importation or delivery of alcoholic liquor that violates an order issued by the Governor. A licensee's or permittee's failure to follow this rule creates an immediate and serious danger to the health and safety of all patrons and employees on the premises. Violation of this rule is a Category II violation.**~~

(16) No licensee or permittee will engage in or permit any activity relating to the manufacture, possession, sale, purchase, transportation, importation or delivery of alcoholic liquor that violates a public health law, as defined in ORS 431A.005, that is created pursuant to an order issued by the Governor. This rule applies only during a state of emergency declared by the Governor. A licensee's or permittee's failure to follow this rule creates an immediate and serious danger to the health and safety of all patrons and employees on the premises. Violation of this rule is a Category II violation.

STATUTORY/OTHER AUTHORITY: ORS 471, 471.030, 471.040, 471.730(1), 471.175, E.O. 20-27

STATUTES/OTHER IMPLEMENTED: ORS 471.030, 471.040, 471.178, 471.186, 471.200, 471.223, 471.227, 471.315(1)(a)(H), 471.351(1), 471.405(1), 471.408, 471.412, 471.675, 471.730, 471.446