



California Restaurants Can Now Deliver and Sell Alcohol To Go

Note: This article was posted on March 26, 2020 at 8 am PDT. Because the COVID-19 situation is rapidly changing, as the federal government and State of California continue to fight this pandemic, individuals and businesses should consult with counsel for the latest developments and updated guidance on this topic.

In light of the shelter in place orders, , the California Department of Public Health’s guidance, and the federally-declared national emergency, the Department of Alcoholic Beverage Control (the “ABC”) has promulgated a notice that eases regulations on the sale of alcohol to support California restaurants and businesses. Specifically, restaurants and businesses can now take advantage of the relaxed regulations to help boost sales while customers are unable to congregate on premises.

Sales of Alcoholic Beverages: To Go and Delivery

Restaurants may now sell beer, wine, cocktails, and pre-mixed drinks to go or for delivery, so long as they are sold with a meal. According to the ABC, “alcoholic beverages must be packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap (e.g., no lids with sipping holes or openings for straws).” Further, the ABC has suspended regulations prohibiting the delivery and sale of alcoholic beverages to persons in motor vehicles or to individuals through a pass-out window or a slide-out tray—meaning alcoholic beverages can now be served via restaurant drive-throughs.

Additionally, restaurants must prominently display the following on premises, online, or in whatever manner is necessary to ensure that purchasing consumers and delivery persons are given notice:

Alcoholic beverages that are packaged by this establishment are open containers and may not be transported in a motor vehicle except in the vehicle’s trunk; or, if there is no trunk, the container may be kept in some other area of the vehicle that is not normally occupied by the driver or passengers (which does not include a utility compartment or glove compartment (Vehicle Code Section 23225)). Further, such beverages may not be consumed in public or in any other area where open containers are prohibited by law.

Deliveries to Consumers

Curbside delivery is now available to ABC licensees, including craft distilleries, who are authorized to sell alcoholic beverages off-sale to consumers. Such licensees may now accept payment, including cash, at the point of delivery; craft distillers, however, are limited to selling a maximum of 2.25 liters per consumer per day. Thus, a liquor store can, for example, sell a bottle of wine to a customer over the phone or online, deliver the wine to a customer at their home, and collect payment upon delivery.

Regulations are Eased for On-Sale Licensed Businesses to Sell Alcoholic Beverages Off-Sale

The ABC has eased regulations for licensees with on-sale privileges such that they may now sell their alcoholic beverages for off-sale consumption in manufacturer pre-packaged containers where their license permits on-sale consumption. For example, a Type 47 liquor license “authorizes the sale of beer, wine and distilled spirits for consumptions on the licenses [sic] premises, [and] authorizes the sale of beer and wine for consumption off the licenses [sic] premises.” Under the loosened regulation, a Type 47 license holder can now also sell beer, wine, and distilled spirits off the licensee’s premises in manufacturer pre-packaged containers.

There are, however, limits to the eased regulations. If a business is not authorized for on-sale consumption of a particular type of alcoholic beverage, they cannot now sell that alcoholic beverage for off-sale consumption. For example, Type 41 licensed restaurants are licensed to sell beer and wine for consumption on or off the premises. The eased regulations do not allow a Type 41 restaurant to now begin selling distilled spirits on-sale or off-sale.

For a full list of license types, visit <https://www.abc.ca.gov/licensing/license-types/>. If you have any questions about your business’ license type or what your business may now sell on-sale and off-sale, contact your attorney.

Retail-to-Retail Transaction Regulations are Eased

Some retailers have been concerned that they are unable to sell their inventory of alcoholic beverages to the public. As such, the ABC has eased regulations so that on-sale retailers can now sell their alcoholic beverage inventory to off-sale retailers to boost revenue to the on-sale retailers and avoid inventory spoliation. No longer will off-sale retailers be required to purchase inventory only from suppliers.

Hours of Operation for Retail Sales

All retailers are prohibited from selling alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m. Additionally, many ABC licenses further restrict the hours during which a licensee can sell alcoholic beverages. The ABC is suspending enforcement of any license condition restricting the hours of sale and service for licensees exercising off-sale privileges. No retailer or licensee may sell alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m. under any circumstances.

Returns of Alcoholic Beverages

While some restrictions on the return of alcoholic beverages remain in effect (*see* Business and Professions Code Sections 23104.1 (wine), 23104.2 (beer), and 23104.3 (distilled spirits)), now manufacturers and wholesalers may—but are not required—to accept returns of alcoholic beverages from retailers. Manufacturers and wholesalers may also establish their own guidelines and requirements for accepting returns (though, a condition for return cannot be that the retailer is required to purchase specific products or quantities of products in the future).

Credit to Retailers

Under the ABC's recent notice, manufacturers, wholesalers, and other specified suppliers may now extend credit to retailers beyond 30 days. Statutory penalties for maintaining a delinquent account will not be enforced, and retailers with delinquent accounts will not be required to purchase additional alcoholic beverages from any unpaid supplier only on a collect-on-delivery basis.

Suspended Retail Privileges

Ordinarily, an ABC licensee is required to Rule 65-surrender its license if the licensee violates the terms of its license by failing to exercise retail privileges for 15 days or longer. The ABC will not be requiring Rule 65-surrender for failure to exercise retail privileges for 15 days or longer while the notice is in effect.

City of Los Angeles Emergency Order Regarding Delivery of Alcohol

On March 23, 2020, City of Los Angeles Mayor Eric Garcetti executed an emergency order to allow, "(i) sales of alcoholic beverages by restaurants for off-site consumption are hereby permitted for delivery and take-out and (ii) sales, by retail stores, of alcoholic beverages for off-site consumption, including deliveries and extended sales hours, from 6 a.m. to 2 a.m. daily. . . . Alcoholic beverages sold under this Order must be sold in containers that are fully sealed in a manner designed to prevent consumption without removal of the lid or cap."

When asked how the City of Los Angeles's emergency order differed from the notice promulgated by the ABC, Mayor Garcetti said that the ABC had issued "guidance" whereas the City's directive was "an order."

California Constitution Article XX, Section 22 vests the State with the exclusive "right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State." However, cities and counties are able to enact local ordinances to the extent that they do not conflict with state laws or regulations. As such,

businesses should follow all local ordinances and state laws when regulating different aspects of the sale of alcohol and follow state law when local ordinances conflict. Thus, restaurants should not interpret the City of Los Angeles's emergency order as allowing them to deliver or sell alcohol to go without also selling a meal.

You can read the City of Los Angeles's order at <https://www.lamayor.org/sites/g/files/wph446/f/page/file/March232020OrderEllisalcoholparaking.pdf>. Businesses should remember that this order is effective only in the City of Los Angeles until it is adopted by other cities.

Limitations

Keep in mind, this relief is temporary. The ABC intends to provide a ten-day notice of termination for the relief; however, the ABC has said it can withdraw any and all relief immediately and without notice should the needs of public safety dictate such.

Moreover, the ABC expects licensees to use the relief responsibly. According to the ABC, "if the [ABC] determines that any licensee is found to be abusing the relief provided by [the] notice, or if the licensee's actions jeopardize public health, safety, or welfare, the [ABC] may summarily rescind the relief as to that licensee at any time."

Lastly, local ordinances, zoning restrictions, conditional use permits, and the like are not exempted by the ABC.

Take Advantage of the Loosened Regulations

The State of shelter in place orders, California Department of Public Health guidelines, and the federally declared national emergency have put a strain on the hospitality industry. It is important for the long-term prosperity and short-term survival for all California hospitality businesses regulated by the ABC to take full advantage of the loosened regulations promulgated by the ABC. If you have any questions about the ABC's loosened regulations, the interplay between the loosened regulations and local ordinances in your area, and/or how your business can best take advantage of the loosened regulations, contact your counsel.

If you have questions regarding this article, contact The Maloney Firm at 310.540.1505.