



**MESSNER REEVES LLP**

# COLORADO LIQUOR LICENSING UPDATE: JULY 2021

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## **Take-Out, Delivery & Common Consumption Areas**

Recent Colorado legislation creates new opportunities for liquor license holders' sales of alcoholic beverages, whether intended for on or off premises consumption. The new laws modify the current rules and regulations on take-out and delivery of alcoholic beverages, as well as add communal outdoor dining areas, which is a new type of permit for neighboring restaurants and retailers to explore.

### **Take-out and Delivery of Alcoholic Beverages**

The recent legislation modifies Colorado's previous emergency regulations on take-out and delivery of alcoholic beverages by extending them for almost all retailers to July 1, 2025. Manufacturers with sales rooms (i.e., brewers, distillers, and vintners with attached sales rooms that do not offer food) and beer wholesalers with sales rooms can continue delivery sales until January 2, 2022, less than six months from now. These licensees can continue take-out sales with the other classes of licensees until July 2025.

Similarly, the legislation limits the types of take-out or delivery sales that other unique classes of licenses can engage in. For instance, bed and breakfast establishments, optional premises establishments, retail gaming tavern establishments, art and racetrack establishments, and public transportation licenses may only engage in *delivery* sales and are prohibited from engaging in any *take-out* sales. Conversely, both on-premises and on/off-premises fermented malt beverage establishments may only engage in *take-out* sales and are prohibited from engaging in *delivery* sales. Please note that the Colorado Department of Revenue's Liquor Enforcement Division ("LED") considers take-out sales to include any curbside pick-up order within 150 feet of the licensee's premises, even if the licensee's employees deliver the pick-up order to that customer. Nonetheless, alcoholic beverages still do not need to be part of a take-out food order to be delivered or carried off a licensee's premises.

The legislation also sets a timeframe on when alcoholic beverages can be delivered or placed for a take-out order and expands the limits on the amount of alcohol allowed for each sale. Licensees may deliver alcoholic beverages, or place them for a take-out order, from 7:00 a.m. to midnight, seven days a week. Licensees are now also permitted to sell the following amounts of alcohol in each delivery or take-out order:

- 1500 milliliters of vinous liquors i.e., two bottles of wine;

July 6, 2021

- 4529 milliliters of malt liquor, fermented malt beverage, or hard cider i.e., a 12-pack of beer or hard cider or approximately three bottles of malt liquor; and
- 1 liter of spirituous liquor i.e., one bottle of liquor (but not a “handle” of liquor).

These limitations, however, do not apply to manufacturers or beer wholesalers that operate sales rooms, or brew pubs, vintner’s restaurants, or distillery pubs. These classes of licensees must continue to abide by their pre-existing volume limitations set under the code and regulations.

Other than these modifications, the majority of the existing code requirements on take-out and delivery of alcoholic beverages remain intact (C.R.S. § 44-3-911). Under the existing requirements, licensees should ensure that they have applied for, and received, the appropriate permanent take-out and delivery permit from the Colorado Department of Revenue, as well as their local licensing authority in their respective municipality or county. The LED is continuing to issue rules and regulations on the new law, and the permit application recently became available on its [website](#). Moreover, although not all cities or counties have enacted, or will enact, a permitting process, several of them could start implementing this process now that these laws have authorized most licensees to engage in these types of sales until July 2025.

### **Communal Outdoor Dining Areas**

The recent legislation also makes communal outdoor dining areas permanent. During the summer of 2020, as part of the COVID-19 pandemic relief efforts, the LED allowed licensees to submit temporary modifications of their premises to include alcohol service at outdoor dining areas. Licensees can now apply for a permanent modification of their premises with neighboring licensees to offer this same type of alcohol service at shared outdoor dining areas. The types of licensees eligible for this type of service pertain exclusively to most on-premises consumption licenses. It is important to note that retail liquor stores and other off-premises retailers will not be able to apply for this permit. Special event permits are also not eligible for this type of permit.

The new legislation makes clear that communal outdoor dining areas are not the same as common consumption areas. Messner Reeves has issued a separate [Compliance Alert on Common Consumption Areas](#). Generally, common consumption areas are established for discrete pedestrian areas as opposed to shared outdoor dining areas. Communal outdoor dining areas are created by neighboring licensees applying for a permanent modification of their respective premises to encompass a shared outdoor dining area. Please note that all neighboring licensees must be located within 1000 feet of the shared outdoor dining area. Otherwise, communal outdoor dining areas do not have the same heightened requirements as common consumption areas, which require to formation of a promotional association and separate application for the designation of an entertainment district.

July 6, 2021

The LED, however, has been entrusted to promulgate rules and regulations concerning the application process and general enforcement, which will include supervision, security, and insurance requirements for each licensee that is part of an outdoor dining area. Moreover, local licensing authorities may enact their own heightened rules and regulations for this type of permit, as they will want to ensure that licensees are not attempting to abuse this new permit by covertly expanding them into common consumption areas.

Licensees should also be aware of potential shared liability for liquor code violations with neighboring licensees before rushing to apply for an outdoor dining area together. The legislation makes clear that all licensees may be held liable for a liquor code violation occurring in an outdoor dining area if the LED or a local licensing authority are unable to ascertain the source of the violation. So, choose your neighbors wisely when looking to create an outdoor dining area.

Similar to the take-out and delivery permits discussed above, licensees should be on the lookout for updates regarding the application process for this type of permit at both the local and state level. The LED, and now local licensing authorities, are currently promulgating rules and regulations for both the application process and general enforcement of this type of permit, which may largely resemble the existing emergency regulations under LED's Regulation 47-1103.

If you have any interest in applying for either type of permit, or even questions about the processes, please do not hesitate to call the liquor license team at Messner Reeves for help.