



Notice of Permanent Rules

WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license?

WAC 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put demarcations around their dedicated dining area(s)?

WAC 314-03-200 Outside or extended alcohol service.

This explanatory statement concerns the Washington State Liquor and Cannabis Board's (WSLCB) adoption of rules. The adopted rules:

- Outline several demarcation options to designate areas classified as off-limits to minors;
- Clarify that floor plans and demarcation options must be approved by the board;
- Specifically exclude tape, paint, or stickers on floors, walls, or ceilings as demarcation options;
- Update requirements for "minor prohibited" signs to include the requirements that signage be visible to patrons who are approaching the off-limits areas, and also once inside the off-limits area;
- Allow licensees to request reclassification of their off-limits areas as open to minors for regularly scheduled or special events with prior board approval (reclassification requests are considered an alteration to a licensed premises under WAC 314-03-300);
- Change references to demarcation(s) instead of barrier(s);
- Correct an error in WAC 314-03-200 referencing that demarcations must be placed no more than ten feet apart (for outside sidewalk café service under (6)(c)); and
- Make technical and clarifying changes.

The adopted rules will be effective February 22, 2020.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to prepare a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The WSLCB appreciates stakeholder involvement in the rulemaking process. For questions about the adopted rules, please contact Janette Benham, Policy and Rules Coordinator, at (360) 664-1760 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules

Rulemaking was initiated as a result of a rules petition requesting the board revise rules that require restaurants to have a forty-two-inch barrier designating areas off-limits to minors. After review and discussion, the board agreed to open rules to explore options other than a forty-two-inch barrier. In the process of drafting these rules, several discussions and work sessions were held with stakeholders and staff members.

Summary of all public comments received on this rule proposal

CR 101 – filed August 8, 2018
CR 102 – filed November 26, 2019
Public Hearing – January 8, 2020

Twelve written comments were received regarding the proposed rules.

Six people testified at the public hearing on January 8, 2020.

Below is a summary of comments.

1. **Amoreena Miller, Strata Architects** – Written comments submitted in support of the proposed rule changes. The changes will help many restaurants succeed in adding flexibility and options for their service.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

2. **Carrie Buckel** – Written comments submitted in support of the changes, particularly the ability to request reclassification to allow minors for a special event.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

3. **Kenneth Rogers** – Written comments submitted in support of WSLCB's efforts to modify regulations allowing flexibility, particularly the ability to allow flexibility to approve variations in outdoor service area demarcation.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

4. **Juergen Oswald** – Written comments submitted in support of options other than a forty-two-inch barrier. The space saved could be used for family-friendly seating and more flexible design options.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

5. **Brad Hagen, Naples Best Restaurants, Inc.** – Written comments submitted asking what purpose a barrier provides, whether it is inside or outside a restricted area. Servers are required to verify a person is over twenty-one in order to serve alcohol, alcohol is served inside of and outside of restricted areas, minors can see alcohol being served right next to them in any establishment that serves alcohol.

WSLCB response: Thank you for your comments and participation in the rulemaking process. The rules were not changed to eliminate demarcations or barriers. Demarcation options and required signage provide a visual cue for patrons, restaurant staff, and members of the enforcement community that persons under the age of twenty-one are not allowed in the area. Throughout the rulemaking process, several stakeholders provided input, including members of the prevention community, licensees, and other businesses that participate in the design and development of restaurants. While drafting these rules revisions, the board took into consideration all stakeholder perspectives. The rules were revised in consideration of underage access, persons in recovery, social norms, exposure to alcohol and advertising, flexibility in restaurant design options, and the laws and rules currently in place regarding alcohol service, age verification, and signage requirements.

6. **Michael Ellinghouse, HotHouse, LLC** – Written comments submitted asking if the revisions apply to restaurants that do not have a bar area.

WSLCB response: Thank you for your comments and participation in the rulemaking process. The rules revisions and demarcation options apply to restaurants that have service areas of their licensed premises that are off-limits to minors (bar areas).

7. **Shellies4 (email – no name provided)** – Written comments submitted requesting that demarcations of tape or paint be allowed and that the language prohibiting tape or paint in WAC 314-02-025(3)(d) be removed.

WSLCB response: Thank you for your comments and participation in the rulemaking process. The language prohibiting tape and paint was not changed. Tape or paint may be easily moved, removed, or obscured by patrons either intentionally or unintentionally.

8. **Steve Habecker** – Written comments submitted requesting we eliminate the required barriers, and just restrict minors from sitting at the bar. The barriers are useless and minors may sit outside of a designated area with adults who are legally drinking anything the bar has to offer and those same adults can be carrying a concealed weapon. Barriers do nothing other than get in the way.

WSLCB response: Thank you for your comments and participation in the rulemaking process. The rules were not changed to eliminate demarcation options or barriers. Demarcation options and required signage provide a visual cue for

patrons, restaurant staff, and members of the enforcement community that persons under the age of twenty-one are not allowed in the area. Throughout the rulemaking process, several stakeholders provided input, including members of the prevention community, licensees, and other businesses that participate in the design and development of restaurants. While drafting these rules revisions, the board took into consideration all stakeholder perspectives. The rules were revised in consideration of underage access, persons in recovery, social norms, exposure to alcohol and advertising, flexibility in restaurant design options, and the laws and rules currently in place regarding alcohol service, age verification, and signage requirements.

9. **Taewoo Khang** – Written comments received of notice and understanding of the proposed regulations.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

10. **Katie Doyle, Washington Hospitality Association (WHA)** – Written comments submitted in support of the rules allowing several demarcation options which will increase the potential for more flexible seating arrangements. The flexibility will improve traffic flow in restaurants and allow more creativity in planning and design. WHA members welcome new possibilities while remaining committed to providing safe guest experiences and prohibiting minors from accessing alcohol.

Trent House from WHA testified at the January 8, 2020 public hearing – testified in support of the rules and referenced previously submitted written comments. Added that he is supportive of the effort undertaken and recognizes that the effort took significant public policy balancing measures.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

11. **Brian McMnamin, McMnamins Pubs & Breweries** – Written comments submitted in support of the rules to allow several demarcation options. Comments suggest that the board consider further changes similar to Oregon’s minor posting signage and minor control plan requirements, that the board adopt language that clarifies that the proposed demarcation options are available for outdoor areas, and the demarcation options should be approved by staff of the WSLCB instead of the board. Suggested changes to the proposed rules were provided.

Brian and Connors McMnamin testified at the January 8, 2020 public hearing – testified in support of the rules with comments similar to written comments, including that they take the responsibility of serving alcohol seriously and comments are provided not to increase access to minors or sales of alcohol, simply to make the process of restoring old buildings easier and create spaces for the community.

WSLCB response: Thank you for your comments and participation in the rulemaking process. The rules were not changed to allow minor posting signage with minor control plans. Throughout the rulemaking process, several options were considered, including minor posting signage and alcohol control plans similar to Oregon's requirements. The adopted rules were revised in consideration of several stakeholder perspectives and the laws and rules currently in place regarding alcohol service, age verification, and signage requirements. The adopted rules are the result of those considerations and are a compromise between different perspectives while ensuring required signage and additional visual cues were in place for patrons, restaurant staff, and members of the enforcement community. The demarcation options adopted in these rules were not extended to outside seating areas. There are several factors to consider, including public right-of-way, and differing city and county codes throughout the state. There are several stakeholders who would like clarification and revisions made to the rules regarding outside seating areas. We may look at clarifying these rules in the future. The floor plan and demarcation options will be approved by the WSLCB licensing and enforcement divisions, who have been delegated this authority by the board.

12. **Elaine R. Albrich, Davis Wright Tremaine LLP** – Written comments submitted on behalf of McMenamins, Inc. The proposed amendments will improve the regulatory situation and request the board further refine the language to ensure long term workability. Supportive of the added flexibility the different demarcation options will allow. Requiring board approval for floor plans is unnecessarily time consuming and burdensome on the board and licensees. Comments suggest adding minor posting signage and alcohol control plan requirements similar to Oregon's requirements. Additional clarifying language should be added that explicitly addresses outdoor areas and that demarcation options are available for outdoor areas as well as indoors. The current proposed language is unnecessarily restrictive and complicated and suggest additional changes that would allow more flexibility to conduct some outside or extended alcohol service. Suggested rules language was provided. Suggested changes to the proposed rules were provided.

WSLCB response: Thank you for your comments and participation in the rulemaking process. The rules were not changed to allow minor posting signage with minor control plans. Throughout the rulemaking process, several options were considered, including minor posting signage and alcohol control plans similar to Oregon's requirements. The adopted rules were revised in consideration of several stakeholder perspectives and the laws and rules currently in place regarding alcohol service, age verification, and signage requirements. The adopted rules are the result of those considerations and are a compromise between different perspectives while ensuring required signage and additional visual cues were in place for patrons, restaurant staff, and members of the enforcement community. The demarcation options adopted in these rules were not extended to outside seating areas. There are several factors to consider, including public right-of-way, and differing city and county codes throughout the state. There are several

stakeholders who would like clarification and revisions made to the rules regarding outside seating areas. We may look at clarifying these rules in the future. The floor plan and demarcation options will be approved by the WSLCB licensing and enforcement divisions, who have been delegated this authority by the board.

13. **Ben Humphrey, Heliotrope Architects** – Testified at the January 8, 2020 public hearing in support of the new rules language. Stated that the reasons for petitioning the board to revise the forty-two-inch barrier requirement were related to economic and life safety concerns. The rules revisions resolve the concerns and the changes provide new opportunities to meet demarcation options while creating interesting spaces.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

14. **Michael Pagana, Ethan Stowell Restaurants** – Testified at the January 8, 2020 public hearing in support of removing the forty-two-inch barrier requirement. The demarcation options are better than the forty-two-inch barrier requirement, but agrees with others that no barrier is better, demarcation options should be extended to outside areas, and would like to see more flexibility to allow service options to extend to shared communal spaces, such as inside a lobby of large office buildings in the ground floor area.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

15. **Annie McGrath, Washington Brewer's Guild** – Testified in support of the rules and thanked WSLCB for the good work on behalf of many brew pub members of the guild.

WSLCB response: Thank you for your comments and participation in the rulemaking process.

WAC Changes – see attachment

Amended:

- WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license?
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- WAC 314-03-200 Outside or extended alcohol service.