

### 35-II-2-03

#### Chapter 03 Permitted Premises Where Alcoholic Beverages Are Sold

- 100 The minimum distances provided in Miss. Code Ann. Section 67-1-51(3), shall be measured from the nearest point of the building housing the church, school, kindergarten or funeral home to the nearest point of the premises which consist of the floor planned area to be licensed by the Commissioner. This distance shall be measured in a straight line, such as air line distance, rather than the usual route of pedestrian travel.
- 101 No person shall sell or offer for sale any alcoholic beverages within four hundred (400) feet of any church, school, kindergarten, or funeral home, provided, however, within an area in which both the premises and the church, school, kindergarten, or funeral home are zoned commercial or industrial such minimum distance shall not be less than one hundred (100) feet.
- 102 In instances in which a church, school, kindergarten or funeral home is located in a residential district and the place of sale of any alcoholic beverages shall be located in an adjacent commercial or industrial district, such minimum distance between the place of sale of the alcoholic beverages and the church, school, kindergarten or funeral home shall be four hundred (400) feet.
- 103 Effective June 1, 1996, any location at which any alcoholic beverages are lawfully being presently offered for sale which does not conform to the above mentioned provisions shall be permitted to continue such sales, until such time as the business is abandoned for a six-month period.
- 104 A church or funeral home may waive the distance restrictions in favor of allowing issuance by the Commissioner of a permit authorizing the sale of alcoholic beverages that would otherwise be prohibited under the minimum distance requirements. Such waiver shall be in written form from the owner, the governing body, or the appropriate officer of the church or funeral home having the authority to execute such a waiver and the waiver shall be filed with and verified by the Commissioner before becoming effective.
- 105 A door must be located at or near the front of every place of business selling packaged alcoholic beverages. The back door to such place of business or storage area must be kept locked at all times except when merchandise is being received. In cases of orders or ordinances of a governing authority forbidding the locking of a back door because of a fire hazard, the Commissioner will make exceptions to this rule.
- 106 Surplus stock must be stored in the same building where the retail business is conducted, but nothing shall prohibit the owner or manager of such a place of business from erecting a partition between the retail and the storage area thereof. In the event that a permittee has multiple permits for a business establishment and there is controlled access to all areas of the establishment, the permittee may use a common storage facility located and identified on the floor planned area for all alcoholic beverages purchased.

- 107 A permittee utilizing a common storage facility for a business establishment with multiple permits must submit a floor plan of the common storage facility that designates where alcoholic beverages purchased under each permit will be stored. Co-mingling of the permitted inventories by the multiple permittee shall result in the suspension or revocation of the permits.
- 108 All sales of alcoholic beverages shall be made inside the permitted premises.
- 109 Under very limited circumstances, a permittee may request a waiver from the Commissioner to authorize the storage of surplus alcoholic beverages in a location that is separate from the building where the retail business is being conducted. Any off-site storage exception or waiver request must be approved by the Commissioner. A request for a waiver must meet the following requirements:
1. The off-site storage location must meet all distance requirements of Miss. Code Ann. Section 67-1-51 in the same manner as the retail premises as well as all local ordinances pertaining to zoning. Further, the proximity of the off-site storage location to the permittee's retail premises shall be considered by the Department.
  2. All entrances and any other access to the storage facility must remain secure and locked at all times, except when merchandise is being received or transferred to the retail location. The Commissioner may request a floor plan of the off-site location as well as a copy of the permittee's deed or lease to ensure that permittee can accomplish restricted access to the off-site location.
  3. The exclusive use of the off-premises location must be storage of surplus alcoholic beverage inventory and items authorized for sale by Miss. Admin. Code Title 35.II.2.23. There shall be no other use of the off-site storage location.
  4. A permittee utilizing an off-site storage location for a business establishment with multiple permits must submit a floor plan of the facility that designates where alcoholic beverages purchased under each permit will be stored at the off-premises location. Co-mingling of the permitted inventories by a multiple permittee shall result in the suspension or revocation of the permits.
  5. The permittee must demonstrate a specific, articulable business necessity for the waiver request as the same relates to the shelf/storage space and inventory cycles of the permittee's retail premises.
- 110 In addition to the above, the Commissioner may request any other documentation from the permittee deemed relevant for consideration of a waiver request to ensure compliance with all ABC laws and regulations. On a case-by-case basis, any waiver granted pursuant to this regulation may be subject to special conditions imposed by the Department. The Department may revoke a waiver for an off-site storage location at any time. The permittee will be notified of the revocation in writing.
- 111 On-premises permits may be issued to qualified hotels, restaurants, clubs, and to common carriers with adequate facilities for serving passengers. In resort areas, in addition to those types of businesses listed in the preceding sentence, on-premises permits may be issued to

businesses that operate solely as bars or permitted casinos or as otherwise authorized by statute.

112 (Reserved)

200 Restaurants

201 To qualify as a “restaurant” under Miss. Code Ann. Section 67-1-5(m), the premises must have and maintain the following minimum kitchen requirements. All equipment must meet applicable standards as required by the Mississippi State Department of Health and as listed in the FDA Food Code. Menus must be readily available and visible to customers along with the dining hours of operation. Dining hours must be adequate to meet the requirements based on the business's individual food service plan.

1. A menu that contains at least five (5) separate entrees. Food items must be prepared in whole or in part on the premises. Food items that are merely heated and served or “ready-to-eat” without further preparation do not meet this requirement. Specialty or theme restaurants that specialize in one entrée line may be exempted from this requirement so long as the entree line contains an acceptable number of theme or specialty entrée variations.
2. At a minimum, a Risk Category 2 Permit issued by the Mississippi State Department of Health. Proof of the Permit is required for the initial application and all subsequent renewals.
3. Employ at least one (1) employee with management or supervisory responsibility certified as a “food manager”, or an equivalent position, by an educational program recognized by the Mississippi Department of Health.
4. A kitchen that contains the following functional equipment:
  - a. Oven and stove top (can be one complete unit);
  - b. Cold storage areas (i.e., a refrigerator and freezer, either separate or combined);
  - c. Ventilation hood that meets applicable requirements under Mississippi State Department of Health regulations and city and/or local ordinances;
  - d. Adequate food preparation areas and countertop space;
  - e. Mop sink;
  - f. Three-compartment sink; and
  - g. Separate hand-washing facilities for employees.

202 At least 25% of the revenue a restaurant permittee receives must be derived from the preparation, cooking and serving of meals or, if food is given to and consumed by customers at no charge, the value of the food must be equal to 25% or more of total revenue.

203 “Meals” shall mean food and non-alcoholic drinks. It shall not include alcoholic beverages, beer or light wine and non-alcoholic beverages used in the preparation of mixed alcoholic drinks.

204 Restaurants may meet the 25% requirement using one of two options. Permit holders may not combine the below options, and must maintain either option exclusively for the permit year for purposes of determining whether 25% requirements are met.

1. If the permittee chooses to meet the 25% requirement through the sale of meals, the amount of funds derived from the sale of meals prior to any accounting adjustments by the permit holder must be 25% or more of total gross revenue when compared to gross revenue derived from the sale of food and beverages. The permittee shall calculate this figure by adding the gross revenue derived from the sale of beer, light wine, alcoholic beverages and meals and then determine the percentage amount from this total figure that is derived from the sale of meals as defined above.
2. If the permittee chooses to meet the 25% requirement through the giving away of food for consumption by customers, the value of the food must be equal to or more than 25% of total gross revenue derived from the total sale of food and beverages. "Value of food" is the cost of the food and non-alcoholic drinks purchased and given in a complimentary manner to customers, plus a reasonable mark-up not to exceed 300%. Such cost shall not include non-alcoholic beverages used in the preparation of mixed alcoholic drinks. The permittee should calculate this figure by adding the gross revenue derived from the sale of beer, light wine and alcoholic beverages to the value of food given to customers in a complimentary manner. The permittee should then determine the percentage amount of this figure that is derived from the sale of food.

205 (Reserved)

*35.II.2.03 revised effective March 15, 2019*