



STATE OF ARIZONA
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

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GOVERNOR

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The Department of Liquor Licenses and Control (“DLLC”) regulates the consumption of alcohol on unlicensed business premises. Members of the public have recently inquired with the DLLC about whether Home Owner’s Associations (“HOAs”) that permit the consumption of alcohol on HOA property must comply with the DLLC’s regulations. The DLLC has informed some inquiring parties that its regulations may not apply to HOAs depending on the circumstances. This advisory clarifies the DLLC’s position on these issues.

Arizona Revised Statute (“A.R.S.”) § 4-244.05 provides that a person owning an unlicensed “business establishment” or “business premises” “shall not allow the consumption of spirituous liquor” if any of the following occur at the location: (1) food or beverages are sold; (2) entertainment is provided; (3) a membership fee or a cover charge for admission is charged; or (4) a minimum purchase or rental requirement for goods or services is charged.

The DLLC defines terms used in statute in A.R.S. § 4-101, but has not defined the terms “business” in statute. The DLLC has adopted a rule in Arizona Administrative Code (“A.A.C.”) R19-1-324 for unlicensed entities to receive an exemption from the application of A.R.S. § 4-244.05. That regulation applies to a “business establishment, business premises, or association hosting a private social function.” The Department has defined “business” and “association” in rule, and it is presumed here that non-profit HOAs would meet the definition of an “association.” See A.A.C. R19-1-101(A)(1).

PLEASE TAKE NOTICE: Notwithstanding the narrow definition of “business” in A.A.C. R19-1-101(A)(5), the DLLC does not interpret the terms “business establishment” and “business premises” in A.R.S. § 4-244.05 to only apply to businesses conducted for profit. Definitions found in rule apply to the related rules but do not control interpretations of statutes. The Department’s interpretation is based on both the plain language of A.A.C. R19-1-324, which is adopted under the authority in the statute and expressly applies to “businesses” and “associations,” and the historical context of the definitions of “business” and “association” in A.A.C. R19-1-101(A). Those definitions were not intended to render all department *statutes* referencing a “business” inapplicable if that business is not “conducted regularly for profit” under A.A.C. R19-1-101(A)(5). Any DLLC or public publications or statements to the contrary are disclaimed and shall not govern the DLLC in any future matter.

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Even if an HOA is subject to A.R.S. § 4-244.05, whether it may permit consumption of alcohol on its property will depend on the circumstances and could vary from HOA to HOA, or from event to event for one HOA. Regarding items (1), (2), and (4), whether an event includes the sale of food and beverages or the provision of entertainment or whether event attendees must make a minimum purchase will obviously vary from one event to another. Regarding item (3), in general, HOAs require that its members pay dues periodically. Whether those dues are required for homeowners or members of the public at large to be present, with or without a member of the HOA, depends on the HOAs specific, internal rules and regulations, or the conditions that the HOA may have established for a specific event.

In addition to the foregoing, interested persons should consider A.R.S. § 4-244(20) (dealing with consumption of alcohol in public recreation areas and on private property). Title IV liquor laws are regularly amended and this advisory references statutes and rules in effect on the above date. Changes to statutes and rules might affect the citations provided herein or the analysis.

The Department will review any occasion involving the consumption of alcohol on HOA premises to determine if the unique circumstances meet one of the four criteria. It is up to each HOA to seek independent legal advice regarding whether a planned event will satisfy one of the criteria. HOAs that wish to obtain a BYOB exemption under A.A.C R19-1-324, or those who instead wish to apply for a Special Event license under A.R.S. § 4-203.02, or a Club (private) license under A.R.S. § 4-205, or any other appropriate retail license may do so using forms available on the DLLC's website.

Sincerely,

A handwritten signature in cursive script, appearing to read "John C.", is positioned below the word "Sincerely,".

Director