

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF)	
THE EXTENSION OF CERTAIN)	ADMINISTRATIVE ORDER 2022-04
COVID-19 EXPANSION OF)	EXTENDING CERTAIN COVID-19
PREMISE PERMITS)	EXPANSION OF PREMISE PERMITS
_____)	

BY THE DIRECTOR:

I. Background

On August 3, 2022, Governor Murphy signed P.L. 2022, c. 85 (S.2364), extending the expiration date of Covid-19 Expansion of Premise Permits (“Covid-19 Permit”) issued by the Division of Alcoholic Beverage Control (the “Division” or “ABC”) to November 30, 2024. Pursuant to Special Ruling No. 2020-10, a Covid-19 Permit authorizes certain licensees¹ to sell and serve alcoholic beverages in outdoor areas, either contiguous or non-contiguous to the permanently licensed premises. If a licensee possesses an active Covid-19 Permit, no renewal application is required. Otherwise, a licensee seeking a new Expansion of Premise permit in an outdoor space or public sidewalk must first obtain municipal zoning approval pursuant to P.L. 2021, c. 15, as amended by P.L. 2022, c. 85, before an application for a Covid-19 Permit can be considered by ABC. Licensees eligible for the automatic extension of their Covid-19 Permits will receive a new permit certificate prior to November 30, 2022.

II. Extension of Covid-19 Expansion of Premise Permits

During the Covid-19 pandemic, the Director issued Special Ruling No. 2020-10, which

¹ Licensees eligible for Covid-19 Permits include restaurants, bars, craft distilleries and limited breweries. See P.L. 2021, c. 15.

created the Covid-19 Permit. On February 5, 2021, Governor Murphy signed P.L. 2021, c.15 which, among other things, extended the expiration date of these Covid-19 Permits until November 30, 2022.² The Division implemented that extension through the issuance of Administrative Order 2021-01. Under the same authority described in Administrative Order 2021-01, namely N.J.S.A. 33:1-39 and -74, the Director is now extending all active Covid-19 Permits until November 30, 2024.

Under the new P.L. 2022, c. 85, municipalities, as they were before, are authorized to file an objection to the continued operation of a licensee under an extended Covid-19 Permit with the Division. Objections are limited to those identified in P.L. 2022, c. 85 (e.g., violations of health, safety, fire, permitted use or zoning regulations or ordinances not superseded by Special Ruling No. 2020-10). The Division will consider relevant objections, and depending on the factual circumstances, may suspend or revoke a permit or impose special conditions. Municipalities are also able to file charges against licensees for violations of the Covid-19 Permit, however, the ultimate decision to revoke or suspend that permit or impose special conditions rests with the Division.

The Covid-19 Permit, like all other permits, is issued to the legal entity associated with the license. Once the legal entity holding the license changes, a new Covid-19 permit is required. Likewise, if there is a place-to-place transfer, a new Covid-19 permit is required to address any new outdoor space where a licensee may seek to sell and serve alcohol.

² P.L. 2015, c. 15 also authorized certain licensees to use “outdoor spaces” and “public sidewalks” that were adjacent to their licensed premises for the purpose of conducting sales of food and beverages. New expansion of premises permits required municipal approval before the Division could issue a Covid-19 Permit.

III. Open Container Areas

In a related matter, earlier this year Governor Murphy signed into law P.L. 2021, c. 395, allowing municipalities to adopt an ordinance designating an “open container area” on any portion of a municipality (or an area encompassing the entire municipality) where persons of legal age may carry and consume alcoholic beverages. See N.J.S.A. 33:1-24.4; N.J.S.A. 40:48-1(36). The Division interprets this law to allow persons of legal age to bring alcoholic beverages in original containers or in “closed or sealed containers”³ to a municipally-designated open container area, where the containers may then be opened and consumed. The law expressly provides that the sale of alcoholic beverages for consumption in an open container area is subject to the ABC Act and the corresponding regulations. See N.J.S.A. 33:1-24.4(c). There is potential for conflict if a municipality designates by ordinance an open container area (e.g., public sidewalk, parklet or driveway) that overlaps or encompasses the expanded premises of a licensee in conjunction with a Covid-19 Permit. The overlapping designation could result in confusion, uncertainty, potential license liability, and possible nullification of a licensee’s Covid-19 Permit.

As noted above, a Covid-19 Permit issued pursuant to Special Ruling No. 2020-10 allows a licensee to sell and serve alcohol in an outdoor area that is either contiguous or non-contiguous to the permanently licensed premises.⁴ The permit requires the licensee to demarcate the

³ In AN 2020-06, the Division defined a “closed and sealed container” as a container with a tamper-evident seal, meaning a seal that will indicate whether a seal or closure has been interfered with or removed. Examples of a tamper-evident seal include, but are not limited to, crown capped glass bottles, screw tops that break from a ring when opened, or heat-sealed closures over sealed caps. Acceptable containers include, but are not limited to, plastic beverage pouches, bottles, substantial or sturdy plastic containers and mason-type jars, as long as the lid or screw cap is sealed with tamper evident security tape or heat-sealed plastic film.

⁴ Due to social distancing requirements that existed when Special Ruling No. 2020-10 was issued, the Division permitted licensees to expand their licensed premises to areas that are non-contiguous to their licensed premises, such as “parklets.” Parklets are small seating areas or green

expanded premises and adopt a security plan to ensure that alcohol is not sold or served to underage patrons or patrons who are apparently or actually intoxicated. Licensees must exercise exclusive control over the expanded premises covered by the Covid-19 Permit and cannot allow their customers to remove open containers of alcoholic beverages.

Under the new open container law, the sale of alcoholic beverages for consumption within a municipally-designated open container area is subject to the Division's jurisdiction. N.J.S.A. 33:1-24.4(c). If a municipality intends to designate an open container area that overlaps or encroaches upon a premises that has been permitted or licensed by the Division to sell alcohol for consumption, the municipality shall alert the Division in advance and submit a copy of the ordinance before it is enacted. See N.J.S.A. 33:1-40. The ordinance may be disapproved if it is found to be inconsistent with the ABC Act and corresponding regulations.

It is therefore on this day of October, 2022,

ORDERED that, on the effective date of P.L. 2022, c. 85, the expiration date of all active Covid-19 Permits issued by the Division is hereby extended to November 30, 2024, without the licensee having to perform any additional administrative actions at the State or municipal level; and it is further

ORDERED that any licensee seeking a new Covid-19 Permit in an outdoor space or public sidewalk must first obtain municipal zoning approval pursuant to P.L. 2021, c. 15, as amended by P.L. 2022, c. 85, before an application for a Covid-19 Permit may be considered by the Division;

spaces created as public amenities on or alongside a sidewalk, especially in a former roadside parking space. The Division approved Covid-19 Permits for non-contiguous areas based on a demonstration by a licensee that the areas were in reasonable proximity to the licensed premises and had adequate safeguards in place to ensure that alcohol was sold and served in a responsible manner.

and it is further

ORDERED that any municipality seeking to designate an “open container area” pursuant to N.J.S.A. 33:1-24.4 and N.J.S.A. 40:48-1(36) that overlaps or encroaches upon a premises that has been permitted or licensed by the Division to sell alcohol for consumption shall submit a copy of the ordinance to the Division before it is enacted; and it is further

ORDERED that all terms and conditions imposed on holders of any Covid-19 Permit, not inconsistent with any other laws, shall remain in force and shall be subject to enforcement by the Division and local issuing authority.



ALYSSA P. WOLFE
ACTING DIRECTOR

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