

CHAPTER 95

AN ACT concerning outdoor sale of food and alcoholic beverages and supplementing Title 40 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.40:55D-164 Definitions.

1. As used in this act:

“Alcoholic beverage manufacturer license” or “license” means a plenary winery license, farm winery license, limited brewery license, restricted brewery license, cidery and meadery license, and craft distillery license issued pursuant to R.S.33:1-10.

“Alcoholic beverage retail consumption license” or “license” means a plenary retail consumption license, plenary retail consumption license used in connection with a hotel or motel, seasonal retail consumption license, or club license issued pursuant to R.S.33:1-12, or a concessionaire permit issued pursuant to Title 33 of the Revised Statutes that authorizes the sale of all alcoholic beverages for consumption on the licensed premises.

“Food” means food that is cooked, prepared, sold, served, and consumed on the business premises.

“Outdoor space” means a patio or deck, whether covered or uncovered, a yard, a walkway, or a parking lot, or a portion of any such space, that is located on the business premises, contiguous to the business premises, or in a non-contiguous location in accordance with paragraph (2) of subsection a. of section 2 of P.L.2024, c.95 (C.40:55D-165) which space is owned, leased, or otherwise in the lawful control of the owner or operator of the business premises.

“Premises expansion permit” means a permit issued to a manufacturer license holder or retail consumption license holder that entitles the license holder to use outdoor spaces as an extension of their business premises that they own or lease and that are located either on their business premises, contiguous to the business premises, or in a non-contiguous location in accordance with paragraph (2) of subsection a. of section 2 of P.L.2024, c.95 (C.40:55D-165) for the purpose of conducting sales of food and beverages as allowed by law.

“Public sidewalk” means a sidewalk on the locally or county owned public right-of-way which is adjacent to the business premises or a portion thereof.

C.40:55D-165 Premises expansion permit, alcoholic beverage manufacturer license, retail consumption license holder.

2. a. (1) Following the issuance of a special ruling or adoption of regulations pursuant to subsection f. of this section, the Director of the Division of Alcoholic Beverage Control shall issue to the holder of an alcoholic beverage manufacturer license or retail consumption license a premises expansion permit upon application by the license holder. Application for the permit shall be made on an annual basis and the administrative fee for the permit shall be fixed by the director. The permit shall entitle the license holder to sell alcoholic beverages in outdoor spaces as an extension of their business premises that they own or lease and that are located either on their business premises, contiguous to the business premises, or in a non-contiguous location in accordance with paragraph (2) of this subsection. The director may impose any conditions upon the issuance or renewal of this permit deemed necessary and proper to achieve the objectives of this section.

(2) The permit shall entitle the license holder to expand the licensed premises to non-contiguous property, provided the property is in reasonable proximity to the licensed premises and the license holder has established safeguards to ensure that alcoholic beverages will be sold and served in accordance with Title 33 of the Revised Statutes. A license holder who obtains a premises expansion permit for a contiguous and non-contiguous property shall

demonstrate that the license holder has a possessory interest and control over the property and shall be entitled to exercise the same privileges afforded on the existing licensed premises.

b. An applicant for a premises expansion permit shall file an application with the director with the following information:

(1) the name, address, and license number of the applicant;

(2) a description of the property that is the subject of the application as well as a sketch or photographs of the property;

(3) written approval or documentation from the property owner authorizing the temporary use of the expanded property by a licensee if the licensed property is not owned by the license holder; and

(4) proposed security plan for sale and service of alcoholic beverages on the expanded premises including prevention of pass-offs, underage drinking, and over-consumption.

c. The director shall transmit the application for a premises expansion permit to the municipal clerk and police chief of the municipal governing body in which the manufacturer license or retail consumption license is situated. For licensed premises located on property owned by or under the control of any political subdivision of this State, the application shall be reviewed and approved by a designated administrative official and the chief law enforcement officer responsible for the licensed property.

The director shall not approve or deny an application until it receives an endorsement or approval by the appropriate governing body officials.

d. Following the initial issuance, the renewal date of a premises expansion permit issued pursuant to this section shall be the same as the renewal date of the retail consumption license or manufacturer license.

e. (1) A license holder who held a temporary expansion permit issued pursuant to the director's special ruling prior to the effective date of this act shall be entitled, upon notice to the director and payment of a fee as shall be fixed by the director, to convert the permit to a premises expansion permit established pursuant to this section. A license holder who held the temporary expansion permit prior to the effective date of this act and converts the permit pursuant to this subsection shall not be required to submit to the director or municipal governing authority an additional application pursuant to P.L.2024, c.95 (C.40:55D-164 et al.).

(2) A temporary expansion permit issued pursuant to the director's special ruling prior to the effective date of this act shall remain in effect pending the director's issuance of a special ruling or adoption of regulations pursuant to subsection f. of this section until either November 30, 2025 or until the license holder is issued a premises expansion permit pursuant to this section.

f. No later than May 30, 2025, the director shall issue a special ruling or adopt regulations necessary to effectuate the purposes of this section. Regulations shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months and may, thereafter, be amended, adopted or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.40:55D-166 Outdoor spaces, extension of business premises, other than sale of alcoholic beverages, application filing, municipal zoning officer.

3. a. Notwithstanding the provisions of any law to the contrary, the owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license may use, for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165), outdoor spaces as an extension of their business premises that they own or

lease and that are located either on their business premises contiguous to the business premises, or in a non-contiguous location.

b. The owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license seeking to utilize, for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165), outdoor spaces as an extension of their businesses shall file an application with the municipal zoning officer. The application to the municipal zoning officer shall include:

(1) a plan, sketch, picture, or drawing that depicts the design, dimensional boundaries, and placement of tents, canopies, umbrellas, tables, chairs, and other fixtures of the outdoor spaces; and

(2) a plan for the control of litter, the removal and storage of garbage, and the cleaning of fixtures and grounds. If a business premises' parking lot is used for the service and sale of either food or beverages, or both, the owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license shall not encumber more than 75 percent of the lot's total parking spaces for service and sale, unless the parking lot contains less than eight parking spaces, and shall maintain at least one handicapped parking space in the parking lot.

c. A municipality may require that an applicant provide one or more of the following:

(1) written consent of the owner of the premises, if other than the applicant;

(2) an insurance certificate naming the municipality as an additional insured, with general liability on an occurrence with a limit of liability of at least \$1,000,000, with respect to losses arising solely from the operation of the outdoor dining facility; or

(3) an indemnification agreement with the municipality with respect to losses arising solely from the operation of the outdoor dining facility.

d. (1) The zoning officer shall issue an approval to the applicant within 15 business days of the application being submitted and deemed complete provided that the applicant meets and abides by all qualifications and requirements of P.L.2024, c.95 (C.40:55D-164 et al.), with the exception that the zoning officer may deny an application based on current violations of any other health, safety, fire, permitted use, or zoning regulation or upon any applicable law permitting the denial of a zoning permit. An application under this section shall not be considered a variance under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

(2) A municipality may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of P.L.2024, c.95 (C.40:55D-164 et al.) or any provision of a law, ordinance, or regulation related to health, safety, fire, permitted use, zoning, or the consumption or control of alcoholic beverages not otherwise under the jurisdiction of the Division of Alcoholic Beverage Control and may also deny, revoke, or temporarily suspend the permit of any applicant or permittee based on any action taken against the applicant or permittee by the Division of Alcoholic Beverage Control related to the division's enforcement of any law or regulation related to the consumption or control of alcoholic beverages under its jurisdiction.

(3) An appeal to any approval, denial, revocation, or suspension may be filed through the municipal clerk with the governing body of the municipality. The governing body, or its designee, shall conduct a hearing and render a decision within 30 days of the filing of the appeal. The governing body may designate a municipal official or an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the governing body for the purpose of conducting said hearing and rendering said decision. Nothing in P.L.2024, c.95 (C.40:55D-

164 et al.) shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

e. A permit issued pursuant to this section to a restaurant without an alcoholic beverage retail license shall be subject to annual renewal.

f. A municipality that approves an application for the holder of an alcoholic beverage manufacturer license or retail consumption license shall submit its endorsement to the Director of the Division of Alcoholic Beverage Control pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165).

g. The owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license who held a temporary permit issued by the municipality prior to the effective date of this act shall be entitled to convert the permit to a premises expansion permit established pursuant to this section to be used for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165). An owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license who held a temporary permit issued by the municipality prior to the effective date of this act and converts the permit pursuant to this subsection shall not be required to submit to the municipal governing authority an additional application pursuant to P.L.2024, c.95 (C.40:55D-164 et al.).

C.40:55D-167 Fixtures on private, public property, right of way, permitted use.

4. The installation and continuous use of tents, canopies, umbrellas, tables, chairs, and other fixtures on private property or public property or right of way designated by a municipality pursuant to P.L.2024, c.95 (C.40:55D-164 et al.) shall be a permitted use provided that the tent, canopy, umbrella, table, chairs, or other fixture conforms to all applicable provisions of the State Uniform Construction Code and Uniform Fire Code, which have been adopted by the Commissioner of Community Affairs pursuant to P.L.1975, c.217 (C.52:27D-119, et seq.) and P.L.1983, c.383 (C.52:27D-192 et seq.), respectively.

C.40:55D-168 Municipal ordinances, applicability, notwithstanding permitted conducting of business outdoors.

5. a. Notwithstanding any provision of P.L.2024, c.95 (C.40:55D-164 et al.) to the contrary, all other municipal ordinances pertaining to sanitation, property maintenance, noise, business days and hours of operation, and days and hours of service of alcoholic beverages shall apply, unless specifically suspended or modified by the municipality or specifically prohibited by the provisions of this section.

b. With respect to a restaurant that does not sell alcoholic beverages and the holder of a premises expansion permit issued pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165) operating in outdoor spaces pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165), a municipality shall not prohibit or limit the days and hours of the outdoor service of food and beverages, including alcoholic beverages, except that municipalities may prohibit or limit operations for the hours after 10:00 p.m. and between 12:00 a.m. and 11:00 a.m. on Sundays through Wednesdays, and between 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with the exception that a municipal ordinance prohibiting or limiting the days and hours of indoor service of food and beverages, including alcoholic beverages, may be applied to the outdoor service of food and beverages, including alcoholic beverages, as a condition of the zoning approval pursuant to section 3 of P.L.2024, c.95 (C.40:55D-166). This provision shall not be construed as overruling or prohibiting the authority of a city of the first class to impose

more restrictive time restrictions or prohibit or limit the days and hours of the outdoor service of food and beverages.

c. A municipality may either prohibit or limit the days and hours of any live performances, including musical performances, and the playing or projection of any content from a recording, streaming service, or television, cable, or Internet broadcasting service in outdoor spaces or on public sidewalks as a condition of the zoning approval pursuant to sections 3 and 4 of P.L.2024, c.95 (C.40:55D-166 and C.40:55D-167).

C.40:55D-169 Public sidewalks, outdoor spaces, considered portion of premises open to public.

6. A public sidewalk or an outdoor space, including pedestrian walkways and pedestrian malls, which is subject to a premises expansion permit issued pursuant to section 2 or section 3 of P.L.2024, c.95 (C.40:55D-165 or C.40:55D-166) shall be considered a portion of the premises that is open to the public for the purposes of section 5 of P.L.1999, c.90 (C.2C:33-27).

C.40:55D-170 Construction of act; restaurants temporarily, permanently closed, limited operation due to disciplinary, legal sanctions, entering settlement agreement.

7. Nothing in P.L.2024, c.95 (C.40:55D-164 et al.) shall be interpreted or construed as permitting or mandating the opening, expansion, or resumption of unlimited operations of a restaurant that does not sell alcoholic beverages and the holder of a COVID-19 Expansion Permit issued by the Director of the Division of Alcoholic Beverage Control pursuant to the provisions of Special Ruling No. 2020-10 or a premises expansion permit issued pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165) that is closed, whether permanently or temporarily, or operating subject to limitations on its operations, service, or hours, as a result of disciplinary or legal sanctions imposed by, or entering into a settlement agreement with, a court of the State of New Jersey, a municipal court, the New Jersey Department of Law and Public Safety, the New Jersey Division of Alcoholic Beverage Control, or a municipal governing body acting as a local alcoholic beverage control board, as applicable.

8. Section 4 of P.L.2021, c.15 is amended to read as follows:

4. a. Notwithstanding the provisions of any other law to the contrary, the expiration date of any COVID-19 Expansion Permit issued by the Director of the Division of Alcoholic Beverage Control pursuant to the provisions of Special Ruling No. 2020-10 shall be November 30, 2025, except that any such permit shall expire prior to that date upon the conversion of the permit to, or issuance to the permit holder of, a premises expansion permit pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165).

b. The governing body of a municipality may file with the Division of Alcoholic Beverage Control an objection to the continued operation under subsection a. of this section by any licensee or permittee the governing body finds to have:

(1) failed to follow, maintain, and enforce protocols promulgated by the Commissioner of Health or by Executive Order of the Governor in response to the COVID-19 public health emergency concerning social distancing and the use of personal protective equipment; or

(2) violated any other health, safety, fire, permitted use, or zoning regulations or ordinances not otherwise directly superseded by this section or Special Ruling No. 2020-10.

Any decision rendered, or action taken, by the Director of the Division of Alcoholic Beverage Control as a result of an objection filed by the governing body of the municipality pursuant to this subsection shall be a final agency action subject to judicial review in the Appellate Division of the Superior Court of New Jersey in accordance with the Rules of Court.

c. Nothing in this act shall preclude or limit the authority provided to the Director of the Division of Alcoholic Beverage Control pursuant to the provisions of Title 33 of the Revised Statutes or the exercise of such authority thereby.

9. Section 10 of P.L.2021, c.15 is amended to read as follows:

10. This act shall take effect on the 30th day following enactment and sections 1 through 8 shall expire at 11:59 p.m. on November 30, 2025.

C.40:55D-171 Construction of act; State-owned rights-of-way.

10. Nothing in P.L.2024, c.95 (C.40:55D-164 et al.) permits the use of State-owned rights-of-way for the purposes of outdoor dining. A permit for the use of the State rights-of-way shall be issued upon application and approval of the New Jersey Department of Transportation. For the purposes of locally owned roads that intersect the State highway system, setbacks from the State right-of-way line will be 50 feet from April 1 to October 31, and 100 feet from November 1 to March 31.

11. This act shall take effect immediately, except that subsections a. through e. of section 2 shall remain inoperative until May 30, 2025 but the director may take such anticipatory action as may be necessary to effectuate those provisions of this act.

Approved November 25, 2024.