

Industry Update

BY KEVEN DANOW

License Renewals

The New York State Liquor Authority is changing the way it processes renewal applications. Beginning with the May 1st renewal period, the Authority will be sending a notice. It will provide instructions and invite you to download the renewal application along with a list of the documents and information that must be submitted with the application. The invitation will also set forth the necessary fees and the effective period for the new license.

On-premise licensees should keep in mind that Section 109(2) of the Alcoholic Beverage Control Law requires that you notify your municipality (community board, village, town or city) of your intention to renew your license 30 days before you file the renewal application with the State Liquor Authority. Failure to do so will result in disapproval of your application.

If you are an on-premise licensee you must submit proof with the renewal application that you gave this notification. You are responsible to see that your application for renewal is filed in a timely fashion.

Section 401(2) of the New York State Administrative Procedure Act, provides:

■ When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid agency action then in effect summarily suspending such license (Emphasis added).

■ If your application for renewal is denied, and you can demonstrate that you delivered a complete renewal application with all appropriate information and notices in a timely fashion, your license will be deemed extended until you have completed your appeal process with the authority and you may be able to get the license extended during the appeals process through the courts. On the other hand, if the application was late or substantially incomplete, you may be forced to remain closed pending an appeal. If that happens, the loss of revenue may be so severe that even if you win, you will not be able to reopen.

Keg Registration Law Expires

On November 22, 2010, New York's Keg Registration law expired. Those licensed to sell beer at retail for off-premise consumption are no longer required to document and track keg sales on State Liquor Authority forms or to collect mandated deposits. You may, if you wish, take a keg deposit to insure the keg's return.

Restaurants May Deliver Beer With Food Orders

The New York State Liquor Authority has ruled that on-premise licensees may deliver beer in containers along with a food order. You must receive the order in the licensed premises. However, orders you receive at your premise over the telephone, by fax or via the Internet are considered to be ordered on your premises. The Authority's ruling applies to beer only. The sale or delivery of wine or liquor for off-premise consumption by an on-premise licensee, other than a hotel off-premises (HOP) permittee, is a violation of the law. The beer must be delivered along with a food order.

BYOB

If you have the appropriate on-premise license, you may allow your customers

to bring their own beverage alcohol and consume it on your premises. If you only have a beer and wine license, you may not allow a patron to bring and consume spirits on the premises. You may, if you wish, charge your customer a corkage or service fee for this privilege. In any event, you are responsible to maintain an orderly and safe premise. Consequently, you will be held liable if you allow a customer to bring beverage alcohol onto your premise and the customer uses that beverage to serve a person to the point of intoxication or if the beverage is served to a minor.

As noted, this privilege is only available for beverage alcohol consistent with your license. Because of Section 64-b of the Alcoholic Beverage Control Law, it is unlawful for any unlicensed person operating a place of business for profit, with a capacity to hold 20 or more persons, to allow beverage alcohol to be brought onto the premise for the purpose of consumption. This means that an unlicensed restaurant, which has a public assembly permit to hold 20 or more persons, may not allow patrons to bring their own wine, beer or spirits onto the premises. It is especially important to keep this in mind during the period that an application for a license is pending.

If you believe it is permissible to provide free alcoholic drinks or to allow patrons to bring their own beverage alcohol onto a premise for which a license application is pending, you are just plain wrong. If the Authority discovers you are allowing beverage alcohol onto your premise, without a license or permit, your chances of obtaining a license are significantly reduced.

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