

Current Issues Regarding Alcohol Licensing

May 25, 2021

Local Approval of Outdoor Alcohol Service

The Governor and General Court took several actions over the past year related to alcohol licensing aimed at providing relief to restaurants, which were hit hard by COVID-19 capacity restrictions during the pendency of the State of Emergency. These included authority to sell beer, wine and cocktails “to go” with take-out food, capping fees on food delivery services and allowing local licensing authorities (LLA) to approve outdoor seating areas without the usual mandatory inspection and approval of the ABCC. While the first two items are currently under discussion to be continued by the General Court, at present, the outdoor service provision is facing a deadline. The Governor’s COVID Order #50 authorized outdoor service with only local approval until “60 days past the end of the State of Emergency.” With the Governor’s announcement that the State of Emergency will be lifted on June 15, 2021, this means this portion of Order #50 will expire on August 14, 2021 if the Governor or General Court take no further action.

Under such circumstances, these locally approved outdoor service areas would be considered unpermitted and in violation of their alcohol license after August 14, 2021, unless they have also been approved by the ABCC. We recommend that LLAs advise any license holders with outdoor table service areas that were only permitted at the local level that they must file an Alteration of Premises application with the LLA, which, if approved, can be submitted to the ABCC for formal approval in order to remain compliant with statutory requirements. It appears that the usual statutory public hearing requirements would apply. In addition, municipalities should review how their zoning ordinances and bylaws apply to such outdoor areas.

Prohibiting Sale of “Nips”

The other recent alcohol licensing news, not related to the pandemic, concerns attempts to curb or ban package store sales of what are commonly referred to as “nips” – containers of alcohol, usually spirits, of 100 milliliters or less. Complaints about these items include littering and public health concerns. In 2019, the City of Chelsea approved such a ban. When local businesses appealed to the ABCC, the Commission determined that it did not have jurisdiction on the issue. In June 2020, the Falmouth Town Meeting approved a general bylaw prohibiting the sale of “nips,” thus requiring the approval of the Attorney General. On March 22, 2021, the Attorney General’s Municipal Law Unit approved the bylaw, finding it not preempted by or inconsistent with state law. In both Chelsea and Falmouth, the bans were established to take effect several months later to give package stores

the chance to sell off their existing stock of nips and coordinate future deliveries before the ban starts. It is still possible that a court challenge could be brought against these bans. At present, however, the Attorney General has concluded that such local action is valid.

Please contact your KP Law attorney if you have further questions. In the meantime, from all of the staff and attorneys at KP Law, be safe and take good care.

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