

Alcohol Licensing: Current Issues

Updated for the January 2023

MMA Annual Business Meeting and Trade Show

Local Approval of Outdoor Alcohol Service Ending

The Governor and General Court took several actions from 2020-2022 related to alcohol licensing, aimed at providing relief to restaurants hit hard by COVID-19 capacity restrictions. These orders and legislation included authority to sell beer, wine and cocktails “to go” with take-out food, capping fees on food delivery services and allowing a local licensing authority (LLA) to approve outdoor seating areas without the usual mandatory inspection and approval of the ABCC. In early 2022, provisions for local approval of outdoor service and takeaway alcohol were extended until April 1, 2023. At present, however, it does not appear that the General Court is planning to approve a further extension of these provisions, although a new spike in COVID-19 variants could potentially change this.

Absent any extension, therefore, as of April 1, 2023, any bar or restaurant with an outdoor service area approved by the LLA but not by the ABCC will be in violation of its alcohol license, unless it reverts to only the service area approved by the ABCC as of early 2020. If such license holders did not address this issue with their renewal for 2023, we recommend that LLAs advise any such license holders that they must file an Alteration of Premises application that, if approved, can then be submitted to the ABCC for formal approval in order to remain compliant with statutory requirements. The usual statutory public hearing requirements will apply. In addition, municipalities should review how their zoning ordinances and bylaws apply to such outdoor areas.

Prohibiting Sale of “Nips”

Some municipalities have acted to curb or ban off-premises alcoholic beverage stores from selling 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, stating that it would have to be determined by the courts. In June 2020, however, 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 to be 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. The Attorney General most recently approved a similar bylaw for the Town of Nantucket in September 2022. 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 bylaws are valid.

Please contact Attorney [Brian Riley](#) or Attorney [Lauren Goldberg](#) at 617.556.0007 with any further questions.

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