

Alcoholic Beverages Licensing – Recent Changes in Law

June 3, 2024

Chapter 88 of the Acts of 2024, *An Act Making Appropriations for the Fiscal Year 2024 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects* (the “Act”), was signed into law by Governor Maura Healey on April 30, 2024. While the Act contains a number of provisions important to municipalities, two changes relating to the service of alcoholic beverages on the premises of a license holder are of particular interest to local licensing authorities – selling mixed drinks with take-out food (“cocktails to go”) and the expansion of licensed premises for outdoor service. The Alcoholic Beverages Control Commission (“ABCC”) recently issued advisories on these changes, and this eUpdate is intended to supplement those advisories. Copies of both advisories are attached to this update.

Mixed Drinks Accompanying Take-Out Food Orders

Section 10 of the Act amends G.L. c. 138 by inserting a new section §12½ that permanently allows establishments licensed for the on-premises sale of all alcoholic beverages, distilled spirits, or cordials/liqueurs, as those terms are defined in G.L. c. 138, §1 and §12 ½, to sell mixed drinks, also defined in §12 ½, prepared on the licensed premises for off-premises consumption. Establishments covered by this amendment include bars, restaurants and several other establishments that prepare and sell mixed drinks, including a pub brewery if it also holds a §12 on-premises license. These licensed establishments may now sell mixed drinks allowed under their type and category of license provided that they are (1) sold with a food order and (2) in sealed containers, “designed to prevent consumption without removal of the lid or cap.” Importantly, authority to sell such beverages accompanying a food order for off-premises consumption is provided by statute and does not require the approval of the local licensing authority.

Although Section 10 of the Act allows establishments to sell mixed drinks for off-premises consumption, the ABCC advises that the law does not permit licensed establishments to sell “wine or malt beverages” for off-premises consumption unless those beverages are a part of the “mixed drink” as defined in G.L. c. 138, §12½. The ABCC also advises licensed establishments delivering mixed drinks in vehicles owned or leased by the establishment to obtain a transportation permit pursuant to G.L. c. 138, §22.

Outdoor Alcoholic Beverage Service

Section 4 of the Act amends G.L. c. 40A, the Zoning Act, by inserting a new section, §3B, which streamlines the process for approving alterations of licensed premises to include service of alcohol in outdoor dining areas. Most notably, the Act eliminates the requirement for approval by the ABCC and allows such alterations in premises to be made solely at the local level. Notably, by including this statutory amendment in the Zoning Act,

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(1) expansion to outdoor areas may be made without regard to any conditions of a special permit, variance, or other zoning approval, and (2) such changes may be made without the notices otherwise required by the Zoning Act. These changes, similar to those adopted by the ABCC in April 2022, are now permanent.

In order to take advantage of this expedited procedure, the municipal “chief executive officer” must adopt a process for approving such requests. The process should review parking and other practical or safety issues that municipalities may have addressed after the issuance of 2022 ABCC guidance. We recommend that notice to abutters, still required for the ABCC’s Alteration of Premises application procedure for indoor alterations, be included in the new approval process. A licensee may begin utilizing an approved outdoor space once such approval is filed with the City or Town Clerk.

For further information, please contact your KP Law attorney at 617.556.0007 or Attorney Brian W. Riley by e-mail at BRiley@k-plaw.com.

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