

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF THE EXPANSION	)	
OF CERTAIN LICENSED PREMISES	)	SR 2020-10
TO ACCOMMODATE SOCIAL DISTANCING	)	SPECIAL RULING ESTABLISHING
REQUIREMENTS DUE TO THE COVID-19	)	TEMPORARY COVID 19 PERMIT TO
PANDEMIC	)	EXPAND LICENSED PREMISES
_____	)	

BY THE ACTING DIRECTOR:

By Executive Order No. 150 (2020), Governor Murphy announced that, given the reduced transmission of COVID-19 outdoors, licensees or permittees with on-premises retail consumption privileges would be permitted to reopen their establishments and serve patrons in outdoor areas. To facilitate this reopening, which is to become effective on June 15, 2020, the Director of the Division of Alcoholic Beverage Control (the “Division”) has determined it necessary to create a temporary permit, known as the COVID-19 Expansion of Premises Permit (“COVID-19 Expansion Permit”), to enable licensees and permittees to expand their licensed premises into outdoor areas, either contiguous or non-contiguous to their permanently licensed premises. This Special Ruling will establish which licensees are eligible for the permit, the application process, and the privileges and limitations of the permit. Licensees may apply immediately through the POSSE ABC Online Licensing System (“POSSE”), but no permit that is issued shall be effective before June 15, 2020. All licensees and permittees with on-premises retail consumption privileges are eligible to apply for this permit, and if they meet the criteria set forth herein, the Division will issue a permit.

The Director of the Division has broad authority to regulate the alcoholic beverage industry and receives heightened deference from the courts to allow for the exercise of the Director’s

discretion in the “delicate area” of alcohol regulation. Circus Liquors, Inc. v. Middletown, 199 N.J. 1, 12-13 (2009). The Director is authorized to provide for contingencies “where it would be appropriate and consonant with the spirit of this chapter to issue a license but the contingency has not been expressly provided for,” and the Director may, for special cause shown, issue temporary permits. N.J.S.A. 33:1-74. It is under this authority that the Director is authorizing creation of a COVID-19 Expansion Permit.

I. New Permit.

The COVID-19 Expansion Permit will allow licensees to expand their premises onto areas adjacent to or contiguous with the licensed premises, where they may provide for the sale and service of alcoholic beverages as on the primary licensed premises. The Director may also permit a licensee to expand its premises onto non-contiguous property, provided the property is in reasonable proximity to the licensed premise and the licensee has safeguards in place to ensure that alcoholic beverages will be sold and served in a manner that protects public health, safety and welfare. In both contiguous and non-contiguous expansions, the licensee must demonstrate that it has a possessory interest and control over those areas, and that it will exercise the same privileges afforded to it on its existing licensed premises. Specifically, licensees that offer food service on their licensed premises must offer *bona fide* food service on the expanded premises. This permit would also allow Class A manufacturers, such as plenary and farm wineries, limited breweries, craft distilleries and cideries and meaderies, to expand their licensed tasting rooms into outdoor areas, but would not otherwise expand their existing privileges.

Examples of permissible expansion areas include, but are not limited to: decks, patios, sidewalks, and parking lots adjacent to or contiguous with the licensed premises, or parks, “parklets” established by a municipality, and other public rights-of-way, as long as these areas are

accessible from the licensed premises and comply with all provisions of the Governor’s Executive Orders and Administrative Orders concerning public health and social distancing requirements.

A COVID-19 Expansion Permit would not be required if a licensee sells a cocktail-to-go, as authorized by P.L. 2020, c. 33, to a patron who consumes it off of the licensed premises (e.g., on a public roadway closed off to traffic, sidewalk, park or beach) in accordance with local laws. Off-premises consumption of alcoholic beverages in public areas is within the jurisdiction of each municipality. See N.J.S.A. 40:48-1.

II. Eligible Licensees and Permittees.

The following licensees or permittees with on-premises retail consumption privileges may apply for the COVID-19 Expansion Permit:

1. Plenary Retail Consumption licensees (“33”);
2. Plenary Retail Consumption licensees with the “broad package privilege” operating primarily as a bar/restaurant (“32”);
3. Seasonal Retail Consumption licensees (“34”);
4. Plenary Retail Consumption licensees operating under the Hotel/Motel exception (“36”);
5. State Concessionaire permittees (“14”);
6. Golf Facility permittees (“40”);
7. Club licensees (“31”);
8. Limited Brewery licensees (“11”);
9. Restricted Brewery licensees (“08”);
10. Plenary Winery licensees (“21”);
11. Farm Winery licensees (“22”);
12. Cidery and Meadery licensees (“02”); and
13. Craft Distillery licensees (“07”).

Holders of Temporary Authorization Permits (“TAP”), with on-premises retail consumption privileges, are also eligible to apply. However, licensees that do not have on-premises retail consumption privileges are not eligible to apply for the COVID-19 Expansion Permit. As noted above, applications must be submitted exclusively through POSSE.

III. Application Requirements.

The application for the COVID-19 Expansion Permit will require the applicant to provide, at a minimum, the following information:

1. 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;
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; and
5. Acknowledgement by the licensee that it has reviewed all applicable local and State safety and social distancing guidelines, including Executive Order No. 150 (2020) and the COVID-19 Outdoor Dining Guidelines for Retail Food Establishments, and will operate the proposed expanded premises in accordance with those guidelines or any that may be promulgated during the term of the permit.

The fee for the COVID-19 Expansion Permit will be \$75.00, in accordance with N.J.A.C. 13:2-5.5. The COVID-19 Expansion Permit will be effective as of the date of issuance by the Division, but not before June 15, 2020, and the term will run until November 30, 2020, which coincides with the month in which seasonal retail consumption licenses expire and the possibility of appropriate seasonal weather conditions. The expiration date of the COVID-19 Expansion Permit may be extended by the Director in a supplementary Special Ruling should circumstances warrant.

IV. Review Procedure.

Upon submission of a complete COVID-19 Expansion Permit application in POSSE and payment of the permit fee, the application will be transmitted to the municipal clerk and police chief (or designee) of the locality where the license is issued, whether the license is municipally-issued or State-issued. For licensed premises located on property owned by or under the control of any political subdivision of the State of New Jersey, the application will be reviewed and approved

by a designated administrative official and the chief law enforcement officer (or designee) responsible for the licensed property. The Division will not take action on any application until it receives an endorsement or approval by the appropriate governing body officials. For municipalities that do not consider permit applications on their regularly scheduled business meetings, municipalities may consider posting notices of applications received on their website. Again, all eligible licensees and permittees with on-premises retail consumption privileges, as described above, may apply for this permit, and if they meet the criteria set forth herein, the Division will grant their application.

The Division will issue the COVID-19 Expansion Permit through POSSE. The Division may impose special conditions on the permit if it determines that they are necessary and proper to accomplish the purposes of Title 33, including the protection of public health, safety and welfare. See N.J.S.A. 33:1-32. The Division will seek to ensure that municipal concerns regarding hours, proximity to neighbors, structures, and other issues of local concern are appropriately addressed in the COVID-19 Expansion Permit. It is the responsibility of the licensee to comply with local ordinances and site plan requirements.

A licensee who receives a COVID-19 Expansion Permit may exercise only those privileges authorized by the licensee's existing license and shall comply with all provisions of Title 33 and the implementing regulations. Violations of these provisions, as well as the terms and conditions of the COVID-19 Expansion Permit, may be grounds for suspension or revocation of the license, as though the violation occurred on the licensed premises.

A handwritten signature in black ink, appearing to read 'James B. Graziano', written over a horizontal line.

JAMES B. GRAZIANO
ACTING DIRECTOR

Dated: June 03, 2020