

SUBCHAPTER 2. FILING OF APPLICATION AND ADVERTISING NOTICE OF APPLICATION FOR MUNICIPAL LICENSE

another corporation, partnership, or other legal entity is noted, the notice shall also contain the names and addresses of the officers, directors, stockholders, partners, or members in that other entity noted.

13:2-2.1 Application forms

(a) Application for license must be filed with the issuing authority, in triplicate, on forms prescribed by the Director, Division of Alcoholic Beverage Control at or before the first insertion of advertisement together with the full annual license fee and an additional \$200.00 filing fee payable to the Division of Alcoholic Beverage Control. One copy of the application and the non-returnable filing fee of \$200.00 shall be forwarded by the issuing authority to the Director immediately upon receipt thereof, and a second copy returned to the applicant. If the application is to include as the licensed premises a building not yet constructed, plans of the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material and the overall room dimensions.

Amended by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c). Added "in triplicate, on forms promulgated by the Director". Amended by R.1995 d.450, effective August 21, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a). Substituted "prescribed" for "promulgated" and increased filing fees. Amended by R.2000 d.342, effective August 21, 2000. See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a). Designated existing paragraph as (a); added a new (a)1. Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004). See: 35 N.J.R. 3707(a). In (a), substituted "\$200.00" for "\$100.00" in the introductory paragraph. Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003. See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a). Provisions of R.2003 d.311 adopted without change. Amended by R.2006 d.67, effective February 21, 2006. See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a). In (a)1, added "limited liability company,".

- 1. If an applicant is a corporation, partnership, limited liability company, or other legal entity, the names and residences of all those persons identified in N.J.A.C. 13:2-1.2(a) shall be inserted in the application. If in listing those,

13:2-2.2 Form of notice of application

Notice of application shall be published in the following form:

-NOTICE- ALCOHOLIC BEVERAGE LICENSE

Take notice that _____ (Name of Applicant)

trading as _____ (Trade Name, if any)

has applied to _____ (Name of Issuing Authority)

of _____ (Municipality)

for a _____ license for premises situated (Type of License)

at _____ (No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

See*

(See ** to insert other information if applicable) Objections, if any, should be made immediately in writing to:

_____ of _____ (Municipal Clerk) (Municipality and Mailing Address)

_____ (Name of Applicant)

(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, partnership, limited liability company, or other legal entity, insert the names and residence addresses of all persons identified in N.J.A.C. 13:2-1.2(a).

If the applicant is a club, insert the name and residence address of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

**If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Amended Notice.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Deleting enumeration of (a).

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

Rewrote the notice.

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

Added "limited liability company," to form.

13:2-2.3 Issuing authority defined

(a) "Issuing authority" in the form of notice in N.J.A.C. 13:2-2.2 usually means the governing board or body of the municipality, whatever the name may be, for instance the mayor and council, the township committee, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority.

(b) If the application is made by a member of the issuing authority or by a corporation, partnership, limited liability company, or other legal entity in which any member of the issuing authority is interested, directly or indirectly, the Director of the Division of Alcoholic Beverage Control is the issuing authority in the form of notice and the notice must state that any objections should be addressed to the Director, Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625-0087. This subsection shall not apply to club licenses.

Amended by R.1984 d.141, effective April 16, 1984.

See: 16 N.J.R. 345(a), 16 N.J.R. 916(a).

Deleted "25 Commerce Drive, Cranford, New Jersey 07016."

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revisions.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Made (b) inapplicable to club licenses.

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (b), substituted "partnership or other legal entity" for "organization or association".

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

In (b), added "limited liability company,".

13:2-2.4 Type of license defined

"Type of license" in the form of notice in N.J.A.C. 13:2-2.2 requires the name or kind of license that is involved in the application. It must be worded strictly in accordance with the statutory language, for instance, "plenary retail consumption license", "plenary retail distribution license", "club license", and so forth.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revisions.

13:2-2.5 Publication of notice of application

(a) The notice of application shall be published once a week for two weeks successively, at least seven days apart in a newspaper printed in the English language, published and circulated in the municipality in which the licensed premises is located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises is located.

(b) Proof of publication of the notice of application for license shall be furnished after the second publication with copies of the dated advertisements attached.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (b), added "with copies of advertisements attached"; deleted form.

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a), added "at least seven days apart" following "successively,".

13:2-2.6 Applicants for renewal of municipal licenses

Applicants for renewal of municipal licenses, other than seasonal retail consumption licenses, issued by municipal issuing authorities are not required to advertise notice of application. In lieu thereof, the Director shall cause a general notice of application to be published in the form set forth in N.J.A.C. 13:2-1.5 once a week from the week of April 1 through the week of June 1 in a newspaper printed in the English language and published and circulated in the counties in which the premises of applicants for such renewals are located.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revisions; deleted Notice.

13:2-2.7 Objections; hearing

Each municipal issuing authority, upon receipt of a timely written objection duly signed by an objector shall set the matter down for a hearing and all parties shall be notified of the date, hour and place thereof. Said hearing shall be stenographically or electronically recorded.

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Stylistic revisions.

Case Notes

Request to renew license; failure to prove ability to expeditiously activate license. In the Matter of Vaughn, 94 N.J.A.R.2d (ABC) 77.

Good cause; consideration of application for renewal; plenary retail consumption license. In the Matter of Donald T. Von Hagen Renewal Application Authorization, 94 N.J.A.R.2d (ABC) 74.

Good cause existed to activate liquor license. In the Matter of the Application of Salvatore Massamuto for Relief, 94 N.J.A.R.2d (ABC) 59.

Plenary Retail Consumption license would be granted to hotel where it met all criteria. Belleaire Resort Corp. v. Spring Lake Borough, 94 N.J.A.R.2d (ABC) 25.

Plenary retail consumption liquor license inactive for six years renewable upon conditions. In the Matter of the Application of Ocean Mile Development Group, Ltd. for Relief Pursuant to N.J.S.A. 33:1-12.39, 94 N.J.A.R.2d (ABC) 19.

Inactive liquor license renewed upon showing that public interest would be served and that applicant made continuous effort to develop project. In the Matter of the Renewal Application of the Pocket License of Branca Corp., 94 N.J.A.R.2d (ABC) 1.

13:2-2.8 Date of hearing

The date fixed for hearing shall not be sooner than five days (excluding Saturdays, Sundays and legal holidays) after the second publication and should not be later than 14 days thereafter. For good cause, each issuing authority in the exercise of sound and fair discretion may, subject to appeal to the Director by the applicant if he proves that he is aggrieved by the delay, fix a date for hearing later than said 14 days or may adjourn the hearing, upon notification to all parties.

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Stylistic revisions.

13:2-2.9 Hearing not required; reasons

(a) If there is no timely written objection and the issuing authority determines to approve the application, no hearing is required; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that:

1. The submitted application form is complete in all respects;

2. The applicant is qualified to be licensed according to all standards established by the New Jersey Alcoholic Beverage Control Act, the regulations promulgated thereunder, as well as any pertinent local ordinances or Division-approved conditions; and

3. The applicant has disclosed and the authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business.

(c) No application shall be disapproved without the issuing authority first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type, and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

Amended by R.1979 d.138, effective May 1, 1979.
 See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).
 Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Stylistic revisions.

13:2-2.10 Decision on application; ad interim (temporary) permit

(a) A municipal issuing authority must render a decision within 45 days from the date of a duly filed application for issuance of a new license unless the applicant consents to an extension. Failure to act may be deemed a denial of application by the applicant for the purpose of allowing the applicant to appeal to the Director.

(b) If no action is taken on an application for renewal of license prior to the expiration of its term, the applicant may apply to the Director for issuance of an ad interim (temporary) permit authorizing the applicant to continue to conduct the licensed business until the application has been acted upon. If no action is taken on an application for renewal of a license within 90 days after the expiration of its term, the applicant may file an appeal with the Director from such failure to act on the renewal application.

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Stylistic revisions.

13:2-2.11 Denial of application; refund of fees

If the application for new or renewal license is denied for any reason whatsoever or withdrawn, a statutory refund of 90 percent of the fee deposited with the municipality shall be made by the municipality to the applicant. The remaining 10 percent shall be deemed an investigation and processing fee and shall be retained by the municipality. The State filing fee required to accompany such applications shall be retained by the Director as a processing fee.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Added "State filing fee retained as processing fee".

13:2-2.12 Application granted; proration of fee; refund

If the application for a new license is granted, except in connection with the issuance of a new license upon failure to timely renew under N.J.S.A. 33:1-12.18, the license fee shall be prorated from the effective date of the license; and where the amount deposited exceeds the prorated fee, the applicant shall be entitled to a refund of the excess. Any new license issued for failure to timely renew pursuant to N.J.S.A. 33:1-12.18 will be effective immediately following the last day of the preceding license term, and no prorating of fee is warranted.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Added "for a new license", "except in connection for failure to timely renew" and "effective immediately following last day of preceding term".

13:2-2.13 Special conditions

If a resolution granting an application for license is adopted sooner than five business days (excluding Saturdays, Sundays and legal holidays) after publication of the second notice of application, the resolution shall set forth in a special condition that the license will not be issued until the five business days have elapsed. If a written objection to issuance of the license is filed within such period, the license shall not be issued pending hearing and further determination of the issuing authority.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Stylistic revisions.

Case Notes

Settlement terms sustain license's special condition. *F.G.P.S.V., Inc. v. Borough of Pleasant Beach*, 97 N.J.A.R.2d (ABC) 4.

Liquor license requirements would be relaxed where local authority's refusal to modify special conditions imposed on licensee were found to be unreasonable. *Wil-Dam Corp. t/a Shakers v. Mayor and Council of the Borough of Carlstadt*, 96 N.J.A.R.2d (ABC) 131.

Action of the local issuing authority which approved its person-to-person license transfer application "subject to" local zoning board approval of petitioner's request to operate as a discotheque was an impermissible condition precedent and should be reversed. *The Iliad & Odyssey, Inc. v. Northvale*, 9 N.J.A.R. 382 (1983).

Local government body has principal jurisdiction and primary authority over imposition of special conditions for liquor license renewal; conditions restricting service to patrons at tables and in conjunction with restaurant operation reasonable; condition banning

rock music unreasonable and vague (Division's Final Decision). *A.H.S., Inc. v. Tp. Committee, Tp. of Wall*, 1 N.J.A.R. 284 (1979), reversed (App.Div.1980).

Nunzio DeFalco v. West Caldwell, ABC Bulletin No. 2243, Item No. 2 (October 15, 1976).

13:2-2.14 Changes in facts; application

(a) Whenever any change shall occur in any of the facts as set forth in any application for a retail license, the licensee shall file with the municipal issuing authority an amendment to the license application on a form prescribed by the Director reflecting the change and not later than 10 days after the occurrence.

(b) Corporate licensees shall file with the municipal issuing authority an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock not later than 10 days after the occurrence. If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in partnerships and other types of legal entities shall be treated in the same manner as a stockholder change of a corporation licensee.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (a), added "an amendment to the license application on form promulgated by Director"; added (b).

Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

In (a), substituted "prescribed" for "promulgated".
Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a), added "any of" preceding "the facts"; in (b), substituted "partnerships and other types of legal entities" for "limited partners".

Amended by R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

In (b), rewrote the first sentence.

13:2-2.15 Publication of notice of change in the structure of corporate, partnership, and other types of legal entities; form

Every corporation, partnership, limited liability company, and other type of legal entity licensee shall, in addition to filing written notice with the municipal issuing authority of changes in ownership, cause to be published a notice of changes in structure in the following form, not later than 10 days after the occurrence whenever the change involves a new individual acquiring one percent or more of the ownership thereof.

Case Notes

Appeal of liquor license renewal dismissed as untimely. Cottrell v. Zagami, LLC, OAL DKT. NO. ABCAM 08017-06, 2007 N.J. AGEN LEXIS 549, Final Decision (May 22, 2007).

13:2-17.4 Answer

Within 10 days after service of the notice and petition of appeal, each respondent shall file, in duplicate, an answer with the Director and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action, together with a copy of the subject resolution.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Stylistic revision.

13:2-17.5 Jurisdiction

Upon filing of the notice and petition of appeal and answer, the Director shall determine whether the case is contested. If the case is determined to be contested, the Director shall file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-8 or retain it under the provisions of N.J.S.A. 52:14F-8.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Stylistic revisions.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
Stylistic changes.

Case Notes

Appeal from issuance of plenary retail license to replace seasonal consumption license was moot. Belleaire v. Spring Lake, 95 N.J.A.R.2d (ABC) 114.

13:2-17.6 De novo hearing; burden of proof

All appeals shall be heard de novo and the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with appellant.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Deleted N.J.A.C. 13:2-17.8 exception.

Case Notes

Denial of place-to-place transfer was arbitrary, unreasonable, and an abuse of discretion because the decision was based on general objections associated with maintaining the character of the downtown area by attempting to preserve the historic nature of the hotel building, and such objections were insufficient to compel a licensee to remain at its hotel despite its own economic concerns; there was no indication in the record that operating the license at a different location would have been problematic or had a negative impact on health, welfare, and safety of residents (adopting 2009 N.J. AGEN LEXIS 229). Union Hotel Restaurant v. Governing Body of Flemington, OAL Dkt. No. ABC 6929-08, 2009 N.J. AGEN LEXIS 881, Final Decision (August 27, 2009).

There was no merit in licensees' argument that they were denied due process by the township's failure to provide a hearing at the local level because the law governing appeals to the Division of Alcoholic Beverage Control dictated that all appeals be heard de novo and,

therefore, the right to a de novo hearing in the Division on testimony taken there cured any infirmity allegedly arising by reason of a denial of a hearing before the local board (adopting 2008 N.J. AGEN LEXIS 1024). Martell's Waters Edge, L.L.C. v. Governing Body of Berkeley, OAL Dkt. No. ABC 6795-07, 2009 N.J. AGEN LEXIS 953, Final Decision (June 17, 2009).

Construction of a "sound wall" intended to reduce the decibel level of sound emanating from a licensee's outside deck was of no consequence where the special condition limiting the time that music could be played on the deck did not speak of prohibiting excessively loud music, but rather prohibited any music outside after 10:00 p.m. on week nights, and after 12:00 midnight on Fridays, Saturdays, and holidays. Therefore, the licensee's appeal of the special condition, and request for expansion of hours in which music may be played, was properly dismissed (adopting 2008 N.J. AGEN LEXIS 1024). Martell's Waters Edge, L.L.C. v. Governing Body of Berkeley, OAL Dkt. No. ABC 6795-07, 2009 N.J. AGEN LEXIS 953, Final Decision (June 17, 2009).

Place-to-place transfer application expanding a license to an alleyway between two buildings was granted subject to the special condition that no drinking of alcohol would be permitted in the alleyway; the condition was directed toward maintaining the integrity of the neighborhood and addressed residents' reasonable concerns regarding increased noise, overcrowding and litter (adopting 2008 N.J. AGEN LEXIS 474). In re Marlin Restaurant & Bar, Inc., OAL Dkt. No. ABC 6215-07, 2008 N.J. AGEN LEXIS 1432, Final Decision (February 5, 2009).

Where the sale of alcoholic beverages was not merely "incidental" to the provision of food, a business should not have been considered a "restaurant" for State Alcoholic Beverage Control purposes; while the township had the authority to enact an ordinance defining "restaurant" for distance between premises purposes, it was incongruous for the township to attempt to apply a broad definition that was entirely unrelated to alcoholic beverage concerns (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 757). Rumson Wine and Spirit Shop, Inc. v. Kenneth Friedman/Middletown Bottle King, OAL Dkt. No. ABC 4795-05, 2008 N.J. AGEN LEXIS 1431, Final Decision (August 13, 2008).

In granting a place-to-place transfer of a plenary retail distribution license, the reviewing authority could consider an amended ordinance that was in effect after the township granted the transfer (but prior to conclusion of the appeal) because the amended ordinance, which permitted locating different classifications of licenses within 2,000 of one another, was consistent with the township's historical treatment of such cases and was not a mere "sham" amendment; there was an absence of proof that the ordinance amendment lacked public interest underpinnings (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 757). Rumson Wine and Spirit Shop, Inc. v. Kenneth Friedman/Middletown Bottle King, OAL Dkt. No. ABC 4795-05, 2008 N.J. AGEN LEXIS 1431, Final Decision (August 13, 2008).

Where a plenary retail consumption license holder did not abandon or vacate the licensed premises, but in fact the landlord testified that he intentionally kept the lease intact in hopes that the lease holder would resolve his tax problems or that a third party would buy the license, acquire the lease, and resume operations, the ALJ's decision denying transfer of the license was reversed. United Funding, LLC v. Municipal Bd. of Alcohol Beverage Control, City of Paterson, OAL Dkt. No. ABC 10954-04, 2005 N.J. AGEN LEXIS 1484, Final Decision (June 21, 2006).

Appeal was properly dismissed where reasonable support existed for municipal board's granting of application for place-to-place transfer of plenary retail consumption license. Caracitas v. Municipal Board of Alcoholic Beverage Control, 96 N.J.A.R.2d (ABC) 98.

Denial of request for place-to-place transfer of liquor license to site in vicinity of two churches was not unreasonable. Application of Maxine's Tavern, 95 N.J.A.R.2d (ABC) 124.

Liquor license for bar/restaurant, given relatively minor incidents, should have been renewed instead of denied. Starbo Corp. v. City of Asbury, 95 N.J.A.R.2d (ABC) 107.

Denial of liquor license transfer application without evidence of detrimental affect was clear abuse of discretion. *Midlantic v. Mayor and Borough Council*, 95 N.J.A.R.2d (ABC) 7.

Violation found for unlawful sale of cocaine upon the premises; respondents offered transcribed record in lieu of producing witnesses at the hearing de novo (Division's final decision). *T.L.S. Inc. v. City of Bayonne*, 9 N.J.A.R. 403 (1985).

Denial of person-to-person transfer of a plenary retail consumption license based upon licensee's conviction on three disorderly persons offenses upheld. *Sturchio v. Town of Harrison*, 9 N.J.A.R. 78 (1986).

Burden of showing erroneous action of licensing authority so as to reverse license suspension not met by licensee. *Canal Street Pub. Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

An appeal from a local license issuing authority is heard de novo; the de novo hearing is designed to cure any procedural defects which occur in connection with the issuing authority's action. *Valdivia's Bar, Inc. v. Elizabeth City Council*, 6 N.J.A.R. 161 (1981).

13:2-17.7 Subpoenas

Subpoenas and subpoenas duces tecum, signed by the Director or Administrative Law Judge, for the attendance of witnesses and the production of books, records and other documents at the hearing on the appeal, may be obtained by the parties upon request.

Recodified from 13:2-17.9 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Prior text at 13:2-17.7, "Public hearing", repealed.

13:2-17.8 Stays

(a) The filing of an appeal from a suspension or revocation of a license by a municipal issuing authority shall act as an automatic stay of such suspension or revocation, unless the Director shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the Director or Administrative Law Judge.

(b) In cases in which a suspension or revocation has been stayed pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

(c) In cases in which a suspension has not been stayed or in which a revocation has been stayed and an indefinite suspension imposed pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the

appeal is pending or the license shall be deemed to have expired.

(d) In cases in which a revocation has not been stayed pending the outcome of an appeal to the Director, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal is pending. If the revocation is not sustained on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each license term during which the appeal was pending, within 60 days of the date of the Director's decision or the license shall be deemed to have expired.

(e) In all other cases, except those addressed in N.J.A.C. 13:2-17.9, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Recodified from 13:2-17.11. Filing of appeal by municipal authority is an "automatic" stay. Prior text at 13:2-17.8, "Stipulations, offer of transcript", repealed.

Amended by R.2003 d.436, effective November 3, 2003.

See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).

Designated existing text as (a); added (b) through (e).

Case Notes

Offer of transcription of proceedings before local issuing authority in lieu of producing witnesses on appeal de novo noted. *Marlboro Manor, Inc. v. Alcoholic Beverage Control Bd., Tp. of Montclair*, 7 N.J.A.R. 29 (1981), reversed 187 N.J.Super. 359, 454 A.2d 905 (App.Div.1982).

13:2-17.9 Extension of license term

(a) Upon the filing of an appeal from the denial of an application for renewal of a license, or the failure to act upon such renewal application within the time set forth in N.J.A.C. 13:2-2.10(b), the Director may, at the time of the filing of the appeal, in the exercise of sound discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the license pending the return of the order to show cause. If it appears that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would result if the license is not extended, the Director may extend the license pending the outcome of the appeal, subject to such special conditions as the Director may deem appropriate.

N.J.A.C. 13:2-16.14	WHOL2	Wholesaler hired, as a solicitor, a person whose immediate family member has a direct or indirect financial interest in a retail license, in violation of N.J.A.C. 13:2-16.14 and/or wholesaler assigned a solicitor, whose immediate family member has a direct or indirect interest in a retail license to an account in which that solicitor's or any solicitor's family member has a direct or indirect interest in the retail license.	30	60	90	Revocation
N.J.A.C. 13:2-16.14	WHOL3	Wholesaler paid commission to a solicitor, whose immediate family member has a direct or indirect interest in a retail license, based upon sales made to or purchases made by a retail licensee in which the solicitor's or another solicitor's immediate family member has a direct or indirect interest.	30	60	90	Revocation

1 The description of the penalties in this schedule is not intended to provide a complete description of the violation. The governing standard is set forth in the referenced statute or regulation.

2 Number refers to days of license suspension.

New Rule, R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

Amended by R.2004 d.55, effective February 2, 2004.

See: 35 N.J.R. 1045(a), 36 N.J.R. 657(a).

In (i), amended N.J.A.C. reference in Code, BOOKS1 and BOOKS2.

Amended by R.2005 d.212, effective July 5, 2005.

See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

In (f), substituted "date of disposition of any prior violation(s)" for "date of the first violation"; in (g), deleted "in writing" following "has been notified"; rewrote (i).

Amended by R.2010 d.160, effective August 2, 2010 (operative October 1, 2010).

See: 41 N.J.R. 2436(a), 42 N.J.R. 1733(a).

In the table in (i), substituted entry "N.J.S.A. 33:1-52/N.J.A.C. 13:2-16.11; N.J.A.C. 13:2-16.3; N.J.A.C. 13:2-16.1" for entry "N.J.S.A. 33:1-52/N.J.A.C. 13:2-16.11(a) and/or 16.11(c)", in the Description column of entry "N.J.S.A. 33:1-52/N.J.A.C. 13:2-16.11; N.J.A.C. 13:2-16.3; N.J.A.C. 13:2-16.1", substituted "offered to sell or sold to, or received compensation based on purchases made by or sales made to, a retail license in which the solicitor's or another solicitor's immediate family has a direct or indirect interest" for "to a retail licensee with family member involved", added the entry for "N.J.A.C. 13:2-16.3" and the two entries for "N.J.A.C. 13:2-16.14", and in the code column of entry "N.J.A.C. 13:2-16.11 and 23.28", substituted "WHOL1" for "WHOL".

Case Notes

Licensee's plenary retail consumption license was properly revoked where a preponderance of the evidence demonstrated that the licensee had engaged in sale to underage patrons on four separate incidents; the ages of the underage patrons ranged from a 16-year-old male to a 19-year-old female (adopting 2008 N.J. AGEN LEXIS 908). *Best Liquors of Red Bank, Inc. v. Governing Body of Red Bank*, OAL Dkt. No. ABC 4908-07, ABC 4909-07 AND ABC 8144-08 (Consolidated), 2009 N.J. AGEN LEXIS 952, Final Decision (January 27, 2009).

Numerous lewd and immoral acts committed by female dancers on the licensed premises with different patrons on three separate days constituted separate and successive violations of N.J.A.C. 13:2-23.6. *N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc.*, OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

License revocation was the appropriate penalty for numerous lewd and immoral acts committed by female dancers on the licensed premises on three separate dates; the violations were egregious and committed with the licensee's knowledge, and the sheer number of violations demonstrated an intentional disregard of the standard of conduct imposed on licensees. *N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc.*, OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

13:2-19.12 Offers in compromise of suspension

(a) The Director may, in the Director's sole discretion, accept offers in compromise for all or part of a suspension. These offers may be monetary, pursuant to N.J.S.A. 33:1-31, or may involve deferring some of the days of suspension. The Director is under no obligation to accept an offer in compromise and shall make this decision based on what the Director determines to be reasonable and proper under the circumstances of the case.

(b) In cases being prosecuted by the Division, a licensee proposing that the Director accept an offer in compromise shall submit any such proposal to the Director, in writing, setting forth the reasons why the offer should be accepted. The Director will not consider an offer in compromise in any case being prosecuted by the Division after an Initial Decision is issued by the Office of Administrative Law, except under extraordinary circumstances. However, if the license is transferred and the current licensee had no interest in the license at the time that the violations in question were charged, the current licensee may apply to the Director for relaxation of this regulation pursuant to N.J.A.C. 13:2-9.1.

(c) In municipal cases involving an application to the Director for a monetary offer in compromise, the licensee shall file a Notice of Appeal, with notice to the municipality, setting forth the reasons why the offer should be accepted. Rules governing the Notice of Appeal are set forth in N.J.A.C. 13:2-17.

(d) If a licensee proposes that the Director accept a monetary offer in compromise, the licensee shall submit any documentation the Director requests, including, but not limited to, income tax returns or other financial reports.

New Rule, R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

Amended by R.2005 d.212, effective July 7, 2005.

See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Rewrote (b).

Case Notes

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. Division of Alcoholic Beverage Control v. Maynard's Inc., OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

13:2-19.13 Increase or decrease of penalties

(a) The penalties set forth in the penalty schedule, at N.J.A.C. 13:2-19.11(i), may be increased or decreased based upon a finding by the Director of aggravating or mitigating circumstances.

(b) Some of the factors that the Director may consider to decrease a penalty are: previous history of compliance, good faith efforts to prevent a violation and extraordinary cooperation in the investigation demonstrating that the licensee is acting responsibly. Some of the factors the Director may consider to increase a penalty are: prior warnings or violations about compliance problems, efforts to conceal violations, age of customers and that the incident that gave rise to the violation resulted in death or substantial injury. These factors are provided as examples only and are not to be considered all inclusive.

(c) In addition, if death or serious injury occurred as a result of the incident that gave rise to the violation, the Director may revoke the license, even if it is a first violation. The licensee has the burden of demonstrating mitigating circumstances.

(d) In determining to increase or decrease the penalty or penalties set forth in the penalty schedule, the Director shall state in writing specific reasons for determining the penalty or penalties actually imposed.

(e) In instances where a licensee fails to comply with a request for documents and/or testimony, the Director may indefinitely suspend the license until such time as the licensee complies, in addition to any other penalty for hindering an investigation.

New Rule, R.2001 d.447, effective December 3, 2001.
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).
Amended by R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).
Added (e).

Case Notes

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the

Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. Division of Alcoholic Beverage Control v. Maynard's Inc., OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

13:2-19.14 Warning letters and fine letters

The Director may, in the Director's sole discretion, issue a warning letter advising a licensee of a violation(s) or issue a fine letter, indicating that the Director will accept a monetary payment in lieu of prosecution.

New Rule, R.2001 d.447, effective December 3, 2001.
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

13:2-19.15 Review by Director of penalties imposed by local issuing authorities

In reviewing the reasonableness of penalties imposed by local issuing authorities, reasonableness will be judged in accordance with the penalty schedule and other factors set forth in the record before the Director.

New Rule, R.2001 d.447, effective December 3, 2001.
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

13:2-19.16 Application of subchapter

(a) This subchapter, as amended effective December 3, 2001, shall apply to violations occurring on or after December 3, 2001.

(b) To the extent that any of the penalties set forth in this subchapter are inconsistent with the penalties set forth in any earlier document(s), including, but not limited to, ABC Bulletins, the penalties set forth in this subchapter shall apply.

New Rule, R.2001 d.447, effective December 3, 2001.
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

SUBCHAPTER 20. TRANSPORTATION OF
ALCOHOLIC BEVERAGES BY LICENSEES;
INSIGNIA

13:2-20.1 Transit insignia; transportation of alcoholic beverages

No licensee shall transport alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless it is owned, leased or contracted for by the licensee. Such vehicle, while so used, shall first have issued therefor a transit insignia, or transportation license insignia issued pursuant to the provisions of this subchapter, or a limited transportation permit or emergency trip permit issued pursuant to the provisions of N.J.A.C. 13:2-21.

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Substantially amended.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Deleted language about transportation permit sticker and added description of new transportation license insignia.

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

Deleted "special transit insignia,".

13:2-20.2 Transportation by retail licensee; delivery slip; emergency delivery

(a) No retail licensee shall deliver or transport any alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless the driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the date of delivery, the bona fide name and address of the purchaser or consignee, and the brand, size of container, quantity and price of each item of the alcoholic beverages being delivered or transported. The original or true copy of such delivery slip, invoice, manifest, waybill or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

(b) No such licensee shall peddle, barter, or otherwise sell any alcoholic beverages from any vehicle.

(c) It shall be an affirmative defense, to a charge of violating N.J.A.C. 13:2-20.1, where the licensee satisfactorily demonstrates that:

1. The licensee owned or leased a properly permitted vehicle;
2. An emergency situation arose which prevented the delivery from being made in the properly permitted vehicle; and
3. The delivery was, in all other respects, made in accordance with the provisions of N.J.A.C. 13:2-20.2(a).

Amended by R. 1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Substantially amended.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a), 21 N.J.R. 2385(c).

In a: changed "Alcoholic Beverage Law" to "New Jersey Alcoholic Beverage Control Act" and revised with minor stylistic changes.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added (c).

13:2-20.3 Transportation by State licensee with retail privileges; delivery slip or route card

(a) No State licensee privileged to sell alcoholic beverages at retail shall deliver or transport any alcoholic beverages in any vehicle, unless:

1. The driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the bona fide name and address of the purchaser or consignee, and the brand, size of container, quantity and price of each item of the alcoholic beverages being delivered or transported; or
2. The driver of the vehicle has in his or her possession a route card which shall contain the name, address and standing order of the customer, and the entry at the time of delivery of the date of delivery, the brand, size of container, quantity delivered and the price charged. In addition to such route cards, there must be carried in the vehicle a loading list setting forth the total quantity of alcoholic beverages loaded for delivery, indicating as to each brand loaded the total quantity of each size of container; and
3. The original or true copy of such delivery slip, invoice, manifest, waybill, route card or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery, and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

(b) No such licensee shall peddle, barter, or otherwise sell any alcoholic beverage from any vehicle to any consumer.

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

(a)3 added; Old (b) deleted and new (b) and (c) added.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Revised throughout with minor stylistic changes and substituted "New Jersey Alcoholic Beverage Control Act" for "Alcoholic Beverage Law."

closure regulation. By its express terms, N.J.A.C. 13:2-23.3 applies to situations where the licensing authority closes a tavern because of a public emergency or investigation of crime. Requiring an actual conviction as a prerequisite to closing the licensed premises would eviscerate the purpose of the regulation to suspend operations pending completion of the criminal investigation, and indeed N.J.A.C. 13:2-23.3 would then be superfluous since N.J.A.C. 13:2-9.2(a)(2) already authorizes revocation of a licensee who has been convicted of a crime of moral turpitude. *Luisa Enterprises, Inc. v. Town of Guttenberg*, OAL Dkt. No. ABC 01078-06, 2008 N.J. AGEN LEXIS 47, Initial Decision (January 30, 2008).

13:2-23.4 House-to-house solicitation forbidden

No licensee shall solicit from house-to-house, personally or by telephone, the purchase of any alcoholic beverage, or allow, permit or suffer such solicitation.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revision.

13:2-23.5 Prohibited patrons; narcotics or other unlawful drugs; illegal activity or enterprise

(a) No licensee shall allow, permit or suffer in or upon the licensed premises the habitual presence of any known prostitute, gangster, racketeer, notorious criminal, or other person of ill repute.

(b) No licensee shall allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to:

1. Narcotic drugs;
2. Controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.);
3. Controlled dangerous analogs as defined by the Comprehensive Drug Reform Act of 1987 (N.J.S.A. 2C:35-1 et seq.);
4. Any prescription legend drug, in any form, which is not a narcotic drug or a controlled dangerous substance or analog, as so defined; or
5. Drug paraphernalia as defined by N.J.S.A. 2C:36-1.

(c) No licensee shall allow, permit or suffer the licensed premises to be accessible to any premises upon which any illegal activity or enterprise is carried on, or the licensed premises or business to be used in furtherance or aid of or accessible to any illegal activity or enterprise.

Amended by R.1972 d.67, effective April 6, 1972.

See: 4 N.J.R. 50(a), 4 N.J.R. 105(c).

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (b), added numbered paragraphs, "Controlled dangerous analogs ..." and "Drug paraphernalia ...".

Case Notes

Revocation of liquor license was improper. *County Hearth, Inc., v. Old Bridge Twp. Council*, 221 N.J.Super. 293, 534 A.2d 424 (App.Div.1987).

Law enforcement officers could not search the nonpublic areas of a licensed tavern for evidence of general criminality, unrelated to the operation of the licensed activity, without a search warrant. *State v. Williams*, 168 N.J.Super. 359, 403 A.2d 31 (App.Div.1979), affirmed 84 N.J. 217, 417 A.2d 1046 (1980).

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. *Division of Alcoholic Beverage Control v. Maynard's Inc.*, OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

Illegal drug activity on licensed premises with licensee's knowledge warranted revocation of license. *Township of Nutley v. Rockyn Juke Box*, 95 N.J.A.R.2d (ABC) 81.

Stockholder's crime of distribution of a controlled dangerous substance was one of moral turpitude; retail consumption license properly revoked. *Division of Alcoholic Beverage Control v. Doug-Kar Corp.*, 92 N.J.A.R.2d (ABC) 21.

Employees selling drugs and guns and delivering liquor for off-premises consumption after legal hours of sale; suspension of license. N.J.S.A. 33:1-3.1. *Director of the Div. of Alcoholic Beverage Control v. Vanmar Liquors, Inc.*, 92 N.J.A.R.2d (ABC) 9.

Sale of cocaine on premises warranted revocation of liquor license. *Fischer v. Mayor and Council of the City of Garfield*, 92 N.J.A.R.2d (ABC) 1.

Violation found for unlawful sale of cocaine upon the premises; respondents offered transcribed record in lieu of producing witnesses at the hearing de novo (Division's final decision). *T.L.S. Inc. v. City of Bayonne*, 9 N.J.A.R. 403 (1985).

Violation found for employee's possession of narcotics paraphernalia on premises. *Canal Street Pub, Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

License suspended due to employee's sale of marijuana on premises; licensee must bear responsibility for employee's action; penalty mitigated by licensee's serious efforts to stop during trafficking on premises; 30 day suspension ordered (Division's Final Decision). *Div. of Alcoholic Beverage Control v. Red Klotz Enterprises, Inc.*, 6 N.J.A.R. 13 (1982).

License revoked for cocaine trafficking on premises by majority stockholder; minority stockholders' lack of knowledge of activity not excusable in mitigation of penalty. *Valdivia's Bar, Inc. v. Elizabeth City Council*, 6 N.J.A.R. 161 (1981).

License suspended for allowing, permitting and suffering possession of controlled dangerous substance on premises; good faith effort to stop activity not found. *Div. of Alcoholic Beverage Control v. Ty-Dan Corp.*, 5 N.J.A.R. 273 (1980), affirmed.

13:2-23.6 Prohibition against immoral activities; disturbance; nuisance on premises

(a) No licensee shall engage in or allow, permit or suffer on or about the licensed premises:

1. Any lewdness or immoral activity or
2. Any brawl, act of violence, disturbance, or unnecessary noise.

(b) Every licensee shall operate its business in an orderly and lawful fashion, so as not to constitute a nuisance. A licensee's responsibility under this subsection includes the conduct of the licensee, its employees and patrons, if such conduct is contrary to the public health, safety and welfare.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised heading.

Amended by R.2005 d.212, effective July 5, 2005.

See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Rewrote the section.

Case Notes

Tavern owner duty-bound to summon police if reasonably foreseeable that patron may otherwise be harmed by criminal acts of another. *Dubak v. Burdette Tomlin Memorial Hosp.*, 233 N.J.Super. 441, 559 A.2d 424 (A.D.1989), certification denied 117 N.J. 48, 563 A.2d 817.

Violation finding upheld against challenge that regulation invalid due to lack of standard for lewdness; contested case decisions provide conduct illustrations or precedents for lewdness available to any licensee. *G. & J.K. Enterprises, Inc. v. Div. of Alcoholic Beverage Control*, 205 N.J.Super. 77, 500 A.2d 43 (App.Div.1985).

Violation of regulation by tavern owner does not give rise to action by policeman for injuries sustained in answering call for assistance. *Entwistle v. Draves*, 200 N.J.Super. 1, 490 A.2d 313 (App.Div.1985), affirmed 102 N.J. 559, 510 A.2d (1986).

There was no reasonable support in the record to uphold a 30-day suspension of a licensee's plenary retail consumption license where numerous witnesses testified that the incident complained of occurred a considerable distance from the licensed premises and was not directly connected to activity inside the club; there was no evidence that a fight had ever taken place in the licensee's club and, therefore, the record did not establish that the licensed business was operated in a manner that constituted a nuisance (adopting 2008 N.J. AGEN LEXIS 976). *River Road Beverage Co. v. Municipal Bd. of Alcoholic Beverage Control of Camden*, OAL Dkt. No. ABC 2256-08 (ABC 4608-07 On Remand), 2009 N.J. AGEN LEXIS 951, Final Decision (March 3, 2009).

License revocation was the appropriate penalty for numerous lewd and immoral acts committed by female dancers on the licensed premises on three separate dates; the violations were egregious and committed with the licensee's knowledge, and the sheer number of violations demonstrated an intentional disregard of the standard of conduct imposed on licensees. *N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc.*, OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

For purposes of alcoholic beverage regulation, female dancers providing entertainment on the licensed premises were employees of the licensee, whether they were hired by the licensee directly or contracted through an outside service. *N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc.*, OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

Nuisance charge under N.J.A.C. 13:2-23.6 upheld in connection with a stabbing outside the licensed premises, involving persons who had an association with the business; dispute between a dancer and a promoter began inside the premises, related to operations of the bar, and resulted in a loud crowd in the parking lot and the injury of the promoter. *Township of Irvington Bd. of Alcoholic Beverage Control v. Maka, Inc.*, OAL Dkt. No. ABC 09001-04N, 2008 N.J. AGEN LEXIS 279, Initial Decision (March 31, 2008).

Nuisance charge under N.J.A.C. 13:2-23.6 was arbitrary and unreasonable, where a dancer, upset over pay, had thrown chairs and broken a mirror inside the premises, and the licensee called the police; not every event that involves the police entering a licensee's premises

rises to a level supporting characterization of the premises as a public nuisance. *Township of Irvington Bd. of Alcoholic Beverage Control v. Maka, Inc.*, OAL Dkt. No. ABC 09001-04N, 2008 N.J. AGEN LEXIS 279, Initial Decision (March 31, 2008).

Petitioner charged with eight counts of allowing lewdness by way of topless dancing on the licensed premises, two counts of allowing lewdness in the form of sexual activity on the licensed premises, and one count of failure by the petitioner to maintain a complete and accurate employee list, failed to submit a requested post-hearing explanation of mitigating factors; thus, the ALJ was forced to conclude that no mitigating factors existed and upheld a 150-day liquor license suspension. *S.B. Lazarus, Inc. v. Borough of Bound Brook*, OAL DKT. NO. ABC 6468-06, 2007 N.J. AGEN LEXIS 579, Initial Decision (August 15, 2007).

Police officer's testimony of a dancer facing a patron with an exposed, erect penis and physical contact between the dancers' breasts and the patron's face was sufficient to establish that the activities carried out were "lewd," as even though the officer did not charge that prostitution had occurred, lewd and immoral conduct can occur without it amounting to prostitution; the acts described by the officer, even without actual contact of the pelvic areas being noted, sufficiently simulated sexual activity, particularly as the patron was exposed and clearly prepared for a climax. Because the Trenton City Council was well within its rights to determine that the officer's testimony was credible and that lewd and immoral conduct was established by a preponderance of the credible evidence, there was nothing arbitrary or capricious about the Council's decision. Accordingly, because the determination of the Council that lewd and immoral conduct occurred within the licensed premises was fully supported by the record made before it, the finding against the licensee must be upheld and revocation of the licensee's plenary retail consumption license was likewise affirmed. *J-Kal, Inc. v. City of Trenton*, OAL DKT. NO. ABC 06834-05S, 2006 N.J. AGEN LEXIS 424, Initial Decision (July 19, 2006).

Licensee loses liquor license for operating business as a nuisance. *Antoine Services, Inc. v. City of Linden*, 97 N.J.A.R.2d (ABC) 9.

Prior suspension of club's plenary retail consumption license for acts of lewdness by club's dancers supported new license suspension for repeat violation. *Jensa, t/a Club Phoenix v. The City of Asbury Park*, 96 N.J.A.R.2d (ABC) 76.

Suspension of club's liquor license was warranted by multiple and flagrant violations of state law, including alleged incidents of lewd conduct by club's dancers and patrons. *Alcoholic Beverage Control v. Jayson, Inc.*, 96 N.J.A.R.2d (ABC) 71.

Incidents of lewdness on business premises warranted suspension of liquor license. *D & Z Realty v. City of Asbury Park*, 96 N.J.A.R.2d (ABC) 41.

Liquor license renewal denied where bar owners failed to comply with special condition and operated bar as a public nuisance. In the *Matter of Nathan's Realty, Inc.*, 96 N.J.A.R.2d (ABC) 25.

Lewd conduct by dancers within sight of licensee warranted revocation of liquor license. *Alcoholic Beverage Control v. Quesada*, 95 N.J.A.R.2d (ABC) 88.

Illegal drug activity on licensed premises with licensee's knowledge warranted revocation of license. *Township of Nutley v. Rockyn Juke Box*, 95 N.J.A.R.2d (ABC) 81.

Lewdness of female go-go dancer warranted 45-day suspension of liquor license. *Jonilo v. Municipal Board*, 95 N.J.A.R.2d (ABC) 1.

Go-go bar's license revoked upon showing of lewd or immoral activity. *Division of Alcoholic Beverage Control v. Wemar, Inc.*, 94 N.J.A.R.2d (ABC) 82.

License suspended for allowing lewd and immoral conduct on premises ("Go-Go" dancers); good faith effort to stop activity not found. *State of N.J. v. G. & J.K. Enterprises, Inc.*, 8 N.J.A.R. 588 (1985).

(c) All licensees shall maintain, for a period of five years, records which show the payment of all expenses. The records shall indicate the name of the person or entity receiving such payment, the amount of the payment and the reason that the payment was made. Payment records shall include payments made for:

1. The purchase of alcoholic beverages;
2. The purchase of food items;
3. The purchase of supplies and use of utilities;
4. The purchase or lease of equipment;
5. The payment of employees' compensation, including all required withholding;
6. The payment of all local, state and Federal taxes and license fees;
7. The payments of rents, mortgages, loans and/or a reduction of an owner's equity; and
8. All other disbursements.

(d) All licensees shall produce the above-enumerated records for inspection immediately upon request by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p), unless a different time period is prescribed in N.J.A.C. 13:2-29.4, at a location designated by the requester. The failure to comply with this subsection shall be considered a violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30.

(e) All licensees shall have and keep, for an unlimited period of time, permanent records of account which shall truly and accurately contain a record of all moneys invested in the licensed business, including loans, the source of all such investments and the disposition of such investments for an unlimited period of time. Such documents may be stored on or off the licensed premises and shall be produced within seven days of a request from by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p) at a location designated by the requester.

(f) All records required to be maintained by a licensee shall be in the English language.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Clarified five-year record requirement of all moneys received and expended.

Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Provided recordkeeping periods.

Amended by R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Rewrote the section.

Amended by R.2011 d.234, effective September 6, 2011.

See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

Rewrote (a)6.

Case Notes

Proof was clear that petitioner licensee did not timely provide the true book of account and other documents to respondent city governing body where that which was offered as a true book of account was factually determined not to have been among the documentation submitted one month after the request, and petitioner failed to provide additional receipts and bills after consenting to do so. Also, it was factually determined that a spiral notebook presented as the 2004 true book of account did not exist at the time of the city's investigation, but was factually determined to be of recent vintage and concoction and was presented to mislead the respondent. *Fayette Fair Trade, Inc. v. City of Perth Amboy*, OAL DKT. NO. ABC 360-05, 2006 N.J. AGEN LEXIS 391, Initial Decision (June 16, 2006).

Disciplinary proceedings against liquor company resulted in a suspension of plenary retail distribution license for failure to disclose a hidden interest in the license (N.J.S.A. 33:1.25); failure to keep true books of account (N.J.A.C. 13:2-23.32) and hindering an investigation into the matter in violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30. In Re: M.A.T. Co., 9 N.J.A.R. 262 (1983).

13:2-23.33 Dishonored checks; unpaid fees

If a check submitted by a licensee, permittee or applicant is returned unpaid to the Division or other issuing authority or if all or any portion of any fee required is unpaid, the licensee, permittee or applicant shall be subject to disciplinary action or denial of current and future applications.

New Rule, R.2005 d.212, effective July 5, 2005.

See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

SUBCHAPTER 24. TRADE MEMBER DISCRIMINATION, MARKETING AND ADVERTISING

13:2-24.1 Discrimination in terms of sale

(a) The purpose of this subchapter is to promote competition while preserving an orderly marketplace, including, but not limited to, the prevention of destructive price wars, and to promote practices that foster moderation and responsibility in the use and consumption of alcoholic beverages.

(b) For purposes of this subchapter:

1. A discount is an inducement or allowance to purchase a product which is reflected on the wholesaler's invoice at the time the sale of the subject alcoholic beverages to a retailer is completed. A discount is reflected in the cost of the product on which it is given, as it relates to the retailer's sale price for purposes of N.J.A.C. 13:2-24.8. Discounts may include quantity discounts;

2. A rebate is an inducement or allowance to purchase a product which is not reflected on the wholesaler's invoice at the time the sale of the subject alcoholic beverages to a retailer is completed, but which is payable no less than 30 days and no more than 90 days after the payment for the

product on which it is given. A rebate is not reflected in the cost of the product on which it is given, as it relates to the retailer's sale price for purposes of N.J.A.C. 13:2-24.8; and

3. A retail incentive program (RIP) is a form of rebate in which a wholesaler provides a financial incentive to a retailer to purchase a specific quantity of alcoholic beverages in one purchase transaction and places no other obligation on the retailer. A purchase transaction is a single order and a single delivery of a specific quantity of a specific alcoholic beverage or combination of beverages, as reflected on a single wholesaler's invoice. More specific requirements for this type of rebate are set forth in (e) below.

(c) Except as may otherwise be authorized by this subchapter, no manufacturer, supplier, importer, brand registrant, wholesaler, or distributor privileged to engage in the commerce of any alcoholic beverage into or within this State shall, directly or indirectly, be a party to, or assist in, any transaction or sale, or contract to sell:

1. Which discriminates against purchasers, in that:

i. There is a different price or are different credit terms for different purchasers of alcoholic beverages of the same brand or trade name of like age, quality and quantity (including, but not limited, to proof and size); or

ii. It is a discount, rebate, allowance or advertising service granted to a purchaser over and above any discount, rebate, allowance, or advertising service available at the time of such transaction to competitors with respect to a sale of alcoholic beverages of the same brand or trade name of like age, quality and quantity. However, a wholesaler may exclude retail cooperatives from a RIP program without the prior approval of the Director so long as the RIP program complies with (e) below. A wholesaler wishing to exclude retail cooperatives from a RIP program that does not comply with (e) below shall first petition the Director and seek approval of its program. This petition may include one or more such proposed programs and shall be submitted to the Director at least 75 days in advance of the date on which the program(s) is proposed to appear on the Current Price List. Such program(s) shall not appear on the Current Price List without the Director's prior approval. The petition shall include the following information upon which the Director shall make his or her decision:

- (1) A detailed description of the proposed program(s);
- (2) A detailed description of how individual retail licensees will be able to participate in the program(s);
- (3) A detailed explanation of why the program(s) will not destabilize the marketplace, including, but not limited to, the creation of destructive price wars, or

unduly increase the consumption of alcoholic beverages; and

(4) Any other information the Director deems necessary from a specific petitioner.

2. Alcoholic beverages in any part of the State at prices lower than those charged by that person or entity elsewhere in the State for the purpose of destroying competition, or eliminating a competitor in the State.

3. Alcoholic beverages at unreasonably low prices for the purposes of destroying competition, or eliminating a competitor.

(d) The provisions of the foregoing shall not prevent:

1. Differentials which make only due allowance for actual differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which alcoholic beverage products are sold or delivered to, or paid for by, purchasers including discounts for prompt payment.

(e) Except as approved by the Director under (c)1ii above, a retail incentive program (RIP) rebate shall conform to the following requirements:

1. All wholesalers participating in such programs shall provide the rebate in the form of a monetary payment, payable only by business checks issued by the participating wholesalers;

2. No RIP rebate shall be offered on a quantity in excess of 50 cases for distilled spirits and wine, or 250 cases for beer. For every RIP rebate, there shall be a corresponding small quantity RIP rebate on the same product(s), for a quantity that is five cases or less. The minimum quantity of any RIP rebate shall be one bottle for distilled spirits or wine, or one case for beer;

i. RIP rebates may be based on a combination of various sizes and products. However, no single RIP rebate shall exceed \$1,000;

ii. Nothing in this section shall be deemed to limit the number of single RIP rebates which can be earned for qualifying purchases;

iii. If a wholesaler wishes to offer a RIP rebate using any formula or dollar amount other than that specified in this subsection, it shall obtain the written approval of the Director prior to offering such RIP rebate and prior to publication thereof in the wholesaler's Marketing Manual and Current Price List applicable to the period during which the RIP rebate will be offered;

3. All wholesalers and all retailers participating in such programs shall keep a separate, complete and accurate accounting of all such rebates disbursed or received and all documents that reflect same; and