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New Law Authorizes Intermunicipal Transfers and Expirations of Inactive Plenary Retail Consumption Licenses

On January 16, Gov. Phil Murphy signed into law P.L. 2023, c.290, which went into effect on August 1. The new law reforms the Alcohol Beverage Control Act, N.J.S.A. 33:1-1 to 33:5-5, in two major ways. First, the law creates a process by which a municipality can issue a request for proposal (RFP) to purchase an inactive plenary liquor license from an adjoining municipality that shares a common land boundary. The catch is that the premises on the receiving end of the transfer must be part of a qualifying project, an economic redevelopment plan, or a redevelopment, improvement or revitalization area. Second, the law sets expiration dates for inactive licenses that are not sited or sold within a certain time frame.

Qualifications

Municipalities have a cap on how many plenary retail consumption licenses they can issue, which is one license for every 3,000 municipal residents. Once the cap has been reached, a municipality cannot issue an additional license. In accordance with the new law, an inactive license may be sold via a municipal RFP to a qualified purchaser in an adjoining municipality, provided the sending and receiving municipalities implement the statutorily prescribed process outlined below. The transferred license does not count toward the receiving municipality's population cap. The new law defines a "redevelopment, improvement or revitalization area" eligible to use a license transferred from an adjacent municipality as:

- an "urban enterprise zone" as designated pursuant to N.J.S.A. 52:27H-60 *et seq.*;
- a "downtown business improvement zone" as designated pursuant to N.J.S.A. 40:56-7.1 *et seq.;*
- a "pedestrian mall," "pedestrian mall improvement" or "special improvement district" as designated pursuant to N.J.S.A. 40:56-66;
- a "transit-oriented development" as designated pursuant to N.J.S.A. 34:1B-243;
- an area of a municipality determined to be in need of redevelopment as designated pursuant to N.J.S.A. 40A:12A-5 and 40A:12A-6; or
- an area determined to be in need of rehabilitation as designated pursuant to N.J.S.A. 40A:12A-14, or any improvement that is 100 percent new construction and is an entirely new improvement, not previously occupied or used for any purpose.

The new law does not define "economic redevelopment plan."

Procedure

Specific requirements must be followed to effectuate the license transfer. An RFP must be completed and establish a minimum bid amount, which is calculated as the greater of the average sale price of the three most recent plenary retail consumption license sales in the receiving municipality or an appraisal completed at the receiving municipality's expense. A license holder with an inactive plenary retail consumption license in a contiguous sending municipality must first apply for and receive permission from the sending municipality prior to submitting an RFP. The sending municipality may grant permission only by a resolution adopted by a majority vote of the governing body.

Notice Requirements

Once there is a successful bid, the sending municipality must submit to the director of the Division of Alcohol Beverage Control (NJABC) a notice of intent to transfer the license at least 90 days in advance of the transfer and must show compliance with the new law. Additionally, the sending and receiving municipalities must adopt identical resolutions authorizing the transfer and establishing a license transfer fee of $25,000 or more, which the inactive license holder must pay to the sending municipality. Good cause must be shown that special attempts were made by the license holder to use or transfer the license for use in connection with a premises located in the sending municipality. Once the license transfer is ratified by resolution, the receiving municipality is entitled to offer the acquired license at a public sale.

Limitations and Restrictions

A qualified bidder that is granted an intermunicipal retail consumption license must use it within two years or it will automatically expire and not be eligible to be reissued by the receiving municipality. An intermunicipal retail consumption license does not include selling alcoholic beverages for off-premises consumption. The new law sets forth a restriction that a receiving municipality is only entitled to solicit an RFP to acquire one inactive license each calendar year and no more than two inactive licenses in five calendar years.

Expiration of Inactive Licenses and Quartiles

In addition to the intermunicipal retail consumption license transfers, the new law also establishes a process whereby inactive licenses may expire if not sited or sold within a certain period of time and provides that inactive Class C licenses shall not be renewed if they have not been actively used within two consecutive one-year terms. The new law requires that inactive Class C licenses must be actively used by the license holder and transferred for fair market value to another person who shall actively use the license in connection with a premises upon receipt of the license or transferred from a sending municipality to a receiving municipality. If inactive Class C license holders do not take steps to comply with the new law, some of the licenses will expire in accordance with the quartiles established and will no longer be allowed indefinite periods of inactivity. The statute requires the director of the NJABC to divide inactive plenary retail consumption licenses into quartiles based on the total length of time the licenses have been inactive. Each quartile has a statutory deadline by which the licenses within that quartile must be sited, sold or transferred. The NJABC has advised that the first-quartile licenses (1993-1994 through 2000-2001) must be transferred or actively used by August 1, 2025, or face expiration. Even though the new law grants municipalities the NJEDA in their discretion to extend inactive licenses for an additional license term, the NJABC advises the first-quartile licensees not to rely on further extensions and indefinite periods of inactivity as they have in the past.

Potential Grant Funding for Small Businesses

The New Jersey Economic Development Authority (NJEDA) is developing a new grant that aims to support small businesses with liquor license acquisition. The proposed $10 million program will assist small businesses that obtain an inactive plenary retail consumption liquor license by giving them up to $100,000 each, but no more than 50 percent of the license's purchase price. According to the NJEDA, eligible applicants must possess a recently purchased inactive plenary retail consumption license at the time of their grant application and must have been open and operating for 12 months. They also must meet the Small Business Administration (SBA) definition of a small-business concern, which includes entities organized for profit; having a place of business in the United States; operating primarily within the United States or making a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor; independently owned and operated; and not dominant in its field on a national basis. In addition, to qualify as a small business with the SBA, there is a size standard, which varies by industry. Applications will be accepted on a rolling basis for three years or until funds are exhausted and the NJEDA board is expected to begin taking applications in early 2025. The program is pending approval from the board. This alert is only meant to summarize the new law and is not intended as legal advice. Interested license holders, developers, redevelopers, municipalities, agencies and other parties are encouraged to reach out to any of the Day Pitney attorneys listed in the sidebar.

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