

STATE OF NEW YORK

8707

IN ASSEMBLY

January 11, 2022

Introduced by M. of A. FAHY -- read once and referred to the Committee on Economic Development

AN ACT to amend a chapter of the laws of 2021 relating to permitting the use of municipal space for outdoor dining, as proposed in legislative bills numbers S. 6353-A and A. 7733, in relation to permitting the use of contiguous and non-contiguous municipal public space by certain licensees under the alcoholic beverage control law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Sections 1 and 2 of a chapter of the laws of 2021 relating
2 to permitting the use of municipal space for outdoor dining, as proposed
3 in legislative bills numbers S. 6353-A and A. 7733, are REPEALED and six
4 new sections 1, 2, 3, 4, 5 and 6 are added to read as follows:

5 Section 1. Legislative intent. The intent of this act is to provide
6 relief to holders of licenses issued under the alcoholic beverage
7 control law with retail on-premises consumption privileges by allowing
8 for the exercise of such privileges on contiguous and non-contiguous
9 municipal public space.

10 § 2. For purposes of this act:

11 (a) "Licensee" shall mean the holder of a retail on-premises license
12 issued under the alcoholic beverage control law or a manufacturing
13 license issued under the alcoholic beverage control law that includes a
14 privilege to sell and/or serve alcoholic beverages at retail for
15 on-premises consumption on the licensed premises.

16 (b) "Non-contiguous municipal public space" shall mean space that:

17 (i) is located in front of, behind, or to the side of the licensed
18 premises;

19 (ii) is within the property boundaries of the licensed premises as
20 extended out; or within the property boundaries of the two nearest adja-
21 cent properties;

22 (iii) does not extend further than the midline of any public roadway;

23 (iv) is separated from the licensed premises only by a pedestrian
24 thoroughfare; and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (v) otherwise complies with all applicable federal, state and local
2 requirements.

3 (c) "Contiguous municipal public space" shall mean space that:

4 (i) is located in front of, behind, or to the side of the licensed
5 premises;

6 (ii) is within the property boundaries of the licensed premises as
7 extended out; or within the property boundaries of the two nearest adja-
8 cent properties;

9 (iii) otherwise complies with all applicable federal, state and local
10 requirements.

11 § 3. Upon application to the state liquor authority and with the
12 authority's approval of such application, a licensee, in accordance with
13 its license, may exercise its privilege to sell and/or serve alcoholic
14 beverages at retail for on-premises consumption on contiguous municipal
15 public space or non-contiguous municipal public space provided:

16 (a) the municipality in which the licensed premises is located issues
17 a permit or the responsible municipal regulatory body or agency issues
18 written authorization to the licensee to sell and/or serve food and
19 beverages on such contiguous municipal public space or non-contiguous
20 municipal public space;

21 (b) the licensee submits notice to the state liquor authority in the
22 form of a copy of such permit or other written authorization;

23 (c) the licensee submits notice to the state liquor authority in the
24 form of a diagram depicting both the licensed premises and the contig-
25 uous municipal public space or non-contiguous municipal public space to
26 be used by the licensee;

27 (d) all new applicants for use of non-contiguous municipal space shall
28 provide community notification to the municipality, including munici-
29 palities outside the city of New York, in a manner consistent with or
30 required by subdivision 2 of section 110-b of the alcoholic beverage
31 control law as required for the city of New York; and

32 (e) use of any such space meets all applicable federal, state or local
33 laws, rules, regulations, guidance, conditions or requirements.

34 § 4. (a) Notwithstanding the provisions of section three of this act,
35 a licensee, previously approved by the municipality, exercising its
36 privilege to sell and/or serve alcoholic beverages at retail for
37 consumption on contiguous municipal public space or non-contiguous
38 municipal public space upon the effective date of this act shall be
39 allowed to continue such use pursuant to this act.

40 (b) Within ninety days, the licensee must provide notice to the state
41 liquor authority pursuant to subdivisions (b) and (c) of section three
42 of this act to indicate that the licensee will continue exercising its
43 privilege to sell and/or serve alcoholic beverages at retail for
44 consumption on such contiguous municipal public space or non-contiguous
45 municipal public space.

46 § 5. If at any time the municipality revokes, cancels or suspends or
47 otherwise terminates the licensee's authorization to use such contiguous
48 municipal public space or non-contiguous municipal public space, the
49 licensee shall cease exercising its privilege to sell and/or serve alco-
50 holic beverages at retail for consumption on such municipal public
51 space.

52 § 6. Violations of the provisions of section three, four or five of
53 this act, or a violation of any provision of the alcoholic beverage
54 control law or the rules of the state liquor authority taking place on
55 contiguous municipal public space or non-contiguous municipal public

1 space being used by such licensee shall be subject to the provisions of
2 sections 118 and 119 of the alcoholic beverage control law.

3 § 2. Section 3 of a chapter of the laws of 2021 relating to permitting
4 the use of municipal space for outdoor dining, as proposed in legisla-
5 tive bills numbers S. 6353-A and A. 7733, is renumbered section 7.

6 § 3. This act shall take effect on the same date and in the same
7 manner as a chapter of the laws of 2021 relating to permitting the use
8 of municipal space for outdoor dining, as proposed in legislative bills
9 numbers S. 6353-A and A. 7733, takes effect; provided, however that the
10 amendments to a chapter of the laws of 2021 relating to permitting the
11 use of municipal space for outdoor dining, as proposed in legislative
12 bills numbers S. 6353-A and A. 7733, made by this act shall not affect
13 the expiration of such chapter and shall be deemed to expire therewith.