STATE OF NEW YORK

7733

2021-2022 Regular Sessions

IN ASSEMBLY

May 20, 2021

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

AN ACT in relation to permitting the use of municipal space for outdoor dining; and providing for the repeal of such provisions upon the expiration thereof

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

Section 1. Legislative intent. The intent of this act is to provide relief to retail licensees for on-premises consumption or manufacturers with retail on-premises consumption privileges as provided for in the alcoholic beverage control law in relation to permitting the use of municipal space for outdoor dining.

§ 2. Notwithstanding any provision of the alcoholic beverage control law to the contrary:

a. For the purposes of subdivision 1 of section 99-d, paragraph (g) of subdivision 1 of section 110, or any other applicable provisions of the alcoholic beverage control law, a temporary use permit issued to a licensee by a municipality authorizing the use of municipal property for the operation of a licensed premises shall demonstrate control of such municipal property for the purposes of this act. For the purpose of this act "licensee" shall have the same meaning as defined in subdivision 18 of section 3 of the alcoholic beverage control law.

b. A licensee issued a retail license for on-premises consumption or manufacturers with retail on-premises consumption privileges as provided for in the alcoholic beverage control law and licensed by the state liquor authority (referred to hereinafter as the "authority"), may make an application to the authority and in accordance with their license and approval by the authority, to use both contiguous space as provided for in section 99-d of the alcoholic beverage control law and non-contiguous municipal space for outdoor dining. For the purposes of this act, "non-contiguous space" shall mean space that is: (i) in close proximity

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

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and in-line-of-sight to the licensed premises; (ii) not wider than the edges of the licensed premises, unless the municipality has expressly approved otherwise, and extending no further than the centerline of the roadway; and (iii) provides a thoroughfare for pedestrian, customer, and employee access. As a condition of such approval, the applicant is required to demonstrate:

(i) use of any such space meets all applicable federal, state or local laws, rules, regulations, guidances, conditions or requirements; and

(ii) receipt of a current temporary use permit issued by the municipality if any such space would utilize municipal property.

c. All new applicants for use of non-contiguous municipal space shall provide community notification to a municipality, including municipalities outside the city of New York, in a manner consistent with or required by subdivision 2 of section 110-b of the alcoholic beverage control law as required for the city of New York.

d. For the purposes of this section, the authority shall allow, pursuant to this act, those licensees currently using such space as provided under a pre-existing authorization to continue to use such municipal space, unless the municipality revokes the permit, the applicant seeks to change its municipal temporary use permit for such outdoor space, or a licensee seeks a renewal of such municipal space.

e. The authority may, on its own initiative or on complaint of any person or community board as established pursuant to section 2800 of the New York city charter, to institute proceedings to suspend or revoke a licensee's ability and privilege to use contiguous or non-contiguous space pursuant to this act after a hearing, in accordance with section 119 of the alcoholic beverage control law, at which such licensee shall be given an opportunity to be heard. Such proceedings and such hearing shall be held in such manner and upon such notice as may be prescribed by the rules of the authority. The authority shall notify the municipality of any suspension or revocation of a licensee's ability to use such space.

f. The authority shall promulgate guidance, rules and/or regulations necessary to implement the provisions of this act in an expeditious manner. Notwithstanding existing provisions of the alcoholic beverage control law, the authority is authorized to provide simplified applications and notification procedures for applicants whenever possible. At a minimum new applicants or applicants for renewal of municipal contiguous and non-contiguous outdoor space shall provide the authority with a diagram of the outdoor space as well as a brief description of the outdoor space intended to be used. Nothing in this act shall prohibit the authority from requesting additional information from any applicant seeking to use new municipal space or renewal of existing municipal space.

§ 3. This act shall take effect immediately and shall expire and be deemed repealed one year after it shall have become a law.