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:

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the use of municipal space for outdoor dining, as proposed in legislative bills numbers S. 6353-A and A. 7733, are REPEALED and six new sections 1, 2, 3, 4, 5 and 6 are added to read as follows:

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

§ 2. For purposes of this act:

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

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

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

(ii) is within the property boundaries of the licensed premises as extended out; or within the property boundaries of the two nearest adjacent properties;

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

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

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

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

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

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

(ii) is within the property boundaries of the licensed premises as extended out; or within the property boundaries of the two nearest adjacent properties;

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

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

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

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

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

(d) all new applicants for use of non-contiguous municipal space shall provide community notification to the 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; and

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

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

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

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

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

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

§ 2. Section 3 of 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, is renumbered section 7.

§ 3. This act shall take effect on the same date and in the same manner as 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, takes effect; provided, however that the amendments to 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, made by this act shall not affect the expiration of such chapter and shall be deemed to expire therewith.