

CHAPTER 3. LICENSE APPLICATIONS

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Authority

The provisions of this Chapter 3 issued under sections 207(i), 402, 403(g), 404, 432(d) and (e), 464 and 505.2 of the Liquor Code (47 P. S. §§ 2-207(i), 4-402, 4-403(g), 4-404, 4-432(d) and (e), 4-464 and 5-505.2), unless otherwise noted.

Cross References

This chapter cited in 40 Pa. Code § 5.86 (relating to permitted exchange of club and catering club licenses).

Subchapter A. GENERAL PROVISIONS

Sec.	
3.1.	Definitions.
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3.8.	Certificate of completion; certificate of approval: letter of authority.
3.9.	Interests of minors.

Source

The provisions of this Subchapter A adopted June 26, 1952, unless otherwise noted.

§ 3.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Authorized agent—An individual whose signature appears on the reverse side of a Wholesale Liquor Purchase Permit Card, provided the individual is regularly employed in the business or establishment of a permit holder.

Bar/counter—A smooth flat surface affixed to the premises on which drinks and food are served.

Bench—A long seat for more than one person.

Booth—A table usually surrounded by one or two benches, serving as partitions.

Chair—A single seat with back, often with arms, and supported on legs or a pedestal.

Eating space—A space at least 18 inches wide by 12 inches deep, which is suitable for a service setting of plate, utensils and drink.

Permit holder—A retail liquor licensee, registered pharmacist, hospital, State-owned institution, manufacturing pharmacist or chemist, manufacturer of products for nonbeverage purposes, or other person to whom a Wholesale Liquor Purchase Permit has been issued by the Board.

Retail liquor licensee—A person, partnership, association or corporation holding a hotel, restaurant, club or public service liquor license or other license issued under the Liquor Code for the sale of liquor and malt or brewed beverages at retail.

Seating—The number of patrons able to be served meals in a restaurant or eating place retail dispenser premises where a stool, chair, booth or bench is provided to sit on, and where an eating space is provided.

Stool—A backless and armless single seat supported on legs or a pedestal.

Table—A piece of furniture having a smooth flat top supported by one or more vertical legs.

Source

The provisions of this § 3.1 amended November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139. Immediately preceding text appears at serial pages (282029) and (234051).

§ 3.2. License districts; license periods.

(a) In accordance with applicable provisions of the Liquor Code, the Board has established multiple year license periods for renewal of licenses. License periods for hotel, restaurant, club and eating place licenses will be established for up to 2 years and license periods for other licenses and permits may be set by the Board up to a maximum of 4 years. License periods will be staggered across this Commonwealth to facilitate efficient and expedient processing of initial applications, license validations and renewals.

(b) Revision to established license districts/periods will become effective as deemed appropriate by the Board.

(c) Notification of revised license districts and license periods will be provided directly to individual licensees by the Board.

(d) Applicable license fees as prescribed by section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A) shall be payable on an annual basis in conjunction with either license validation or renewal.

(e) When revisions to license districts/periods result in the issuance of partial year licenses to accommodate transition to newly established license districts/periods, a license so affected will be renewed on a prorated fee basis in accordance with the number of months the license will be valid.

Source

The provisions of this § 3.2 adopted June 26, 1952; amended July 21, 1995, effective July 22, 1995, 25 Pa.B. 2885. Immediately preceding text appears at serial pages (146538) and (179079).

§ 3.3. Validation of licenses; late filing fees.

(a) To qualify as timely filed, an application for validation of license shall be filed with requisite license and filing fees and tax clearance, if applicable, at least 60 days before the effective date of validation or the license shall be subject to appropriate late filing fees. Upon objection from the Department of Revenue or the Department of Labor and Industry, or both, pertaining to lack of tax clearance, clearance shall be obtained from either or both Departments, as appropriate, at least 60 days prior to the effective date of validation.

(b) The Board may accept validation applications filed less than 60 days before the effective date of validation upon the payment of the requisite license and filing fees and an additional late filing fee of \$100. A validation application filed on or after the effective date of validation shall be accompanied by the requisite license and filing fees and an additional late filing fee of \$250. A validation application will not be considered for approval unless accompanied by the requisite filing, license and late filing fees, and tax clearance if appropriate, from the Department of Revenue and the Department of Labor and Industry.

(c) Outstanding issues related to validation or renewal of a license shall be satisfied before the Board will consider additional action or processing of license matters.

(d) The authority to dispense alcoholic beverages under a license shall be contingent upon validation or renewal of the license by the Board.

Source

The provisions of this § 3.3 adopted June 26, 1952; amended July 21, 1995, effective July 22, 1995, 25 Pa.B. 2885. Immediately preceding text appears at serial page (179079).

§ 3.4. Fees.

Applications for new licenses and renewal or validation of licenses subject to this subchapter shall be accompanied at the time of filing by remittance covering required filing fees, license fee and related license or permit fees associated with authority to operate.

Source

The provisions of this § 3.4 adopted June 26, 1952; amended July 21, 1995, effective July 22, 1995, 25 Pa.B. 2885. Immediately preceding text appears at serial page (179080).

§ 3.5. Replacement of license.

If a licensee loses the original copy of his liquor license, the licensee shall obtain an application for a duplicate license from a State Liquor Store. The application shall be returned to the store with a fee of \$10 and a letter explaining the loss of the original license. Upon receipt by the Board of the application, fee and letter, a duplicate license will be issued. If the original copy of the liquor license is found, the licensee shall return the duplicate license to the Board within 10 days.

Source

The provisions of this § 3.5 adopted June 18, 1982, effective July 1, 1982, 12 Pa.B. 1860; amended March 12, 1993, effective March 13, 1993, 23 Pa.B. 1145. Immediately preceding text appears at serial page (165824).

§ 3.6. Individual financial disclosure affidavit.

(a) An applicant for a new license, the transfer of a license or extension of premises shall report financial arrangements related to the purchase of the license and business and items incidental thereto including, but not limited to, the following:

- (1) Inventory.
- (2) The lease or purchase of equipment and real estate.
- (3) Construction or renovation costs.

(b) The information shall be reported on forms provided by the Board.

Source

The provisions of this § 3.6 adopted August 22, 1986, effective October 1, 1986, 16 Pa.B. 3114; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432. Immediately preceding text appears at serial pages (205115) to (205116).

§ 3.7. Reporting changes.

While an application for a new license, the transfer of a license or extension of premises is pending, the applicant shall immediately advise the Board of a change in the information provided on the application or individual financial disclosure affidavit.

Source

The provisions of this § 3.7 adopted August 22, 1986, effective October 1, 1986, 16 Pa.B. 3114.

§ 3.8. Certificate of completion; certificate of approval; letter of authority.

(a) Upon Board approval of an application for new license, transfer of a license or extension of premises, the Board will issue a certificate of approval to the applicant. The Board will also issue a letter of authority which shall authorize the applicant to operate the licensed premises for no more than 30 days. If the application is for an extension of premises, the letter of authority shall be effec-

tive immediately. If the application is for a new license, the letter of authority shall be effective when the applicant acquires the right to occupy the premises. If the application is for the transfer of a license, the letter of authority shall be effective upon completion of the underlying financial transaction. Within 15 days of completion of transactions necessary to complete the process, the applicant shall submit a certificate of completion to the Board, indicating that the financial arrangements were completed as reported or modified. The certification shall be on forms provided by the Board. If the application is a transfer application, then the certificate of completion must be signed by the transferor and the transferee. Failure to submit a properly executed certificate of completion may void the approval.

(b) If the certificate of completion discloses modified arrangements, the Board may request information or documentation, as it deems necessary.

(c) If the certified modifications are such that the eligibility of the applicant or premises would not be affected, the Board will take no action against the applicant.

Source

The provisions of this § 3.8 adopted August 22, 1986, effective October 1, 1986, 16 Pa.B. 3114; amended November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139. Immediately preceding text appears at serial page (234052).

§ 3.9. Interests of minors.

An individual under 18 years of age may not have an interest in a license or permit issued by the Board whether as licensee or permittee, partner or stockholder in a corporate licensee, except if the interest is held by a trustee or guardian. Under no circumstances may an individual under 18 years of age be an officer or director of a corporate licensee or permittee.

Source

The provisions of this § 3.9 adopted August 22, 1986, effective October 1, 1986, 16 Pa.B. 3114.

Subchapter B. NOTICE POSTING

- Sec.
 3.11. Definitions.
 3.12. Notice posting generally.
 3.13. Retail liquor and retail malt and brewed beverage licenses, importing distributor and distributor licenses.
 3.14. Applicant responsibility.

Source

The provisions of this Subchapter B adopted January 1, 1955, unless otherwise noted.

Cross References

This subchapter cited in 40 Pa. Code § 17.13 (relating to protests/intervention procedure).

§ 3.11. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Controlling interest—The power or authority to manage, direct, govern, administer or oversee the operation of a licensed business.

Source

The provisions of this § 3.11 adopted January 1, 1955; corrected July 8, 1977, effective July 9, 1977, 7 Pa.B. 1890; amended January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; amended August 22, 1986, effective January 1, 1987, 16 Pa.B. 3114, as it relates to protests and intervention; amended December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935. Immediately preceding text appears at serial pages (110136) and (117777).

§ 3.12. Notice posting generally.

(a) The purpose of notice posting is to identify to the public that an application has been filed with the Board for a new alcoholic beverage license or a change in location or ownership status of an existing license.

(b) The Board may require notice posting for an application of any class of license when it is determined the posting is in the public interest.

(c) A notice shall be in the size and form the Board requires; no other is acceptable. A notice shall contain only language supplied and required by the Board.

Source

The provisions of this § 3.12 adopted January 1, 1955; amended January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; amended through August 22, 1986, effective January 1, 1987, 16 Pa.B. 3114, as it relates to protests and intervention; amended December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935. Immediately preceding text appears at serial pages (117777) to (117778) and (110139).

§ 3.13. Retail liquor and retail malt and brewed beverage licenses, importing distributor and distributor licenses.

(a) An applicant for a retail liquor license, retail malt and brewed beverage license, importing distributor, distributor license or for the transfer or extension of premises of these licenses, whether person to person, place to place, or both, shall post notice.

(b) Except for nonprofit clubs, retail liquor licensees, retail malt and brewed beverage licensees, importing distributor and distributor licensees, reporting a change in officers, directors or stockholders, which would constitute a change in majority ownership or controlling interest, shall post notice of the change. Except for nonprofit clubs, if a corporate licensee is owned by two persons each of whom owns 50% of the corporation, then any change in ownership shall require posting.

(c) The filing of an application for extension of premises shall be governed by Chapter 7, Subchapter B (relating to extension of licenses).

Source

The provisions of this § 3.13 adopted January 1, 1955; amended January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; amended through August 22, 1986, effective January 1, 1987, 16 Pa.B. 3114, as it relates to protests and intervention; amended December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935; amended November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139. Immediately preceding text appears at serial pages (243257) to (243258).

§ 3.14. Applicant responsibility.

(a) The applicant is responsible for the posting and maintenance of the notice at all times during which the action is pending.

(b) The notice shall be posted at or near the entrance to the premises in a conspicuous place which can be observed readily by the public. In the case of a vacant lot, posting shall be on a post or stake of permanent material, at the mid-point of the largest boundary fronting on a public thoroughfare at a point not more than 10 feet from the sidewalk, or roadway in the absence of a sidewalk. The notice shall be mounted upon heavy cardboard, wood or other substantial backing affixed to the post or stake so it is readily visible from the sidewalk or roadway.

(c) The notice shall be continuously posted commencing with the date the application is filed with the Board until notice of approval or disapproval is rendered.

(d) An application may be refused by the Board if notice is not posted as required.

Source

The provisions of this § 3.14 adopted January 1, 1955; reserved August 22, 1986, effective August 23, 1986, 16 Pa.B. 3114; corrected September 5, 1986, effective September 6, 1986, 16 Pa.B. 3292; amended December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935. Immediately preceding text appears at serial page (110139).

Notes of Decisions*Duration of Posting*

The Liquor Control Board (Board) did not abuse its discretion in a new restaurant liquor license when the applicant failed to post its notice continuously from the date of application to the date of the Board's decision, because the proposed premise was properly posted well in excess of 30 days from the initial posting date and for the majority of the time from the filing of the application to the Board's decision; this 30-day period is most important because it is during this period that a petition to intervene or protest must be filed with the Board by parties concerned about the license application. *In re Asprey, Inc.*, 693 A.2d 257 (Pa. Cmwlth. 1997); appeal denied 702 A.2d 1061 (Pa. 1997).

**Subchapter C. MEASUREMENT OF DISTANCES
FROM PREMISES**

- Sec.
3.21. Authority of the Board to grant or refuse licenses.
3.22. Method of measurement.
3.23. Points for measurement.

Source

The provisions of this Subchapter C adopted March 3, 1960, unless otherwise noted.

§ 3.21. Authority of the Board to grant or refuse licenses.

Under sections 404 and 432(d) of the Liquor Code (47 P. S. §§ 4-404 and 4-432(d)), the Board may, in its discretion, grant or refuse a new Hotel, Restaurant or Club License or transfer where the place proposed to be licensed is within the distances prescribed by the act from the respective locations there named. In so doing, the Board will follow the guidelines set forth in §§ 3.22 and 3.23 (relating to method of measurement; and points for measurement).

§ 3.22. Method of measurement.

For the purpose of establishing a uniform method of measurement, the following interpretation shall apply:

- (1) *Church, hospital, charitable institution, school and public playground.* The building and the adjoining ground used in connection therewith.
- (2) *Other premises licensed by the Board.* The portion of the premises covered by the current license.
- (3) *Place proposed to be licensed.* The rooms designated in the application for license.
- (4) *Radius.* That area within a designated distance of any point of the premises proposed to be licensed.

Notes of Decisions

Place Proposed to be Licensed

This section defines "place proposed to be licensed" for purposes of section 403 of the Liquor Code (47 P. S. § 4-403) cited and applied in *Board of Commissioners v. Penn Continental Motor Inns, Inc.*, 314 A.2d 587 (Pa. Cmwlth. 1975); *Thompson v. Liquor Control Board*, 348 A.2d 916 (Pa. Cmwlth. 1975).

Cross References

This section cited in 40 Pa. Code § 3.21 (relating to authority of the Board to grant or refuse licenses).

§ 3.23. Points for measurement.

(a) For the purpose of establishing uniform points of measurement, the following applies:

(1) The part of the church, hospital, charitable institution, school or public playground (and/or the adjoining ground used in connection therewith), and other premises licensed by the Board nearest to the place proposed to be licensed.

(2) The part of the place proposed to be licensed nearest to the church, hospital, charitable institution, school or public playground (and/or the adjoining ground used in connection therewith), and other premises licensed by the Board.

(b) Measurements shall be made or calculated in a straight line between the fixed points so determined, regardless of intervening land, water, buildings or structures of any kind.

Notes of Decisions

General Comment

The 300 foot distance requirement of 47 P. S. § 4-464, defined in § 3.33 and this regulation, is mandatory and unambiguous. Because protestant, by its own admission, does not comply with the distance provision in Section 464, it has no standing to appeal the grant of a retail dispenser eating place liquor license to applicant. *Tacony Civic Association v. Liquor Control Board*, 668 A.2d 584 (Pa. Cmwlth. 1995).

In determining points of measurement for purposes of complying with restrictions on granting of liquor license, this provision would not be basis for denial of license where applicant's premises were beyond 300 feet restriction from church building itself, and that part of church property which was within restricted distance was vacant lot not used in connection with church activities. *Liquor Control Board v. Ripley*, 529 A.2d 39 (Pa. Cmwlth. 1987).

The property line and not the building line of a charitable institution should be the measuring point where activities conducted by the institution involved the use of all of the adjoining grounds. *In re Amminiti*, 377 A.2d 1042 (Pa. Cmwlth. 1977).

The determination of reference points, between which the distance from a proposed licensed premises to a restrictive institution should be measured, is a matter of law not discretion. *In re Amminiti*, 377 A.2d 1042 (Pa. Cmwlth. 1977).

The building line, rather than the property line, is the proper reference point from which to measure, *Thompson v. Liquor Control Board*, 348 A.2d 916 (Pa. Cmwlth. 1975).

Standing

The 300 foot distance requirement of 47 P. S. § 4-464, defined in § 3.22 and this regulation, is mandatory and unambiguous. Because protestant, by its own admission, does not comply with the distance provision in section 464, it has no standing to appeal the grant of a retail dispenser eating place liquor license to applicant. *Tacony Civic Association v. Liquor Control Board*, 668 A.2d 584 (Pa. Cmwlth. 1995); appeal denied 681 A.2d 180 (Pa. 1996).

Cross References

This section cited in 40 Pa. Code § 3.21 (relating to authority of the Board to grant or refuse licenses).

Subchapter D. PHOTOGRAPHS AND CRIMINAL HISTORY RECORD INFORMATION CHECKS**PHOTOGRAPHS**

- Sec.
3.31. Personal photographs.
3.32. Photographs of premises.
3.33. [Reserved].

CRIMINAL HISTORY RECORD INFORMATION CHECKS

- 3.35. Persons from whom criminal history record information checks are required.
3.36. [Reserved].
3.37. Failure to comply.

PHOTOGRAPHS**§ 3.31. Personal photographs.**

(a) A photograph shall be furnished to the Board's representative by the following:

- (1) Individuals; members of partnerships; and principal officers of a corporation applying for Retail Liquor Licenses, Retail Dispenser Malt Beverage Licenses, Distributor Licenses and Importing Distributor Licenses, except Public Service and Club Licenses.

- (2) Current managers/stewards and proposed managers/stewards.

(b) The photograph shall:

- (1) Be 1 1/2 inches square and unmounted with a matte finish.
(2) Bear the name of the individual and the address of the licensed premises.
(3) Be taken within 60 days of the date submitted.

Source

The provisions of this § 3.31 adopted June 26, 1952; amended June 3, 1977, effective June 4, 1977, 7 Pa.B. 1480; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432; amended December 17, 1999, effective December 18, 1999, 29 Pa.B. 6337. Immediately preceding text appears at serial page (234057).

§ 3.32. Photographs of premises.

(a) Applications for new Retail Liquor or Retail Dispenser Malt Beverage Licenses and applications for transfer thereof, except Public Service Licenses, shall be accompanied by two photographs of the premises proposed to be licensed.

- (b) One photograph shall be a view of the exterior of the building, showing the street number, if any.
- (c) One photograph shall be a view of the main serving room.
- (d) Applications for new Distributor and Importing Distributor Licenses and applications for transfer thereof shall be accompanied by one photograph each of the exterior of the principal place of business and additional storage warehouses, showing the street number, if any.
- (e) Photographs shall:
 - (1) Be at least 4 by 6 inches in size with a matte finish.
 - (2) Unmounted.
 - (3) Bear the name of the applicant and address of the establishment on the reverse.
- (f) Where a material physical change is made to the exterior or interior of the licensed premises after the license has been issued, new photographs will be required.

Source

The provisions of this § 3.32 adopted June 26, 1952; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432. Immediately preceding text appears at serial pages (205121) to (205122).

§ 3.33. [Reserved].

Source

The provisions of this § 3.33 adopted June 26, 1952; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432; reserved December 17, 1999, effective December 18, 1999, 29 Pa.B. 6337. Immediately preceding text appears at serial page (234058).

CRIMINAL HISTORY RECORD INFORMATION CHECKS

§ 3.35. Persons from whom criminal history record information checks are required.

- (a) The following shall submit a criminal history record information check to the Board under 18 Pa.C.S. §§ 9101—9183 (relating to the Criminal History Record Information Act):
 - (1) Applicants for a new license.
 - (2) Applicants for the transfer of a license.

(3) The applicant's officers or directors, or both, where the applicant for a new license or the transfer of a license is a corporation, club, association or other business entity.

(4) Persons identified in a change of officers, directors, or stockholders required to be reported by § 5.91 (relating to required report).

(5) A person reported to the Board as having been appointed a manager as required by § 5.23 (relating to appointment of managers).

(6) [Reserved].

(b) The required criminal history record information check shall accompany the application or notice of change. Upon good cause shown, the Board may accept the criminal history record information check at a later date.

Source

The provisions of this § 3.35 adopted October 11, 1965; amended March 21, 1986, effective May 21, 1986, 16 Pa.B. 954; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432. Immediately preceding text appears at serial pages (205122) to (205123).

Cross References

This section cited in 40 Pa. Code § 3.37 (relating to failure to comply).

§ 3.36. [Reserved].

Source

The provisions of this § 3.36 adopted October 11, 1965; amended October 15, 1976, effective October 16, 1976, 6 Pa.B. 2570; amended March 21, 1986, effective May 21, 1986, 16 Pa.B. 954; reserved August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432. Immediately preceding text appears at serial page (205123).

Cross References

This section cited in 40 Pa. Code § 3.37 (relating to failure to comply).

§ 3.37. Failure to comply.

Failure to comply with § 3.35 (relating to persons from whom criminal history record information checks are required) will be sufficient cause for refusal to grant, transfer or renew a license or for the issuance of a citation to show cause why a license may not be suspended or revoked.

Source

The provisions of this § 3.37 adopted October 11, 1965; amended March 21, 1986, effective May 21, 1986, 16 Pa.B. 954; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432. Immediately preceding text appears at serial pages (205123) to (205124).

Subchapter E. HEARINGS

- Sec.
3.41. Hearings on applications.
3.42. Continuance of hearings.

Source

The provisions of this Subchapter E adopted June 26, 1952, unless otherwise noted.

§ 3.41. Hearings on applications.

In cases where the Board has refused an application for a license, renewal or transfer thereof without hearing, it will, as provided in section 464 of the Liquor Code (47 P. S. § 4-464), upon the written request of the applicant, fix a time and place for hearing on the applications, provided the request is filed with the Board not later than 20 days after notice of the refusal is mailed to the applicant at the address in the application.

Source

The provisions of this § 3.41 adopted June 26, 1952.

Notes of Decisions*Appeals*

The authority of the Pennsylvania Liquor Control Board to refuse renewal of an amusement permit was inherently provided by 47 P. S. § 4-470. Therefore, an appeal from the denial of an amusement permit was an appeal pursuant to the Liquor Code and section 933 of the Judicial Code mandated that jurisdiction laid with the court of common pleas. *Teazers, Inc. v. Liquor Control Board*, 661 A.2d 455 (Pa. Cmwlth. 1995).

An applicant for the renewal of a liquor license was denied due process when the Liquor Control Board failed to grant a hearing which was filed within 20 days after receipt of a notice of termination. *Pace's Lounge, Inc. v. Liquor Control Board*, 601 A.2d 408 (Pa. Cmwlth. 1991).

§ 3.42. Continuance of hearings.

(a) Except as provided in subsection (b), no continuance of a Board hearing will be approved unless a request for the continuance is received by the Board at least 48 hours prior to the time fixed for hearing.

(b) Requests for continuance received by the Board within the 48-hour period will not be granted unless satisfactory arrangement in writing is made with the Board for the payment of expenses resulting from the continuance. The Board may waive the payment of the expenses where extenuating circumstances are deemed present.

Source

The provisions of this § 3.42 adopted June 26, 1952.

Subchapter F. PREMISES

Sec.

- 3.51. Connection with residence.
 3.52. Connection with other business.
 3.53. Restriction on storage and sales where Board has approved connection with other business.
 3.54. Separation between licensed premises and other business.
 3.55. Restriction on retail dispenser eating place license.
 3.56. Licensed premises operated in conjunction with other business.

Notes of Decisions

A license transfer application was within the eminent domain exception to the liquor license transfer quota, where a tavern owner deeded property to a township in lieu of the township commencing condemnation and where no other suitable buildings existed within the township for establishing a tavern. *Liquor Control Board v. Marble Hall Inv. Co.*, 623 A.2d 965 (Pa. Cmwlth. 1993).

§ 3.51. Connection with residence.

Licensed premises may not have an inside passage or communication to or with a residence other than the residence of the licensee, corporate officer or manager.

Source

The provisions of this § 3.51 adopted June 24, 1970, effective June 25, 1970, 1 Pa.B. 78; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432. Immediately preceding text appears at serial page (205125).

§ 3.52. Connection with other business.

(a) A licensee may not permit other persons to operate another business on the licensed premises.

(b) Licensed premises may not have an inside passage or communication to or with any business conducted by the licensee or other persons except as approved by the Board.

(c) A licensee may not conduct another business on the licensed premises without Board approval.

Source

The provisions of this § 3.52 adopted June 24, 1970, effective June 25, 1970, 1 Pa.B. 78; amended March 20, 1998, effective March 21, 1998, 28 Pa.B. 1418. Immediately preceding text appears at serial page (234061).

Notes of Decisions*Interior Passage*

It was reasonable for Liquor Control Board to conclude that applicant's bakery and antique shop constituted separate business from restaurant for which license was requested; Board could properly withhold license while interior passage connected businesses, but court would grant license subject to condition that applicants close passages if specified by the Board. *Liquor Control Board v. Ripley*, 529 A.2d 39 (Pa. Cmwlth. 1987).

Other Business

Although entertainers who dance at the licensee's gentlemen's club are independent contractors, they are part and parcel of the licensee's business, and do not constitute "another business" operating on the licensee's premises. *MAG Enterprises, Inc. v. Liquor Control Board*, 806 A.2d 521 (Pa. Cmwlth. 2002).

Cross References

This section cited in 40 Pa. Code § 3.122 (relating to points assessment).

§ 3.53. Restriction on storage and sales where Board has approved connection with other business.

Where the Board has approved the operation of another business which has an inside passage or communication to or with the licensed premises, storage and sales of liquor and malt or brewed beverages shall be confined strictly to the premises covered by the license.

Source

The provisions of this § 3.53 adopted June 24, 1970, effective June 25, 1970, 1 Pa.B. 78.

§ 3.54. Separation between licensed premises and other business.

Where the Board has approved the operation of another business which has an inside passage or communication to or with the licensed premises, the extent of the licensed area shall be clearly indicated by a permanent partition at least 4 feet in height.

Source

The provisions of this § 3.54 adopted June 24, 1970, effective June 25, 1970, 1 Pa.B. 78.

§ 3.55. Restriction on retail dispenser eating place license.

Where the Board has approved the operation of another business which has an inside passage or communication to or with premises covered by a Retail Dispenser Eating Place License, alcohol or liquor may not be stored, kept, possessed or sold on the premises used for such other business.

Source

The provisions of this § 3.55 adopted June 24, 1970, effective June 25, 1970, 1 Pa.B. 78.

§ 3.56. Licensed premises operated in conjunction with other business.

The premises covered by a license shall meet all requirements of the Liquor Code and of this part for the license exclusive of space devoted to other business operated in conjunction therewith.

Source

The provisions of this § 3.56 adopted June 24, 1970, effective June 25, 1970, 1 Pa.B. 78.

Subchapter G. LIMITED WINERY LICENSES

- Sec.
- 3.61. [Reserved].
- 3.62. Creation.
- 3.63. Agents.
- 3.64. Additional Board-approved locations.

§ 3.61. [Reserved].**Source**

The provisions of this § 3.61 adopted March 11, 1969; amended July 23, 1971, effective August 30, 1971, 1 Pa.B. 1562; reserved September 13, 1974, effective September 14, 1974, 4 Pa.B. 1948.

§ 3.62. Creation.

Under section 505.2 of the Liquor Code (47 P. S. § 5-505.2), holders of a Limited Winery License may produce and sell wines, subject to §§ 3.63, 5.103 and 11.111 (relating to agents; limited wineries; and sale by limited winery licensees).

Authority

The provisions of this § 3.62 issued under sections 207(i) and 505.2(2) and (3) of the Liquor Code (47 P. S. §§ 2-207(i) and 5-505.2(2) and (3)).

Source

The provisions of this § 3.62 adopted March 11, 1969; amended July 23, 1971, effective August 30, 1971, 1 Pa.B. 1562; amended September 13, 1974, effective September 14, 1974, 4 Pa.B. 1948; amended March 11, 1983, effective March 12, 1983, 13 Pa.B. 984. Immediately preceding text appears at serial page (18428).

Cross References

This section cited in 40 Pa. Code § 5.103 (relating to limited wineries); and 40 Pa. Code § 11.111 (relating to sale by limited winery licensees).

§ 3.63. Agents.

A limited winery licensee may employ individuals to solicit orders, off the licensed premises, for wine produced by it or to promote the sale of wines off the premises. Agents may advertise and promote the sale of merchandise by “missionary work” of only brands sold by the limited winery licensee by whom the agents are employed and may solicit orders from licensees and make deliveries in properly registered vehicles.

Authority

The provisions of this § 3.63 issued under sections 207(i) and 505.2(2) and (3) of the Liquor Code (47 P. S. §§ 2-207(i) and 5-505.2(2) and (3)).

Source

The provisions of this § 3.63 adopted March 11, 1969; amended July 23, 1971, effective August 30, 1971, 1 Pa.B. 1562; amended September 13, 1974, effective September 14, 1974, 4 Pa.B. 1948; amended January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; amended June 18, 1982, effective July 1, 1982, 12 Pa.B. 1860; amended March 11, 1983, effective March 12, 1983, 13 Pa.B. 984; amended March 12, 1993, effective March 13, 1993, 23 Pa.B. 1145; amended December 17, 1999, effective December 18, 1999, 29 Pa.B. 6337. Immediately preceding text appears at serial pages (234063) to (234064).

Cross References

This section cited in 40 Pa. Code § 3.62 (relating to creation); and 40 Pa. Code § 11.111 (relating to sale by limited winery licensees).

§ 3.64. Additional Board-approved locations.

(a) Additional locations, as authorized by section 505.2(3) of the Liquor Code (47 P. S. § 5-505.2(3)) may not be used by a limited winery licensee in the operation of a licensed business unless approved by the Board.

(1) An application for an additional location shall be made to the Board, accompanied by a \$220 fee. A renewal application shall be submitted annually and be accompanied by a \$75 fee.

(2) Applications for additional Board-approved locations may be submitted on a prior approval basis. If plans are approved, the necessary construction or alterations shall be completed within 6 months of the approval. Business may not be transacted until the premises has been reinspected and the Board has approved the completed construction or alterations.

(3) Portions of an additional Board-approved location premises shall be contiguous.

(4) Additional Board-approved locations of a limited winery license shall be under the control of a manager appointed in accordance with § 5.16 (relating to appointment of managers).

(5) Additional Board-approved locations of a limited winery license shall be enclosed by soundly constructed walls, with controlled points of access and egress directly accessible to the general public from a public thoroughfare.

(6) Limited winery licensees shall provide Board officers conducting licensing investigations of additional locations with the following:

- (i) Leases which contain percentage agreements.
- (ii) Management agreements.
- (iii) Employee agreements.
- (iv) Commission agreements.

(b) Limited winery licensees shall notify the Board immediately upon discontinuing use of an additional location.

Authority

The provisions of this § 3.64 issued under sections 207(i) and 505.2(2) and (3) of the Liquor Code (47 P. S. §§ 2-207(i) and 5-505.2(2) and (3)).

Source

The provisions of this § 3.64 adopted March 11, 1983, effective March 12, 1983, 13 Pa.B. 984; amended March 12, 1993, effective March 13, 1993, 23 Pa.B. 1145. Immediately preceding text appears at serial pages (165837) to (165838).

Cross References

This section cited in 40 Pa. Code § 11.111 (relating to sale by limited winery licensees).

Subchapter H. LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE

Sec.	
3.72.	Creation.
3.73.	Agents.

§ 3.72. Creation.

Under section 505.3 of the Liquor Code (47 P. S. § 5-505.3), distilleries of historical significance established more than 100 years prior to January 1, 1975, which hold a license under section 505 of the Liquor Code (47 P. S. § 5-505) may sell liquor produced on the licensed premises subject to §§ 3.73, 5.104, 11.211 and 11.212 (relating to agents; licensed distilleries of historical significance; sale by licensed distilleries of historical significance; and additional conditions).

Source

The provisions of this § 3.72 adopted February 20, 1976, effective February 21, 1976, 6 Pa.B. 365.

§ 3.73. Agents.

Agents may advertise and promote the sale of merchandise of brands sold by the licensed distillery of historical significance by whom the agents are employed.

Source

The provisions of this § 3.73 adopted February 20, 1976, effective February 21, 1976, 6 Pa.B. 365; amended January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; amended June 18, 1982, effective June 19, 1982, 12 Pa.B. 1860; amended March 12, 1993, effective March 13, 1993, 23 Pa.B. 1145; amended December 17, 1999, effective December 18, 1999, 29 Pa.B. 6337. Immediately preceding text appears at serial pages (234065) to (234066).

Cross References

This section cited in 40 Pa. Code § 3.72 (relating to creation); and 40 Pa. Code § 11.211 (relating to sale by licensed distilleries of historical significance).

Subchapter I. [Reserved]**§ 3.81. [Reserved].****Source**

The provisions of this § 3.81 adopted January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; reserved April 20, 1990, effective April 21, 1990, 20 Pa.B. 2155. Immediately preceding text appears at serial page (110152).

§ 3.82. [Reserved].**Source**

The provisions of this § 3.82 adopted January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; reserved April 20, 1990, effective April 21, 1990, 20 Pa.B. 2155. Immediately preceding text appears at serial page (110152).

§ 3.83. [Reserved].**Source**

The provisions of this § 3.83 adopted January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; reserved April 20, 1990, effective April 21, 1990, 20 Pa.B. 2155. Immediately preceding text appears at serial page (110152).

§ 3.84. [Reserved].**Source**

The provisions of this § 3.84 adopted January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; reserved April 20, 1990, effective April 21, 1990, 20 Pa.B. 2155. Immediately preceding text appears at serial page (110152).

§ 3.85. [Reserved].**Source**

The provisions of this § 3.85 adopted January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; reserved April 20, 1990, effective April 21, 1990, 20 Pa.B. 2155. Immediately preceding text appears at serial pages (110152) to (110153).

§ 3.86. [Reserved].**Source**

The provisions of this § 3.86 adopted January 16, 1981, effective January 17, 1981, 11 Pa.B. 355; reserved April 20, 1990, effective April 21, 1990, 20 Pa.B. 2155. Immediately preceding text appears at serial page (110153).

**Subchapter J. MALT OR BREWED BEVERAGE
MANUFACTURERS**

- Sec.
3.91. Alternate brewers' license.
3.92. Brewery pubs.

Source

The provisions of this Subchapter J adopted November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139, unless otherwise noted.

§ 3.91. Alternating brewers' license.

Records required to be maintained shall be the same as are required by a licensed manufacturer of malt or brewed beverages under § 5.101 (relating to breweries).

§ 3.92. Brewery pubs.

(a) The Board will be authorized to issue a brewery pub license to the holder of a brewery license. A brewery pub license may only be issued in those municipalities in which the Board may issue or transfer a malt and brewed beverage retail dispenser license.

(b) The holder of a brewery pub license shall have all the rights and be subject to the same conditions and qualifications as those imposed on holders of a malt and brewed beverage retail dispenser license except as set forth in this section.

(c) The brewery pub license will be issued to premises immediately adjacent to but separate and distinct from the brewery premises.

(d) Sales of alcoholic beverages at the brewery pub premises shall be limited to sales of malt or brewed beverages produced at and owned by the adjacent brewery. A brewery pub licensee may sell, for on-premises consumption, Pennsylvania wine it has purchased either from the Board or the holder of a Pennsylvania limited winery license.

(e) A brewery pub license may not be issued to a brewery that has already acquired a restaurant, hotel or malt and brewed beverage retail dispenser license. If a brewery, which has a brewery pub license, applies for and acquires a restaurant, hotel or malt and brewed beverage retail dispenser license, the brewery pub license will be cancelled upon approval of the restaurant, hotel or malt and brewed beverage retail dispenser license.

(f) Any citations which may be issued pursuant to section 471 of the Liquor Code (47 P. S. § 4-471) for activity relating to the brewery pub will be issued against the brewery license.

Subchapter K. ECONOMIC DEVELOPMENT LICENSES

- Sec.
- 3.101. Economic development licenses.
 - 3.102. Approval for economic development license.
 - 3.103. Filing criteria for provisional economic development license.
 - 3.104. Municipal standing before the Board.
 - 3.105. Quarterly filing of applications and application hearings.
 - 3.106. Criteria for issuance of a permanent economic development license.
 - 3.107. Failure to meet the minimum requirement.
 - 3.108. Subsequent transfers.

Source

The provisions of this Subchapte K adopted November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139, unless otherwise noted.

§ 3.101. Economic development licenses.

(a) *Issuance of license.* The Board may issue restaurant and eating place retail dispenser licenses without regard to county quota restrictions for the purpose of economic development in a municipality for premises situated within any of the following:

(1) A KOZ established under the authority of the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act (73 P. S. §§ 820.101—820.1309).

(2) An EZ, as designated by the Department of Community and Economic Development in accordance with the Neighborhood Assistance Act (62 P. S. §§ 2081—2089).

(3) A municipality that has approved the issuance of a restaurant or eating place retail dispenser license for the purpose of local economic development.

(b) *Definitions.* The following words and terms, when used in this subchapter, have the following meanings:

EZ—Enterprise zone.

KOZ—Keystone opportunity zone.

§ 3.102. Approval for economic development license.

(a) An applicant shall request written certification from the KOZ local coordinator or EZ administrator that the proposed licensed premises is situated in a zone or an area designated for economic development.

(b) An applicant shall request approval from the municipality for a KOZ, EZ or local economic development license.

(1) The municipality will hold at least one public hearing on the applicant's request for an economic development license.

(2) The municipality shall, within 45 days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an economic development license.

(3) If the municipality finds that the issuance of the license would promote economic development, it may approve the request. The municipality shall refuse the request if it finds that the approval of the request would adversely affect the welfare, health, peace and morals of the municipality or its residents.

(4) If the receiving municipality denies the applicant's request for approval of an economic development license, the applicant may appeal the decision of the municipality to the court of common pleas in the county in which the proposed licensed premises is located.

§ 3.103. Filing criteria for provisional economic development license.

A license application may be filed with the Board for premises situated within a KOZ, an EZ or a municipality that has approved the issuance of a license for the purpose of local economic development, provided that the applicant submits the following with its application:

- (1) The required initial application surcharge fee as determined by county class, the appropriate license fee and application-processing fee.
- (2) Written certification from the KOZ local coordinator or EZ administrator or from the municipality that the proposed licensed premises is situated in a zone or an area designated for economic development.
- (3) Municipal approval in the form of an ordinance or resolution, including the applicant's name and exact address, approving the issuance of an economic development license.

§ 3.104. Municipal standing before the Board.

- (a) The receiving municipality may file a protest against the issuance of a license for economic development into its municipality and the municipality shall have standing in a hearing to present testimony in support of or against the issuance of a license.
- (b) If the Board receives a protest from the receiving municipality, the Board may in its discretion refuse an application for an economic development license.
- (c) A protest must be filed within 30 days of the filing of the application.

§ 3.105. Quarterly filing of applications and application hearings.

- (a) Issuance of economic development licenses is limited to two licenses per calendar year in counties of the first through fourth class and one license per calendar year in counties of the fifth through eighth class.
- (b) Quarterly filing periods are established for all counties as follows:
1st Quarter—January 1 through March 31
2nd Quarter—April 1 through June 30
3rd Quarter—July 1 through September 30
4th Quarter—October 1 through December 31
- (c) At the end of the first quarter, every properly filed license application in a county will be subject to an administrative hearing before a Board hearing examiner in accordance with section 464 of the Liquor Code (47 P. S. § 4-464). Second quarter applications will be held in abeyance until after hearings are held for first quarter applications and a determination is made by the Board as to the availability of a license within the county.
- (d) If a vacancy continues to exist in a county after hearings are held and a determination has been made by the Board, properly filed applications for the next quarter will be scheduled for hearings.

(e) In addition to any objections to, or support of, an application for the issuance of a license, an applicant shall establish at the administrative hearing, that it has exhausted reasonable means to find a suitable license within the existing county quota law.

(f) Upon approval of an application, the applicant will receive a provisional license for 120 days, exclusive of periods of safekeeping.

(g) In the event of an appeal from the Board's decision regarding the issuance or renewal of an economic development license, the appeal will act as a supersedeas and will preclude the processing of additional applications for vacancies in that county.

§ 3.106. Criteria for issuance of a permanent economic development license.

(a) After 90 days from the date of issuance of the provisional license, the licensee may file an application with the Board for a permanent license. The licensee shall certify that for 90 consecutive days since the granting of the provisional license, the licensee's sales of food and nonalcoholic beverages were equal to or greater than 70% of the combined gross sales of food and alcoholic beverages.

(b) Upon submission of certification, the Board will issue a permanent economic development license.

(c) The economic development license will be governed by the license district in which it is situated for the purpose of validation and renewal. Validation and renewal applications will require submission of certification that during the license year immediately preceding its application for renewal or validation, the licensee met or exceeded the 70% minimum requirement.

(d) An appeal of the Board's decision refusing to grant or renew a license will not act as a supersedeas if the decision is based, in whole or in part, on the licensee's failure to demonstrate that its sales of food and nonalcoholic beverages were at least 70% of its combined gross sales of food and alcoholic beverages.

§ 3.107. Failure to meet the minimum requirement.

(a) Failure to meet the 70% minimum requirement as set forth in this subchapter, as submitted upon renewal or validation application will result in an investigation by the Bureau of Licensing. If the investigation discloses that the licensee failed to meet the 70% minimum requirement, the license will be cancelled.

(b) An appeal of the Board's decision refusing to grant or renew a license will not act as a supersedeas if the decision is based, in whole or in part, on the licensee's failure to demonstrate that its food and nonalcoholic beverages were at least 70% of its combined gross sales of food and alcoholic beverages.

§ 3.108. Subsequent transfers.

Neither an economic development license nor a provisional license is transferable with regard to ownership or location.

Subchapter L. [Reserved]**Source**

The provisions of this Subchapter L adopted June 24, 2005, effective June 25, 2005, 35 Pa.B. 3547; reserved May 16, 2008, effective May 17, 2008, 38 Pa.B. 2250. Immediately preceding text appears on serial pages (312235) to (312237).

§ 3.121. [Reserved].**§ 3.122. [Reserved].**

[Next page is 5-1.]

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