

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

NOTICE TO MUNICIPAL ISSUING AUTHORITIES AND LICENSEES
CONCERNING SPECIAL CONDITIONS

N.J.S.A. 33:1-32 provides, in its entirety:

Subject to rules and regulations, each issuing authority by resolution, *first approved by the [Director]*, may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof. [Emphasis added.]

Special conditions are typically imposed on a license at initial issuance, at renewal of the license, or upon transfer of a license. See Lyons Farms Tavern, Inc. v. Mun. Bd. of Alc. Bev. Control of City of Newark, 68 N.J. 44, 51-53 (1975) (Supreme Court interpreted "issuance," as used in N.J.S.A. 33:1-32, to mean initial issuance, renewal and transfer). A special condition must be based on something more than mere speculation, Pal's Pancake House, Inc. v. Twp. Comm. of East Hanover, ABC Bulletin 2320, Item 3 (1979), and must be specific, reasonable and narrowly tailored to accomplish its purpose, A.H.S., Inc. v. Twp. Comm. of Wall, 1 N.J.A.R. 284, 293, 299 (ABC 1979). See also Lyons Farms Tavern, 68 N.J. at 52. On an annual basis, the Director has been reviewing all special conditions imposed on a license by a municipal issuing authority and has been issuing *ex parte* decisions approving or disapproving every such condition. It is no exaggeration to say that the Director reviews hundreds of municipal resolutions containing hundreds, if not thousands, of special conditions each year. This process has become particularly

onerous and burdensome on the Division, especially given the large number of special conditions imposed and the fact that the vast majority of them are routinely approved.

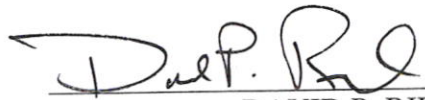
Municipal actions are presumed to be valid. Ward v. Montgomery Tp., 28 N.J. 529, 539 (1959). However, if a municipal issuing authority imposes a special condition on a license and a licensee is unduly aggrieved by that condition, the licensee may appeal to the Director. See N.J.S.A. 33:1-22. In the event of an appeal, a *de novo* hearing is held before the Director or the Office of Administrative Law (“OAL”), and the burden of establishing that the municipal issuing authority’s imposition of the special condition was erroneous is on the licensee challenging the condition. See N.J.A.C. 13:2-17.6. Thus, even with the Director’s prior *ex parte* approval of the special condition, the parties still have the opportunity at the *de novo* hearing to litigate the appropriateness of the special condition in the proper forum.

Given the statutory requirement that the Director must first approve all special conditions in order for them to become effective, the resource constraints of the Division, and the fact that any licensee who is aggrieved by a special condition has the right to appeal the condition(s) to the Director and have an opportunity for a *de novo* hearing, I believe that a more efficient process needs to be set forth. Therefore, effective immediately, all special conditions that are imposed on a license by a municipal issuing authority are presumed to be approved by me without formal action, unless I affirmatively disapprove them because they are either not cognizable or derivable under the Alcoholic Beverage Control Act (the “Act”) or are otherwise unenforceable.

Because municipal actions are presumed to be valid, if a licensee does not appeal special condition(s), the licensee must comply with the condition(s) imposed. When a licensee files an

appeal, it may also seek a stay of the condition pending appeal. Stay applications of conditions will be decided on a case-by-case basis.

Please note that nothing in this Notice is intended to affect the rights of a municipal issuing authority to impose special conditions on a license pursuant to N.J.S.A. 33:1-32 or the rights of a licensee aggrieved by the imposition of special condition(s) to challenge said condition(s) pursuant to N.J.S.A. 33:1-22.



DAVID P. RIBLE
DIRECTOR

DATED: November 28, 2018

DPR/APW