

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

IN THE MATTER OF THE )  
APPLICATION TO RELAX THE )  
PROVISION OF N.J.A.C. 13:2-5.2(i) TO )  
PERMIT EXCEPTION TO )  
PISCATAWAY TOWNSHIP’S )  
HOURS ORDINANCE )  
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\_\_\_\_\_ )

SR 2023-09  
SPECIAL RULING GRANTING  
RELAXATION

Robert D. Skene, Esq., Attorney for Legends Hospitality, LLC  
Michael J. Baker, Esq., Attorney for Piscataway Township

BY THE DIRECTOR:

Gourmet Dining LLC (“Gourmet Dining”) is the holder of a State-issued Special Concessionaire Permit issued by the Division of Alcoholic Beverage Control (“Division”), authorizing it to sell alcoholic beverages at the football stadium at Rutgers University, 1 Scarlet Knight Way, Piscataway. In accordance with N.J.A.C. 13:2-5.2(i) of the regulation governing Special Concessionaire Permits, Gourmet Dining is required to “abide by all provisions of the New Jersey Alcoholic Beverage Control Act, Division rules and regulations and municipal ordinances as they pertain to retail licensees,” including Piscataway Township’s Hours of Sale Ordinance § 6-4.2 (“Sundays”). This municipal ordinance provides in pertinent part that no alcoholic beverages may be served or consumed on Sundays between the hours of 2 a.m. and 12 p.m.

On August 30, 2023, Gourmet Dining submitted a written petition requesting relaxation of N.J.A.C. 13:2-5.2(i) in order to sell alcoholic beverages beginning at 11 a.m. on Sunday, September 3, 2023, the date of the first game of the Rutgers football season. The game is scheduled to begin at noon. Piscataway Township promptly submitted a written objection to Gourmet Dining’s petition, arguing that neither the Division nor the Township has the ability to waive the time constraints in Ordinance § 6-4.2. The Township cites to N.J.S.A. 33:1-40, which grants municipalities the authority to limit the hours during which the sale of alcoholic beverages may be made and to prohibit retail sales on Sunday.

In support of its petition, Gourmet Dining states it will suffer undue hardship if it is not allowed to sell alcoholic beverages in advance of the game; ticket-holders’ experience will be

diminished and the reputation of Gourmet Dining and Rutgers University could be negatively impacted. Gourmet Dining also asserts that relaxing the regulation would not unduly burden any affected parties because ticket-holders will already be on the licensed premises and will not adversely affect neighboring licensees. Finally, Gourmet Dining states that relaxation of the regulation is consistent with Title 33 (i.e., the Alcoholic Beverage Control Act) because the request, if granted, is temporary and would serve to enhance the game-day experience for ticket-holders.

As a threshold issue, Piscataway Township's objection must be addressed. Pursuant to N.J.S.A. 33:1-42, no sales of alcoholic beverages shall be made in any public buildings belonging to or under the control of the State or any political subdivision, except as permitted by the Director and subject to regulations. The authority of the Director to issue a Special Concessionaire Permit under such circumstances derives directly from this statute. In re Xanadu Project at Meadowlands Complex, 415 N.J. Super. 179, 209 (App. Div. 2010). And, Special Concessionaire Permittees must comply with Title 33, Division regulations and municipal ordinances, specifically those governing hours of sale. See N.J.A.C. 13:2-5.2(i).

In this matter, Gourmet Dining is seeking a waiver of N.J.A.C. 13:2-5.2(i) based on the reasons set forth above. It is not seeking a waiver of the municipal ordinance (§ 6-4.2) governing retail licensees in Piscataway Township, which the Division agrees it is not authorized to approve. A waiver of the regulation, however, is authorized by N.J.A.C. 13:2-9.1, provided a licensee or permittee demonstrates by written documentation undue hardship (economic or otherwise), that a waiver of the regulation will not unduly burden any affected parties, and that a waiver is consistent with the underlying purposes of Title 33 and the implementing regulations.

The Division has reviewed Gourmet Dining's request for relaxation of N.J.A.C. 13:2-5.2(i). Based on this review, the Division is satisfied that Gourmet Dining will suffer a certain degree of hardship if the relief sought is not granted since ticket-holders will not have early access to the stadium. In addition, the requested relief is modest, one hour out of one day, and the Division does not believe that granting this relief will unduly burden any affected parties, including neighboring licensees that must continue to abide by the hours ordinance. Moreover, granting the *de minimis* relaxation sought does not appear to undermine the purposes of Title 33, which include the strict regulation of alcoholic beverages to protect the safety and welfare of the people of this State. In fact, it may be safer to provide access to the stadium one hour earlier, as opposed to patrons tailgating prior to the start of the game.

The approval granted herein is based upon the specific facts alleged in this petition and, therefore, is subject to further review and modification should the factual circumstances warrant.

Accordingly, it is on this 31<sup>st</sup> day of August, 2023,

ORDERED that Gourmet Dining's request to relax the provision of N.J.A.C. 13:2-5.2(i) pursuant to N.J.A.C. 13:2-9.1 is GRANTED; and it is further

ORDERED that Gourmet Dining is authorized to sell alcoholic beverages beginning at 11:00 AM on Sunday, September 3, 2023; and it is further

ORDERED that the approval granted herein is based upon the specific facts alleged in the petition and, therefore, is subject to further review and modification should the factual circumstances warrant.



JAMES B. GRAZIANO  
DIRECTOR