

# **MUNICIPAL CLERK'S ASSOCIATION OF NEW JERSEY EDUCATION CONFERENCE**

**APRIL 27, 2015**



**State of New Jersey**

**Department of Law & Public Safety**

**Division of Alcoholic Beverage Control**

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# Today's Topics:

1. B.Y.O.B.
2. GROWLERS
3. RENEWAL
4. POSSE
5. RESOLUTIONS
6. TRANSFERS
7. CORPORATE STRUCTURE CHANGE
8. NEW LICENSE
9. CLUB LICENSE
10. PERMITS

## B.Y.O.B. Key Points:

- \* Statute requires restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public.
- \* Wine or a malt alcoholic beverages only.
- \* No cover, corkage or service charge.
- \* No advertising B.Y.O.B. inside or outside.



- \* Cannot allow the consumption of wine or malt alcoholic beverages at times or by persons to whom the service or consumption of alcoholic beverages on licensed premises is prohibited by State or municipal law or regulation.
- \* Municipality may prohibit the consumption of alcoholic beverages on those premises.
- \* A person who violates the B.Y.O.B. statute is a disorderly person.

**Scenario #1**: There is a very popular “Paint & Sip” in your town which allows customers to B.Y.O.B. wine and beer to consume while painting. Is this allowed?



- A. Yes, as long as B.Y.O.B. is allowed in your town.
- B. No, because the statute allows B.Y.O.B. at a restaurant or dining room.
- C. Yes, as long as the Paint & Sip does not serve the alcoholic beverage.
- D. No, because they did not get a Social Affair Permit.

# Remember:

- \* **B.Y.O.B. is for wine and beer only.**
- \* **It is NOT a Division of ABC issue. Call Municipal or County Prosecutor for advice and information.**
- \* **Violators can be charged with a Disorderly Person's Offense. Talk to your local Police Department.**
- \* **Only Restaurants are permitted B.Y.O.B as of now.**
- \* **ANSWER: "B"**

**Scenario #2:** A local hair salon has signs posted stating “Bridal Party Special: Hair, Makeup & Free Champagne.” Can they give away a free glass of Champagne?



- A. Yes, because they are not selling it - - the champagne is free.
- B. Yes, if they have the proper permit.
- C. No, because they do not have a liquor license.
- D. No, because it is not offered to all clients.



# Remember:

- \* Under Title 33, this is a sale of alcoholic beverages, and the hair salon does not have a liquor license.
- \* Municipal or County Prosecutor has the authority to prosecute disorderly persons offenses.
- The Division of ABC can only prosecute liquor licensees or permittees.
- **ANSWER: “C”**

**Scenario #3:** “Jose’s Cantina,” an un-licensed restaurant, offers a complimentary glass of wine or shot of Sambuca to you. Is this o.k.?



- A. Yes, as long as it is not tied to the purchase of a meal.
- B. Yes, as long as its free.
- C. Yes, as long as its less than a sample size of 1 oz.
- D. No, because they do not have a liquor license and are not permitted to sell, serve or deliver alcoholic beverages, even if it is complimentary.

# Remember:

- \* They may allow B.Y.O.B. (if permitted by municipality) which is for beer and wine only, but they cannot offer complimentary alcoholic beverages.
- \* It is NOT a Division of ABC issue.
- \* Violators can be charged with a Disorderly Person's Offense.
- Only Restaurants are permitted B.Y.O.B as of now.
- ANSWER: "D"

**Scenario #4: An Italian Restaurant, which does not hold a liquor license, is allowing its patrons to bring wine and/or beer into the restaurant to enjoy while eating. They provide glasses and ice to the customers. Is this allowable?**



- A. Yes, as long as the local municipality does not have an ordinance prohibiting B.Y.O.B., and the patrons are at least 21 years old.
- B. Yes, as long as they do not charge a corkage fee and it is during hours that sales of alcoholic beverages are allowed.
- C. Yes, as long as patrons do not bring distilled spirits or mixed drinks.
- D. Yes, as long as they do not advertise B.Y.O.B.
- E. All of the above.

## **B.Y.O.B. STATUTE (N.J.S.A. 2C:33-27) States:**

- A. No person who owns or operates a restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public, and for which premises a license or permit authorizing the sale of alcoholic beverages for on-premises consumption has not been issued:
1. Shall allow the consumption of alcoholic beverages, other than wine or a malt alcoholic beverage, in a portion of the premises which is open to the public; or
  2. Shall charge any admission fee or cover, corkage or service charge or advertise inside or outside of such premises that patrons may bring and consume their own wine or malt alcoholic beverages in a portion of the premises which is open to the public; or
  3. Shall allow the consumption of wine or malt alcoholic beverages at times or by persons to whom the service or consumption of alcoholic beverages on licensed premises is prohibited by State or municipal law or regulation.
- B. Nothing in this act shall restrict the right of a municipality or an owner or operator of a restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public from prohibiting the consumption of alcoholic beverages on those premises.
- C. A person who violates any provision of this act is a disorderly person, and the court, in addition to the sentence imposed for the disorderly persons violation, may, by its judgment, bar the owner or operator from allowing consumption of wine or malt alcoholic beverages in his premises as authorized by this act.

# GROWLERS

“Growlers” are usually a glass or ceramic container with a screw on cap or a hinged gasket cap that contains fresh beer.



Growlers were very popular after Prohibition ended.

With the increasing popularity of craft beers, growlers are becoming popular again.



# GROWLERS



- Package goods store licensees **cannot** fill growlers. A holder of a “44” license **MAY NOT** sell or fill growlers.



- Growlers can only be filled by an on-premise consumption licensee. A licensee **must** have a “33” or “32” license to sell or fill growlers.

# Scenario #5: A packaged goods store licensee that holds a “32” license wants to sell growlers. Can they?



- A. Yes, “32” licenses are allowed to sell growlers.
- B. Yes, “32” licenses can sell growlers only if they have a bar.
- C. No, “32” licenses are not allowed to sell growlers.
- D. Yes, “32” licenses can sell growlers as long as they are consumed on the licensed premises.

# Remember:

- \* “32” licenses can operate as (“either-or, or both”) a consumption licensee, a packaged goods store license, or both with no restrictions.
- \* Note: “33” licenses may sell packaged goods and may look similar to a “44” or “32” license. don’t make determinations about growlers based on the way the premises looks - - be sure to check what type of license they hold. Check the license number!
- \* **ANSWER: “A”**

# License Renewal

All licenses must be renewed annually

## Retail Licenses

July 1st June  
30th



## Winter Seasonal

November 15th thru May  
1st

## Summer Seasonal

May 1st thru November 15th  
(This year, by Executive  
Order, the Governor  
granted Seasonal Licenses  
the ability to open on  
March 1st )

# Renewal Procedures:

Application and fees must be filed by  
the licensee

All licenses expire on June 30<sup>th</sup>  
and are required to be renewed on a timely basis

**RENEWAL MAY NOT BE GRANTED BY RESOLUTION PRIOR TO MAY 1<sup>st</sup>**

**NOTE: Applications may not be approved without an Alcoholic Beverage Retail License Clearance Certificate for Renewal from the Division of Taxation**



**\*\*NEW THIS YEAR!\*\***



# **ELECTRONIC FILING OF RENEWAL APPLICATIONS**



# “POSSE ABC”

## What is “POSSE ABC?”

POSSE ABC is a web-based system that utilizes a portal for Municipal Clerks/ABC Secretaries and Liquor Licensees to manage their licenses online. POSSE ABC will ultimately reduce work load, minimize effort and streamline the renewal process.

## What does it do?

It changes the way municipalities, licensees and the Division of ABC interact with each other, and will bring ABC licensing into the 21<sup>st</sup> century. We anticipate that it will take time for all parties to become accustomed to the modernization of our licensing process.

This system is also new to the Division of ABC, and we must all work together to reap the benefits of POSSE ABC.

# The Division will begin a new renewal process for the 2015-2016 license term.



- \* Renewal applications can be filed online.
- \* You should have received a letter from the State Division of ABC asking for a “Municipal User” e-mail address.

THE STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL

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## Welcome Joshua!

See below for Applications associated with the Cloverburg Township that require Municipality attention.

APPLICATIONS

File Number	Application Type	License Type	License Number	Description
11010	Renewal Application			Licensee: ABC Telecom dba Patty's Wine - Establishment: Muscle Bar
13263	Renewal Application			Licensee: ABC Telecom dba Patty's Wine - Establishment: Above Bored
13267	Renewal Application			Licensee: Sam Jones - Establishment: CactiCoffee
13316	Renewal Application			Licensee: - Establishment:
13321	Renewal Application			Licensee: - Establishment:
13332	Renewal Application			Licensee: Paul Fraser - Establishment: Capricorn
13337	Renewal Application			Licensee: Barrytron - Establishment: Baumhowers

[Show More...](#)

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Keep an eye on the Division's Website [www.nj.gov/oag/abc](http://www.nj.gov/oag/abc) for information, instructions and tutorials.

Please be patient as we figure out our new system and work to streamline the renewal process.

**\*NOTE:** Licensees will still pay renewal fees to the clerk of your municipality.

The clerk is still required to review renewal applications.

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### Renewal Application - Club

File Number: 16579      Renewal Term: 04/01/2015 to 03/6/2017  
License Number: 0104-31-014-002  
License Type: Club  
Licensee: Barrytron  
Legal Entity (Licensee)  
13413 57 Street NW, Edmonton, AB  
Establishment: Baumhowers  
2465 Eastern Boulevard Montgomery, AL 36117 USA

WARNINGS:

Warning Type	Start Date	End Date
12.18 Restriction	Feb 16, 2015	Feb 18, 2015

QUESTIONS

Question	Response
Have there been any renovations to the building?	<input type="radio"/> Yes <input checked="" type="radio"/> No

REPORTS

Report Type	Created Date
License Certificate	Mar 10, 2015

APPLICATION DOCUMENTS

Description	File Name	Uploaded Date
Incorporation Certificate	Map.cs	Jun 27, 2014

CHECKLIST

Completed?	Description	Mandatory?
<input checked="" type="checkbox"/>	Verify tax clearance.	Yes

COMMENTS:

UPLOADED DOCUMENTS

[+ Upload File](#)

Description	File Name	Uploaded Date
* Does the resolution include Special Conditions?		<input checked="" type="radio"/> Yes <input type="radio"/> No

[Save](#) [Submit Resolution to NJ ABC](#)

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## Licensees will receive a Notice with instructions for renewal.

- Their Notice will include an authorization code to register online to become a User of Posse.
- Notices will also reflect (and contain instructions for):
  - whether they require a 12.39 Special Ruling, or
  - whether their license will be treated as a “conflict of interest,” or
  - whether they failed to file a 2014-2015 renewal application.
- Once a licensee is registered as an online user, they can review their information and complete the renewal process which includes payment of the \$200 State Fee.
- Licensees are directed to go to your office to pay their municipal fee to be considered a complete filing.

## **“POSSE ABC continued...”**

**Municipalities will receive a Notice of Instructions for renewals.**

**The Posse ABC System will be implemented in phases.**

**Phase 1 is RENEWALS only!**

**Every municipality will have a “primary” municipal user who will access the municipal portal.**

**Change in facts- You must file an Amendment to your license application within 10 days.**



- \* Becoming inactive/closing
- \* Becoming active/opening
- \* Change of home address/phone number
- \* Any fact that is associated with a license and listed on POSSE ABC, must be updated by the licensee via a paper amendment and forwarded to ABC and Issuing Authority within **10 days** of the occurrence.

N.J.A.C. 13:2-2.14



# Renewal Resolutions General Guidelines



All Resolutions should clearly list:

- \* License Number
- \* Licensee Name
- \* Licensed Premise Location
- \* Language Relating to Special Rulings (if applicable)
- \* License Renewal Term
- \* Date Adopted

# Renewal Resolutions

- Once a resolution is adopted, forward to the Division.
- Your issuing authority has no jurisdiction to act on the renewal of license without an Alcoholic Beverage Retail Licensee Clearance Certificate for Renewal from the Division of Taxation.
  - > Check your confidential Web address
  - > Municipal Clerks may contact the [Division of Taxation's ABC Licensing Unit](#) at (609) 292-0043
  - > It is the licensee who must be in tax compliance.
- Licenses will not be considered renewed by ABC until your Resolution has been received by the Division.



# Municipal Resolutions with Special Conditions

Resolution must specifically include any Special Conditions that are to be applied to the license for that license term only.



Conditions may not be imposed for matters not directly related to alcoholic beverage control.

For Special Conditions to become effective, they must be imposed at the time of issuance, renewal or transfer of a license.

Special Conditions may not be “revisited” during the license term, however, a Special Condition may be “relaxed” at any time during the license term by Resolution.

Copies of Resolutions imposing Special Conditions must be submitted to the Division.

# Special Conditions – *The Good, the Bad and the Ugly!*

## Good examples:

1. The licensee may not have or conduct any Teen, College or Hip Hop Dance Nights on the premises.
2. Alcoholic beverages may not be sold, served, delivered or consumed on the open exterior deck of the premises.

## Bad examples:

1. A six month review shall be conducted by the police division to see if provisions are effective and if further restrictions are necessary.
2. See special conditions set forth in Resolution #2078 adopted November 10, 1999.

## Ugly examples:

1. Failure to comply with special conditions shall constitute an automatic revocation of license.
2. The hours of sales of alcoholic beverages shall be limited from sunrise to sunset.

# Transfer Facts



Person-to-Person

A person-to-person transfer is necessary when:

A license is to change from one person or entity to another.

# Transfer Facts



A place-to-place transfer is necessary when a licensee wishes to:

- \* Change the place where the license is sited (business location)
- \* Site the license at an operating place of business following a period of inactivity “pocketed” (not sited at a business location)
- \* Permanently expand the scope of the license premises
- \* De-license a portion of the premises

# Transfer Facts (continued...)

For a **PLACE-TO-PLACE EXPANSION** particular attention needs to be given to:

- The area in which the licensee wishes to extend must be contiguous or adjoin the permanently licensed premises.

- It is possible for a licensee to expand the licensed premises to more than one building on a property.

- No public or private thoroughfare may bisect between the facilities to be included under one license.

- All locations must be under the control of the same legal entity although different registered trade names may be used for each building.

**NOTE:** A voluntary abandonment of all of the licensed premises shall be a change of facts (amendment). A place-to-place transfer is not required. N.J.A.C. 13:2-7.2(d).

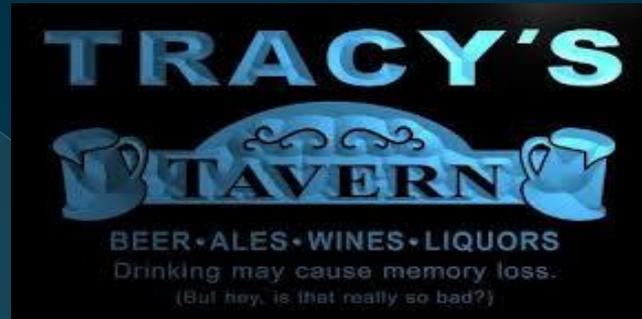
# Transfer Requirements:



- \* NOTICE OF PUBLICATION – needed for all types of transfers.
- \* CONSENT TO TRANSFER – only needed for a PERSON-TO-PERSON transfer.
- \* TAX CLEARANCE CERTIFICATE – only needed for a PERSON-TO-PERSON transfer.

**Note:** The issuing authority has no jurisdiction to consider a person-to-person transfer application without a Consent to Transfer or receipt of a Tax Clearance Certificate.

**Scenario #7:** Tracy's Tavern, LLC, files a person-to-person transfer with your office. Licensee is fingerprinted and publishes Notice. Tracy's Tavern, LLC, wants to operate licensed premises ASAP. Can you now transfer this license?



- A. Yes. Pass a resolution that states “transfer is contingent upon tax clearance.”
- B. Yes. Pass a resolution that states “transfer is contingent upon ABC approval.”
- C. Yes. Pass a resolution that states “transfer is contingent upon closing between the two parties.”
- D. All of the above.
- E. None of the above.

# Remember:

- \* The text should be conclusive and may not be contingent upon future events.
- \* Once approved, a license transfer cannot be reversed.
- \* To correct an improperly transferred license, a new transfer procedure must be completed.
- \* Forward resolution to the Licensing Bureau as soon as enacted by the issuing authority. (Via the municipal portal when Phase 2 is implemented.)
- \* Division of ABC does not approve transfers.
- \* ANSWER: "E"

# Transfer Investigations by Municipality

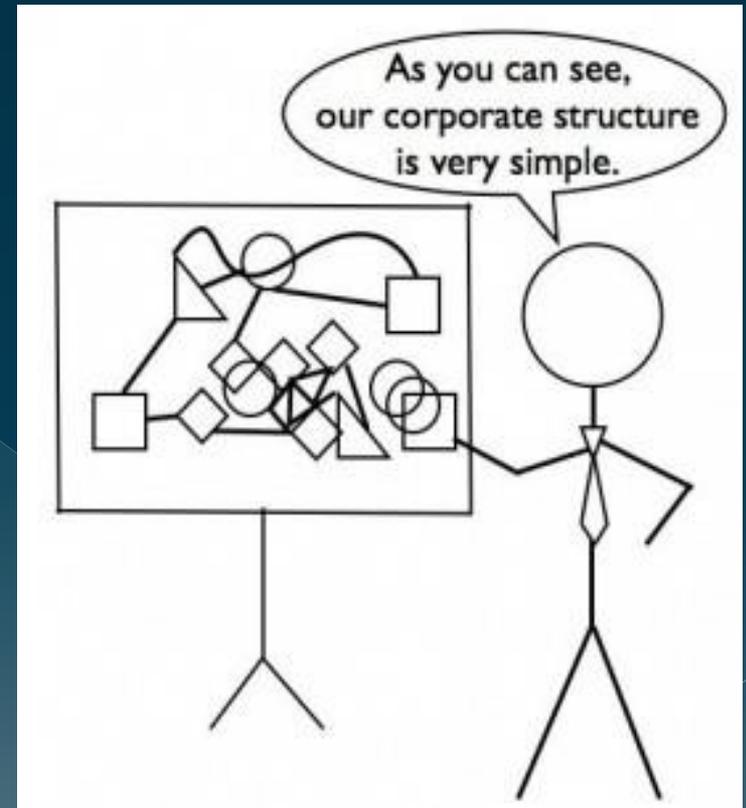
- Investigation by the issuing authority should include:
  - > fingerprinting
  - > a criminal background check
  - > financial disclosure documentation



**THIS INVESTIGATION SHOULD BE  
CONDUCTED BY THE POLICE DEPARTMENT.  
(N.J.A.C. 13:2-7.7)**

# Corporate Structure Change

- When a change in the corporate stockholdings of a licensed corporation occurs, that change must be reported to the issuing authority **within ten (10) days** of the sale of the corporation's shares.
- This action does not constitute a license transfer but is handled as a change in corporate structure.
- Changes encompassing one-third or more of the total number of issued shares, the change must be reported by the filing of a complete 12-page application.
- Changes constituting less than one-third of the total issued shares, the change is reported by amending the last application on file.



# Corporate Structure Change *(continued...)*

## Any new stockholder:

1. Must be fully qualified to hold an alcoholic beverage license
2. If acquiring 1% or more of the corporations stock must publish in a newspaper of local circulation
  - Individuals name & address
  - Name of licensed corporation

**No filing fee is required**

**A copy of the application must be forwarded to the Licensing Bureau**

**No requirement to approve a stockholder change by resolution**



# New License Issuance

A municipality may issue a new license if they are under the population cap.

See N.J.S.A. 33:2-12.14



The two methods to issue a new license:

1. Historical Method
2. Public Sale Option (bid)



*See Municipal Clerk handout on Division's website.*

# Club License

Club Licenses are a source of many inquiries and complaints at the Division.

Many Club Licenses operate contrary to law.

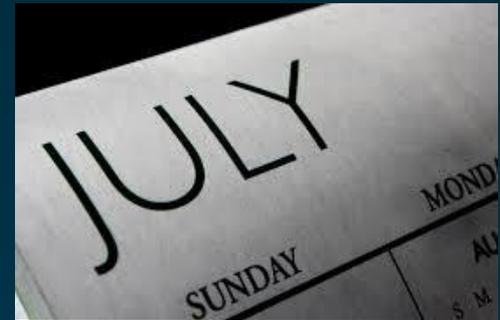
Club licenses **MAY NOT** operate as a retail licensee.



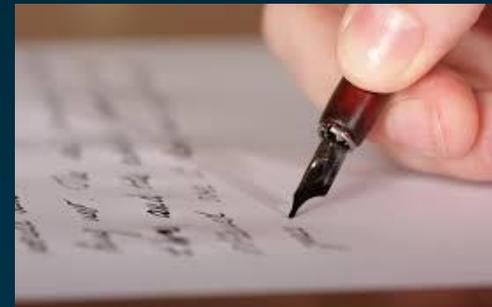
They **MAY NOT** be open to the general public.

# Ad Interim Permit

- An application for an Ad Interim permit may be submitted to the Division when:
  - > a license is not renewed by the issuing municipality by resolution on time to be effective on the first day of the new license term
  - > and the licensee has filed the renewal application
  - > paid the filing fees
- The permit will allow the licensed business to operate until the municipal issuing authority can meet and renew the license by resolution.



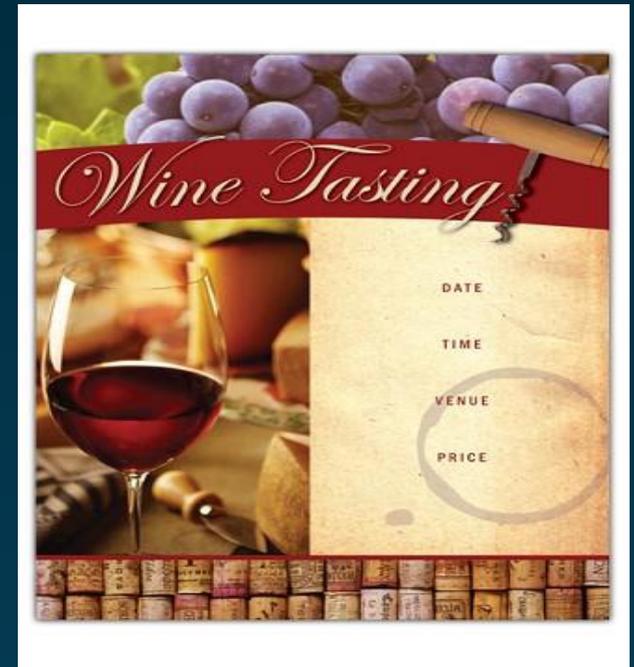
## Ad Interim Permit (continued...)



- The application must be accompanied by:
  - > a letter from the Municipal Clerk/ABC Board Secretary indicating that the application and fees have been filed and that there is no objection to issuance of the temporary permit
- The fee for this permit is \$75 plus the daily fee of \$5 per day payable to the Division of ABC.
- The application must be completed in full.
- The licensee must have obtained a clearance certificate from the Division of Taxation before the permit will be issued.

# Social Affair Permit

- Fee Schedule:
  - > \$100 for a one-day permit issued to
    - civic
    - religious
    - educational organizations
  - > \$150 for a one-day permit issued to
    - any other non-profit organization
- Issued to a bona fide, non-profit organization that wishes to hold a fundraising event that encompasses the sale of alcoholic beverages and where the monies that accrue will be used for civic, religious, educational or other purposes that are not for personal or profit making corporate gain.



## Social Affair Permit (continued...)

- This permit is frequently issued to authorize the sale and service of alcoholic beverages at:
  - carnivals
  - church feasts
  - bazaars
  - parades, etc.
- No organization may receive more than 12 such one-day permits in any calendar year.
- No more than 25 permits may be issued at a location in a calendar year.
- The permittee may sell alcoholic beverages only in open containers for consumption on the premises at which the event is to be held and which is covered by the permit issued.

## Social Affair Permit *(continued...)*

Organizations making online application for the first time will be required to submit:

- > proof of non-profit status in New Jersey

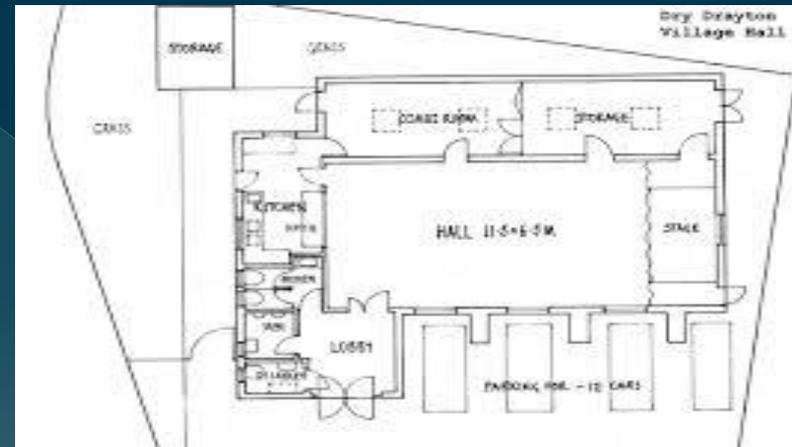
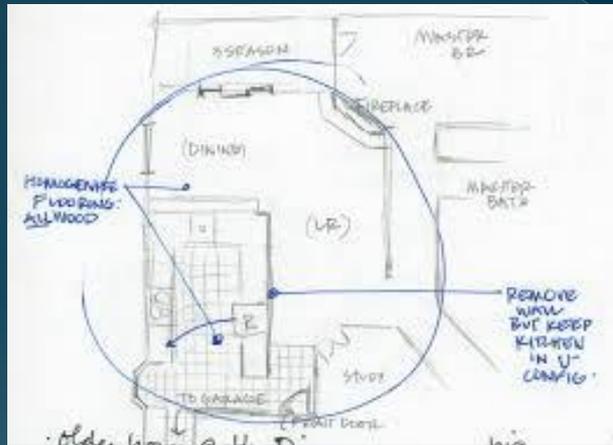
Acceptable forms of proof are:

- > certificate of incorporation
- > federal tax exempt certificate
- > or combinations of:
  - Charter or by-laws
  - Financial records
  - Membership lists



## Social Affair Permit (continued...)

- A sketch of the location where alcoholic beverages are to be dispensed must accompany the application including:
  - the bar area
  - location of person checking ID's



**\*NOTE: APPLICATIONS MUST BE SUBMITTED TO THE DIVISION AT LEAST TWO WEEKS PRIOR TO THE AFFAIR, EITHER IN PERSON OR ONLINE (IN THE FUTURE).**

**Scenario #8:** John Smith is a member of the VFW which holds a Club License. He has rented the facility to have a 50th wedding anniversary party for his parents. What will John need to do to serve alcoholic beverages to his family and friends at this event?



- A. He is able to purchase alcohol from the club licensee's inventory.
- B. He does not need to obtain a permit.
- C. He can hire a licensed restaurant to cater the food and alcoholic beverages for the party.
- D. All of the above.

# Remember:

- \* **John Smith is a member of the club.**
- \* **The party is for his immediate family member.**
- \* **It will be a private party – no tickets will be sold.**
- \* **ANSWER: “D”**

**Scenario #9:** The Make-A-Wish Foundation wants to hold a fundraising event for a sick child. They are selling tickets for the event which includes food and alcoholic beverages. What do they need to obtain for this event?



- A. Nothing.
- B. A Social Affair Permit if the event is at a licensed premises.
- C. A Social Affair Permit if the event is at a non-licensed premises.
- D. A Social Affair Permit no matter where the event is being held.

# Remember:

- \* They are a non-profit, holding an event where tickets are sold and alcoholic beverages are included.
- \* To sell alcoholic beverages (and profit), they need a permit.
- \* **ANSWER: "D"**

# Extension of Premises Permit

- When the licensee wishes to hold an event in an area off the licensed premises but on property that is contiguous to it
- Online application includes:
  - > information regarding the nature of the event
  - > the location
  - > date and time
- Upload a rough drawn sketch depicting the extended area as it adjoins the licensed premises



- The fee for this permit is \$75 per day payable to the Division
- Online Application is electronically forwarded the Municipal Clerk/ABC Board Secretary and Chief of Police of the municipality in which the license is issued. They will have opportunity to comment on application pending before the ABC.

# Catering Permit



An online application must be submitted when:

- A retail consumption licensee wishes to sell alcoholic beverages in open containers off its licensed premises.
- The fee is \$100 per day (for each 24 hour period).
- Only 25 permits may be issued for any one location in a calendar year.
- A detailed sketch of the locations where alcoholic beverages are to be dispensed including: the bar area and location of person checking ID's

**\*NOTE: APPLICATIONS MUST BE SUMITTED ONLINE TO THE DIVISION AT LEAST TWO WEEKS PRIOR TO THE EVENT.**

# Disciplinary Matters

Problem licensee – what can you do?

Call our **Investigations Bureau** toll free at **(866) 713-8392**, or speak to your local chief of police or your mayor.

Local police can charge licensees with violations. Have the police department call our **Enforcement Bureau** for further information.

Impose **Special Conditions** on the license at time of renewal, issuance or transfer to curtail specific problems at a licensed premises.



**YOU CAN FIND THE**  
**“MUNICIPAL CLERK’S HANDBOOK”**  
*(listed under the Licensing/Permits section)*  
**AND**  
**“HANDBOOK FOR RETAIL LICENSEES”**  
**BY VISITING OUR WEB SITE AT:**

**[www.nj.gov/oag/abc](http://www.nj.gov/oag/abc)**



**YOU CAN ALSO CALL US AT:**

**Main Line: (609) 984-2830**

**Toll-Free Anonymous Tip Line: (866) 713-8392**



- If you are not sure which Bureau can be of assistance, just call our main number shown above.