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Governor

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ADVISORY 2023-3

Subject: Requests for Reconsideration of Licensing Determinations

Section 54(3) of the Alcoholic Beverage Control Law provides that, in the event an application is disapproved, the applicant may request a review of that determination and that such review shall include an administrative hearing (also known as a “disapproval hearing”). That review is limited to determining whether the disapproval was supported by the law and the record before the Authority at the time of such disapproval. Upon the completion of the disapproval hearing, the Administrative Law Judge conducting the hearing submits a report of their findings and recommendations to the Members of the Authority. The decision of the Members of the Authority is deemed a final determination of the Authority for purposes of judicial review under Article 78 of the Civil Practice Law and Rules.

The Members of the Authority have allowed applicants, in lieu of having a disapproval hearing, to request reconsideration of the application disapproval. The applicant may submit new or additional facts in support of their request to rescind the disapproval and to have the Authority reconsider the application. As with a decision upon a disapproval hearing, a decision on a request for reconsideration shall be deemed a final determination of the Authority for purposes of judicial review under Article 78 of the Civil Practice Law and Rules. The purpose of this Advisory is to provide guidance to applicant on the reconsideration process.

Requests for reconsideration are provided, in the discretion of the Authority, as a courtesy to applicants. The reconsideration process allows applicants to offer arguments and submit documentation that would otherwise not be relevant in a disapproval hearing. For example, an applicant that has failed to submit a required document with the application can use the reconsideration process to address that deficiency in the application. The reconsideration process is offered as an alternative to, not in addition to, a disapproval hearing. Applicants are reminded that the Authority deems a request for reconsideration to be a waiver by the applicant of its right to a disapproval hearing.

Full Board Disapprovals

Requests for reconsideration of a disapproval by the Full Board of an application in a licensing matter will be reviewed by the Members of the Authority at a Full Board meeting. The Members will first determine whether the applicant has demonstrated good cause to reconsider and rescind the disapproval. If the Members find such good cause, they will then either act (approve or disapprove) the application or refer the application to the Licensing Bureau for further investigation.

Licensing Board Disapprovals- license applications

Requests for reconsideration of a disapproval by the Licensing Board of a license application will be reviewed by the Deputy Commissioner of Licensing or the Chief Executive Officer who will either: grant reconsideration and rescind the prior determination; forward the request through the Office of Counsel to a Member of the Authority for review; or in the case of an application that was disapproved for failure to comply with a deficiency letter or failure to submit a complete application, deny reconsideration.

If a request for reconsideration is forwarded by the Deputy Commissioner of Licensing or the Chief Executive Officer to a Member of the Authority for review, that Member shall either: deny the request; grant the request and return the matter to the Licensing Bureau for further consideration; or submit the request for further review and decision to the Full Board.

Licensing Board Disapprovals- permit and other non-license applications

Requests for reconsideration of a disapproval by the Licensing Board of a permit or other non-license applications (such as endorsements, alterations, corporate changes, brand labels, etc.) will be reviewed by the Deputy Commissioner of Licensing or the Chief Executive Officer who will either: grant reconsideration and rescind the prior determination; deny reconsideration; or forward the request through the Office of Counsel to a Member of the Authority for review.

If a request for reconsideration is forwarded by the Deputy Commissioner of Licensing or the Chief Executive Officer to a Member of the Authority for review, that Member shall either: deny the request; or grant the request and return the matter to the Licensing Bureau for further consideration.

Time to Submit Request for Reconsideration

A request to reconsider a Full Board disapproval or a Licensing Board disapproval of a license application must be submitted within 60 days of the date of the written decision disapproving the application. Requests submitted more than 60 days after the written decision will not be reviewed.

A request to reconsider any other Licensing Board disapproval (other than an "all-night permit") must be submitted within 15 days of the date of the written decision disapproving the application. Requests submitted more than 15 days after the written decision will not be reviewed. Requests for reconsideration of all-night permits is governed by Part 35 of the Rules of the Authority.

Number of Requests That Can Be Submitted

An applicant will only be entitled to one request for reconsideration in response to a disapproval. If an applicant submits a second request to reconsider a Full Board disapproval, the request shall first be reviewed by a Member of the Authority to determine if there is good cause for the submission of a second request. If such good cause is found, the request will then be submitted to the Members of the Authority for their consideration.

If an applicant submits a second request to reconsider a Licensing Board disapproval, the

request shall first be reviewed by the Deputy Commissioner of Licensing or the Chief Executive Officer to determine if there is good cause for the submission of a second request. If such good cause is found, the request will then be submitted to a Member of the Authority for their consideration.

If the request results in the rescission of the disapproval, the applicant may submit another request in response to any subsequent disapproval.

No reconsideration of approvals

The reconsideration process is provided as an option to the disapproval hearing. Accordingly, the Authority will not entertain requests to reconsider the approval of an application.

This Advisory replaces Advisory 2022-28.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on March 8, 2023 before Chairman Vincent Bradley and Commissioner Lily Fan. The above written advisory was approved by the Members of the Authority on March 8, 2023.

Dated: 3/10/23



Donald Roper
Secretary to the Authority