

Chapter 134 ALCOHOLIC BEVERAGES

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[HISTORY: Adopted by the City Council of the City of Cape May as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Beaches and Boardwalk—See Ch. 158. Parks and recreation areas—See Ch. 368.

ARTICLE I Licensing and Regulation [Adopted as Secs. 6-1 through 6-7 of the 1997 Revised General Ordinances]

§ 134-1. Purpose.

This article is enacted to regulate the sale and transportation of alcoholic beverages in the City of Cape May in accordance with the provisions of an act of the Legislature of the State of New Jersey entitled "An Act Concerning Alcoholic Beverages," comprising Chapter 436 of the Laws of 1933, its supplements and amendments, and also comprising N.J.S.A. 33:1-1 et seq., and in accordance with the rules and regulations of the State Director of Alcoholic Beverage Control.

§ 134-2. Definitions. [Amended by Ord. No. 740]

For the purposes of this article, words and phrases shall have the same meanings as set forth in N.J.S.A. 33:1-1 et seq., the rules and regulations of the Division of Alcoholic Beverage Control, N.J.S.A. 39:1-1 et seq., and all other applicable statutes and rules of the State of New Jersey, including all amendments and supplements thereto.

§ 134-3. Licenses; fees.

- A. Laws applicable. All applications for licenses, all licenses issued, and all proceedings under this article shall be in accordance with the act, rules and regulations referred to in § 134-1, and all other applicable laws of the State of New Jersey or the United States.
- B. Issuing authority. All licenses required by this article shall be issued by the City Council, which shall also administer the provisions of this article.
- C. License required. No person shall sell or distribute alcoholic beverages within the City without having obtained a license in accordance with the Act referred to in § 134-1 and the provisions of this article.
- D. License fees. [Amended by Ord. No. 639; Ord. No. 740; Ord. No. 883; Ord. No. 1039-95; 10-21-2003 by Ord. No. 1307-2003; 6-15-2004 by Ord. No. 1342-2004]

(1) The annual license fees for sale or distribution of alcoholic beverages in the City of Cape May shall be as follows:

(a) Plenary retail consumption license:

- [1] 2004-2005 license term: \$2,146.80.
- [2] 2005-2006 license term: \$2,500.00. [Amended 5-3-2005 by Ord. No. 30-2005]
- [3] Every term thereafter \$2,500.00.

(b) Plenary retail distribution license:

- [1] 2004-2005 license term: \$714.00.
- [2] 2005-2006 license term: \$856.80.
- [3] 2006-2007 license term: \$1,028.16.
- [4] 2007-2008 license term: \$1,233.79.
- [5] 2008-2009 license term: \$1,480.55.
- [6] 2009-2010 license term: \$1,776.66.

[7] 2010-2011 license term: \$2,131.99.

[8] 2011-2012 license term: \$2,500.00.

[9] Every term thereafter: \$2,500.00.

(c) Club license:

[1] License term: \$188.00.

- (2) The annual license fees herein established shall immediately apply to all new licenses or transferred licenses. For all other existing licenses, fees herein established shall take effect commencing with the first renewal subsequent to the date of the passage of this subsection.

§ 134-4. Restrictions on number of licenses and locations.

A. Maximum number. [Amended by Ord. No. 740]

- (1) The number of liquor licenses, except club licenses, issued and outstanding in the City shall not exceed the number allowed by state law.
- (2) The limitation provided for in Subsection A(1) shall not prevent the issuance of renewals of outstanding plenary retail consumption licenses to persons holding these licenses as of December 1, 1944.
- (3) The limitation provided for in Subsection A(1) shall not prevent the transfer of plenary retail consumption licenses from person to person or from place to place, or both, for the renewal of these licenses transferred, according to law and the rules and regulations of the State Director of Alcoholic Beverage Control.
- (4) No new licenses shall be issued until the number outstanding shall be reduced by surrender, revocation or nonrenewal to less than the number limited by state statutes. This shall not be applicable to club licenses, nor to bona fide hotels as defined in N.J.S.A. 33:1-1 et seq., having a capacity of more than 100 guest sleeping rooms or 50 guest sleeping rooms if the license was in effect on December 31, 1968.

B. Location.

- (1) No license of any class for the sale or distribution of alcoholic beverages shall be granted for or on premises situated on the ocean side of the boardwalk or the promenade now or hereafter constructed to replace the boardwalk or promenade anywhere along the Atlantic Ocean.
- (2) No person shall sell, serve or deliver any alcoholic beverages in or on any building, dock, pier or other premises situated on the ocean side of the boardwalk or the promenade now or hereafter constructed to replace the boardwalk or any extension of the boardwalk or promenade anywhere along the Atlantic Ocean, except under a special permit granted by the State of New Jersey.

§ 134-5. Hours of sale. [Amended by Ord. No. 398; Ord. No. 442; Ord. No. 595; Ord. No. 740; Ord. No. 1272-2002; 9-19-2006 by Ord. No. 76-2006]

No alcoholic beverage shall be sold in the City between the following hours on the following days:

A. Sundays.

- (1) Friday preceding Memorial Day to September 30, inclusive: 3:00 a.m. to 12:00 noon.
- (2) Remainder of the year: 2:00 a.m. to 12:00 noon.
- (3) With respect to those premises offering on-site consumption under a plenary retail consumption license, the restriction on alcoholic beverage sales for on-site consumption shall be until 10:00 a.m. This exception shall not apply to the sale of alcoholic beverages for off-site consumption. Additional package goods sales from premises operating under a plenary retail consumption license, and all premises operating under a plenary retail distribution license are not permitted until 12:00 noon, as required by § 134-5A(1) and (2) hereinabove.

B. Mondays through Thursdays.

- (1) Friday preceding Memorial Day to September 30, inclusive: 3:00 a.m. to 7:00 a.m.
- (2) Remainder of the year: 2:00 a.m. to 7:00 a.m.

C. Fridays and Saturdays.

- (1) May I through October 15, inclusive: 3:00 a.m. to 7:00 a.m.
- (2) Remainder of the year: 2:00 a.m. to 7:00 a.m.

D. Notwithstanding the foregoing, on the eves of New Year's, Thanksgiving, Christmas and Easter, the closing times shall, in all cases, be extended to 3:00 a.m.

E. All music, including live, mechanical and canned, including jukeboxes, loudspeakers and stereos, in all licensed premises must cease at the later of one hour prior to the time the sale of alcoholic beverages must cease or 2:00 a.m.

F. All patrons must be out of and off licensed premises within 15 minutes subsequent to the time that the sale of alcoholic beverages must cease.

§ 134-6. Sales to certain persons.

No licensee or employee of a licensee shall sell, serve or deliver, directly or indirectly, any alcoholic beverages to any intoxicated person or person under the legal age, nor permit the consumption of alcoholic beverages on any licensed premises by any of the above-named classes of persons, or permit any such persons to congregate in or about the licensed premises.

§ 134-7. Revocation of licenses.

A. Any license issued under this article may be suspended or revoked for violation of any of the provisions of this article or any provision of any applicable statute or any of the rules or regulations of the State Director of Alcoholic Beverage Control.

B. Proceedings for suspension or revocation shall be in accordance with the provisions of N.J.S.A. 33:1-31 by service of a five-day notice of charges preferred against the licensee and affording a reasonable opportunity for hearing.

C. Suspension or revocation of a license shall be in addition to any other penalty which may be imposed for a violation of this article.

ARTICLE II Possession or Consumption in Public and in Vehicles [Adopted by Ord. No. 740 (Sec. 3-9 of the 1997 Revised General Ordinances)]

§ 134-8. Consumption in public; possession of open containers.

No person shall consume alcoholic beverages upon the streets, sidewalks, highways, alleys, public or quasi-public places, parking lots, public or private, or in automobiles or other vehicles parked or in motion upon any streets, parking lots, public or private, or on any mall, beaches, boardwalk, asphalt promenade, steps or ramps adjacent thereto or any other such public or quasi-public places not expressly licensed for the sale and consumption of such beverages. Further, no person shall enter, be in or be upon any of the places (including vehicles) hereinabove specified while in possession of any opened bottle, can or other container of any type containing alcoholic beverages.

§ 134-9. Minors.

Pursuant to the statutes of the State of New Jersey, no person under the legal age shall knowingly, without legal authorization, possess, serve, sell or consume any alcoholic beverage in any school, public conveyance, public place, or place of public assembly, or motor vehicle within the City.

ARTICLE III Possession or Consumption by Underage Persons on Private Property

[Adopted by Ord. No. 1285-2003 (Sec. 6-8 of the 1997 Revised General Ordinances)]

§ 134-10. Possession upon private property.

It shall be unlawful for any person under the legal age to, without legal authority, knowingly possess or knowingly consume an alcoholic beverage on private property. For the purposes hereof, "possession" shall have the same meaning as set forth in N.J.S.A. 2C:2-1c, as interpreted by the case law pertaining to such section, which is defined as an act in which "the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession."

§ 134-11. Exceptions.

This article shall not prohibit:

- A. The possession of alcoholic beverages by any person while actually engaged in the performance of employment by a person who is licensed by the New Jersey Division of Alcoholic Beverage Control;
- B. The possession of alcoholic beverages by any person while actively engaged in the preparation of food while enrolled in a culinary arts or hotel management program at a county vocational school or post-secondary educational institution;
- C. The possession or consumption of an alcoholic beverage in connection with a religious observance, ceremony, or rite; or
- D. The consumption or possession of an alcoholic beverage in the presence of and with the permission of a parent, guardian or relative, as defined in N.J.S.A. 40:48-1.2, who has attained the legal age to purchase and consume alcoholic beverages.

§ 134-12. Violations and penalties; suspension or postponement of driving privileges.

- A. Any person who shall violate the provisions of this article shall, upon conviction thereof and in accordance with N.J.S.A. 40:48-1.2, be punished by a fine of \$250 for a first offense and \$350 for any subsequent offense.
- B. In addition to the fine authorized for this offense, the court may suspend or postpone for six months the driving privilege of the defendant. Upon the conviction of any person and the suspension or postponement of that person's driver's license, the court shall forward a report to the Division of Motor Vehicles stating the first and last day of the suspension or postponement period imposed by the court pursuant to N.J.S.A. 40:48-1.2, as amended. If a person at the time of the imposition of sentence is less than 17 years of age, the period of license postponement, including a suspension or postponement of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period of six months after the person reaches the age of 17 years.
- C. If a person at the time of the imposition of a sentence has a valid driver's license issued by this state, the court shall immediately collect the license and forward it to the Division of Motor Vehicles along with the report. If for any reason the license cannot be collected, the court shall include in the report the complete name, address, date of birth, eye color, and sex of the person, as well as the first and last date of the license suspension period imposed by the court.
- D. The court shall inform the person orally and in writing that if the person is convicted of operating a motor vehicle during the period of license suspension or postponement, the person shall be subject to the penalties set forth in N.J.S.A. 39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of N.J.S.A. 39:3-40.
- E. If a person convicted under this article is not a New Jersey resident, the court shall suspend or postpone, as appropriate, the nonresident driving privilege of the person based on the age of the person and submit it to the Division of Motor Vehicles on the required report. The court shall not collect the license of a nonresident convicted under this article. Upon receipt of a report from the court, the Division of Motor Vehicles shall notify the appropriate officials in the licensing jurisdiction of the suspension or postponement.

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