

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE LIQUOR CONTROL ACT

- and -

IN THE MATTER OF APPLICATIONS FOR THE TEMPORARY EXTENSION OF LICENSING PRIVILEGES pursuant to s. 32 of the *Liquor Licensing Regulations* to allow for the sale, service and consumption of liquor within an area located adjacent to, or near, permanently licensed premises

BEFORE: Margaret A.M. Shears, Q.C., Vice-chair
David J. Almon, LL.B., Member
Roland A. Deveau, LL.B., Member

WHEREAS the *Liquor Licensing Regulations* (the "Regulations") were substantially amended in August of 2007 and, among a number of other changes, an application for the permanent or temporary extension of licensing privileges must be referred to the Nova Scotia Utility and Review Board (the "Board") for approval;

AND WHEREAS pursuant to ss. 32(1) and (2), respecting an application to change the size, structure or location of licensed premises, provide as follows;

Review Board must approve change to size, structure or location of licensed premises

- 32 (1) A permanent licensee may change the size of their licensed premises or make a structural change to their licensed premises only if the permanent licensee submits a proposed replacement floor plan to the Review Board and the Review Board approves the replacement floor plan.
- (2) A permanent licensee may change the location of their licensed premises only if the permanent licensee submits a proposed replacement floor plan for the new location to the Review Board and the Review Board approves the replacement floor plan and the new location.

AND WHEREAS the Alcohol and Gaming Division, Department of Labour and Workforce Development (the "AGD") is responsible for the enforcement of Orders issued by the Board;

AND WHEREAS the Board receives applications on a regular basis requesting the temporary extension of licensing privileges to allow the sale, service and consumption of liquor within an area (the "designated area") located adjacent to, or near, premises that are already licensed on a permanent basis;

AND WHEREAS an application in such cases is filed by the holder (the "Licensee") of an Eating Establishment Liquor License, a Lounge License, a Cabaret License, a Club License or a Special Premises License (the "License");

AND WHEREAS the Board requires all applications for temporary extensions of licensing privileges to be accompanied by a written request outlining, among other items, a description of the proposed event, the proposed days and hours of operation, the number of expected patrons, a sketch of the proposed floor plan of the designated area, the square footage of the designated area, an outline of enforcement and control measures to be implemented during the event, a description of the barrier delineating the designated area, confirmation that the Licensee has arranged for approval of the event by the local municipal and police authorities, as well as a recommendation from the AGD respecting the application;

AND WHEREAS the Board also requires that the Licensee obtain, prior to the holding of the event, written approval from the Office of the Fire Marshall respecting any tent or other temporary structure which will be erected or used to cover all or any part of the designated area, together with confirmation accompanying the application that the Licensee has arranged for such approval to be obtained;

AND WHEREAS the Board determines that various liquor licensing conditions should apply to all temporary extensions of licensing privileges approved by the Board in order to ensure appropriate control respecting the sale, service and consumption of liquor, as well as the public safety, as required under the *Liquor Control Act* (the "Act") and the *Regulations*;

AND WHEREAS the conditions ordered by the Board with respect to most temporary extensions of licensing privileges are identical in all respects;

AND WHEREAS the Board is of the view that a generic Order setting out its findings on this matter would be useful to parties in the future and would facilitate the timely and efficient approvals of such applications;

AND WHEREAS, in view of the unique nature of such requests, the Board is satisfied that an extension of liquor licensing privileges from a permanently licensed premises to a designated area, on a limited and temporary basis, is the most appropriate manner in which to facilitate the sale of liquor at such events;

IT IS HEREBY ORDERED, unless otherwise ordered by the Board, that all Approval Memorandums issued by the Board respecting the temporary extension of licensing privileges to a designated area shall be subject to the following conditions:

1. The extension of licensing privileges permits the sale and service and consumption of liquor in the designated area on the dates and during the hours set out in the Approval Memorandum issued by the Board.
2. Pursuant to ss. 22 and 67 of the *Regulations*, the maximum number of persons permitted in the designated area is restricted to the number set out in the Approval Memorandum issued by the Board, unless a fire official subsequently sets a lower occupancy load.

3. Pursuant to s. 55(1) of the *Regulations*, the designated area shall be vacated of patrons one-half hour after service of liquor has been terminated and the Licensee remains responsible for the conduct of patrons and the management and control of the licensed area until vacated.
4. In respect of a temporary extension of Lounge License or a Cabaret License, the Licensee is responsible to ensure that persons under the age of 19 (nineteen) years are not permitted to enter in the licensed area or be sold or served or provided with liquor.
5. In respect of a temporary extension of a Club License or a Special Premises License, the Licensee is responsible to ensure that persons under the age of 19 (nineteen) years are not sold or served or provided with liquor. Further, there shall be no service of liquor during any event where the majority of persons in attendance are likely to be under the age of 19 (nineteen) years. In such cases, all bar facilities are to remain closed, unless by prior arrangement the Board has authorized their operation.
6. In respect of a temporary extension of an Eating Establishment License, the Licensee is responsible to ensure that persons under the age of 19 (nineteen) years are not sold or served or provided with liquor.
7. The designated area covered under the temporary extension of licensing privileges shall be defined and separated from the unlicensed area, to the satisfaction of the requirements of the AGD, by barriers of sufficient height and stability to adequately provide the necessary security and control over access to and egress from the licensed area.
8. The Licensee must ensure that the temporary extension of licensing privileges to the designated area for the event is in compliance with all fire safety and municipal requirements and approvals which may apply.
9. Where the proposed extension of licensing privileges includes an area covered by a tent or other form of temporary enclosure, written approval by the Office of the Fire Marshal of the tent or enclosure must be obtained prior to the commencement of the event and such written approval must be available for inspection by AGD officials during the event.

10. The approval of temporary licensing privileges is granted on the basis of the Board's understanding that the local police authority, the local municipality, and the AGD are satisfied that the complement of security personnel, police, AGD Investigation and Enforcement staff and all other staff as outlined in the documentation filed in respect of the application, is adequate to provide the controls necessary to ensure that the sale, service and consumption of liquor, as well as access to and egress from the licensed area during the event, is conducted in an orderly manner and the safety of the public is not compromised.
11. The approval should not be considered a precedent with respect to potential future requests for extensions of licensing privileges to adjacent or offsite locations.
12. The appropriate officials of the Licensee must meet with AGD officials prior to the event to review the requirements of the *Act, Regulations*, and the conditions set out in this Order and the Approval Memorandum issued by the Board.
13. Compliance with the *Act, Regulations*, and the conditions set out herein during the event is the responsibility of the Licensee and, in the event that disciplinary action is ordered by the Board in respect of an infraction found to have occurred in or about the designated licensed area during the event, the disciplinary action will apply to the permanent licensed facility operating under the authority of the License.

DATED at Halifax, Nova Scotia, this 29th day of July, 2008.

Clerk of the Board