

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

**AN 2024-07 – ADVISORY NOTICE TO ISSUING AUTHORITIES REGARDING THE ISSUANCE OF
PLENARY RETAIL CONSUMPTION LICENSES TO NON-PROFIT CORPORATIONS (“THEATER
LICENSES”)**

The Division of Alcoholic Beverage Control (the “Division”) has received inquiries from municipalities concerning the issuance of plenary retail consumption licenses to non-profit corporations¹ (“theater licenses”) and the process of obtaining the approval of the Director of the Division, as required by the Alcoholic Beverage Control Act (“ABC Act”) and implementing regulations. See N.J.S.A. 33:1-19.7 and -19.8; N.J.A.C. 13:2-41.1 to 41.7. The recent amendments to N.J.S.A. 33:1-19.8 (P.L. 2023, c. 104), which authorize the issuance of non-profit theater licenses to smaller capacity non-profit theaters, may result in an increase in the number of theater license applications received by the issuing authorities. The purpose of this Advisory Notice is to clarify and explain the recent amendments to N.J.S.A. 33:1-19.7 and -19.8 as they apply to the application process and issuance of non-profit theater licenses.

I. Director’s Approval Needed Prior to Issuance of Theater License by Municipal Issuing Authority.

Pursuant to N.J.S.A. 33:1-19.7, a municipal issuing authority may issue a theater license at a premises that operates as an art-house movie theater² or conducts musical or theatrical performances or concerts for which admission is charged with a capacity of 1,000 persons or more. N.J.S.A. 33:1-19.8 authorizes a municipal issuing authority to issue a theater license at a premises that operates as an art-house movie theater or conducts musical or theatrical performances or concerts for which admission is charged with a capacity of 50 persons or more, but less than 1,000 persons. The 2023 amendments to these statutes expanded the types of theaters that are eligible for theater licenses, specifically to include both large and small art-house movie theaters.

Before a municipal issuing authority may issue a theater license to a non-profit organization, the issuing authority **must** receive the Director’s approval. The Director’s approval of an application is conditioned upon receiving a certification from the issuing authority and a finding by the Director that the following conditions have been satisfied:

¹ Under N.J.S.A. 33:1-19.7 and -19.8, only non-profit corporations that are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code are eligible to apply for a non-profit theater license.

² “Art-house movie theater” is defined as a “theater that is principally used for the purpose of showing motion pictures and is operated by a non-profit arts organization, which demonstrates a commitment to enriching its local community by providing opportunities for participation in the arts, offering arts education opportunities, and promoting regional economic prosperity.” N.J.S.A. 33:1-19.7 and -19.8.

- 1) the municipality intends to issue this special plenary retail consumption license;
- 2) the applicant is a bona fide non-profit corporation exempt from federal income tax under section 501(c)(3);
- 3) the applicant has exclusive possession and control of the premises to be licensed and the premises meet the requirements of N.J.S.A. 33:1-19.7 or -19.8; and
- 4) the applicant and premises are qualified for licensure and are in compliance with all applicable provisions of law. See N.J.A.C. 13:2-41.2.

In addition to a certification from the issuing authority addressing the above points, the issuing authority must also provide the Division with a copy of its detailed background investigation report so that the Division can determine compliance with the aforementioned regulation. Attached to this Advisory Notice as Exhibit A is a document request list outlining all the information and documentation that should be included in the issuing authority's background investigation report.

Following a satisfactory review of the municipal issuing authority's submission, the Director will issue a finding about whether the conditions in N.J.A.C. 13:2-41.2 have been met. A municipal issuing authority cannot take any action to issue a theater license unless it receives an approval letter from the Director.

II. Process to Issue Theater Licenses.

Due to the growing number of small capacity non-profit theaters seeking a theater license, the Division has received inquiries from issuing authorities regarding the process they should follow when issuing a "new" theater license. The issuing authority should follow the "Historical Method" when issuing a new theater license. See Alcoholic Beverage Control Handbook for Municipal Issuing Authorities, New License Issuance, Historical Method.

Issuing authorities should further note that a theater license issued pursuant to N.J.S.A. 33:1-19.7 and -19.8 does not count in determining the number of licenses that may be issued in their municipalities. In other words, the issuance of a theater license is an exception to the population cap. See N.J.S.A. 33:1-12.14.

To issue a theater license using the Historical Method, the issuing authority must:

- 1) Adopt a resolution indicating its intent to issue a new theater license by the historical method. See N.J.S.A. 33:1-19.1 and 19.2;
- 2) The issuing authority must publish a notice of the proposed issuance of the theater license and state that applications will be accepted by the issuing authority. The notice must specify a date and time after which no additional applications will be accepted. The notice must be published not less than two times in a newspaper circulating generally in the municipality, one week apart, the second or last publication shall be done not less than 30 days prior to the date and time specified in the notice as the date and time after which no additional applications will be accepted;

- 3) All interested applicants must complete applications and pay all the required fees.³ All applicants must publish a public notice two times of their intent to apply for the license and their proposed licensed premises. At a public hearing, the issuing authority must evaluate each applicant (factors to consider include the applicant's intended use, location, traffic, proximity to schools and places of worship, land use provisions, community need, parking, etc.) and issue a Resolution awarding the theater license to the applicant whose proposal would be in the best public interest. The Resolution should contain language that the issuance of a theater license is subject to the Director's final approval pursuant to N.J.A.C. 13:2-41.2(b). **However, the license cannot be issued until all necessary background investigations are complete and satisfactory to the issuing authority AND the issuing authority has received approval from the Director as outlined in the process above. Once the issuing authority has received the Director's approval, it should issue a final Resolution issuing the license to the Applicant with language that the Director has approved the issuance of the license.**
- 4) If a new theater license is not issued within six months after the closing date and time for receipt of applications, the statutory process must start over.
- 5) The issuing authority is not required to issue a theater license after publishing a notice if there are no applicants or if it determines that issuance to those who applied would not be in the public interest.

Any general questions concerning this Advisory Notice should be directed to Tia Johnson, Retail Manager Licensing Bureau at 609-376-9723 or Tia.Johnson@njoag.gov. Any legal questions concerning this Advisory Notice should be directed to Mary Stevens, DAG at 609-376-9819 or Mary.Stevens@njoag.gov.

This Advisory Notice does not impose any new or additional requirements that are not required by statute or regulation and does not establish any rights or obligations for any person. This document does not provide legal advice and should not be treated as providing legal advice. Licensees or applicants should speak to a qualified attorney for legal advice related to this Advisory Notice.


MISSY URBAN
ACTING DIRECTOR

Dated: August 16, 2024

³ Neither N.J.S.A. 33:1-19.7 nor -19.8 sets forth a fee for a theater license. The fee for a retail consumption license is fixed by the issuing authority at not less than \$250 and not more than \$2,500. The issuing authority must determine the fee for a theater license based on this range. There is a \$200 State fee that must accompany an application for a theater license. See N.J.S.A. 33:1-12(1).

Exhibit A

Suggested Document Request List for Issuing Authority Background Investigation Report for Theater Licenses

1. A notarized affidavit with the following information:
 - Nature of the business activity in New Jersey for the theater, which includes a detailed description of the proposed business and the method of operation for concessions and catering at the theater.
 - State that the theater, or the “restaurant operator” pursuant to N.J.A.C. 13:2-41.3, is the only entity that will provide food and alcohol on the licensed premises, it will order the food and alcohol and collect the income from the sale of food and alcohol which will be deposited into their bank account and it will only use their employees for food and alcohol operation on the licensed premise.
 - State the experience in the industry for theater.
 - Provide the proposed hours of operation.
 - Provide the name of the person who will be in charge of the day to day operation.
 - Must also state the areas at the location that will be licensed for sale, service, delivery, consumption and storage of alcohol.
2. Copy of the Certificate of Corporation;
3. Copy of the Deed/Lease for the Proposed Premises;
4. Copy of operating agreement for Corporation, if applicable;
5. Proof of 501(c)(3) status;
6. List of the Board of Trustees and their addresses;
7. The Officers and Directors of theater, the Board of Trustees involved in the day to day operation and the on-site Manager must complete the following:
 - A State and Federal fingerprint check. The New Jersey State Police utilizes the live scan fingerprinting services provided by IDEMIA, a private company under contract with the State of New Jersey. To begin the fingerprint process, an applicant is required to contact IDEMIA to schedule a time and place to have fingerprints capture at one of the Identogo sites.
 - Affidavits of Qualification.
8. Copies of all business bank account statements for the last 2 years for the theater, if applicable;
9. Copies of the last 2 years corporate tax returns, if applicable;
10. Proof of insurance for theater;
11. Copy of Certificate of Occupancy;
12. Diagram/sketch and photos of the proposed licensed establishment;
13. Any loan documents and/or mortgage documents from any person, entity or institution related to the establishment;
14. Proof of Applicant’s publication of application;
15. Copy of the issuing authority’s Resolution indicating its intent to issue the theater license;
16. Copy of the issuing authority’s Resolution awarding the license to the Applicant; and
17. Copy of the issuing authority’s Final Resolution issuing the license to the Applicant.

*Please note the Division or municipal issuing authority may require additional information be provided in its discretion.