

Municipal Alert
July 27, 2020

**Guidance on Expanded Mixed Drink Take-out/Delivery Options in
Response to COVID-19**

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On July 20, 2020, Governor Charlie Baker signed “An Act to Expand Take-out/Delivery Options in Response to COVID-19 (“Act”)” into law. The Act is an emergency measure intended to address significant disruptions to the restaurant industry in the Commonwealth caused by the COVID-19 pandemic. The Act temporarily allows establishments that are currently licensed by Massachusetts law to sell *all* alcoholic beverages to be consumed on-premises to sell mixed drinks for off-premises consumption, subject to restrictions, effective July 20, 2020. The Act will remain in effect until the Governor’s state of emergency is lifted or on February 28, 2021, whichever occurs earliest. An all alcohol license is required; this temporary authorization does not extend to establishments with only wine and malt beverages licenses.

Qualified Establishments

Under the Act, establishments licensed under Mass. Gen. L. ch. 138 § 12 to sell all alcoholic beverages for on-premises consumption may now sell mixed drinks for off-premises consumption. Qualified Licensees may include bars, restaurants, taverns, clubs, war veterans’ clubs, continuing care retirement communities, hotels, farmer-distilleries with pouring permits, and all-alcohol manufacturers with pouring permits. Licensees authorized to sell only wine and malt beverages on-premises do not receive the benefit of the Act. Wine and Malt beverages only Licensees may continue to sell such beverages for off-premises consumption in compliance with Bill No. 4598, signed into law on April 3, 2020 and in effect until the Governor’s state of emergency is lifted or on February 28, 2021, whichever occurs earliest.

Compliance Requirements for Licensed Establishments

On July 21, 2020, the ABCC issued an advisory on the application of the Act. The ABCC requires that establishments licensed to sell all alcoholic beverages for on-premises consumption must follow *all* of the following requirements when serving mixed drinks to customers for off-premises consumption:

- 1) The mixed drink must be of the same distilled spirits proportions as if it was prepared for on-premises consumption;
- 2) the mixed drink shall be sold in a sealed container, meaning:



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(a) a packaged container with a secure lid or cap designed to prevent consumption without removal of the lid or cap;

(b) if the packaged container has a lid with sipping holes or an opening for straws, the container shall be covered or affixed with an additional seal;

(c) the lid, cap or seal shall be affixed in such a way as to prevent reopening without it being obvious that the lid, cap or seal was removed or broken; and

(d) affixing the cap may be completed by the use of tape or other sticking adhesive before sale;

3) each customer shall be limited to not more than 64 fluid ounces of mixed drinks per transaction; and,

4) if the mixed drink is to be transported by a motor vehicle, either by delivery or pick-up, the driver of the motor vehicle shall transport the mixed drink in the trunk of the motor vehicle or in some other area that is not considered the passenger area as defined in section 24I of chapter 90 of the General Laws.

The sale of mixed drinks may only be done from opening until 12:00 a.m. midnight, or the licensee’s closing time previously approved by the Local Licensing Authority, whichever is earlier. All licensees must verify that both the purchaser and recipient of alcohol are at least 21 years old.

Sales must be made as part of a takeout order by way of pickup, including curbside pickup, and delivery. Licensees do not need to obtain a separate transportation permit under M.G.L. c. 138, § 22, in order to make deliveries. Licensees are advised to check with their Local Licensing Authority on any additional requirements in order to sell alcohol for curbside pickup.

All sales must be accompanied by a receipt reflecting the purchase of food along with alcohol, and licensees must keep copies of all receipts for inspection by licensing authorities.



This Client Alert was prepared by Joseph Prive and was reviewed by Karis North, Andrew Waugh, and David DeLuca. If you have any questions, please contact David DeLuca, Karis North or the attorney assigned to your account, or call (617) 479-5000.



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