



Memorandum

TO: The Honorable James Graziano, Esq.

FROM: Eric Orlando

DATE: April 8, 2021

RE: **Brewers Guild of New Jersey (BGNJ) Recommended Amendments to May 2019 Limited Brewery Special Ruling**

On behalf of the membership of the Brewers Guild of New Jersey, and in follow-up to our Executive Board's meeting with you and your senior staff on Monday, March 22nd, I wanted to provide you the below recommended changes to the May 2019 *Special Ruling Authorizing Certain Activities by Holders of Limited Brewery Licenses*. This list of recommended changes was compiled based on feedback from our general membership and input from our Executive Board on what priority issues within the existing *Special Ruling* we suggest potential revisions or maintaining in their current form. Also, it should be noted that requests for feedback were made to the general membership asking them to consider the ways they operated their respective breweries prior to the onset of the global COVID-19 pandemic in March 2020, how they have been operating with limitations during the pandemic, and how their businesses may function post-pandemic based on lessons learned from this unprecedented era for our state's small businesses.

To best organize our Guild's positions, and hopefully continue a constructive dialogue on the current *Special Ruling* and next steps, our organization broke down the ruling into six distinct areas: **1.** Tour Definition, **2.** On-Premises Special Events, **3.** Social Affairs Permits and Private Parties, **4.** Food Issues, **5.** Brewery Off-Premises Permits, and **6.** Other Issues (i.e. utilization of outdoor spaces, home delivery, etc.). By in large, our organization is supportive of the overall framework of the *Special Ruling* and the rights and privileges it addresses but wishes to make modifications as highlighted below.

Tour Definition (Pages 5 and 12)

The Guild believes the definition of a tour in the *Special Ruling* remains workable in terms of the components of what is considered a "tour" and the frequency by which a customer must take it (upon an initial visit to a brewery and annually thereafter). Members still though have remaining concerns about the documentation and record retention requirements in the tour definition. While breweries have attempted to remain compliant with these provisions by keeping written or digital logs (i.e., Excel spreadsheets) of customers as they come to a brewery and complete a tour, customers have consistently been resistant to giving their name and other personal information to breweries so they can forgo a tour at a brewery upon return visits to a brewery's tasting room

or outdoor space. Having these types of negative interactions with new and/or returning customers is a detriment to the overall customer experience at breweries, and upon the re-opening of tasting rooms to near or full capacity could hinder their financial recovery, especially those newer breweries still largely reliant on tasting room sales. **The Guild would ask that this customer documentation and record retention requirement be discontinued entirely, or at the very least, relaxed so that brewery representatives do not have to ask for the personal information of guests, record it, and maintain it at the brewery for extended periods of time.**

On-Premises Special Events (Pages 5, 11 and 14-15)

In this area, feedback from the Guild has consistently highlighted how in recent months as vaccination numbers have increased and indoor and outdoor restrictions have eased, various vendors who perform or organize live music/open mic nights, trivia nights, comedy shows and/or educational seminars have contacted brewery owners asking them to book events in their tasting rooms or outdoor spaces. These vendors, who have largely been out of work during the pandemic, are looking to return to venues *en masse* as soon as possible and breweries would like to host them. While the Guild appreciates the delicate balance that the NJ Division of Alcohol Beverage Control (NJABC) has in delineating the different rights of hybrid manufacturing/retail/distribution licensees in the craft alcohol beverage space and traditional retail licensees, the Guild would ask for changes in terms of **live/amplified music, DJs, and open mic nights** being considered automatically an on-premises special event without outward advertising via any type of media, including social media. We would ask **that these events not be counted against the annual cap outlined in *Special Ruling* unless advertised directly by the brewery itself outwardly via the media, including social media.**

Along similar lines, Guild members have asked that **live-televised championship sports also not be automatically considered an on-premises special event unless it is advertised directly by the brewery itself outwardly via the media, including social media.** In a calendar year like 2021 in the next seven months, televising in a brewery tasting room or outdoor area the Summer Olympics, NBA Finals, World Series and NHL Stanley Cup Finals could count for the entire 25 annual allowable events per brewery in this category. Breweries in our group believe the stakes or popularity of the live sporting event being shown should not automatically dictate whether there should be a limit on these occasions, nor impact the opportunity to host other types of events which could fall within the definition of an on-premises special event.

Social Affairs Permits and Private Parties (Pages 6 and 15-17)

Our membership is largely satisfied with most of the allowances and protocols adopted in the current *Special Ruling* in this area. While these two types of permits have largely gone unused over the past 13 months causing meaningful negative financial impacts to many breweries who have spaces designed specifically to host events, some are beginning to book these types of events in line with state-mandated pandemic restrictions considered. While consumer demand is starting to awaken and will likely increase somewhat this summer, attendance at each of these events will likely be a fraction of those before the pandemic, meaning less revenue overall for breweries statewide. To help compensate for the reduction in the number of attendees due ongoing pandemic limits, and maintain customer safety and comfort onsite, **the Guild would ask NJABC to consider increasing the limits in the private party permit category from 52 to 104 annually.** Under the current limits, almost 85% of the calendar year is off limits to host a private party at a limited brewery. While in the next few months our Guild and many in the hospitality

industry do not foresee an immediate frenzy of indoor in-person events hosted in a pre-pandemic manner statewide, our members would like to be able to have enough of these private party permit allowances in hand so they can market their locations to potential customers and not have to be overly selective on what events to book once restrictions are eased and demand picks up.

Aside from the number of events allowed onsite, the Guild would also request that the Division consider **allowing breweries to coordinate food availability for these types of events on behalf of a host.** Breweries do not want to sell food at these events or derive any direct financial compensation through an exclusive business relationship from food vendors utilized by an event or party host. Limited breweries want to be able to provide information and recommendations on potential food vendors such as local restaurants, caterers and/or food trucks that a host could work with, and book those services on behalf of a host, including facilitating the host's payment for food to the outside food vendor. Brewery staff wishes to work with these food vendors in the delivery and set-up of food at these events and assist in the clean-up and disposal of food at their conclusion. We believe at this time when like breweries, local bricks-and-mortar and mobile food vendors are struggling to deal with the pandemic and will need to adjust to the yet-known realities of the post-pandemic world, partnerships such as those envisioned above are mutually beneficial and will help form positive, lasting connections between the New Jersey craft brewery industry and the state's restaurant and hospitality industry.

Food Issues (Pages 6 and 19-21)

Our Guild realizes that this area of regulation presents challenges to the Division in balancing the rights and interests of limited breweries and the opinion of others on these matters in the state's hospitality industry. The Guild wanted to first express its appreciation of current allowances allowing de minimis snacks to be offered and sold, outside food menus to be accessible to brewery patrons onsite, food to be delivered directly to a brewery guest, and in-house produced soda to be sold for consumption on premises. We think these abilities, particularly those which help market and bring revenue to other local businesses like restaurants, are worthwhile to maintain and show how these privileges do not harm, but actually add value to those business which may seek working relationships with local breweries.

To this end, and in our group's view of a natural progression in this area of regulation, the Guild would ask again for the Division's consideration of an additional right which will promote local food vendors and positively impact them financially. The Guild proposes maintaining language prohibiting any direct financial compensation through an exclusive business relationship between a food vendor (i.e., restaurant, food truck, etc.) and brewery, and co-locating an outside food vendor on a brewery's licensed premise. **However, the Guild would request that NJABC allow the entities to coordinate with one another so that a food vendor may locate near a brewery's licensed location in line with local zoning, traffic and safety regulations, and the food vendor promote its attendance utilizing a brewery's name and location.** While the Guild understands this expansion to coordination between brewery and food vendor would be a change in policy potentially by your agency, the Guild believes the time has come to allow this change within the aforementioned parameters to the benefit of brewery customers and food vendors. Like the new rights requested in the Social Affairs Permit and Private Party category of this document, we think this change will provide tangible economic benefits to all involved, especially as both breweries and the food and hospitality industry emerge from the pandemic.

Also, Guild member breweries would ask, as a matter of convenience and service to those who choose not to or cannot purchase beer for onsite consumption, **for the ability to sell off-premises manufactured soda and other non-alcoholic beverages at their tasting rooms.** Whether it be a non-beer drinker, a designated driver, or an accompanied minor with family, breweries believe that consumers should be afforded more options than in-house made sodas and bottled water for purchase as currently authorized. While the ability to sell these non-alcoholic beverages is a minor issue compared to the other requests in this section, this topic still comes up regularly in discussions with membership.

Brewery Off-Premises Permits (Pages 7 and 21-24)

While off-premises events have been on a hiatus for over a year due to the pandemic, breweries foresee the summer of 2021 being a time when these type of events with attendee limits and other safety protocols may be possible again. Prior to the onset of the pandemic, breweries were able to test how these permits could work to help promote their brand beyond licensed locations to customers otherwise not reachable due to the limitations of their distribution footprint. Based on feedback from Guild membership, some breweries took full advantage of this new permit and would like to expand upon it if allowed per a revised *Special Ruling* or subsequent regulations.

Beginning in 2018, the Guild had requested consideration within the off-premises event category the allowance of limited brewery-sponsored events where a licensee's beer plus those beers of both New Jersey and out-of-state breweries invited to participate would be sold, or made available for tastings, in a manner similar to those events popular in various states around the country (i.e. CA, FL, etc.). Upon the adoption of the *Special Ruling*, it was expressed to Guild representatives that this concept would be explored in the future and given further consideration.

In the spirit of that understanding, **the Guild would request that both: 1.) beer not produced by the sponsor limited brewery be allowed to be sold and/or offered for tastings at off-premises events for on-premises consumption, and 2.) packaged beer intended for off-premises consumption made by the limited brewery sponsor *only* be allowed to be sold for "take home" consumption in this "beer festival" format.** Beer available from other invited breweries, aside from the sponsor's brewery, would be available at the event through the invited breweries in-state distributor or the sponsor brewery's distributor if the invited brewery does not have an in-state distributor. If the sponsor limited brewery does not have a distributor, invited out-of-state breweries without a New Jersey distributor would be allowed to contract with an in-state distributor for an off-premises special event only. Limited brewery licensees without a distributor would be able to self-distribute their own beer to an off-site special event if the sponsor limited brewery also did not have a distributor. Based on New Jersey breweries' experience at this type of beer festival, the Guild believes this kind of event would benefit breweries attempting to expand their footprint statewide and allow organizing breweries the ability to better market themselves in the region and nationally as has been the case with host breweries in other states.

On the issue of the number of permits allowed annually, members of the Guild are interested in organizing or participating in events that are sequentially scheduled in certain timeframes (i.e. 3-day holiday-weekend food festival, "12 Days of Christmas" holiday village, etc.). With the cap at 12 events per year, a three-day event over a holiday weekend would use up 25% of their allotted amount for an entire year. **The Guild would suggest that each scheduled event, not each *scheduled date* of an event, be deducted from the 12 off-premises event cap annually.** Applying these limits per event, not each day of an event, would allow breweries to commit to

more events when asked, particularly related to those conducted that correspond with holidays throughout the year.

Similar to other areas of the *Special Ruling*, limited breweries are prohibited from coordinating with any food vendors to sell food in the area designated in the permit for an off-premises event. While it should be noted that limited breweries in the Guild still do not wish to cook, prepare, or sell food themselves at these off-premises events, **Guild members would request that they be allowed to organize food vendors such as, but not limited to, food trucks, caterers, and restaurants to attend these events and offer food options to event attendees. The Guild would also request that these types of food vendors be allowed to be sited within the event's permitted space.** With many events in this category related to holiday or other civic events, some organized in conjunction with municipalities and non-profits who give the primary organizing responsibility to limited breweries, the Guild believes that breweries should be able to organize *all* aspects of an event, not most except for the provision of food.

Finally, and in line with the amount of beer which can be sold daily to a consumer from a brewery's tasting room and at a farmer's market in accordance with Public Law 2021, c. 15 and SR 2021-01, **we would ask that breweries at these off-premises events be allowed to sell 15.5 gallons of beer per patron per day for consumption off the event premise.** The current cap at these events of 72 ounces per patron equates to one six-pack of beer allowed to be sold for take home consumption. With the variety of beers produced by each brewery in our state always increasing, the various sizes of containers craft beers are sold constantly changing (i.e., 12oz cans/bottles, 16oz cans, 375mL bottles, 750mL bottles, etc.), and the overall marketing/sales potential these events may hold, breweries would request the same sales limit as exists at their tasting rooms and the state's newest venue, farmers markets.

Other Issues

Lastly, we wanted to use this opportunity to provide feedback and suggested changes to the *Special Ruling* to bring up a few issues which come directly out of the operation of breweries during COVID-19 pandemic. Breweries during this time, due to various pandemic-related laws, special rulings, advisory opinions, and executive orders, have enjoyed the ability to 1.) locate tap systems in existing licensed or temporarily permitted outdoor spaces, and 2.) have sold and served beer to customers in these spaces utilizing wait staff. With indoor tasting rooms either unusable or drastically limited during much of the pandemic, these temporary rights have been a lifeline in preserving any semblance of normal on-premises consumption privileges, while maintaining the safety of employees and guests. The *Special Ruling* in Section 4 (g) (4) and (5) currently prohibits these two activities explicitly for outdoor spaces. **Based on our ongoing experience in these outdoor spaces and likely customer interest in keeping these well-received outdoor options available, the Guild would ask that the provisions of Section 4 (g) (4) and (5) not be reestablished once the current public health emergency ends and breweries be given these rights explicitly in the next iteration of the *Special Ruling* or forthcoming regulations.**

Also, as we have discussed previously in our March 22nd meeting, the preservation of home delivery of beer to a consumer's home is a priority of our organization and is an issue the Guild will continue to pursue going forward. Even as pandemic restrictions have lessened and the public feels safer leaving their homes and traveling to brick-and-mortar stores and food establishments to purchase their goods, including alcohol, many Guild members still have a steady business

doing home delivery, serving all of the state's twenty-one counties many days of the week. Customers overwhelmingly like this new way to buy their favorite local beers, some getting access to products previously not regularly available on retailer's shelves or on tap close to home. Eighty-four percent (84%) of craft beer customers polled in a recent national [Brewers Association study](#) highlight this fact.

These delivery sales have supplemented losses coming from other traditional retail venues, including bars and restaurants and in their own tasting rooms. Breweries have hired new staff or retained existing employees directly due to the home delivery privilege. Also, some Guild members have made large investments in delivery vehicles and brewery equipment to help facilitate home delivery, including investments in packaging equipment and canning lines that they had not contemplated or budgeted for prior to the pandemic.

As you are aware, the *Special Ruling* in Section 2 (j) prohibited this ability until pandemic-related legislation, and new NJABC special rulings and advisory opinions, authorized it until at least six months after the current public health emergency ends. **We would hope that NJABC not reinstate this prohibition in any revisions of the Special Ruling or a new rule proposal, instead supporting the continuation of this home delivery right in a way which passes constitutional muster for both instate and out-of-state breweries.** The Guild intends to explore all options to make this right permanent and would ask NJABC to help facilitate this right beyond the pandemic if possible.

Thank you for allowing the Brewer's Guild's Executive Board and I to provide you feedback on the current *Special Ruling* and recommended changes for you and your senior staff's consideration. We stand at the ready to continue to work with you and the Division on issues involving this document, and how we may better communicate to our membership next steps involving the potential full implementation of the *Special Ruling* in the future.

Thank you.

c. Brewers Guild of New Jersey Executive Board