

Craft Brewery Licensing in Rhode Island

Overview – A Three-Part Process

Opening a craft beer brewery in Rhode Island requires interactions with three separate regulatory bodies; local towns and cities issue building, zoning and other local permits and retail liquor licenses, the Federal Alcohol and Tobacco Tax Trade Bureau (“TTB”) issues the federal brewery “basic permit”, and the Rhode Island Department of Business Regulation (“DBR”) issues manufacturer’s licenses.

Although obtaining the manufacturer’s license with the DBR is the last step a brewer must complete before opening, the requirements of all three major licensing hurdles need to be considered together before a prospective brewer begins the application process. For example, the state requirements that a licensee be a Rhode Island resident, or that the proposed facilities be located more than 200 feet from a school or place of worship, should be considered as threshold issues, especially considering typical brewery investment and start-up costs. In any event, making sure the proposed brewery is adequately funded to cover a long permitting process should factor into planning.

Local Licenses and Permits – City or Town

Obtaining local approval and community buy-in is the most critical part of obtaining a license to brew in Rhode Island. Towns and cities in Rhode Island indirectly regulate manufacturing licenses by setting local health, fire, police, building permit, and zoning variance standards, and are directly responsible for the discretionary issuance of retail alcohol licenses. As smaller micro and nano breweries rely increasingly on on-premises sales to generate buzz and lock in better margins, the importance of developing a plan to obtain local approval cannot be underestimated.

The first steps for any prospective brewer are to identify an appropriate site and to establish a detailed business plan that includes all projected brewing equipment, capacity needs, legal structure, and financing. The planning process should include a discussion with local liquor control boards to determine if they are open to the type of business proposed, and should include a dialogue with neighboring landowners to make sure there are no objections to the proposed use of the premises. This approach can reduce the chance of surprise when the actual completed retail application is filed with local authorities.

Breweries should exercise caution in selecting sites. Frequently, new breweries are drawn to older mill spaces and industrial properties for cost and aesthetic purposes. These types of locations can create problems for breweries operating with taproom models from a zoning perspective. Industrial spaces must also have adequate facilities to accommodate the public and may carry extra development costs related to infrastructure issues concerning plumbing, electricity, water quality, and environmental compliance.

After obtaining all necessary zoning variances and building permits, applicants should finalize any leasing and financing terms and begin building out the facilities. Applicants need to complete the build out and be ready to open in order to obtain a certificate of occupancy. A certificate of occupancy is required for both the retail alcohol licenses and the manufacturer’s license from the DBR.

Federal Basic Permit – TTB

After completing the build-out process, prospective brewers should submit a “Brewer’s Notice” application for a basic permit with the TTB. The basic permit allows the holder to brew beer commercially under federal law and is a prerequisite to obtaining manufacturing licensure with the DBR.

Applicants should apply for their basic permit with the TTB as soon as possible, but not before they are able to provide complete and accurate information about their layout, equipment, and facilities. Although a certificate of

occupancy is not required to obtain a basic permit, the layout of the brewing and ancillary premises has to be set. Data released by the TTB indicates that average basic permit application wait times averaged approximately 60 days in 2017, although the waiting period may be longer if the TTB has questions on the materials submitted. Despite the wait time, brewers need to resist the temptation to file too early, as the TTB reserves the right to question the proposed layout and perform an on-site inspection.

A significant part of obtaining brewery approval from the TTB involves documenting the proposed brewery's business plan and legal structure. The basic permit application requires applicants submit complete diagrams and descriptions of the brewery premises, information on equipment leasing, trade name registration information, a disclosure of the source of funds, a description of the brewery's security procedures, and disclosures regarding ownership structure. Documentation on water quality and environmental planning is also required, as is registration with the IRS for tax purposes. Generally, the TTB does not need to approve particular beer formulas. Other trademark work and approval of proposed labeling is in addition to these procedures.

Beginning in 2017, breweries that anticipate owing less than \$50,000 in annual federal excise taxes are no longer required to post bond as a condition of establishing a brewery. For startup breweries, this can be a significant cost savings. Breweries manufacturing less than 60,000 barrels per year are entitled to a reduced federal excise tax rate of \$7.00 per barrel of beer, and as of January 1, 2018, the rate has been temporarily reduced even further to \$3.50 per barrel.

RI Manufacturer's License – Rhode Island Department of Business Regulation

Rhode Island technically has two types of manufacturer's licenses that are available for craft brewers: a general manufacturer's license and a brewpub manufacturer's license. Both permits allow breweries to manufacture beer, sell to distributors, and make retail sales to consumers for on and off-premises consumption. Due to legislative changes made in 2016, though, the distinction between the two types of licenses has become less relevant. Most new breweries should probably obtain a general manufacturer's license unless they want to offer food other than basic snacks.

Prior to July 2016, breweries intending to rely on a taproom model to promote their products were limited to using a brewpub manufacturer's license, as the general manufacturer designation did not permit sales for on-site consumption and severely restricted sales for off-site consumption. These limitations made it difficult for general manufacturers to operate functional taprooms. Breweries hoping to generate local buzz instead would be inclined to apply for a brewpub manufacturer's license, which permits unrestricted sales for on-site consumption, but limits sales for off-site consumption to half-gallon "growler-style" containers.

Thanks to the new laws, general manufacturers may now sell up to 36 oz. of beer or malt beverages to visitors for on-site consumption in a single day, as well as 288 oz. of beer (four six-packs) for off-site consumption. These new changes make it significantly more advantageous for craft breweries with taprooms to operate under a general manufacturer's license as opposed to applying for a brewpub designation, especially considering the annual fees for both types of licenses are roughly the same.

In applying for a manufacturer's permit, breweries must establish that they have sufficient security for the storage of beverages, record-keeping systems in place, suitable transportation for deliveries, and commitments from suppliers. The DBR will also request a certificate of occupancy and other local approvals before accepting an application, and require applicants to post a \$5,000 bond to cover future state excise taxes, which is in addition to the annual licensing fee.

After a complete application is submitted, the DBR is required to hold a hearing in two weeks time and give both public notice in print media and provide specific notice to all owners within 200 feet of the proposed premises. Neighboring landowners may object to the proposed manufacturing license, which could cause complications at this stage if not already considered. This DBR hearing process is in addition to the local hearing required for applicants applying for retail licensing. The DBR in some cases may also require proof of retail licenses from the city or town prior to issuing a state manufacturing license.

Other Licensing Considerations

The DBR and most localities have not provided complete guidance as to what craft breweries need to do in order to obtain local retail licenses. Currently, the only available information provided in the DBR's regulations applies to Class B-M retailers – operators of brewpubs – that serve food. Presumably, a general manufacturer only selling beer will be required to obtain a Class C saloon retail permit, which only permits the sale of limited snack foods.

Retailing brings other compliance issues as well. Tap lines need to be cleaned periodically under Rhode Island law and serving alcohol to patrons requires that servers and management complete a state-mandated alcohol server training course (TIPS training). Completing the TIPS currently costs \$40 per person.

Concluding Thoughts

Altogether, the federal, state, and local authority licensing requirements for craft breweries are similar. However, managing the application process to minimize idle time and delays can be challenging, especially as final approval requires the facilities be constructed and a certificate of occupancy issued. Applicants can reduce the risk that they will encounter problems by ensuring that adequate financing is in place and by establishing a dialogue with local authorities at the earliest possible opportunity.

Date Created

January 18, 2018