

Rooms, Revenues, and Regulations: Liquor Licensing Fundamentals for Hotel and Resort Projects

January 23, 2026

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Key Take: *Early engagement with specialized beverage counsel allows developers to align license strategy with the business plan, avoid disqualifying design choices, and preserve optionality for future operators and revenue streams.*

When developing a hotel or resort, securing the right to serve alcoholic beverages is often a key driver of guest satisfaction and overall profitability. However, the process of obtaining a liquor license is complex and highly regulated, with requirements that vary significantly by state and even by municipality. For developers and investors, understanding the nuances of liquor licensing early in the project lifecycle is essential—not only to ensure compliance but also to maximize the value and operational flexibility of the property. This article explores the critical liquor licensing considerations that should be factored into the planning and development of hotels and resorts, including the types of licenses

available, corporate structuring, development-specific requirements, and working with third-party food and beverage operators.

Types of Liquor Licenses

The landscape of liquor licensing in the United States is highly fragmented, with each state—and in some states, each municipality—setting its own rules and requirements. In some states, hotel and resort developers can obtain a liquor license “by right,” provided they meet certain minimum criteria such as having a minimum number of guest rooms or having an accessory restaurant with a minimum number of seats. Alternatively, states may cap the number of available licenses based on location and population quotas, requiring new applicants to purchase a license on the open market, often at a significant premium.

For example, in Florida a hotel owner may apply for a series 4COP-S special hotel liquor license, which allows the sale and service of beer, wine, and liquor for consumption on- or off-premises throughout the hotel property and mini bars within the guest rooms. This type of license is issued by the state to applicants “by right,” however, only if the hotel qualifies by consisting of a minimum number of guest rooms based on the population of the county where it is located. In most counties, the minimum is 100 rooms, with some as low as 50 rooms. For smaller properties located in historically designated structures, Florida also offers a series 4COP-SH special historic hotel license, which is tailored for certain hotels with at least one guest room (that’s right, just one!). However, to qualify for this type of license, the property must derive at least 51% of its gross revenue from the rental of guest rooms. Additionally, for developments that will not have enough rooms to qualify for a series 4COP-S license and are not located in a historic structure to qualify for a series 4COP-SH license, there are still other types of liquor licenses that a hotel may qualify for in Florida. If the hotel will have a restaurant with at

least 120 seats and 2,000 square feet of service area that derives at least 51% of its gross food and beverage revenues from the sale of food and non-alcohol drinks, it could qualify for a series 4COP-SFS alcoholic beverage license that could cover the entire hotel property; or if the development doesn't qualify for any other special license, there is a series 4COP-Quota license, which has no special requirements or operational restrictions, but must be won in a state-sanctioned lottery that only occurs once each year subject to increases in population by county, or purchased from a third-party, with this type of license selling for prices ranging from \$150,000 to \$1,500,000 depending on the location.

Given all the unique restrictions and criteria, obtaining a liquor license should never be an afterthought in hotel or resort development. Early planning and consultation with specialized counsel can be crucial to ensuring the project is developed in a manner that will suffice to meet the needs of the hotel operation.

Corporate Structuring: Who Should Hold the Liquor License?

The legal structure of an applicant seeking a liquor license is a critical consideration for any hotel owner or resort developer. Proper corporate structuring not only streamlines the licensing process but also helps minimize required disclosures and potential liability to protect the interests of owners and investors. It can also be used to separate the interests of silent investors that may otherwise disqualify an applicant from obtaining and holding a liquor license.

When determining the corporate structure it is important to note that with the exception of some states, such as California and Texas, which allow a third-party management company to hold a liquor license in lieu of the hotel owner, a liquor license generally must be held by the entity that will: (1) own and operate the hotel; and (2) hold dominion and control over the hotel premises being licensed,

typically through a deed or lease for the licensed premises. As such, a common practice in corporate structuring of projects that will hold a liquor license is to utilize a single purpose operating entity that is wholly owned by a holding company. Such a layered structure provides for the ability to insulate the broader ownership group from direct liability and, in some states, even disclosure of the individuals in the ownership group. This separation is especially important in the hospitality industry, where the risk of liability is heightened by the sale of alcohol, leading to potential for employee misconduct, such as serving alcohol to minors or visibly drunk patrons that can result in incidents with significant damages claims due to dram shop liability, such as drunk driving accidents. If such incidents occur, having a distinct operational entity as the license holder can help shield owners, investors, and other affiliated entities from direct exposure.

Liquor licensing also requires a degree of personal disclosures for owners and officers of applicants, which vary by state. Most states at a minimum will require the officers and directors of an applicant entity to be personally disclosed and fingerprinted for background checks as part of the application and qualification process. These requirements are designed to ensure accountability, to protect the public interests, and to prevent violations of “tied house evil” laws, which prohibit ownership or control across the three tiers of the alcoholic beverage industry, specifically manufacturers/importers, wholesalers/distributors, and retailer vendors. With a little advance planning, a structure can be formulated to ensure only the responsible qualified individuals will need to be personally disclosed in a liquor license application.

Development of the Premises: Land Use, Zoning, and Design Factors

A substantial portion of a hotel or resort development’s liquor licensing process is driven by land use and zoning considerations, making the

location and physical development of the premises just as, if not more important than, the corporate planning and confirming ownership and officer qualifications. Without the land use and zoning approvals, a developer will not be able to secure the required business operating licenses and permits.

Every municipality sets its own land use and zoning regulations, which can dictate criteria such as permitted locations, size and design features, and hours of operation—all of which can differ significantly from one location to the next. For example, many jurisdictions across the country have specific criteria for liquor licensing that include thresholds on number of guest rooms in a hotel, square footage and/or seat counts in a restaurant or bar, and even percentage of gross revenues that are derived from the sale of liquor. Additionally, if a large resort spans across a public right of way, such as a public road, this can create a lack of contiguity that would present a potentially significant licensing challenge. In such cases, multiple liquor licenses may become necessary to cover the entire resort property. For example, if planning to utilize a special hotel liquor license and the resort property is split by a public road with all of the guest rooms located on one side of the road, a special hotel liquor license may not be able to cover the other side of the road due to a lack of contiguity of the resort premises. A second liquor license would be needed to cover this area of the resort, and the ability to obtain a second license would be dependent on the ability to qualify for a different type of liquor license, since there will be no guest rooms to qualify for a special hotel liquor license.

The design and layout of the project should also be planned with these licensing requirements in mind. For instance, the size and configuration of restaurant spaces within resort properties can be determinative of how they will need to be structured operationally to qualify for the ability to serve liquor. If a restaurant space is built in a way that it could not qualify for its own liquor license, it could effectively

remove the potential option of ever being able to rent the restaurant space to a third-party tenant operator, as any operator of the restaurant would need to be an agent of the owner, i.e., operate under a management or concession type agreement, in order to use the hotel's liquor license in the operation of the restaurant.

Developers and owners should approach project design with the goal of maximizing their licensing options, rather than limiting themselves through design choices that could restrict the types of licenses that may otherwise be available to them, ultimately leading to otherwise restricted operations and reduced potential profitability.

Utilizing Third-Party Operators and Management Services

In many hotel and resort developments, the property owner or developer will not ultimately operate the business, but rather engage a third-party management company to handle day-to-day operations, including food and beverage services. The involvement of a management company introduces additional considerations for liquor licensing, as the rules regarding who may hold the license can vary significantly from state to state.

As mentioned earlier, in some jurisdictions, a third-party management company is permitted to hold a liquor license. However, most states require that the business owner with legal dominion and control over the licensed premises (i.e. via lease or deed) must hold the liquor license and be in ultimate control of the alcoholic beverage operations of the business. When structuring hotel or restaurant management agreements, it is important to know these requirements to ensure responsibilities are properly allocated in the agreements.

It is also crucial to include provisions that protect the liquor license holder from liability. For example, if an employee serves alcohol to a minor, certain states

provide statutory protections for the owner, provided specific conditions are met. In Florida, for instance, section 561.701-706, Fla. Stat., commonly known as the Florida Responsible Vendor Act, offers liquor license holders protection from administrative liability in the event an employee or agent commits a violation of the law so long as all requirements of the statute are complied with. However, not all states offer such protection; for instance, in Oklahoma, the license holder may still face fines and/or suspension of their liquor license for the actions of an employee or agent, so it is important to be aware of these factors. Since ultimate liability generally rests with the license holder, management agreements should include specific provisions to protect all parties from potential exposure. These agreements should also address operational safeguards, such as requiring the implementation of responsible vendor or other training programs for all employees who serve alcohol to maximize risk mitigation.

It is also common for a hotel or resort to have multiple third-party operators utilizing a single liquor license. For instance, this can occur when a third-party hotel operator is responsible for stocking mini-bars and a separate food and beverage operator is responsible for operating a restaurant within the hotel. This arrangement can be the most practical solution, especially when it is not feasible for each operator to enter into leases for separate portions of the hotel property and obtain their own liquor licenses due to regulatory or logistical constraints. In such cases, careful drafting of management agreements is essential to ensure that all parties understand their responsibilities to adequately protect the liquor license and themselves.

In summary, there are many liquor licensing factors that should be considered when planning the development of hotels and resorts and when engaging third-party management companies or operators to operate these businesses. Failure to consult with specialized beverage counsel to

conduct licensing diligence at the onset of a hotel or resort development can result in unnecessary costs, project delays, or even limitations on operations that can be easily avoided.