

500 FOOT RULE ANNOUNCEMENT - MARCH 6, 2009

The Alcoholic Beverage Control Law limits the ability of the Authority to issue on premises retail licenses when there are existing licensed establishments within 500 feet of the applicant's location. This has become known as the "500 foot rule". Applications subject to the 500 foot rule must have a hearing to determine whether it is in the public interest to issue the license. Until recently, the Authority applied the rule to any application where there were at least three existing establishments within 500 feet, no matter what type of establishments they were. However, as a result of a recent court decision, the Authority may no longer count all of the establishments within 500 feet of the applicant's location. The 500 foot rule will now apply as follows:

- If you are applying for a license under Section 64 to operate a restaurant, hotel or catering establishment, the rule will apply if your location is within 500 feet of three or more other establishments which are also licensed under Section 64.
- If you are applying for a license under Section 64-a to operate a bar, tavern, nightclub or adult entertainment facility, the rule will apply if your location is within 500 feet of three or more other establishments licensed under Section 64-a.
- If you are applying for a license under Section 64-c to operate a brew pub, the rule will apply if your location is within 500 feet of three or more establishments licensed under Section 64, 64-a, or 64-c.
- If you are applying for a license under Section 64-d to operate a cabaret, the rule will apply if your location is within 500 feet of three or more establishments licensed under Section 64 or 64-c. [Please note that the rule will also apply if your location is within 500 feet of another cabaret. However, in that situation you are not entitled to a hearing. The application must be disapproved.]

Once the agency has done an investigation and verified that the 500 foot rule applies to your application, the hearing will be scheduled and all parties notified. All other review processes will continue to be performed during this time in order to avoid any additional delays. If you do not dispute that your application is subject to the 500 foot rule and a hearing is required, you can waive the investigation and the matter will be scheduled for a hearing. A 500 Rule Investigation Waiver Request form is available on our website under Retail Forms – Other Applications or Forms, or you can contact one of the zone offices to obtain the form.

Overview of the 200 & 500 Ft Rules:

<http://www.sla.ny.gov/system/files/200-500-foot-rules-050213.pdf>

N.Y. ABC. LAW § 64 : NY Code - Section 64: License to sell liquor at retail for consumption on the premises -

See more at: <http://codes.lp.findlaw.com/nycode/ABC/5/64#sthash.3X4pRxv6.dpuf>

APPLICANT FILING PROCEDURES / REQUIREMENTS

1. Notwithstanding the provisions of subdivision two of section seventeen of this chapter, any person may make an application to the appropriate board for a license to sell liquor at retail to be consumed on the premises where sold, and such licenses shall be issued to all applicants except for good cause shown. 2. Such application shall be in such form and shall

contain such information as shall be required by the rules of the liquor authority and shall be accompanied by a check or draft in the amount required by this article for such license. 2-a. Notwithstanding any other provision of this chapter, upon receipt of an application for a license under this section, an application for renewal under section one hundred nine of this chapter, or an application for an alteration to a premises licensed for consumption on the premises under section ninety-nine-d of this chapter, the applicant shall notify the clerk of the village, town or city, as the case may be, by certified mail, return receipt requested, wherein the prospective licensed premises is to be located or, in the case of an application for renewal, or alteration where it is presently located not less than thirty days prior to the submission of its application for a license under this section or for a renewal thereof pursuant to section one hundred nine of this chapter. For the purposes of the preceding sentence notification need only be given to the clerk of a village when such premises is to be located within the boundaries of the village. In the city of New York, the community board established pursuant to section twenty-eight hundred of the New York city charter with jurisdiction over the area in which such licensed premises is to be located shall be considered the appropriate public body to which notification shall be given. Such municipality or community board, as the case may be, may express an opinion for or against the granting of such license. Any such opinion shall be deemed part of the record upon which the liquor board makes its determination to grant or deny such license. 3. Section fifty-four shall control so far as applicable the procedure in connection with such application. 4. Such license shall in form and in substance be a license to the person specifically licensed to sell liquors at retail, to be consumed upon the premises. Such license shall also be deemed to include a license to sell wine and beer at retail to be consumed under the same terms and conditions, without the payment of any additional fee.

BONA FIDE HOTEL EXCEPTION

5. No retail license under this section shall be granted except for such premises as are being conducted as a bona fide hotel provided that a restaurant is operated in such premises, restaurant, catering establishment, club, railroad car, vessel or aircraft being operated on regularly scheduled flights by a United States certificated airline. 5-a. Notwithstanding the provisions of subdivision five of this section, a liquor license may be issued under this section to an establishment designated and commonly known and operated as a "bed and breakfast" regardless of whether or not a restaurant is operated in such establishment, provided that such license shall only permit the sale of alcoholic beverages to overnight guests of such establishment. 6. Where an on-premise license shall be granted to the owner of a hotel situated in a town or village the liquor authority may in its discretion grant to such owner the right to sell liquor and wine for off-premise consumption under the same terms and conditions as apply to off-premise licenses upon the payment of an additional fee of sixty-two dollars and fifty cents; provided, however, that this permission shall not be granted if an off-premise license has been granted for premises located within eight miles of such hotel.

N.Y. ABC. LAW § 3 : NY Code - Section 3: Definitions -

See more at: <http://codes.lp.findlaw.com/nycode/ABC/1/3#sthash.qWc8uPFT.dpuf>

14. "Hotel" shall mean a building which is regularly used and kept open as such in bona fide manner for the feeding and lodging of guests, where all who conduct themselves properly and who are able and ready to pay for such services are received if there be accommodations for them. The term "hotel" shall also include an apartment hotel wherein apartments are rented for fixed periods of time, either furnished or unfurnished, where the keeper of such hotel regularly supplies food to the occupants thereof in a restaurant located in such hotel. "Hotel" shall also mean and include buildings (commonly called a motel) upon the same lot of land and owned or in possession under a lease in writing by the same person or firm who maintains such buildings for the lodging of guests and supplies them with food from a restaurant located upon the same premises.

PUBLIC BENEFIT CRITERIA

6-a. The authority may consider any or all of the following in determining whether public convenience and advantage and the public interest will be promoted by the granting of licenses and permits for the sale of alcoholic beverages at a particular unlicensed location - (a) The number, classes and character of licenses in proximity to the location and in the particular municipality or subdivision thereof. (b) Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies. (c) Effect of the grant of the license on vehicular traffic and parking in proximity to the location. (d) The existing noise level at the location and any increase in noise level that would be generated by the proposed premises. (e) The history of liquor violations and reported criminal activity at the proposed premises. (f) Any other factors specified by law or regulation that are relevant to determine the public convenience and advantage and public interest of the community.

200 Ft Rule

7. No retail license for on-premises consumption shall be granted for any premises which shall be (a) on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship or (b) in a city, town or village having a population of twenty thousand or more within five hundred feet of three or more existing premises licensed and operating pursuant to the provisions of this section; (c) the measurements in paragraphs (a) and (b) of this subdivision are to be taken in straight lines from the center of the nearest entrance of the premises sought to be licensed to the center of the nearest entrance of such school, church, synagogue or other place of worship or to the center of the nearest entrance of each such premises licensed and operating pursuant to the provisions of this section; except, however, that no renewal license shall be denied because of such restriction to any premises so located which were maintained as a bona fide hotel, restaurant, catering establishment or club on or prior to December fifth, nineteen hundred thirty-three; and, except that no license shall be denied to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school, church, synagogue or other place of worship; and except that no license shall be denied to any premises, which is within five hundred feet of three or more existing premises licensed and operating

pursuant to the provisions of this section, at which a license under this chapter has been in existence continuously on or prior to November first, nineteen hundred ninety-three; and except that this subdivision shall not be deemed to restrict the issuance of a hotel liquor license to a building used as a hotel and in which a restaurant liquor license currently exists for premises which serve as a dining room for guests of the hotel and a caterer's license to a person using the permanent catering facilities of a church, synagogue or other place of worship pursuant to a written agreement between such person and the authorities in charge of such facilities. The liquor authority, in its discretion, may authorize the removal of any such licensed premises to a different location on the same street or avenue, within two hundred feet of said school, church, synagogue or other place of worship, provided that such new location is not within a closer distance to such school, church, synagogue or other place of worship. (d) Within the context of this subdivision, the word "entrance" shall mean a door of a school, of a house of worship, or premises licensed and operating pursuant to the provisions of this section or of the premises sought to be licensed, regularly used to give ingress to students of the school, to the general public attending the place of worship, and to patrons or guests of the premises licensed and operating pursuant to the provisions of this section or of the premises sought to be licensed, except that where a school or house of worship or premises licensed and operating pursuant to the provisions of this section is set back from a public thoroughfare, the walkway or stairs leading to any such door shall be deemed an entrance; and the measurement shall be taken to the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. A door which has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a building not regularly used by the general public or patrons, is not deemed an "entrance". (d-1) Within the context of this subdivision, a building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship, such uses which include, but which are not limited to: the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups; use of the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups; the use of the building by other religious organizations or groups for religious services or other purposes; the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease; the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions. The building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building. (e) Notwithstanding the provisions of this chapter to the contrary, the authority may issue a license to sell liquor at

retail to be consumed on premises to a club as such term is defined in subdivision nine of section three of this chapter whether or not the building in which the premises for which such license is to be issued is used exclusively for club purposes and whether or not such premises is within two hundred feet of a building used exclusively as a school, church, synagogue or place of worship if such club is affiliated or associated with such school, church, synagogue or place of worship and the governing body of such school, church, synagogue or other place of worship has filed written notice with the authority that it has no objection to the issuance of such license.

N.Y. ABC. LAW § 106 : NY Code - Section 106: Provisions governing licenses to sell at retail for consumption on the premises -

See more at: <http://codes.lp.findlaw.com/nycode/ABC/8/106#sthash.omvpeZm2.dpuf>

Hours of Sale Provision:

... 5. No alcoholic beverages shall be sold, offered for sale or given away upon any premises licensed to sell alcoholic beverages at retail for on-premises consumption, during the following hours: (a) Sunday, from four ante meridiem to twelve noon. (b) On any other day between four ante meridiem and eight ante meridiem. Unless otherwise approved by the authority pursuant to subdivision eleven of section seventeen of this chapter, where any rule has been adopted in a county on or before April first, nineteen hundred ninety-five, further restricting the hours of sale for alcoholic beverages, such restricted hours shall be the hours, during which the sale of alcoholic beverages at retail for on-premises consumption shall not be permitted within such county...

Most Common Violations of the ABC Law

- The following list, while not all inclusive, will help to familiarize you with the most common violations of the ABC Law:
- Sale to Minor (under 21 years old) - Section 65.1. (It is important to note that the Members of the Authority have directed that any sale to a person under 16 can result in revocation of the license, even for a first offense.)
- Sale to Intoxicated Person - Section 65.2.
- Prohibited Hours of Sale - Sections 105.(a), 105.14 and 106.5.
- Prohibited Hours of Consumption - Section 106.5.
- Employment of a Minor - Section 100.2(a).
- Disorderly Premises (includes Gambling at on premises establishments, Lewd and Indecent conduct, Assaults, Narcotics at on premises establishments, Prostitution) - Section 106.6.
- Gambling at establishments.
- Narcotics at establishments.

QUICK SUMMARY OF SELECTED LAWS FOR RETAIL LICENSEES

<http://www.abc.ca.gov/FORMS/ABC608.pdf>