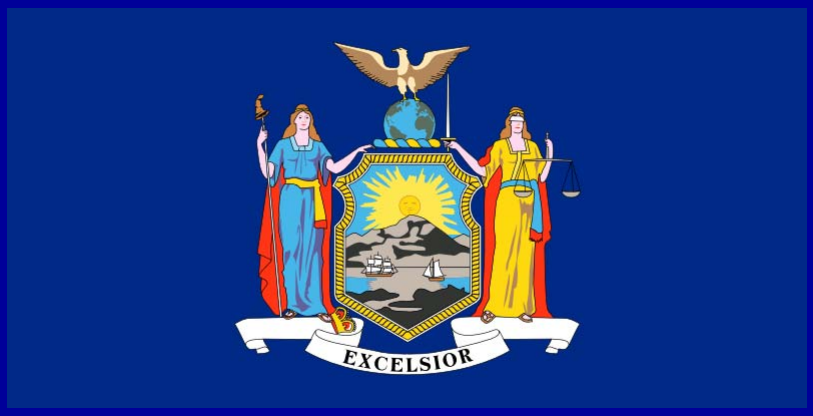
New York State Liquor Authority
Taskforce for the Review of On-Premises Licensure

Report

NEW YORK STATE



LIQUOR AUTHORITY

Submitted by Chairperson Noreen Healey
December 8, 2006

Taskforce for the Review of On-Premises Licensure

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STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

George E. Pataki
Governor

317 Lenox Avenue, 5th Floor
New York, New York 10027

Noreen Healey
Commissioner

December 8, 2006

Dear Chairman Boyle,

With this letter I am presenting the report and recommendations of the State Liquor Authority Taskforce for the Review of On-Premises Licensure which you directed on September 6, 2006. In accordance with your directive, this taskforce examined the policies and procedures of the State Liquor Authority relating to the issuance of on–premises licenses and reviewed the pertinent state laws to make recommendations that would enhance the Authority's ability to fairly license New York businesses by balancing the interests of business with those of the greater community.

In a series of meetings, the taskforce convened for in-depth discussion and debate on the issues. These meetings brought many interested stakeholders together, stakeholders who often disagree regarding matters of on-premises licensure. The taskforce thereby provided a venue where policy makers, business people, and citizens could communicate regarding matters, some of which are highly contentious, relating to the issuance of on-premises licenses. The State Liquor Authority gleaned valuable information from many sources in these meetings. I urge you to continue with the taskforce. It generated open and honest discussion of important issues facing the Authority, those we regulate, and those we are sworn to serve.

Thank you for the opportunity to serve as chairperson.

Commissioner Noreen Healey
Chairperson Taskforce for the Review of On-Premises Licensure

TASKFORCE MEMBERS:

Commissioner Noreen Healey, Esq. Chair
New York State Liquor Authority

Elected Officials:

Senator Martin Connor

Senator Thomas K. Duane

Senator Serphin Maltese

Senator Frank Padavan

Senator Nick Spano

Speaker of the Assembly Sheldon Silver
Represented by Paul Goldstein

Assembly Member Deborah J. Glick

New York City Mayor Michael Bloomberg
Represented by:
John Feinblatt
NYC Criminal Justice Coordinator
Shari Hyman, Esq.
Director/ Mayor's Office of Special Enforcement

New York City Council Speaker Christine Quinn
Represented by Lauren Axelrod, Jim Caras and David Pristin

Manhattan Borough President Scott M. Stringer
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Community Groups/Leaders/Community Boards:

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Manhattan Community Board No. 3

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Industry Representatives:

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State Liquor Authority:

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Director of Licensing Operations

Jacqueline Held
Acting Secretary to the Board

BACKGROUND

On September 6, 2006, by the powers vested in the New York State Liquor Authority under section 17 of the Alcoholic Beverage Control Law (ABC Law), the Members of the Authority imposed a moratorium on all liquor licenses within New York County that were subject to the 500 foot rule and issued pursuant to sections 64-a (6)(a) and 64-d of the ABC Law. The moratorium is in effect from September 7, 2006 through December 31, 2006. During this time period, the SLA will not accept new on-premises license applications for bars and nightclubs issued pursuant to section 64-a of the ABC Law, and will not accept applications for cabarets issued pursuant to section 64-d of that law. Restaurant applications, issued pursuant to section 64 are excluded. State Liquor Authority Chairman Daniel Boyle designated Commissioner Noreen Healey, Esq., to chair a new taskforce, the Taskforce for the Review of On-Premises Licensure. He directed that the taskforce review those sections of the ABC Law related to on-premises licenses, analyze the licensing polices and procedures of the SLA regarding these license applications, and examine that application process. The mission of the taskforce was to make recommendations for a more effective and efficient license application process, including distinguishing the various types of on-premises licenses. Commissioner Healey convened a taskforce of legal experts, elected officials, community leaders, law enforcement officials, and representatives from the industry (see membership list at page 3). The taskforce meetings were held October 17, November 14, and December 5, 2006.

SLA Taskforce Mission and Directed Tasks:

The mission of the State Liquor Authority Taskforce for the Review of On-Premises Licensure is to review the controlling sections of the ABC Law related to on-premises liquor licenses and examine SLA's policies, regulations, and directives related to on-premises establishments. Our goal is to make recommendations to modernize the on-premises license applications, to streamline that application process, to modify or create new policies regarding the issuance or denial of such licenses, and to define the classifications of the various types of on-premises licenses.

DISCUSSION OF THE 200 FOOT RULE[1]

Sections 64, 64-a, 64-b, 64-c, and 64-d provide for the issuance of on-premises liquor, wine, and beer licenses for a number of different types of establishments. Each statute contains a provision that prohibits the issuance of such licenses to any establishment that is on the same street and within 200 feet of a building that is used exclusively as a school, church, synagogue or other place of worship (hereinafter referred to as school/church). This prohibition is commonly referred to as the 200 foot rule. Following is a discussion of the issues raised in applying that rule.

Measurement of distance

The statutes provide that the measurements be taken in straight lines from the center of the nearest entrance of the school/church to the center of the nearest entrance of the proposed establishment. The SLA has interpreted these sections as meaning a straight line from one entrance to the other. The court decisions on the 200 foot rule have not questioned this interpretation. The travel/walking distance between the school/church and the premises is not relevant to the determination.

The measurements are taken using only entrances that are regularly used to give ingress to (a) the students of the school; (b) the general public into the church; and (c) patrons into the establishment. Emergency/fire exits, maintenance access, and doors to gain access to non-public areas are not used in the measurements. If the entrance to the school/church is set back from the sidewalk by a walkway or doorway, the measurement is taken from the center of the line where the walkway/doorway meets the sidewalk.

Exceptions to the rule ("grandfather" clause)

If the 200 foot rule applies to a particular location, the SLA does not have the discretion to grant the application. Even if the school/church consents to the issuance of the license, the SLA cannot approve the applications (*In re Multi Million Miles Corp. v. State Liquor Authority*, 55 A.D.2d 866, *aff'd*, 43 N.Y.2d 774 (1977)). If the SLA discovers that a premises has been licensed in violation of the rule, it cannot allow the violation to continue by renewing the license (*Norton v. O'Connell*, 282 A.D. 744, *app. dismissed*, 306 N.Y. 843 (1954)).

The statutes do, however, provide for certain exceptions to the rule: (1) establishments in operation since December 5, 1933; (2) if the location was licensed before the school/church came into existence, the SLA can renew the license and approve applications to transfer ownership; (3) if a hotel has an existing "RL" [restaurant liquor] license, it may obtain a "HL" [hotel liquor] license; (4) applications for a "CL" [club liquor] license when the club is affiliated with the school/church; (5) a legitimate theater operated by a not-for-profit organization; and (6) the SLA may permit the licensee to

[1] The Discussion of the 200 Foot Rule is the opinion of Counsel to the Authority and was presented at the taskforce meetings by SLA staff. It is not the opinion of the taskforce.

move its establishment (that has an exception) to another location within 200 feet of the school/church, as long as the new location is not closer than the old location.

Corner locations

The statutes refer to the school/church being on the same street as the licensed premises. The buildings do not have to be on the same block. (*Taste Me Concepts v. City of New York*, 307 A.D.2d 237 (1st Dept. 2003)).

With respect to an establishment or school/church on a corner lot, the SLA has interpreted the statutes to mean that a building on the corner of two streets is considered to be on both streets, whether or not there is an entrance to the building on both streets.

For example, consider the following situation: The proposed licensed premises is on the corner of Street A and Street B, with an entrance on Street A. There is a school/place of worship on Street B. If the entrance to the licensed premises is within 200 feet of the entrance of the school/place of worship, the license cannot be issued. The same result would occur if the school/place of worship was on the corner of Streets A and B and the licensed premises on either street. The SLA's interpretation of the law was upheld by the New York State Court of Appeals (*In re Gorman's Rest., Inc. v. O'Connell*, 66 N.Y. 733 (1949)).

Exclusive use as school/church

While the statutes use the phrase "building used exclusively" as a school/church, the courts have adopted a test that looks to whether the building is used primarily as a school/church. The building will still be considered a school/church as long as any use is incidental to, and are not inconsistent with or detracting from the predominant character of the building as a school/church (*In re Fayez Rest., Inc. v. O'Connell*, 66 N.Y.2d 805 (1985)).

In the following situations, the courts or the SLA have determined that the building was still exclusively used as a school/church:

- use of guest quarters by visiting church members, existence of pastor's apartment and periodic overnight lodging of church members (*In re AJ & J Rest. Corp. v. State Liquor Authority*, 205 A.D.2d 530 (2nd Dept. 1994));

- use of fifth floor of church five nights a week (rent-free) by a chapter of Alcoholics Anonymous (*In re Multi Million Miles Corp. v. State Liquor Authority*, 55 A.D.2d 866, *aff'd*, 43 N.Y.2d 774 (1977));

- holding bridal showers and birthday parties (*In re Capizzi v. State Div. of Alcoholic Beverage Control*, 231 A.D.2d 881 (4th Dept. 1996));

- school closed for more than one year for renovations (Declaratory Ruling 90-2683/ 91-0062).

However, in the following situations the courts determined that the building was not being used exclusively for school/church purposes:

- renting church auditorium for baseball card shows, jewelry shows, oriental rug sales, as well as renting another portion of the church as an embassy (*Brasero Rest., Inc. v. State Liquor Authority*, 176 A.D.2d 462 (1st Dept. 1991));

- use of the building on a regular basis for a number of nonreligious activities that the church had no control over, including a commercial theatre group, private teaching program and concerts (*Le Parc Gourmet Inc. v. State Liquor Authority*, 95 A.D.2d 855 (2nd Dept. 1983));

- yearly renting of wing of church to not for profit corporation engaged in rehabilitation programs (*Taft v. State Liquor Authority*, 84 A.D.2d 623 (3rd Dept. 1981));

- operation of a Spanish language school with rented office space, a preschool in the gym, the use of the conference room by an Alcoholics Anonymous chapter and an immigration service. (Declaratory Ruling 95-1305);

- use of the church by a cancer sewing group, wall street catholic young adults group, job forum and international apostolistic organization (Declaratory Ruling 94-0195).

One building or two

In two cases the courts dealt with adjoining structures. The question was whether the non-school/church use of one of the structures meant that the adjoining structure was not being used for school/church purposes. In both cases the courts could not make a determination because there were insufficient facts to determine whether the structures were separate buildings. *Coco's Roller Rink, Inc. v. State Liquor Authority*, 92 A.D.2d 487 (1st Dept. 1983); *111 East 22nd Street Management Corp. v. State Liquor Authority*, 152 Misc.2d 842 (Sup Ct. N.Y. Co. 1991)).

Conclusion

In 200 foot rule cases, the issue that will most often be raised and result in the most litigation, is whether the building is used exclusively as a school/church. As it appears from the cases and declaratory rulings cited above, the determination in each case is fact specific and conflicting decisions have been reached on similar facts. It is the opinion of Counsel, based on those decisions, that, as long as the building is regularly used as a school/church, certain uses, such as the following, of the building will keep it subject to the 200 foot rule:

- meetings/activities of school/church affiliated groups;

- meetings/activities of not for profit groups that are designed to benefit the public; and

- income producing activity by the school/church to benefit the operation of the school/church.

Other uses, in the opinion of Counsel, would be considered inconsistent with the use of a school/church:

- renting/use of space for commercial activities when there is no benefit to the school/church other than the profit from the use of the space; and

- meetings/activities by not-for-profit groups for the purpose of promoting the groups' ideology, politics, etc.

Whatever the issue (measurement, use of school/church, etc) the determination by the SLA must be supported by facts.

DISCUSSION OF THE 500 FOOT RULE[2]

In 1993 the Alcoholic Beverage Control Law was amended to place restrictions on the issuance of certain on-premises liquor licenses. The restrictions, commonly referred to as the "500 foot rule," applies to licenses issued under sections 64, 64-a, 64-c and 64-d of the Alcoholic Beverage Control Law. These statutes all provide for "full" (liquor, wine and beer) liquor licenses. Following is a brief summary of the 500 foot rule.

Establishments subject to the 500 foot rule

Section 64 provides for the on-premises license. A license under section 64 can only be issued to a restaurant, hotel with a restaurant, catering establishment, club, vessel or aircraft. Establishments obtaining a license under this section must have a kitchen, with a chef, serving meals.

Section 64-a provides for the "special" on-premises license. The statute has two categories of establishments that can obtain a "special" on-premises license without meeting the restaurant/kitchen requirement of section 64. Generally speaking, licenses issued under Section 64-a(6)(a) are for bars, taverns, etc, that do not have kitchen facilities and primarily serve alcoholic beverages rather than food. Theaters and other entertainment facilities receive licenses issued under subdivision (6)(b). Establishments obtaining a license under section 64-a are not required to have kitchen facilities, but must regularly keep food (sandwiches, soups, etc.) available for sale to customers.

Section 64-c provides for the "restaurant-brewer" license. In addition to allowing the licensee to brew a limited amount of beer on the premises, the licensee must operate a restaurant at the establishment.

Pursuant to Section 64-d a "cabaret" license is required for any on-premises establishment that: (1) permits musical entertainment, singing, dancing or other forms of entertainment; and (2) has a capacity of 600 or more persons. This section primarily addresses large nightclubs. It should not be confused with the cabaret permit issued by the City of New York, which is required for certain establishments regardless of whether alcoholic beverages are served.

The 500 foot rule

While each of these types of licenses has distinct licensing requirements, they are, as noted above, all subject to the 500 foot rule. This rule, applicable in cities, towns or villages with a population of 20,000 or more, prohibits the issuance of such licenses if there are three or more existing premises with full liquor licenses within 500 feet of the proposed establishment.

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[2] The Discussion of the 500 Foot Rule is the opinion of Counsel to the Authority and was presented at the taskforce meetings by SLA staff. It is not the opinion of the taskforce.

It should be noted that, while reference is made to "the 500 foot rule," each statute [64, 64-a, 64-c and 64-d] actually has its own 500 foot rule. The language of each rule differs with respect to what types of premises are "counted" in determining whether three or more establishments are within 500 feet. Please note that, after reviewing the legislative and chronological history of the statutes, it is the opinion of Counsel to the Authority that there is, in fact, one 500 foot rule which applies to all four sections of the Alcoholic Beverage Control Law. Therefore, under that interpretation, it does not matter which of the four sections an establishment is licensed under to determine whether it is "counted" as one of the three establishments within 500 feet of the applicant's location.

Exceptions to the rule

There are three exceptions to the 500 foot rule. First, locations that have been continuously licensed since November 1, 1993, (the date the 500 foot rule took effect) are exempt. Second, an existing licensee cannot be denied a renewal based on the rule. Finally, and the source of most controversy, the SLA may issue a license for a location subject to the 500 foot rule if it finds that the granting of such license would be in the "public interest".

<u>"Grandfather" clause</u>

The 500 foot rule specifically excludes any licensed establishment that was licensed when the rule went into effect on November 1, 1993. If an application is received for an establishment at a location that has been continuously licensed since that date, it is not subject to the rule. "Continuously" means without interruption. If the location was not licensed for any period of time, it has not been continuously licensed.

To obtain the protection of this exemption, it does not matter what kind of license was issued for the location, or whether it had been licensed to the same person or corporation.

<u>Renewals</u>

A renewal of a license cannot be denied because of the 500 foot rule. In addition, applications to approve corporate changes (new individuals taking over the existing licensed corporation) are not subject to the 500 foot rule since the corporation continues to hold the license.

<u>Public Interest</u>

If the location is subject to the 500 foot rule, and no other exception applies, the license cannot be issued unless the State Liquor Authority makes an affirmative finding that it is in the public interest to issue the license. This clearly creates a presumption that the license should not be issued.

The 500 foot rule requires that the SLA consult with the municipality or community board and conduct a hearing to gather facts to determine whether the public interest

would be served by issuing the license. Section 64(6-a) sets forth the issues that the SLA may consider in making that determination. These include:

- the number and character of other licensed premises in the area;
- the effect on vehicular traffic and parking;
- the impact on the existing noise level; and
- the history of ABC violations and criminal activity at the location.

The hearing required by the 500 foot rule is conducted before an Administrative Law Judge in Zone 1 (New York City) and designated staff in Zones 2 and 3 (Albany and Buffalo). The Members of the Authority have delegated to specific licensing staff the ability to approve applications when, after the hearing is conducted, it appears that there is no community opposition to the issuance of the license. In cases where the application is opposed by the community, the matter is referred to the Members of the Authority for determination.

When such matters are referred to the Members of the Authority, the applicant may come to an agreement with the "community opposition" on stipulations concerning the operation of the establishment. In such cases, the Members of the Authority can incorporate those stipulations into the approved method of operation of the licensed premises. These stipulations essentially become conditions of the license privilege. Failure to comply with those conditions subjects the licensee to disciplinary action.

Despite the presumption against issuing the license, it cannot be disputed that, in the past, the SLA has approved many more applications subject to the 500 foot rule than were disapproved. A series of court decisions has called into question the SLA's decision making process in these matters and the manner in which the SLA explains its reasons for the approval of such applications. However, since Chairman Daniel Boyle's appointment in February 2006, most of the 500 foot rule applications referred to the Members of the Authority with community opposition were disapproved.

DISCUSSION OF ON-PREMISES LICENSES[3]

Introduction

The SLA issues a number of liquor licenses which allow for the retail sale of alcoholic beverages for consumption on the licensed premises. The purpose of this section of the report is to familiarize the reader with those licenses and is not intended to be an in-depth analysis of the various licensing provisions in the Alcoholic Beverage Control Law. Following is a table which includes:

- the statutory authority for the license;
- the symbol used to denote the type of license;
- the kinds of establishments that can obtain the license;
- the alcoholic beverages that can be sold and consumed on the premises; and
- whether the license is subject to either the 200 or 500 foot rules.

Restaurants vs. Taverns

The moratorium recently issued by the Members of the Authority focuses on the distinction between licensed premises such as restaurants, hotels and catering establishments as compared to bars, taverns and nightclubs. In years past, the SLA issued "RL" (Restaurant Liquor) and "TL" (Tavern Liquor) licenses. As a practical matter, a restaurant would apply under section 64 of the Alcoholic Beverage Control law and receive a "RL" license, while a bar/tavern would apply under section 64-a and receive a "TL" license. In recent memory, however, the SLA has approved all such applications as "OP" licenses.

With a few additions not relevant for the task force's purposes, a license under Section 64 can only be issued to a restaurant, hotel with a restaurant, or catering establishment. Establishments obtaining a license under this section must have a kitchen, with a chef, serving meals.

Section 64-a provides for the "special" on-premises license. The statute has two categories of establishments that may obtain a "special" on-premises license without meeting the restaurant/ kitchen requirement of Section 64. Generally, licenses issued under Section 64-a(6)(a) are for bars, taverns, etc, that do not have kitchen facilities and primarily serve alcoholic beverages rather than food. Establishments obtaining a license under Section 64-a are not required to have kitchen facilities, but must regularly keep food (sandwiches, soups, etc.) available for sale to customers.

The statutory definitions of "catering establishment," "hotel," and "restaurant" are provided as follows:

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[3] The Discussion of On-Premises Licenses is the opinion of Counsel to the Authority and was presented at the taskforce meetings by SLA staff. It is not the opinion of the taskforce.

Catering establishment [defined in Alcoholic Beverage Control law section 3(7-a)] means and includes any premises owned or operated by person, firm, association, partnership or corporation who or which regularly and in a bona fide manner furnishes for hire therein one or more ballrooms, reception rooms, dining rooms, banquet halls, dancing halls or similar places of assemblage for a particular function, occasion or event and/or who or which furnishes provisions and service for consumption or use at such function, occasion or event. Such premises must have suitable and adequate facilities and accommodations to provide food and service for not less than fifty persons at any one function, occasion or event and shall in no event be deemed to include any taxi dance hall or any other premises at which public dances are regularly scheduled to be held daily, weekly or monthly and to which the general public is invited.

Hotel [defined in Alcoholic Beverage Control law section 3 (14)] 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 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.

Restaurant [defined in Alcoholic Beverage Control law section 3 (27) shall mean a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods, which may be required for ordinary meals, the kitchen of which must, at all times, be in charge of a chef with the necessary help, and kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. "Meals" shall mean the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a restaurant for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this subdivision contained, however, shall be construed to require that any food be sold or purchased with any beverage.

Licensing terminology

During discussions of on-premises licenses and applications, certain terminology is used by the SLA and those in the industry. For those unfamiliar with the licensing process, there are several phrases that are helpful to know:

Corporate Change: an application to change the corporate principals of an existing licensed corporation.

Removal application: an application by an existing licensee to move his license to a new location.

Temporary permit: a permit issued to an applicant to continue licensed activities at an establishment that is already licensed to another party while the application is pending.

Transfer application: an application by a new person or corporation for a location that is currently licensed.

LICENSES FOR THE RETAIL SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES

TYPE OF LICENSE	ABBREVIATIONS	ESTABLISHMENTS ELIGIBLE FOR LICENSE	KINDS OF BEVERAGES ALLOWED	200 FOOT RULE	500 FOOT RULE
On Premises Liquor [ABC 64]	OP- On Premises RL- Restaurant Liquor HL- Hotel Liquor CL- Club Liquor CT- Catering Hall VL- Vessel Liquor AL- Aircraft Liquor	Hotel with a restaurant; Restaurant; Catering Establishment; Club; Vessel; or Aircraft on regularly scheduled flights; Bed & Breakfast	Liquor Wine Beer	Yes	Yes
Special On Premises Liquor [ABC 64-a]	OP- On Premises TL- Tavern Liquor	Bar/Tavern/Nightclub; Legitimate Theatre; or Adult Entertainment/Recreation facility	Liquor Wine Beer	Yes	Yes
Bottle Club [ABC 64-b]	BL- Bottle Club Liquor	Premises for consumption only, no sales, capacity of at least 20	Liquor Wine Beer	Yes	No
Restaurant-Brewer [ABC 64-c]	MR- Brew Pub	Brewery with a restaurant	Liquor Wine Beer	Yes	Yes

LICENSES FOR THE RETAIL SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES

TYPE OF LICENSE	ABBREVIATIONS	ESTABLISHMENTS ELIGIBLE FOR LICENSE	KINDS OF BEVERAGES ALLOWED	200 FOOT RULE	500 FOOT RULE
On Premises Wine [ABC 81]	RW- Restaurant Wine HW- Hotel Wine	Premises eligible for license under 64; Hotel; or Premises were food is prepared and served & sale of wine is incidental and not prime source of income	Wine Beer	No	No
Cabaret [ABC 64-d]	CR- Cabaret	Required for any premises with a capacity of 600 or more where musical entertainment, singing, dancing or other forms of entertainment is permitted	Liquor Wine Beer	Yes	Yes
Special On Premises Wine [ABC 81-a]	TW- Tavern Wine	Premises eligible for license under 64; Hotel; or Premises where food is prepared and served & sale of wine is incidental and not prime source of income	Wine Beer	No	No
On Premises Beer [ABC 55]	EB- Eating Place Beer	Premises eligible for a license under 64 or 64-a; Hotel; or Premises where food is prepared and served & sale of beer is incidental and not prime source of income	Beer	No	No
On Premises Ball Park [ABC 55-a]	BP- Ball Park	Baseball parks; Race tracks; or Athletic fields	Beer	No	No

RECOMMENDATIONS AND TASKFORCE DISCUSSIONS

Commissioner Healey held three meetings of the taskforce. Thomas Donohue, Esq., Counsel to the Liquor Authority explained the various types of on-premises licenses; new license applications; and amendments to and renewals of existing licenses. He and Chief Executive Officer Joshua B. Toas presented information regarding the 200 foot rule, as well as the 500 foot rule, the exception to the 500 foot rule, and the community board's input on 500 foot rule cases. Senator Frank Padavan, who sponsored the statute with these rules in 1993, explained the legislative intent and gave the members insight into the background of the rules. The taskforce members discussed the SLA's policies and procedures regarding licensure and application of these rules. SLA staff reported to the taskforce that the agency was reviewing the on-premises license application and the application process. Staff advised that it sought to improve the on-premises application and delineate the various types of on-premises licenses. The actual license certificate, which must be displayed at the premises, would identify the type of license that had been approved, including any limitations and/or conditions imposed on that license. The taskforce deliberated and considered these proposed changes. During the meetings, but not within the scope of the mission of the taskforce, enforcement issues consistently arose.

The members of the taskforce had lively discussions resulting in the following recommendations:

1. Require that certain sections of all new on-premises license applications filed with the SLA, also be disclosed to the appropriate community board or the local equivalent of the board. Under existing law, an applicant must give notice to the community board 30 days before filing the license application with the SLA. However, as the proposed business plans develop and ripen during that 30 day period, the information regarding the proposed premises changes. Consequently, the information in the application filed with the SLA differs from the information that the community board has been given. This creates administrative problems for the SLA and fails to provide the community board with sufficient relevant information to render an informed recommendation regarding the application. The single most important information that must be disclosed is the "Method of Operation" portion of the application. Other relevant information, including information regarding the primary financial backers, should be disclosed: personal information should not be disclosed. There was no consensus regarding the timing of disclosure; therefore, discussion must continue on this matter. To accomplish this recommendation, section 64 (2-a) of the Alcoholic Beverage Control Law must be reviewed and the current required statutory notice should be revised;

2. Community boards throughout New York City should use a model questionnaire and a generalized format for letters of support and opposition to applications. The questionnaire form must be sufficiently general as different communities have different concerns. The SLA and community boards should work together to

devise the form and identify the pertinent information for opposition and support letters;

3. Change the notice requirement on renewal applications. Specifically, licensees should be required to post notice of renewal next to the license certificate posted in the establishments for 30 days prior to the completion of the renewal process. Currently, licensees are required to give notice by publication in the local press. The notice requirement divided the group. Some members wanted licensees to post renewal notices outside the establishment, near the front door or in the window. Others opposed. The opposition expressed serious concern that this type of notice invited challenge, that opponents of bars would take action against renewals for long term establishments that have no significant adverse disciplinary history, creating an unfair environment for the license community, and building a barrier against new restaurants and bars in New York State. Any change to the notice requirement would require amendments to existing laws;

4. The statutes governing SLA's authority to deny certain renewal applications must be clarified. Current SLA practice is to issue a letter pursuant to the State Administrative Procedure Act ("SAPA"). While not an outright renewal of the license, this allows the establishment to continue to operate, temporarily, pending the disposition of disciplinary matters. Although this new SLA policy stopped the practice of renewing licenses for problematic premises, it may still allow bad actors to continue to operate, potentially at great public risk. Clarification of the statute would allow the SLA to disapprove a renewal application in cases where there is significant adverse history of adjudicated violations related to public health and safety. However, in some cases, notwithstanding an adverse compliance history, it may still be appropriate to issue a SAPA letter as opposed to deny a renewal while current charges are pending. This proposal was opposed by a minority of the taskforce. This recommendation would require amendments to the ABC Law and SAPA;

5. The SLA should grant renewal applications on a probationary basis in cases where the licensee has an adverse compliance history. While many licensees with adverse history are quick to respond and cure their improper practices to ensure compliance with the law, others fail to do so. Creating a probationary period for certain licensees with adverse history provide violators with the opportunity to demonstrate to the SLA they have modified their practices and are in compliance with the law. Alternatively, those licensees that fail to change and continue to violate the law can immediately lose their licensing privilege. This recommendation would require amendments to the ABC Law and SAPA;

6. Financial background checks on the licensees should be more detailed. This recommendation would require the hiring of forensic accountants;

7. The SLA should be given access to criminal records and criminal history databases in order to check the backgrounds of applicants and licensees. Current

law generally prohibits felons from working in licensed establishments and provides a character and fitness requirement for applicants. Even though a felony conviction prohibits employment, there is no law which allows the SLA to request criminal histories of employees and managers. There was general consensus among the taskforce that the SLA should have the ability to conduct criminal history checks for applicants, licensees, managers and security staff. However, there was no consensus as to whether the SLA should have the ability to conduct these types of inquiries for other employees. The SLA does not have the ability to access criminal histories for employees and limited access to information regarding applicants. This recommendation would require amendments to several statutes and would require information technology upgrades at the SLA. The taskforce agreed that SLA should have access to criminal records and criminal history databases;

8. The license application filed with the SLA and the ensuing license certificate issued by the SLA on that application should match the specified sections of the ABC Law. The certificates should identify the specific type of license approved. All existing on-premises license certificates state only that the license is "on-premises." The recommendation is to change the license certificate to identify the specific type of on-premises license such as "restaurant," "tavern," or "wine-bar." The applicable section of the ABC Law under which the license was issued shall also be stated on the certificate. In addition, licensees must be held to the terms and conditions of the approved licenses, and the operation must be consistent with the method approved in the application. The SLA should explore means wherein approved terms and conditions of the licenses can be made easily available to community boards. The SLA must amend its application to be consistent with the ability to properly classify establishments. A new license should be developed to address mixed use issues. For example, a restaurant that operates as a nightclub after dinner hours would identify both. The SLA can accomplish much of this proposal without any statutory amendment and has begun the work necessary to implement major changes in the near future. Staff is currently working on modifications to the existing on-premises application, including requirements for a more detailed method of operation to identify items such as the security plan, number of bars, type of entertainment, etc.;

9. The SLA must be given additional resources for enforcement, licensing, and technology, including technology to improve public access to information. Additional staff would permit the SLA to more efficiently carry out the overarching licensing mission of the Agency. The licensing review process is an important function which ensures that a proposed licensee meets all of the statutory pre-requisites to licensure and includes a review of personal/corporate finances and the criminal history of all applicants. Moreover, a review of the type of proposed license is conducted which would include site visits, legal review, code compliance/zoning verification, and detailed reviews specific to the type of license sought. Additional staff would enable a more through review of pending applications. Due diligence in regard to licensing will result in less problem

premises down the road. To achieve that due diligence additional resources are recommended; and

10. The SLA should continue this taskforce or form another taskforce to explore whether changes are needed in two areas: (a) licensing restrictions, including further examination of the 200 and 500 foot rules and (b) enforcement issues. Sub-committees and study groups should be part of the taskforce. Some members supported further discussion to investigate the creation of a computer network where state and local agencies can share data to provide a one-stop shop for information gathering in order to enhance licensing and enforcement initiatives.

CONCLUSION

During the last three months the taskforce and staff of the SLA have worked diligently in their collective review of the Alcoholic Beverage Control law and SLA policies regarding on-premises licensure. The taskforce presented a forum for interested parties to meet and openly discuss the law; SLA polices, and related concerns. Equally as important, it was an avenue of communication between disparate groups. The ten recommendations presented to you are the result of extensive discussion and debate. Implementation of these recommendations will result in a more orderly licensing process fair to legitimate businesses and the communities where they operate. The taskforce pledges to support the statutory and regulatory changes needed to implement these recommendations. The members of this taskforce look forward to continuing this dialogue in a less formal manner to foster the communication that has evolved.