

INCORPORATED VILLAGE OF OCEAN BEACH

FIRE ISLAND, NEW YORK

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PLANNING BOARD MEETING

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July 1, 2023  
11:21 a.m.  
Boat House  
Ocean Beach,  
New York

-----x

A P P E A R A N C E S:

JOSEPH SPERANZA, CHAIRMAN

JOEL SILVERBERG, MEMBER

JUDITH STEINMAN, MEMBER, via Zoom

CRAIG SHERMAN, ALTERNATE MEMBER

DAVID SILVER, ALTERNATE MEMBER

CONSTANTINE KARALIS, ALTERNATE MEMBER, via Zoom

KENNETH GRAY, ESQ., VILLAGE ATTORNEY

D. Leigh Chapman  
Court Reporter

## A P P E A R A N C E S:

James Betz  
Andrew Becker  
Maguire's Bayfront Restaurant  
1-5 Bungalow Walk  
Ocean Beach, New York 11770

## E X H I B I T S

State Liquor Authority Handbook for Retail Licensees

See Attachment

## SPA #310

1 CHAIRMAN SPERANZA: So I'm going to call the  
2 meeting to order, Planning Board, Saturday,  
3 July 1, 2023. The time is 11:21 a.m., and we had  
4 two items on the agenda today, Special Permit  
5 Application Number 310: Palms Ocean Beach --

6 MR. GRAY: You want to take attendance  
7 first?

8 CHAIRMAN SPERANZA: Yeah, I will after this.

9 MR. GRAY: Okay.

10 CHAIRMAN SPERANZA: -- LLC, Palms Hotel  
11 Ocean Beach, 932-934 Bay Walk, Ocean Beach, New  
12 York. Special use permit for change of  
13 ownership/site plan review at 932-934 Bay Walk,  
14 Ocean Beach, New York, §164-32 uses permitted by  
15 special permit, §164-36 site plan review.

16 The applicant has asked for an adjournment  
17 because he, they, I should say, need more time  
18 to prepare their documentation for the Planning  
19 Board to review. So I'm going to make a motion  
20 to adjourn the hearing on Special Permit  
21 Application Number 310 until a date to be  
22 determined.

23 Do I have a second?

24 ALTERNATE MEMBER RAGUSA: Second.

25 CHAIRMAN SPERANZA: Gina Ragusa seconds.

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1 All in favor?

2 ALL MEMEBRS: Aye.

3 CHAIRMAN SPERANZA: Okay.

4 The second item on the agenda is Special  
5 Permit Application Number 314: Maguire's, 1-5  
6 Bungalow Walk, Ocean Beach, New York, to  
7 consider special use permit change of  
8 ownership/site plan review of 1-5 Bungalow Walk,  
9 Ocean Beach, New York, §164-36 site plan review.  
10 All interested persons are welcome to attend.

11 Okay. Want to take a role call? Ken, take  
12 a role call, please?

13 MR. GRAY: David Silver?

14 ALTERNATE MEMBER SILVER: Here.

15 MR. GRAY: Joe Speranza?

16 CHAIRMAN SPERANZA: Here.

17 MR. GRAY: Joel Silverberg?

18 MEMBER SILVERBERG: Here.

19 MR. GRAY: Gina Ragusa?

20 ALTERNATE MEMBER RAGUSA: Here.

21 MR. GRAY: And David Lieber. Couldn't  
22 recognize you with the mask, sorry.

23 ALTERNATE MEMBER LIEBER: Here.

24 MR. GRAY: Thank you.

25 CHAIRMAN SPERANZA: Okay. And also

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1 Constantine Karalis is here by Zoom. He just  
2 said "here" and Judy Steinman? Judy, are you  
3 there?

4 (No verbal response given.)

5 Not hearing you, Judy.

6 MR. ARMENT: She's muted.

7 CHAIRMAN SPERANZA: She's muted. Okay.  
8 Judy, can you unmute and say "here"?

9 (No verbal response given.)

10 I guess not, but you can see that she's  
11 logged in?

12 MR. ARMENT: Yes.

13 CHAIRMAN SPERANZA: Okay. Let the record  
14 show that Judy Steinman is logged in and  
15 considered here.

16 Now I'm going to now appoint --

17 MEMBER STEINMAN: I'm here. Can you hear me  
18 now?

19 CHAIRMAN SPERANZA: Yes. Thank you, Judy.

20 MEMBER STEINMAN: Thank you, Joe.

21 BUILDING INSPECTOR MANDARINO: I'm here.

22 CHAIRMAN SPERANZA: Oh, Mike Mandarino is  
23 also here, so that's the end of the role call.

24 I'm now going to appoint several alternates  
25 to vote in addition to the present regular

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1 members. Those being Constantine Karalis and  
2 Craig Sherman. They are alternates, but they  
3 will vote as regular members today.

4 The applicant I can see sitting there.  
5 Mr. Betz, you're here. Would you like to make  
6 your presentation, please?

7 MR. BETZ: Sure.

8 MR. GRAY: Mr. Betz, may I ask, we did  
9 receive a letter from a Matthew Leone, an  
10 attorney. Is he representing the corporation  
11 today, or is he not participating?

12 MR. BETZ: He is representing the  
13 corporation today. I asked Marco here if this is  
14 being recorded and he said yes and Matthew is  
15 going to ask for a transcript of the meeting.

16 MR. GRAY: Okay. Fair enough, but he's not  
17 here and he's not --

18 MR. BETZ: He's not in the building today.

19 MR. GRAY: Okay. I just wanted to make  
20 sure. Thank you.

21 CHAIRMAN SPERANZA: You mentioned a letter.

22 MR. GRAY: I did.

23 CHAIRMAN SPERANZA: Okay. You didn't say  
24 what it said.

25 MR. GRAY: I didn't. You want me to?

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1 CHAIRMAN SPERANZA: Yes.

2 MR. GRAY: Okay. The Chairman of the  
3 Planning Board is in receipt of a letter from  
4 Matthew Leone, attorney-at-law, dated June 28,  
5 2023. And I'll just read it. This is concerning  
6 this special permit application.

7 "Dear Chairman Speranza:

8 I am writing on behalf of Beck Epstein  
9 (phonetic) d/b/a Maguire's Bayfront Restaurant  
10 in connection with meeting scheduled for July 1,  
11 2023, during which the Planning Board will  
12 consider my clients' application for a special  
13 use permit to allow chairs and tables in two  
14 outdoor sections adjacent to the restaurant on  
15 Bungalow Walk. In anticipation of the meeting,  
16 my clients, James Betz and Andrew Becker are  
17 requesting that you recuse yourself from hearing  
18 this application. My clients are concerned that  
19 a conflict of interest may exist due to the  
20 proximity in which you live to the restaurant  
21 and the involvement in prior litigation with the  
22 restaurant.

23 Thank you for considering this request.

24 Very truly yours,

25 Signed Matthew Leone"



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1           CHAIRMAN SPERANZA: Okay. Notwithstanding  
2 the fact that I don't feel that I have a conflict  
3 with the application as stated in Mr. Leone's  
4 letter, I am going to recuse myself from this  
5 hearing today, and in my stead I am appointing  
6 Craig Sherman to chair the balance of the  
7 meeting. So, Craig, please come up and take my  
8 seat.

9           MR. GRAY: Mr. Sherman is an alternate  
10 member of the Board and you are appointing him to  
11 be a voting member today and act as acting chair;  
12 is that correct?

13           CHAIRMAN SPERANZA: That's correct.

14           Let the record show that I have vacated the  
15 dais, and I'm headed to the audience.

16           MR. GRAY: So can we have a confirmation as  
17 to who the voting members will be today? Because  
18 I know we have --

19           ALTERNATE MEMBER RAGUSA: Yeah, could you  
20 confirm, please?

21           MR. GRAY: So we have Craig Sherman, David  
22 Silver, Joel Silverberg.

23           MEMBER SILVERBERG: Here.

24           MR. GRAY: Is that who will be voting?  
25 Because we also have Judy Steinman on the call, I

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1 believe, and Constantine Karalis. So who will be  
2 the five voting members is what I'm trying to  
3 confirm.

4 CHAIRMAN SHERMAN: The five that are  
5 present.

6 MR. GRAY: The five that are present?

7 CHAIRMAN SHERMAN: Yeah. That makes it  
8 easier.

9 MR. GRAY: Okay. Thank you.

10 ALTERNATE MEMBER RAGUSA: So did you confirm  
11 that everyone on the dais is voting?

12 CHAIRMAN SHERMAN: Correct.

13 ALTERNATE MEMBER RAGUSA: Thank you.

14 CHAIRMAN SHERMAN: Are we okay to hear them?

15 MR. GRAY: Yes. So now we have the vote.  
16 Craig Sherman will be the acting chair of today's  
17 meeting and be a voting member. David Silver  
18 will be a voting member. Joel Silverberg, Gina  
19 Ragusa, and David Lieber, those are the five  
20 members who are present. So you can go forward  
21 with the presentation.

22 CHAIRMAN SHERMAN: Correct.

23 MEMBER STEINMAN: I am present. I am a  
24 member, not an alternate member.

25 ALTERNATE MEMBER RAGUSA: I'll step down.

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1           CLERK ADRION: Constantine is on too. He's  
2 also --

3           CHAIRMAN SPERANZA: If I could, before I  
4 officially recuse, the voting members are Craig,  
5 Joel, Constantine, and Judy.

6           MR. BETZ: Do I get to choose which members?

7           MR. GRAY: No, no. Judy makes a good point  
8 and, Judy, I do apologize. So the standing  
9 members of Constantine Karalis and Judy Steinman  
10 will be voting members and then we have Joel  
11 Silverberg, David Silver, and then Alternate  
12 Member Craig Sherman will be chairing the meeting  
13 so those are the five. Thank you, Judy, I  
14 apologize.

15           MEMBER STEINMAN: Okay.

16           CHAIRMAN SHERMAN: Whenever you're ready,  
17 proceed with your presentation.

18           MR. BETZ: So everybody knows where this is.  
19 Everybody's been walking around town, so it's no  
20 secret where it is or what existed during the  
21 COVID time, 2020, 2021, and part of 2022. It was  
22 taken away last year. We took the tables away.

23           Over the course of the last winter, I hired  
24 a liquor attorney. We got the space legal  
25 according to the New York State Liquor

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1 Authority. We're talking about five tables  
2 here, three dining tables, two tables with  
3 Adirondack chairs around them, four Adirondack  
4 chairs each.

5 Put them up this spring thinking I had the  
6 legal authority to do so. I was told to take  
7 them away by the Village of Ocean Beach. We  
8 complied, and now I am before the Planning Board  
9 to present my case why they should be able to  
10 stay.

11 First off, they're within my property line.

12 Second off, they are within the setbacks of  
13 said property line. In fact, my tables are  
14 probably further away from the street than the  
15 mayor's tables are on his deck when it comes  
16 right down to it.

17 Third off, it's not changing the physical  
18 structure of the building in any way. It's  
19 already built. It's already there. Everybody  
20 knows what it looks like, and we've gotten a lot  
21 of positive feedback about it.

22 The tables are wonderful for us because I  
23 don't know if everybody has seen it or not, but  
24 everybody thinks they can take their dog to  
25 dinner and to lunch, okay? Everybody. New York

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1 State made this, New York City made this legal,  
2 so now, all the people coming out, I got Great  
3 Danes coming on my deck, okay? Sure I could  
4 refuse the business. Do I want to? No, I'm a  
5 summertime business. I'm only open two months a  
6 year when it really comes down to it, July and  
7 August. That's it. That's the time to make the  
8 money, Okay? So by saying no to these people,  
9 I'm saying no to my business, and I'm not  
10 willing to do that. Does it cause a safety  
11 hazard with dogs on my deck? Yeah. Does it  
12 cause people being disgusted because they're  
13 sitting next to a dog? Probably so.

14 The other reason it's nice to have those  
15 tables is families with children love those  
16 tables. It's right next to the children's  
17 playground, as we all know. I don't know how  
18 many mothers and fathers say, "Where are those  
19 tables out there? We love those tables."

20 Again, revenue source, people like the  
21 tables. They have not, I checked with the  
22 Village of Ocean Beach and the police chief,  
23 there has not been one complaint about the  
24 tables in all the time we've had them. Not one.  
25 Not one. And the Village of Ocean Beach,

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1 they're saying -- I heard this is the reason --  
2 it's going to set a precedent. Let's talk about  
3 the precedent, okay?

4 There's an establishment right to my right,  
5 to your left, Chairman, people, with tables  
6 right up to their property line that did not  
7 take away any COVID seating at all. They also  
8 have tables going all the way out on the dock.  
9 Now, again, it's his property, okay? And he's  
10 apparently allowed to do whatever he wants with  
11 his property, but Maguire's Bayfront Restaurant  
12 has to do something different. Let's talk more  
13 about precedent.

14 Housers, behind Housers, 20 years ago,  
15 there was nothing back there. Housers Hideaway  
16 has built a huge deck back for dining and  
17 Housers bar has the whole outside space, which  
18 they never used before 20 years ago. Now that  
19 whole thing is a big, open drinking  
20 establishment back behind Housers. And you know  
21 what? Terrific. I'm happy for these  
22 establishments. I really am. I think that's  
23 what Ocean Beach, the commercial district, okay?  
24 Summertime, you want to be outside, okay? This  
25 view right here is beautiful, right? But we're

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1 in AC right now. I don't have AC in my  
2 building.

3 The tables outside will create another  
4 space for people to be outside where they want  
5 to be. Am I increasing my seating capacity?  
6 No. The people who are going to sit out there,  
7 are just going to -- people don't want to sit  
8 inside at Maguire's. We have the most beautiful  
9 inside dining room on the beach, in my opinion,  
10 but people don't want to sit there. They want  
11 to sit outside. By having these tables, it  
12 gives them another opportunity to sit down  
13 outside.

14 Let's go back to precedent. Bocce Beach,  
15 the whole configuration of that building  
16 changed. There was four block apartments in  
17 front of Bocce Beach on Bay Walk. Okay? Those  
18 are gone now and now that whole restaurant is  
19 restaurant and deck where the four blocks were.  
20 So the precedent has been set there. The  
21 precedent has been set at Housers. The  
22 precedent, I don't know if that's even legal up  
23 there, but maybe he doesn't care about  
24 precedent. Okay?

25 Let's talk about Maguire's. Took me seven

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1 years to build, everybody knows, my little deck  
2 off of the bar area right there. Seven years  
3 before this Planning Board and the Village of  
4 Ocean Beach to build that deck. Seven years it  
5 took me to do that. And why? Because I got  
6 blockaded by this Planning Board and the Village  
7 trustees who couldn't vote on it and has there  
8 been one complaint about that deck? No. Was  
9 the precedent set then? Again, yes. So if  
10 we're talking about precedent, precedent should  
11 be by a case by case basis, which it has been  
12 through the years with this Village. It's  
13 already been set. The precedent has already  
14 been set, so to talk about precedent is a  
15 ridiculous, ridiculous argument. Okay?

16 Just want that to sink in.

17 Already have the permit for the SLA. Two  
18 areas are in the property within the  
19 (inaudible). Everybody has seen the  
20 configuration of the tables already. It's not  
21 going to change. Okay?

22 Uh, I think that's all of my presentation.  
23 Thank you for listening.

24 CHAIRMAN SHERMAN: Thanks, Jim.

25 As much as we can all appreciate that





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1 Plan of Fire Island National Seashore and the  
2 objectives of the Village of Ocean Beach,  
3 buildings or land hereafter may not be altered,  
4 changed, expanded, converted, constructed, or  
5 used for any of the following purposes."

6 Subsection E says, "Restaurants and eating  
7 and/or drinking establishments, whether counter  
8 service, carry-out, or fast food or other  
9 businesses designed to serve food and/or drink  
10 inside of the structure, outside, or both inside  
11 and outside the structure and whether or not  
12 serving alcoholic beverages for on-premises  
13 consumption."

14 So may I point something else out also?

15 CHAIRMAN SHERMAN: Please.

16 MR. GRAY: So I'm going to have this marked  
17 into evidence, I guess, as part of the record.  
18 There's a State Liquor Authority Handbook for  
19 Retail Licenses and this is distributed by the  
20 Commission of Alcohol and Beverage Control and  
21 the State Liquor Authority. It's dated May,  
22 2022. It's a -- looks like a 23-page handbook.  
23 I just want to point this out. It has a section  
24 called Local Regulations.

25 "If you are an on-premises licensee, the

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1 State Liquor Authority expects you to comply  
2 with all local and state laws and regulations  
3 governing the operation of your business. This  
4 includes health, fire, and building codes. If  
5 you are in violation of state or local law or  
6 regulation, you could face disciplinary action  
7 by the State Liquor Authority as well as an  
8 agency that enforces that particular provision."

9 So I want to make that part of the record.  
10 I'm sure Mr. Leone has advised you of this  
11 authorization.

12 I want to say one more thing.

13 I do recognize that when you file your plan  
14 with the State Liquor Authority, you're allowed  
15 to serve alcohol within the plan that's on file  
16 and approved by the State Liquor Authority. My  
17 understanding is, based on the documents  
18 forwarded to me, that you did make an  
19 appropriate application with the State Liquor  
20 Authority to expand that to include this  
21 particular area and that was approved by the  
22 State Liquor Authority. Nobody is disputing  
23 that. The issue is whether or not you are  
24 currently, or your application will comply with  
25 the Village Code. So although the State has

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1 approved the plan, it's not in compliance with  
2 the local zoning regulation is, I believe, what  
3 Craig has been saying.

4 CHAIRMAN SHERMAN: Exactly.

5 MR. GRAY: With that said, I have nothing  
6 further.

7 CHAIRMAN SHERMAN: I think that we should  
8 just take a vote to reject the special permit  
9 application.

10 MR. ARMENT: Before you do that, are you  
11 taking any public comments on this?

12 CHAIRMAN SHERMAN: Absolutely.

13 MR. ARMENT: Hi, Marco Arment. To whatever  
14 degree possible, I'm speaking as a private  
15 citizen and not as a trustee of this Village at  
16 this moment. Whatever that's worth.

17 MS. STEINMAN: Who's speaking?

18 MR. ARMENT: Marco Arment. Hi, Judy.

19 MEMBER STEINMAN: Hi there.

20 MR. ARMENT: As a citizen of this Village, I  
21 think we need to encourage businesses and help  
22 them thrive that are being good citizens of the  
23 Village. If you impose restrictions on  
24 businesses that make it harder for them to make  
25 money, which is already difficult out here, what

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1       you're gonna have more of is the most profitable  
2       businesses in town, which tend to be high volume  
3       drinking establishments. Those tend to cause  
4       issues that residents don't want, and, so if you  
5       make it difficult for good citizens of the  
6       Village to offer an elevated experience, like  
7       what Maguire's offers, we're going to have a hard  
8       time retaining those businesses and we'll have an  
9       easier time retaining those that we don't want.

10               The tables there in question for here are  
11       not a theoretical. We know exactly what  
12       happened when these tables were there because  
13       they were there for a year and a half or two  
14       years, whatever it was and they were great. As  
15       both a resident of the Village and as a customer  
16       of many of the businesses in town, I loved those  
17       tables. As somebody who has sat there with my  
18       kid on the playground and wanted more tables  
19       that could see the playground. There's huge  
20       demand for that, and it's all seemingly  
21       additive. There seems to be no downside to this  
22       demand.

23               So for the particular applicant in  
24       question, I see no reason why we should have any  
25       problem with this.

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1           Now, as long as it's in their setbacks and  
2           as long as they're following rules everyone else  
3           is allowed to do with their property, and, to my  
4           understanding, that's what the applicant said  
5           that's what they're doing. This seems like a  
6           clear win for everyone for the Village.

7           Now, regarding the particular Seashore law  
8           that you're citing here, that's up to you  
9           whether that applies. I'm not an expert on that  
10          law; you are. But I would consider that my  
11          understanding of how it was read is that the  
12          expansion of buildings and land for the cited  
13          purposes is not permitted. I would question  
14          whether adding tables to a part of land that was  
15          already land for this but it's not expanding the  
16          land area of the plot and it's not expanding the  
17          structure, so I would question whether that  
18          might apply.

19          Anyway, that concludes any comment. Thank  
20          you.

21          CHAIRMAN SHERMAN: Thank you.

22          ALTERNATE MEMBER SILVER: Craig?

23          CHAIRMAN SHERMAN: Go ahead.

24          ALTERNATE MEMBER SILVER: I'm bothered by  
25          the statement about the precedents. It seems --

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1 MS. STEINMAN: Who is speaking?

2 ALTERNATE MEMBER SILVER: David Silver.

3 MEMBER STEINMAN: Hey, David.

4 ALTERNATE MEMBER SILVER: Are you talking to  
5 me?

6 MEMBER STEINMAN: Yeah, I just said hi.

7 ALTERNATE MEMBER SILVER: Oh, hi.

8 I heard the statements about the precedents  
9 that have been set. I have been here to watch  
10 them going up, especially the Housers and the  
11 back deck. All of the things that were brought  
12 up that shouldn't have been done. Other  
13 restaurants doing things that shouldn't be done.  
14 Precedents have been set already in that regard.  
15 The law has been in affect. I'm not a legal  
16 mind, so I don't know how strong that law is,  
17 but it was set when the other things were being  
18 done as well. So I don't know if we are in a  
19 position to say, oh, you can do it and you  
20 can't. Don't worry about the past and that it's  
21 been done. So my point is there is something to  
22 look at when you talk about precedents being  
23 set.

24 CHAIRMAN SHERMAN: Agreed. So just to make  
25 a point to this. I don't think that there are

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1 many people who disagree with your description or  
2 Marco's description of how pleasant that is to  
3 have out there. That's not what this Board is  
4 charged with. What the Board is charged with is  
5 that you came to request a special permit, and we  
6 have to apply the law to that special permit.  
7 Now if any of the other establishments that have  
8 nonconforming issues that you call precedents, if  
9 they came forward and asked for a special permit,  
10 we'd have to deny that as well. The fact that  
11 you guys are doing it all the right way presents  
12 us with the issue of, we have to apply the law to  
13 that.

14 To Marco's statement, and I'm going to talk  
15 to Marco as a trustee. We're just a  
16 recommending body. We are going to recommend to  
17 the Board of Trustees that they hear this  
18 application for special permit, and we're going  
19 to advise our rejection of that application. It  
20 is then up to the Board of Trustees to apply the  
21 law as they see it and make a determination as  
22 to whether they want to take our recommendation  
23 or not.

24 MR. BETZ: Yes, I'm aware that this is a  
25 recommending body only. I get to go before the



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1 trustees. I believe the next trustee meeting is  
2 July 15th, and I'd like to be put on the agenda  
3 for July 15th. This is a time sensitive matter,  
4 obviously. I would like to be put on the docket  
5 for July 15th.

6 MR. GRAY: That will be done.

7 MR. BETZ: And I'd like the trustees to take  
8 a vote on this, and, hopefully, they'll not see  
9 it in black and write like the Planning Board is  
10 doing today but in a practical, fair manner.

11 MEMBER STEINMAN: Do we not get to vote on  
12 this, Craig?

13 MR. GRAY: We're gonna vote on it in a  
14 minute, or you're gonna vote on it. I have one  
15 question. Mike Mandarino, are you on the line?

16 (No verbal response given.)

17 MEMBER STEINMAN: Unmute Mike. He's muted.

18 BUILDING INSPECTOR MANDARINO: I'm up. I'm  
19 up.

20 MR. GRAY: Hi, Mike. Mike Mandarino,  
21 Building Inspection, Village of Ocean Beach. How  
22 are you?

23 BUILDING INSPECTOR MANDARINO: Fine, thank  
24 you. Good morning.

25 MR. GRAY: Good. I have a question. You've

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1           been to the area and saw the tables and chairs in  
2           question, correct?

3           BUILDING INSPECTOR MANDARINO:   Correct.

4           MR. GRAY:   Do you know, sitting here today,  
5           whether or not they are in the setback, or are  
6           they outside of the setback of the property?

7           BUILDING INSPECTOR MANDARINO:   In the  
8           commercial district, there are no measured  
9           setbacks.  The language in the code is  
10          "consistency and harmony."  They are within the  
11          property of Maguire's, and just to make another  
12          note that Jim points out that there was no change  
13          in the structure.  The only change was that it  
14          was converted from a planting area to a graveled  
15          area for the tables.  But as far as numbers, as  
16          in the residential area where eight feet is  
17          required setback and what have you, there is no  
18          specific number in the commercial district.  Once  
19          again, they use the term "consistency and  
20          harmony."

21          MR. GRAY:   Fair enough.  Just to round out  
22          the record, my next question is, the tables and  
23          chairs that are in question, are they considered  
24          structures under the Village Code?

25          MEMBER STEINMAN:   No.

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1           MR. GRAY: I'm asking the Building  
2 Inspector.

3           BUILDING INSPECTOR MANDARINO: No. I -- no,  
4 they're not considered structures. They are  
5 tables and chairs.

6           The only other point I would want to make  
7 that might be relevant to this hearing is that,  
8 to my knowledge, the only other COVID tables at  
9 issue right now are the ones described by  
10 Mr. Betz and that owner has been given notice --

11          MR. GRAY: Michael, I don't want to get into  
12 to that. This hearing is about Maguire's and  
13 Mr. Betz's application.

14          BUILDING INSPECTOR MANDARINO: Okay.

15          MR. GRAY: Thank you.

16          BUILDING INSPECTOR MANDARINO: You're  
17 welcome.

18          MR. BETZ: And Maguire's is all about  
19 harmony.

20          CHAIRMAN SHERMAN: Does anybody have  
21 anything else to add from the public?

22          ALTERNATE MEMBER KARALIS: This is  
23 Constantine Karalis. I would like to raise a  
24 couple of points.

25          CHAIRMAN SHERMAN: Go ahead, Constantine.

SPA #314

1           ALTERNATE MEMBER KARALIS: As supporting  
2 evidence to the application, I noticed there were  
3 plans and documents referring to the (inaudible).

4           And I see 12 documents. The first ten deal with  
5 the (inaudible). I saw the plans which were  
6 (inaudible) very, very quickly.

7           As best as I can tell, there were three  
8 restaurants that were not to serve on the  
9 Village Green. The fourth one didn't mention a  
10 plan at all. There were several more that did  
11 have access to provide tables within the  
12 property and I see here a (inaudible) of those.  
13 There are two more that it was very unclear what  
14 they were about. So I mention this as a  
15 background, one could say, having any judgment  
16 over the procedure that actually applies here  
17 but actually clarify a little bit more what is  
18 the background.

19           On the plan that we see submitted, I notice  
20 that there's no direct access to those tables  
21 from the restaurant itself. It appears that in  
22 order to service those tables, people have to,  
23 food operators have to go on Bungalow and then  
24 going up to them. I wanted to see if that was  
25 correct. Could you answer that question if you

SPA #314

1 would?

2 MR. BETZ: That is not correct. We can  
3 service the tables through the restaurant. They  
4 do not have to go through Bungalow Walk.

5 MR. GRAY: Right. There's a ramp that goes  
6 from Bungalow up to a gated area on the deck, so  
7 the service people, and, correct me if I'm wrong,  
8 they can use that gated area to come down the  
9 ramp, which is on Maguire's property to service  
10 those two areas.

11 ALTERNATE MEMBER KARALIS: But then that is  
12 on the Walk.

13 CHAIRMAN SHERMAN: Constantine, just in  
14 response, regardless to the access, the egress,  
15 or the ability to serve, the change from the  
16 permitted use, which was a planting area into a  
17 dining area, unfortunately, is still not  
18 permitted based on 164-33. So I think we, if no  
19 one else has anything to add from the Board or  
20 from the public, that we should go ahead and --

21 MEMBER SILVERBERG: Can I ask a question,  
22 please?

23 CHAIRMAN SHERMAN: Of course you can.

24 MEMBER SILVERBERG: Does this change the  
25 seating capacity of the restaurant?

SPA #314

1 MR. BETZ: No, not at all.

2 MEMBER SILVERBERG: Let me finish. Was it  
3 limited by the Liquor Authority? The number of  
4 tables and chairs?

5 MR. GRAY: Liquor Authority doesn't  
6 determine the occupancy. That's done by the fire  
7 marshal.

8 MEMBER SILVERBERG: Okay. Has the fire  
9 marshal thought about the occupancy here? Is it  
10 still going to be limited to what it was before?

11 MR. GRAY: I would suspect that since the  
12 plan filed with the State Liquor Authority was  
13 increased by square footage, it might, and this  
14 is a fire marshal question, it might increase the  
15 allowable capacity for fire purposes. I don't  
16 know if Mr. Bets wants to speak to that.

17 MR. BETZ: That's a fire marshal's  
18 determination, I would guess, and if there's a  
19 fire out on those tables, I think you could get  
20 out.

21 MEMBER SILVERBERG: That's not the question.

22 MR. BETZ: I understand that.

23 MEMBER SILVERBERG: The question is, does  
24 the occupancy change? Does that have any  
25 significance?

SPA #314

1           MR. BETZ: You know what? There could be  
2 less occupancy inside and increase it on the  
3 outside or whatever.

4           MEMBER SILVERBERG: Well, that's what I'm  
5 talking about. I would say that for me, thinking  
6 about it, that if it does change occupancy, which  
7 I believe it does, that if you just gave up the  
8 ten seats inside and transferred them to the  
9 outside, I think that's what we're talking about,  
10 correct?

11          MR. BETZ: I mean, I've given up a number of  
12 seats. When we reconfigured the establishment,  
13 we added another ladies room, handicap accessible  
14 stall with our last construction project. We put  
15 in that host stand. You know, both of those  
16 things we had extra tables in both areas.

17          MEMBER SILVERBERG: I don't see anything in  
18 the application that says anything about  
19 occupancy.

20          CHAIRMAN SHERMAN: So based upon the  
21 diagrams in the permit application, existing has  
22 28 tables with 144 seats. In the application,  
23 there's an addition of six tables and additional  
24 24 seats. So this would be in addition to the  
25 existing. It would be adding 24 seats.

SPA #314

1           MR. GRAY:  So, Mr. Chairman, what I'm  
2           hearing you say is that you would like to make a  
3           motion to make a recommendation to deny the  
4           special permit application based upon Village  
5           Code Section 164-33 E, as in elephant; is that  
6           correct?

7           CHAIRMAN SHERMAN:  That's correct.

8           MR. GRAY:  Do I have a second?

9           MEMBER SILVERBERG:  Second.

10          MR. GRAY:  Okay.  Take a vote.

11          Constantine Karalis, how do you vote?

12          (No verbal response given.)

13          MEMBER STEINMAN:  You're muted, Constantine.

14          ALTERNATE MEMBER KARALIS:  No.

15          MR. GRAY:  You vote no?

16          ALTERNATE MEMBER KARALIS:  Let me take that  
17          back.  Please clarify what no means in this  
18          interpretation.

19          CHAIRMAN SHERMAN:  I'm sorry, Constantine.  
20          Can you repeat that?

21          MR. ARMENT:  He asked to please clarify what  
22          no means in this situation.

23          MR. GRAY:  So there was a motion to make a  
24          recommendation to deny the special permit  
25          application based on the Village Code Section



SPA #314

1 164-33 E. What that means is the motion is to  
2 not allow the extra tables and chairs. So if you  
3 vote yes, that means you're in favor of denying  
4 the application. If you vote no, that means you  
5 are in favor of the chairs and tables.

6 ALTERNATE MEMBER KARALIS: I vote yes.

7 MR. GRAY: You vote yes. Okay. So we have  
8 a motion, a second, Constantine votes yes.  
9 You're in favor of the motion to deny; is that  
10 correct?

11 ALTERNATE MEMBER KARALIS: Correct.

12 MR. GRAY: Okay. Judy?

13 MEMBER STEINMAN: No.

14 MR. GRAY: No. So to clarify, you're in  
15 favor of the tables and chairs?

16 MEMBER STEINMAN: Yes.

17 MR. GRAY: Okay. Thank you.

18 David?

19 ALTERNATE MEMBER SILVER: No.

20 MR. GRAY: No. Joel?

21 MEMBER SILVERBERG: No.

22 MR. GRAY: No. Craig?

23 CHAIRMAN SHERMAN: No.

24 MR. GRAY: So the motion is passed four to  
25 one to make a recommendation to deny the

SPA #314

1 application.

2 ALTERNATE MEMBER SILVER: No.

3 CHAIRMAN SHERMAN: Hold on a second. In  
4 favor is a yes. Opposed is a no.

5 MEMBER STEINMAN: Yes.

6 CHAIRMAN SHERMAN: Hold on, Judy.

7 If you're in favor of the motion, that's a  
8 rejection of the application. If you affirm,  
9 that means you're in favor of rejecting the  
10 application.

11 ALTERNATE MEMBER SILVER: If you're for the  
12 application, what do you vote? Yes or no?

13 CHAIRMAN SHERMAN: If you're in favor of  
14 denying the application, you will affirm yes.

15 MR. ARMENT: Why don't you make a motion to  
16 approve the application?

17 CLERK ADRION: Yeah, that's what he should  
18 do.

19 MR. GRAY: Good suggestion.

20 CHAIRMAN SHERMAN: So let's do that.

21 MR. GRAY: Let's do it a little cleaner.

22 Make a motion to approve the application.

23 Judy?

24 MEMBER STEINMAN: No.

25 MR. GRAY: Constantine?

SPA #314

1 ALTERNATE MEMBER KARALIS: No.

2 MR. GRAY: David?

3 ALTERNATE MEMBER SILVER: Yes.

4 MR. GRAY: Joel?

5 MEMBER SILVERBERG: Yes.

6 MR. GRAY: To approve?

7 MEMBER SILVERBERG: Yes.

8 MR. GRAY: Craig?

9 CHAIRMAN SHERMAN: No.

10 MR. GRAY: Motion fails three to two.

11 Everybody agree?

12 CHAIRMAN SHERMAN: Just to recount. We have  
13 Judy denying the approval of the application. We  
14 have Mr. Silver accepting the application. We  
15 have Silverberg approving and accepting the  
16 application.

17 MR. GRAY: And Constantine denying it.

18 CHAIRMAN SHERMAN: Denying the application  
19 and Sherman declining the application.

20 MR. GRAY: Is everybody's vote properly  
21 recorded?

22 MEMBER STEINMAN: No. I'm confused.

23 ALTERNATE MEMBER SILVER: I think Judy's  
24 vote switched.

25 MR. BETZ: Judy, do you approve the

SPA #314

1 application or deny the application?

2 MEMBER STEINMAN: I want them to be able to  
3 have chairs outside as they are now.

4 CHAIRMAN SHERMAN: Okay. So you want to  
5 approve?

6 MEMBER STEINMAN: I want to approve their  
7 application.

8 CHAIRMAN SHERMAN: You want to recommend to  
9 the Board of Trustees approval of their  
10 application for special permit allowing a change  
11 in use for their flowerbed into a seating area.

12 MEMBER STEINMAN: Yes.

13 MR. BETZ: Thank you, Judy.

14 MR. GRAY: So the way I read it now is we  
15 have a three to two in favor of recommending  
16 approval of the application.

17 BUILDING INSPECTOR MANDARINO: This is Mike  
18 Mandarino. I think Constantine misunderstood  
19 because he changed his vote as well.

20 MEMBER STEINMAN: Thank you, Michael.

21 BUILDING INSPECTOR MANDARINO: Constantine,  
22 do you want the tables or not want the tables?

23 ALTERNATE MEMBER KARALIS: (Inaudible).

24 MR. GRAY: Constantine, what was the answer?

25 ALTERNATE MEMBER KARALIS: The answer was

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1 no.

2 MR. GRAY: You said no.

3 BUILDING INSPECTOR MANDARINO: You don't  
4 want the tables?

5 ALTERNATE MEMBER KARALIS: No.

6 CHAIRMAN SHERMAN: Three to two.

7 MR. GRAY: Okay. I think we're done.

8 Motion to close the meeting?

9 CHAIRMAN SHERMAN: Motion to close the  
10 meeting.

11 MR. GRAY: Second?

12 MEMBER SILVERBERG: Second.

13 MR. BETZ: Thanks, guys.

14 (Time Noted: 12:05 p.m.)

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## CERTIFICATION

I, D. Leigh Chapman, a Notary Public in and for the State of New York, do hereby certify:

THAT the forgoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of July, 2023.

*Leigh Chapman*  
\_\_\_\_\_  
D. LEIGH CHAPMAN

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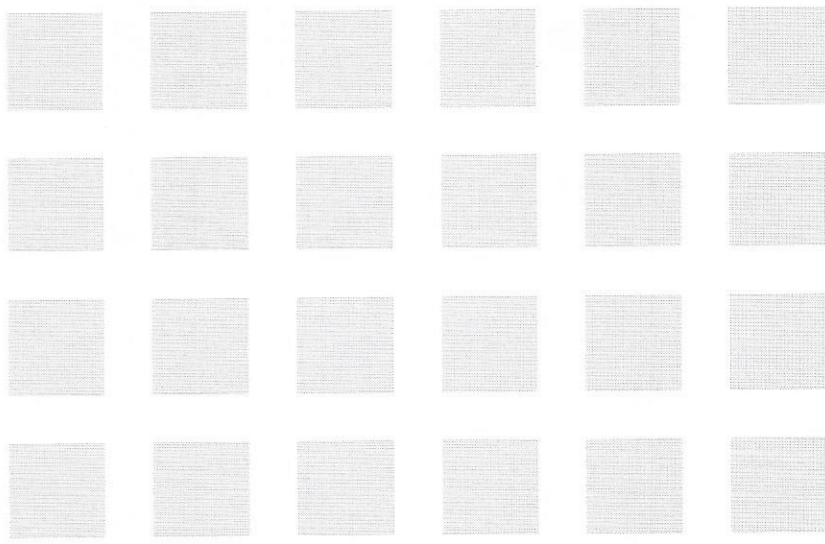
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**SKYLINE**



State Liquor Authority  
**HANDBOOK**  
for Retail Licensees

Division of Alcoholic Beverage Control  
State Liquor Authority

Kathy Hochul  
Governor

Vincent Bradley  
Chairman

Greely Ford  
Commissioner

Lily Fan  
Commissioner

May 2022



**INSIDE FRONT COVER (blank)**





**New York State**

Kathy Hochul, Governor

**State Liquor Authority  
Division of Alcoholic Beverage Control**

Vincent Bradley, Chairman  
Greely Ford, Commissioner  
Lily Fan, Commissioner

**Revised May 2022**







**State Liquor Authority  
Division of Alcoholic Beverage Control**

**Contact Information**

New York City Office (Zone 1)  
163 W. 125<sup>th</sup> Street  
New York, NY 10027

Albany Office (Zone 2)  
Alfred E. Smith Building  
80 S. Swan Street  
Suite 900  
Albany, NY 12210

Buffalo Office (Zone 3)  
Iskalo Electric Tower Building  
535 Washington Street  
Suite 303  
Buffalo, NY 14203

Contact the SLA by phone at: (518) 474-3114  
Prompts will direct you to the appropriate bureau.

Visit our website at: [www.sla.ny.gov](http://www.sla.ny.gov)







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## ■ WHAT IS THE STATE LIQUOR AUTHORITY?

In 1934, after the prohibition against the sale and distribution of alcoholic beverages was repealed by the 21st Amendment to the United States Constitution, New York State enacted the Alcoholic Beverage Control Law ("ABCL") which created the State Liquor Authority ("SLA"). The SLA consists of three Commissioners, or Members, appointed by the Governor for three year terms. One of the Commissioners is designated by the Governor to serve as the Chairman.

The provisions of the ABCL were designed to protect the health, safety and welfare of the people of New York State and to promote temperance and respect for the law. Those considerations continue to play an important role in the enforcement of the law today.

The SLA is responsible for issuing licenses and permits to eligible applicants to allow them to manufacture, sell (at wholesale or retail), store and/or transport alcoholic beverages in this state. It is also responsible for ensuring that licensees and permittees comply with the ABCL. In addition, the SLA promulgates regulations and issues advisories to provide licensees and permittees with further guidance regarding their duties and responsibilities under the ABCL.

The purpose of this booklet is to acquaint you, as a retail licensee, with information you need to know to operate your business in compliance with the ABCL. It is not intended to be all inclusive, but rather will offer a summary of important information. Please note that the ABCL is amended regularly and this booklet reflects the law at the time it was printed. For additional information or any questions you may have, please write, call or email the SLA.

New York State recognizes the contributions made to the State's economy through the production and sale of alcoholic beverages. The SLA's goal is to maintain a positive working relationship with those in the alcoholic beverage industry. There are more than 60,000 active alcoholic beverage licenses and permits in the State, with the vast majority held by law-abiding, hard-working people. Our intent in this pamphlet is to help you achieve success with your business operations through compliance with the ABCL.

## ■ WHAT TYPE OF LICENSE DO YOU HAVE?

Retail licenses are divided between "on-premises" and "off-premises" licenses. If you have an on-premises license, you can sell or serve alcoholic beverages to be consumed at your licensed premises. This is sometimes referred to as "sale by the glass". If you have an off-premises license, you can sell alcoholic beverages to be consumed someplace other than your licensed premises. This is sometimes referred to as "sales by the bottle" or "sales to go".



## ■ WHAT TYPES OF ALCOHOLIC BEVERAGES CAN YOU SELL?

If you have an off-premises beer license, you can sell beer and cider “to go”. The license is identified with an “A” (for grocery stores) or “D” (for drug stores) before the serial number.

If you have an off-premises beer and wine products license, you can sell beer, wine products and cider “to go”. The license is identified with an “AX” (for grocery stores) or “DX” before the serial number.

If you have an off-premises liquor license, commonly called a package store license, you can sell liquor, wine and cider “to go”. The license is identified with an “L” before the serial number.

If you have an off-premises wine license, commonly called a wine store license, you can sell wine and cider “to go”. The license is identified with a “W” before the serial number.

If you have an on-premises beer license, you can sell beer, wine products and cider to be consumed in your establishment. You can also sell beer “to go”. The license is identified with an “EB” before the serial number.

If you have an on-premises wine license, you can sell wine, beer, wine products and cider to be consumed in your establishment. You can also sell wine, beer, wine products and cider “to go”. The license is identified with either a “RW” or “TW” (depending on the type of business) before the serial number.

If you have an on-premises liquor license, you can sell liquor, wine, beer, wine products and cider to be consumed in your establishment. You can also sell liquor, wine, beer, wine products and cider “to go”. The license is usually identified with an “OP” before the serial number. However, depending on the type of business, the license may be identified with “CR”, “CT”, “EL”, “HL”, “RL”, or “TL” before the serial number.

- On-premises liquor and wine “to go” became law on April 9, 2022 and will expire and be deemed repealed three years from that date.

## CAN YOU ALLOW ANYONE ELSE TO USE YOUR LICENSE?

Your license has been issued either to you individually, or as a principal in a partnership, corporation or limited liability company. You may not allow anyone but the entity named on the license and the principals disclosed to the SLA in the application to use the license without the SLA’s approval. You cannot allow any person, other than the principals disclosed to the SLA, to exercise control over or profit from the sale of alcoholic beverages in your licensed premises.



## ■ ONCE YOU HAVE A LICENSE, DO YOU HAVE TO FILE ANY OTHER APPLICATIONS?

As discussed below, there are some situations that require you to obtain the approval of the SLA in advance. There are other situations that do not require SLA approval, but you must notify the SLA so that your licensing record is accurate and complete. The forms and applications referenced below can be found on the SLA's website.

### Alterations

If you are making any renovations to your licensed premises, you may need to notify, or obtain the approval of, the SLA before going forward with the changes. A minor alteration is anything that costs less than \$10,000 that does not "materially affect the character of the premises or the physical structure that existed at the time of licensing." You must notify the SLA in advance of minor alterations but you do not need to obtain the SLA's approval.

If you are making a substantial alteration to the licensed premises, you must file an application in advance and obtain the SLA's approval. Substantial alterations include adding or deleting space (including outside areas) from the licensed premises; physical changes that reduces visibility; physical changes to interior that materially affect the character of premises; relocating the entrance; enlarging or relocating the bar; converting a room for food/beverage service; installing a bandstand, stage, dance floor; and sealing off or creating a public entrance or window.

If you have an on-premises beer, wine or liquor license in New York City, you must notify your Community Board of your intent to apply for approval of a substantial alteration. The notice must be in writing, using the form approved and provided by the Authority. This must be done thirty days before you file the alteration application, using either: certified mail; an overnight delivery service; or personal delivery to the Community Board.

You do not need to notify the SLA, or obtain approval, for renovations such as painting, carpeting, replacement of electrical, plumbing, refrigeration, air conditioning and heating fixtures and equipment, replacement of booths with tables and chairs, or vice versa, as long as the booths do not exceed 42 inches in height.

### Corporate Changes

If your license has been issued in the name of a corporation or limited liability company, you must obtain the approval of the SLA before making any of the following changes to the corporate structure: (a) adding or removing an officer or director of the corporation; or (b) adding or removing a managing member of a limited liability company.



In addition, you must also obtain the approval of the SLA before there is a change in the stockholders of the corporation or the members of the limited liability company, or any change in the stock held by an existing stockholder (of the corporation) or the ownership interest of an existing member (of the limited liability company) has in the business. Please note that no approval is needed if there are ten or more stockholders or members and: (a) the change involves less than 10% of the stock or ownership interest; and (b) none of the existing stockholders or members with less than a 10% interest have their interest increased to 10% or more.

If you have an on-premises license in New York City, you must notify your Community Board before filing an application to approve a corporate change if you are making a "substantial corporate change." The notice must be in writing, using the form approved and provided by the Authority. This must be done thirty days before you file the corporate change application, using either: certified mail; an overnight delivery service; or personal delivery to your municipality. For a corporation, a "substantial corporate change" means a change of 80% or more of the officers and/or directors, or a transfer of 80% or more of stock of the corporation, or an existing stockholder obtaining 80% or more of the stock of such corporation. For a limited liability company, a "substantial corporate change" means a change of 80% or more of the managing members of the company, or a transfer of 80% or more of ownership interest in the company, or an existing member obtaining a cumulative of 80% or more of the ownership interest in the company.

## Fiduciaries

On occasion, a court may give someone (such as an administrator or executor of an estate, a bankruptcy trustee, or a receiver in a mortgage foreclosure) power to run your business pending the outcome of the court proceeding. In such cases, that person must advise the SLA of the court appointment and that person will become the only person recognized by the SLA to act for the licensee until the court directs otherwise.

## Method of Operation

When you submitted your application, you provided the SLA with information regarding how you would operate your business. For example, if you are an on-premises licensee, you may have advised the SLA that you would be open during certain hours and would have background music without any dancing. This is referred to as your method of operation. You may not change your method of operation without applying to the SLA for approval.

Please note that your method of operation is different than the type of business that the SLA approved when you obtained your license. For example, if you applied as a restaurant but now wish to operate as a tavern or nightclub that is not a change in the method of operation. That is a change in the type of business being licensed and requires a new license application.

## Name Changes

If your name has changed due to marriage, divorce, or any other reason, you must file an endorsement application so that the SLA's records can be updated. You may also use an endorsement application if you are changing the name of the corporation that holds the license as long as there is no change in ownership and the federal employer information number remains the same.

If you hold a license in your individual name, the SLA will also allow you to change the licensee to a corporation or limited liability company using an endorsement application. You can only use this application if you remain the sole owner of the business.

## Partnership Changes

If your license is issued to a partnership, you must obtain the approval of the SLA if you are adding or removing any partners. You also need SLA approval if you are dissolving the partnership and want to continue with the license in your name only.

## Removals (Changing Locations)

You may not move your licensed business to another location without obtaining the SLA's approval. If you move without getting the approval you will be subject to disciplinary action by the SLA. If you have an on-premises beer, wine or liquor license, you will have to notify your municipality (the clerk of the city, town or village where premises is located, or in the case of a premises located in New York City, your Community Board) of your plans to obtain a license at the new location. The notice must be in writing, using the form approved and provided by the Authority. This must be done thirty days before you file the removal application, using either: certified mail; an overnight delivery service; or personal delivery to your municipality.

Please note that a removal application is much like an application for a brand new license. While you are already licensed, the SLA must determine whether a license can, or should, be issued for your new location. Do not move until the SLA has issued you a temporary retail permit or a license certificate for the new location.

## Renewals

The term of your license depends on the type of license you have. If you have a retail license to sell only beer, either for on-premises or off-premises consumption, your license lasts for three years. Off-premises liquor and wine licenses (package and wine stores) are also issued for three years. On-premises wine and liquor licenses are issued for two years. If you have a seasonal license, it must be renewed every year.

A renewal application must be filed before the expiration of the current license period. You will receive a notice approximately three months prior to the expiration of your license as a reminder that the renewal application needs to be filed. If you file a



complete renewal application before the expiration of your current license period, you will receive either: 1) a new license certificate for the next licensing period; 2) a letter explaining why your application was denied; or 3) a letter from the SLA allowing you to sell alcoholic beverages while your application is being reviewed.

If your application is not complete, or you do not file it before the expiration of the current license period, you will not be able to sell alcoholic beverages once your current license expires unless and until the SLA renews the license. If you have an on-premises license, you cannot allow your customers to bring their own alcoholic beverages into your establishment during this period of time. You are also prohibited from giving away alcoholic beverages to your customers during this time.

If you have an on-premises beer, wine or liquor license in New York City, you must notify your Community Board of your intent to renew your license. The notice must be in writing, using the form approved and provided by the Authority. This must be done thirty days before you file the renewal application, using either: certified mail; an overnight delivery service; or personal delivery to the Community Board.

It is important that you report in your renewal application any changes of information, such as a change in your residential address or any arrests or convictions that have not already been reported to the SLA. Please keep in mind, however, that if the change requires SLA approval, merely including it in the renewal application is not sufficient. You must obtain the necessary approval for the change.

## ■ HOW MANY BARS CAN YOU OPERATE IN YOUR PREMISES?



If you have an on-premises beer, wine or liquor license, you may operate one “stand-up” bar for the sale of alcoholic beverages directly to patrons. Your license also entitles you to operate one “service bar”, from which wait staff can obtain alcoholic beverages to serve to patrons seated at tables. You may also apply to obtain approval to operate no more than two additional stand-up bars in your premises. The cost for each additional bar is the same as your license fee.

If you are licensed as a hotel, restaurant or not-for-profit club, you may use temporary stand-up bars without any additional approval or fee in ballrooms, meeting rooms or private dining rooms during private events where the general public is not admitted. If your establishment has an occupancy of at least 1000 persons, or if you operate a theatre or concert hall, you may apply for more than two additional stand-up bars. The cost of each bar is the same as your license fee.

## ■ DO YOU HAVE TO SERVE FOOD AT YOUR ON-PREMISES ESTABLISHMENT?

If you are licensed as a restaurant, you must have suitable kitchen facilities to prepare and serve a full menu of food commonly served at various hours of the day. If you have a hotel license, there must be a restaurant in your building available to your guests,





although you do not have to operate the restaurant yourself. If you operate a catering establishment, you must have adequate facilities (at your location) to prepare food for, and serve, an event with at least 50 people.

If you have another type of on-premises business, such as a tavern, nightclub or lounge, you must have food available for your patrons. You can meet this requirement by providing sandwiches, soups or similar items. Snack foods (chips, pretzels, etc.) are not sufficient to meet this requirement. The food can be fresh, pre-cooked, or frozen, but it must be kept at your licensed premises to be available for your patrons. You cannot have patrons order food to be delivered by other businesses.

## ■ DO YOU HAVE TO NOTIFY THE SLA OF ANY CHANGES IN YOUR PERSONAL INFORMATION?

All licensees are required to notify the SLA in writing of any changes to the information that was contained in the original application. This includes any change in your residential address. Such changes must be reported to the SLA within ten days. If you are arrested or convicted of a crime, you must report this fact in writing to the SLA within forty-eight hours.

## ■ ARE THERE ANY RESTRICTIONS ON WHOM YOU CAN EMPLOY?

### Felons

If you have an off-premises license, or an on-premises license for a catering establishment, hotel, restaurant, not-for-profit club or recreational facility, you may employ someone with a felony conviction. If you have any other on-premises license, you are prohibited from employing someone with a felony conviction unless you obtain the SLA's approval or the person has: a pardon; certificate of relief from civil disabilities; certificate of good conduct; or other relief from disabilities provided for in the law.

### Minors

There is a general prohibition against a retail licensee employing a person under the age of 18 in a position that requires the person to sell, dispense or handle alcoholic beverages. Please note: there is no exception for minors who are related to the licensee.

However, if you are an on-premises licensee, you may employ persons under the age of 18 to work as dishwashers, busboys or in other positions involving the handling of alcoholic beverages when they are in the presence of and under the direct supervision of someone who is at least 18 years old.

If you are an off-premises beer licensee, you may employ persons under the age of 18 in the following positions: to handle and deliver beer; and to work as a cashier when they are in the presence of and under the direct supervision of someone who is at least 18 years old.

As a retail licensee you are also prohibited from employing a person under the age of 18 to appear as an entertainer in your licensed premises. There are two exceptions: (1) if the minor has obtained a permit issued by the Authority; or (2) the minor's parent or guardian consent; the appearance is for a special event; the appearance is approved by and under the sponsorship of the minor's primary or secondary school; the appearance takes place under the direct supervision of the minor's teacher; and the appearance does not take place in a tavern.

### **Police Officers**

If you are an on-premises licensee, you may not employ a police officer to work for you. You may arrange with your local police department for it to provide a special detail for your business, or for a group of area businesses, as long as the officers are not paid by you or other licensees.

Package and wine store licensees cannot employ police officers. However, off-premises beer licensees may employ police officers if the officer has the permission of his/her commanding officer.



### **Security Guards/Bouncers**

Employees who provide security and/or check identification of patrons are considered to be performing a security function. Therefore, they must be registered with the New York State Department of State as security guards. On-premises licensees who employ unregistered security guards are not only violating the law, but failing to adequately supervise the conduct of the licensed premises. If the security guards work for the licensee, the licensee must also be registered with the Department of State. If you contract with another company to provide security services, you should require that company to provide proof that it is registered with the Department of State.

## **■ CAN YOU ALLOW GAMBLING AT YOUR LICENSED PREMISES?**

In general, you cannot allow any form of gambling to take place or be promoted in your licensed premises. This includes both professional and social gambling. Football pools, dice games, sign-in drawings, etc., are all prohibited. It does not matter whether you, as the licensee, are involved in any fashion in the gambling. Certain types of gambling authorized by the state, such as the sale of New York State lottery tickets, simulcast betting facilities, and games of chance by not-for-profit groups are permitted.





The SLA has issued declaratory rulings addressing whether specific types of activities are considered gambling under the ABCL. For example, under certain conditions you, as a licensee, can allow a "Texas Hold Em" tournament to be held at your licensed premises. These declaratory rulings can be found on the SLA's website.

## ■ WHAT ARE YOUR OBLIGATIONS AS A CLUB LICENSEE?

Club licenses are only issued to not-for-profit organizations. If you have a club license, you may only serve alcoholic beverages to members of your organization and to guests that accompany the member to the licensed premises. Club licensees affiliated with certain national veterans' organizations may also serve members of other clubs affiliated with the national organization.

As a club licensee, you cannot cater or conduct events where alcoholic beverages are served to the general public. In addition, you cannot rent or hire out your premises for an event where alcoholic beverages will be served to the general public. If you wish to serve the general public, you must obtain a separate on-premises license or permit for the portion of your location that will be used to sell or serve alcoholic beverages to the general public.

## ■ WHAT SHOULD YOU DO IF YOU ARE SELLING YOUR BUSINESS?

If you are selling your business to another person or company, you cannot let the buyer have any interest or control over your business, or share in the profits, while the establishment is being operated under your license. The buyer must have its own license, or have a temporary permit while its application is being reviewed by the SLA. You are responsible for any violations committed while the business is operated under your license, even if the buyer commits the violations.

If you are going out of business, you may sell your inventory of alcoholic beverages to the buyer, to your wholesalers, or to other licensed retailers. However, before doing so you must obtain a liquidator's permit from the SLA. If you are on the delinquent list because of unpaid bills with a wholesaler, you will not be able to get a liquidator's permit.

## ■ WHAT IS MEANT BY "NON BONA FIDE"?

You are required to operate your business as contemplated by the type of license that you received from the SLA. If you fail to operate in that manner, you are considered to be "non bona fide" and you will be subject to disciplinary action. For example, if you obtained a license as a restaurant, you must continue to operate as a restaurant. You cannot change your business to a tavern, nightclub, etc., without obtaining a new license.

If you have a retail license (other than a club license, as discussed above or catering establishment) you must be open to the general public. You cannot restrict entry into your establishment to a select list of persons, or require customers to provide a college identification to enter.

If you have an off-premises beer license for a grocery store, you are required to maintain a certain inventory of food and certain household goods. When you applied for your license you submitted a stipulation agreeing to set aside a specified level of display area for these products.

If you are licensed as a catering establishment, your location is supposed to be used to cater events taking place at your premises. You can only serve alcoholic beverages to persons who are invited to and are attending those events. You cannot be open to the general public.

If you close your business (either temporarily or permanently) you are also considered to be "non bona fide" if you do not take appropriate action regarding your license certificate. See below regarding what you should do if you close your business.

## ■ WHAT SHOULD YOU DO IF YOU CLOSE YOUR BUSINESS?

All retailers are required to keep their business open. If you are going to close for any reason for more than one week, you should place your license certificate in safekeeping with the SLA until you are prepared to re-open. The SLA will allow you to keep your license certificate in safekeeping for a reasonable period of time.

When you are ready to re-open, you can have the SLA return your license certificate to you. If you do not plan on re-opening your business, you should return ("surrender") your license certificate to the SLA. You will then be entitled to a refund of any unused portion of your license fee. Once you surrender your license, you will have to apply for a new license if you wish to go back into business.

## ■ WHERE DO YOU NEED TO POST YOUR LICENSE AND REQUIRED WARNING SIGNS?

You must keep your license certificate in a wood or metal frame with a clear glass front. The entire certificate must be visible. You cannot use a copy of your license certificate. As framed, the license certificate must be posted up and displayed at all times. It must be posted in a location where it can easily be seen by anyone visiting your business. The license certificate does not have to be posted at the point of sale.

The ABCL also requires you to post two warning signs. One is a sign warning about sales of alcoholic beverages to minors and patrons who appear to be intoxicated. The second sign contains a warning regarding the consumption of alcoholic beverages while pregnant. There are approved versions of each of these signs that are distributed to licensees by the SLA.



The warning sign regarding sales of alcoholic beverages to minors and patrons who appear to be intoxicated must be posted in a location where it can easily be seen by anyone visiting your business. A warning sign regarding pregnancy must be posted as close as possible to each point of sale.

## ■ WHEN CAN YOU SELL ALCOHOLIC BEVERAGES?

If you are a package or wine store, the ABCL requires that you must be closed to the public: every day between midnight and 8 am; and Sundays before noon and after 9 pm. If you have an off-premises beer license, you may sell beer at any time except on Sundays from 3:00 am until 8:00 am. If you have an on-premises beer, wine or liquor license, you may not sell alcoholic beverages: between 4 am and 8 am on Mondays through Saturdays; and between 4 am until noon on Sundays. You must not allow any patron to consume alcoholic beverages more than 30 minutes after you are required to stop sales.

Please note that many counties have further restricted the hours that you may sell alcoholic beverages. Those restrictions are available on the SLA's website. In addition, there may be specific restrictions placed on your license by the SLA regarding your hours of operation or sale of alcoholic beverages. You must comply with those restrictions even if the hours of sale are longer in the county where your establishment is located.

## ■ WHERE AND HOW CAN YOU BUY ALCOHOLIC BEVERAGES?

As a licensed retailer, you may only purchase alcoholic beverages from wholesalers and manufacturers who are licensed in this state. You cannot buy from another retailer in this state unless the retailer is selling its inventory with a liquidator's permit. You cannot purchase alcoholic beverages from any entity located outside of this state.

If you have a wine or liquor license, manufacturers and wholesalers may only sell to you at the prices that have been posted with the SLA. The schedules containing those prices are available on the SLA's website.

You must pay for alcoholic beverages you purchase in cash (which includes checks drawn on your business account and electronic funds transfers, but not credit cards). The wholesaler may, but does not have to, offer payment on credit. The amount of time you have to pay for credit purchases depends on whether you are buying from a beer wholesaler or a liquor/wine wholesaler.

If you purchase on credit and fail to pay the bill on time, you will be placed on the delinquent list, also referred to as the "C.O.D." list. You will remain on the delinquent list until you pay that bill. While you are on the delinquent list, no wholesaler can sell you alcoholic beverages on credit.

## ■ CAN YOU CONDUCT TASTINGS IF YOU HAVE AN OFF-PREMISES LICENSE?

If you have an off-premises beer license, you cannot conduct any tastings on your licensed premises. However, brewers with a permit can conduct beer tastings at your establishment.

If you have a package or wine store license, you can conduct wine tastings in your establishment but not liquor tastings. Licensed distillers and liquor wholesalers can conduct liquor tastings in package stores without a permit. Manufacturers, importers and wholesalers can conduct tastings if they have a permit.

## ■ DO YOU NEED TO FILE A SURETY BOND, AND WHAT IS IT FOR?

The SLA requires all licensees to file a surety bond. You must file a bond when you apply for your original license and each time you renew your license. These bonds are used to insure payment of any penalties that may be imposed against you because of disciplinary violations.

The amount of the bond varies depending on the type of license. As a retailer, you must have a \$1,000 bond. Please note that if the SLA makes a claim against your bond in a disciplinary proceeding, you must obtain a new bond and file it with the SLA within 10 days of the claim.



## ■ WHAT CAN YOU DO WITH YOUR LICENSE AWAY FROM THE LICENSED PREMISES?

Your ability to sell alcoholic beverages is restricted to the licensed premises. However, as a retail on-premises licensee, you may obtain permits to cater events that take place at other locations. To obtain a caterer's permit, you must be serving the food and beverages for the events. You can only serve alcoholic beverages that can be sold at your licensed premises.

## ■ HOW DO YOU STORE AND DELIVER YOUR ALCOHOLIC BEVERAGES?

You can store alcoholic beverages on your licensed premises. If you need additional space for your inventory, you can store the alcoholic beverages at a location that has a warehouse permit issued by the SLA. This could be a site that belongs to you, or a third-party's storage facility.





If you are storing alcoholic beverages in your establishment's basement or a building, storage unit, etc. next to or near your business, make sure that the area was included as part of your licensed premises in your application. If the area is not part of the licensed premises, that storage space needs a warehouse permit.

If you are an off-premises licensee, you can deliver alcoholic beverages to your customers using either a delivery service that has a trucking permit issued by the SLA, or in one of your own vehicles. If you are using your own vehicle, it must be a vehicle owned or leased, and operated by the entity that is named on the license certificate. You cannot deliver alcoholic beverages using an employee's vehicle. Keep a copy of the license certificate in the vehicle while deliveries are being made.

## ■ WHAT ARE YOUR OBLIGATIONS AS A LICENSEE?

You as the licensee are responsible for the activities of employees and patrons in all parts of the licensed premises (even if you are not always physically present) to ensure that the business is operating in accordance with the ABCL. The following are common issues faced by retailers that could subject you to disciplinary action if you do not meet your responsibilities as a licensee.

### Beer Taps

If you have an on-premises license, you must have a sign/card/plate identifying the name of the brewer of the beer being dispensed from each tap. The sign/card/plate must be annexed or affixed to the tap. A symbol or logo commonly used or associated with the brewer is not sufficient.

### Books and Records

As a licensee, you are required to maintain adequate books and records of all the transactions involving your licensed business. This includes records recording your employees, whether full or part-time. Your books and records must be kept at your licensed premises and be made available for inspection by SLA investigators. You should keep your records for at least two years.

If two or more licensed on-premises establishments have common ownership, the SLA may allow centralized bookkeeping and accounting for the records of the licensed businesses. For more information about whether you meet the conditions for common ownership, and the procedures to be followed for centralized bookkeeping, please contact the SLA's Licensing Bureau.

## Consumption On or Off Your Licensed Premises

If you have an on-premises license you cannot allow anyone to leave your licensed premises with liquor or wine. The only exception is for those with a Restaurant Wine license. Those licensees may allow a patron to leave with an unfinished bottle of wine that was purchased with a meal. You may sell beer "to go" but you must not allow patrons to leave your premises with an unsealed container if your municipality has an "open container" law.

If you have an off-premises license, you cannot let anyone consume alcoholic beverages in your licensed premises unless it is an authorized tasting. Package or wine store licensees can conduct wine tastings. A manufacturer or wholesaler with the proper permit can conduct tastings at an off-premises establishment. Additional information about tastings at your establishment can be found in the "Can you conduct tastings if you have an off-premises license?" section of this handbook.

## Conditions on Your License

When you received your license, you agreed to comply with certain stipulations or conditions regarding the operation of your business. The SLA may have also imposed certain conditions on the operation of your business to address concerns raised during the review of your application. Those conditions may have included such things as whether you would have music or dancing, the hours you would operate, etc. You are required to comply with those conditions unless and until you obtain the SLA's approval to operate in a different manner.

## Contaminated Bottles

If you have an on-premises license, you must keep liquor and wine in the original containers as received from the manufacturer or wholesaler. You are also prohibited from reusing, refilling, tampering with, adulterating, diluting or fortifying the contents of those containers. This includes the violation referred to as "contaminated bottles", where the licensee allows foreign substances into the containers.

## Disorder

If you are an on-premises licensee, you must not allow your establishment to become disorderly. Disorder includes fights, disturbances, the use or sale of controlled substances, prostitution, lewd and indecent conduct and excessive noise. You have an obligation to exercise reasonable diligence and provide adequate supervision over the conduct of your licensed premises and your patrons. The SLA strongly recommends that you contact your local police agency to respond to any disorderly incidents at your establishments. The fact that you call for police assistance will typically not be held against you when the SLA considers whether you exercised reasonable diligence and provided adequate supervision.



## Extension of Your Premises

As a licensee, you are required to confine the service and consumption of alcoholic beverages to the area that is licensed. When you submitted your application you provided the SLA with a description and diagram of that premises. You cannot use any unlicensed area for the sale or consumption of alcoholic beverages.

If you want to use an area that is not already part of your licensed premises, you must submit an alteration application and obtain the SLA's approval. Additional information about alteration applications can be found in the "Once you have a license, do you have to file any other applications?" section of this handbook.

## Inspections

Your licensed premises is subject to inspection by SLA investigators, police officers and peace officers during the hours that you are open for business. This includes your entire licensed premises, even those areas that are not open to the general public. If you refuse to allow the inspection, or interfere in any manner, you will be subject to disciplinary action by the SLA.

## Intoxicated Patrons

It is a crime to sell, deliver or give away alcoholic beverages to a person who is visibly intoxicated. As the licensee, you are subject to disciplinary action by the SLA whether you or your employee served a person who is visibly intoxicated. This applies to both on-premises and off-premises licenses. The SLA recommends that you have all employees who serve or sell alcoholic beverages take an Alcohol Training Awareness Program. The SLA's website contains a list of approved providers of such training.

## Local Regulations

If you are an on-premises licensee, the SLA expects you to comply with all local and state laws and regulations governing the operation of your business. This includes health, fire and building codes. If you are in violation of a state or local law or regulation, you could face disciplinary action by the SLA as well as the agency that enforces the particular provision.

## Nudity

Generally, you are prohibited from allowing anyone to appear nude, or partially nude, in your licensed premises. However, you may allow female entertainers to perform "topless" provided that they are on a stage that is at least 6 feet from the nearest patron and at least 18 inches above the floor immediately surrounding the stage.

## Premixing

If you are an on-premises licensee, you must keep all of your liquor and wine in the original containers as received from the wholesaler or manufacturer. You are prohibited from adding anything to the container to mix with the liquor or wine. You are also prohibited from pouring liquor or wine into another container, whether or not you mix it with something else.

There is one exception to the ban against premixing. You can premix beverages using a dispensing machine that has a capacity of at least one gallon that continuously mixes the combination of beverages.

## Refilling

If you are an on-premises licensee, you must keep all of your liquor and wine in the original containers as received from the wholesaler or manufacturer. You cannot reuse or refill the container. You cannot use larger bottles to refill smaller bottles. You cannot combine the contents of two or more bottles into one bottle. You also may not pour one brand of alcoholic beverages into a bottle for another brand of alcoholic beverages.

## Untaxed Cigarettes and Tobacco Products

If you are found to be in possession of untaxed cigarettes or other tobacco products at your licensed premises, the New York State Department of Taxation & Finance may suspend your registration to sell tobacco products. The Department of Taxation & Finance will send a notice to the SLA advising us that your registration to sell cigarettes has been suspended. The law provides that the notice alone is sufficient reason for the SLA to bring disciplinary action against you.



## ■ HOW CAN YOU PREVENT SALES TO MINORS?

It is a crime to sell, deliver or give away alcoholic beverages to a person under the age of 21. As the licensee, you are subject to disciplinary action by the SLA whether you or your employee served the minor. It does not matter whether you thought the person was at least 21, if they lied about their age, or if they appeared to be at least 21 years old.

You are responsible for sales made directly to the minor. You are also responsible for "indirect deliveries," when another person gives the alcoholic beverage to the minor, if you could have prevented the indirect delivery using reasonable diligence.

Although you are not required to ask for proof of age, the SLA strongly recommends that you do so. Requiring customers to produce valid photo identification, together with verifying that the person providing you with the identification is the same person shown on the identification, may help you avoid any sanctions being imposed by the SLA.





Only the following forms of identification may be accepted: 1) Valid New York State driver's license or a valid driver's license from any other state or Canada; 2) Valid identification issued by the New York Department of Motor Vehicles (Non-Driver ID card); 3) Valid United States military identification; or 4) Valid passport or visa from the United States government or any other country.

College or Sheriff's Department identification cards are not acceptable as the primary means to determine the customer's age. However, they can be used in addition to one of the acceptable forms of identification to verify information. You should ask for identification every time, even from a customer that has previously provided you with some proof of age.

When reviewing identification offered by a customer, you or your employees should be checking: 1) for tampered or fake documents; 2) the date of birth; and 3) whether the person has the same eye color, hair color, height, etc., as set forth in the identification.

The SLA recommends that you have all employees who serve or sell alcoholic beverages take an Alcohol Training Awareness Program. These training programs are not only an effective way to prevent underage sales from taking place but, in the event the SLA charges you with a violation, proof that your staff has participated in training may reduce the penalty that will be imposed by the SLA. The SLA's website contains a list of approved providers of such training.

In addition, you should take the following steps to help prevent sales to minors: post "Date Born After" signs in close proximity to all points of sale and service; have a written policy on what you expect from employees when making alcoholic beverage sales; establish an ongoing training and education program for all employees; encourage responsible drinking when advertising your establishment; and support your employees when they refuse to make a sale. You should also consider the purchase of a scanner device to verify that the identifications presented to you are valid.

A sale to a minor is considered one of the most serious violations of the ABCL. The SLA and law enforcement agencies throughout the state routinely conduct operations to monitor your compliance with the law. These operations may consist of investigators observing sales made to the general public in your establishment. They may also involve the use of underage agents to test whether you have sufficient safeguards in place to prevent sales to minors.

Do not assume that because a customer looks old enough to purchase alcoholic beverages, or lies about his/her age, that you are not responsible if the person is, in fact, a minor. The law imposes the obligation on you and your employees to make sure that the customer is at least 21. You should refuse to make any sale unless you are prepared to accept responsibility if the customer is underage.

## ■ HOW DOES THE SLA ENFORCE THE LAW?

Licensees who violate the ABCL or the Rules of the Authority may be subject to a disciplinary proceeding. These proceedings are based on referrals from other law enforcement agencies or investigations conducted by the SLA's Enforcement Bureau. These referrals and investigations are reviewed by the SLA's Office of Counsel to determine whether there is sufficient evidence to charge a licensee with a violation of the ABCL or the Rules of the Authority.

A disciplinary proceeding starts with the issuance of a pleading that contains the alleged violations committed by the licensee. If you are the subject of a disciplinary proceeding, the SLA will mail a copy of the pleading, by certified mail, to your business address. Another copy will be mailed to the primary residential address that you provided in your application.

Disciplinary proceedings are resolved by either: an administrative hearing; a "no contest" plea to the charges; or an offer negotiated between the licensee and the SLA prosecutor that must be reviewed by the Members of the Authority. If you receive a pleading, you will be provided with additional information about your rights and the process.

If you are found to have committed a violation, the SLA can suspend, cancel or revoke your license. In addition to, or instead of, a suspension, cancellation or revocation, the SLA can also impose a fine. For retailers, the maximum fine for each violation is \$10,000. A claim can also be made against the surety bond that you filed with your application.



