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Governor

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Commissioner

VINCENT G. BRADLEY
Chairman

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Commissioner

ADVISORY #2022-2

Subject: Guidance on Sale of Wine and Liquor To-Go by On Premises Retail Licensees

Upon the enactment of a chapter of the laws of 2022, section 106 of the Alcoholic Beverage Control Law (“ABCL”) was amended to allow retail licensees who are granted the privilege of selling wine and liquor for on premises consumption (“On Premises Licensees”) to also have the privilege to sell wine and liquor for take-out and delivery, but subject to a series of enumerated restrictions and conditions. The Legislature expressly authorized the Authority to “promulgate guidance, rules and regulations necessary to implement the provisions of this subdivision.” ABCL 106(2-a)(d).

The Authority has already received inquiries from industry members on certain of the conditions and restrictions. Accordingly, through this Advisory, the Authority provides the following guidance:

1. With respect to ABCL 106(2-a)(a)(i), which requires purchases of wine and/or liquor to be accompanied by a “substantial food item”:
 - A substantial food item is defined as sandwiches, soups or other foods, whether fresh, processed, precooked or frozen. Other foods are foods which are similar in quality and substance to sandwiches and soups; for example, salads, wings, or hotdogs would be of that quality and substance; however, a bag of chips, bowl of nuts, or candy alone are not. Obvious efforts to circumvent the law, for example an unreasonably small portion of soup, a serving of canned beans, a handful of lettuce, or charging a small extra fee for an alcoholic beverage in lieu of a food item not actually ordered or delivered will be treated as a violation of the law.
2. With respect to ABCL 106(2-a)(a)(vi), which prohibits On Premises Licensees from selling for take-out “any bottles of liquor or bottles of wine”:

A bottle is defined to mean the wine and/or liquor that the retailer purchases from a wholesaler in a bottle, box, can, or other similar container. Obvious efforts to circumvent the law, such as transferring the contents of a bottle of wine or liquor to a same or equivalent bottle, will be treated as a violation of the law. Provided however that where a "bottle" holds only a single serving, the sale of the contents of such single serving bottle for off premises consumption shall not be prohibited when such contents are transferred to a sealed container meeting the requirements under the law.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on April 27, 2022 before Chairman Vincent Bradley, Commissioner Lily Fan, and Commissioner Greeley Ford. The above written advisory was approved by Chairman Bradley on behalf of the Members of the Authority on April 27, 2022.

Dated: 04/29/22



Donald Roper
Secretary to the Authority