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Commissioner

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Chairman

**GREELEY FORD**  
Commissioner

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ADVISORY #2022-27

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**SUBJECT:** Minimum inventory standards for grocery stores

The purpose of this Advisory is to provide guidance with respect to maintaining a bona fide grocery store within the meaning of the Alcoholic Beverage Control Law (“ABCL”). Grocery stores and drug stores are eligible for licenses to sell beer (ABCL §54) or beer and wine products (ABCL §54-a) at retail for consumption off the licensed premises. “Grocery store” is defined in ABCL §3(13) as “any retail establishment where foodstuffs are regularly and customarily sold in a bona fide manner for consumption off the premises.” This advisory replaces Advisory 2014-2.

In prior directives<sup>1</sup> the Members of the Authority provided their interpretation as to the inventory that must be maintained to meet the statutory definition of “grocery store” and operate a bona fide business within the contemplation of the “grocery store beer” license. After consultation with representatives of the grocery store industry, the Members of the Authority issued Advisory 2014-2, setting forth a new inventory standard that must be maintained by a business in order that it shall be considered a “grocery store” within the meaning of the ABCL. The new standard took into consideration that businesses seek to offer multiple services and goods to patrons. The Authority’s prior standard would, in some instances, prohibit a bona fide grocery store from obtaining an off-premises beer, or beer and wine, license either because of the items that were, or were not, available for sale or because of the volume of products that were available for sale.

Accordingly, in Advisory 2014-2, the Members of the Authority interpreted the definition of “grocery store” to mean a business that devotes at least 50% of its public floor space exclusively to the display of “consumer commodities”, however packaged or contained. The advisory created three categories of consumer commodities. However, it did not expressly require grocery stores to offer any specific item from any of the categories.

To continue to allow businesses the ability to offer goods and services not typically associated with a “grocery store”, but to also have available the items that the public would expect at a “grocery store,” the Authority’s definition of “grocery store” shall continue to mean a business that is open to the public and devotes at least 50% of its public floor space exclusively to the display of “consumer commodities.” In addition, at least one-half of the floor space devoted to the display of consumer commodities must be devoted to the display of “food.”

For purposes of the Advisory:

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<sup>1</sup> Divisional Order 780 and Divisional Order 826, which rescinded and replaced Divisional Order 780.

“Food” shall mean all items used or intended for consumption by human beings or household pets. Food does not include alcoholic beverages or carbonated beverages. At least ten different food items must be eligible for purchase using Supplemental Nutrition Assistance Program (“SNAP”) benefits.

“Consumer Commodities” shall mean:

- (a) Food;
- (b) Household items, which means napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper towels and disposable plates and utensils; and
- (c) Personal health/hygiene items, which means non-prescription drugs, hygiene products and toiletries.

Compliance with this standard shall be determined as follows: The number of square feet of public floor space devoted to consumer commodities shall be divided by the total number of square feet of public floor space in the licensed premises. The resulting quotient must be no less than 0.5 for the business to be considered a bona fide grocery store. In calculating the total number of square feet of floor space occupied by the licensed premises, businesses occupying less than 5,000 square feet may exclude up to 10% of their floor space for area used for food preparation, bottle redemption and automated teller machines. Businesses occupying 5,000 or more square feet may not exclude any space used for such purposes.

All existing grocery store beer licensees must maintain the inventory standards set forth above to be considered a operating a bona fide business within the contemplation of the grocery store beer license. Failure to comply with these standards may result in disciplinary action against the licensee. All applicants for a grocery store beer license shall be required to sign a stipulation prior to the approval of the application in which the applicant agrees to abide by these standards.

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This matter was heard and determined by the Members of the Authority at a Full Board meeting held on October 26, 2022 before Chairman Vincent Bradley, Commissioner Lily Fan, and Commissioner Greeley Ford. The above written advisory was approved by the Members of the Authority on October 26, 2022.

Dated: 10/31/22



Donald Roper  
Secretary to the Authority