



KATHY HOCHUL
Governor

LILY M. FAN
Commissioner

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

ADVISORY #2022-31

Subject: BYOB and providing free alcoholic beverages to customers

The purpose of this advisory is to provide guidance regarding whether a business or a location needs a license or permit if patrons are allowed to bring their own alcoholic beverages (BYOB) or are served alcoholic beverages for no charge.

BYOB

If people are allowed to bring their own alcoholic beverages to a premises, a license or permit is required if: 1) the premises has an occupancy of 20 or more; and 2) the premises is being operated “for pecuniary gain”, meaning it is being operated as a business. For example, the owner of a banquet hall charges for the use of the hall. The owner allows people attending events to bring their own alcoholic beverages. Since the hall is being rented out, it is being operated “for pecuniary gain.” If the hall has an occupancy of 20 or more, a license or permit is needed.

A business that has an occupancy of less than 20 does not need a license or permit to let customers bring their own alcoholic beverages. However, for customers bringing their own alcoholic beverages, it can charge customers a “corkage fee.” That fee is usually related to having waitstaff open bottles for the customers, but it can be a fee charged just for the customer to have the ability to bring their own alcoholic beverage.

“Free” alcoholic beverages

If a person wants to sell alcoholic beverages, the ABC Law requires the person to have the appropriate license or permit. If the customer must pay anything to obtain the alcoholic beverage, that is a sale. For example, an art gallery is having an exhibition and anyone (of legal age) attending the exhibition can get a glass (or glasses) of champagne. If anyone can walk into the gallery for free and get a glass of champagne, the champagne is being given away. If a person must pay a fee to enter the gallery and see the exhibition, that is a sale of the champagne.

If the alcoholic beverages are being sold, the location must have a license or permit. If the alcoholic beverages are being given away, a license or permit will still be needed if: 1) the premises has an occupancy of 20 or more; and 2) the premises is being operated “for pecuniary gain”, meaning it is being operated as a business. For example, if the art gallery in the example

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above is giving alcoholic beverages away, but has an occupancy of 20 or more, a license or permit will be needed.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on November 22, 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 November 22, 2022.

Dated: 12/13/22

A handwritten signature in black ink, appearing to read "Donald Roper". The signature is fluid and cursive, with a long horizontal stroke at the end.

Donald Roper
Secretary to the Authority