

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF SEPTEMBER 25, 2013  
REFERRED FROM: CHAIRMAN'S OFFICE

2013-02490

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

HOTEL OFF-PREMISES PERMITS

(ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on SEPTEMBER 25, 2013 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: Hotel off-premises permit holders, package and wine store licensees  
and agency staff

SUBJECT: Hotel off-premises permits

The purpose of this Advisory is to provide guidance to licensees with respect to the issuance and renewal of hotel off-premises permits issued under subdivision 6 of section 64 of the Alcoholic Beverage Control Law ("ABCL"). Divisional Order 426 (issued on June 6, 1957) and Divisional Order 426a (issued on March 8, 1965) are hereby rescinded.

Subdivision 6 of section 64 allows the Authority to issue to a hotel licensee a permit to sell liquor and wine at retail for off-premises consumption. This is otherwise known as a HOP permit. The permit is issued under the same terms and conditions that apply to an off-premises liquor license issued under section 63. However, the permit may only be issued if there is an establishment with an off-premises liquor license located within eight miles of the hotel.

Measurement

The distance of eight miles shall be measured using the driving distance between the hotel and the establishment with an off-premises liquor license. The measurement shall be taken from the points on the public road which are closest to the entrances of the hotel and the establishment with the off-premises liquor license.

Standard for issuance of HOP permits

Determinations on applications for HOP permits shall be made in accordance with public convenience and advantage. As with applications for off-premises liquor or wine licenses, HOP permit applicants shall identify the four closest off-premises liquor or wine licensees.

Continuation of HOP permits

In the event that an off-premises liquor license is issued within eight miles of a hotel licensee with an HOP permit, such permit may remain in effect and be renewed notwithstanding the issuance of the off-premises liquor license.

Impact of HOP permits on applications for off-premises liquor and wine licenses

For purposes of determining public convenience and advantage, the presence of any existing HOP permit shall be considered with respect to an application for an off-premises liquor or wine license or an HOP permit. The presence of an existing HOP permit does not require the disapproval of an application for another HOP permit within eight miles of the existing permit.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF SEPTEMBER 10, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-02424S (OVER)  
2013-02525

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

OPERATION OF  
LOCAL WINE SCHOOL FRANCHISES LTD.

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on SEPTEMBER 10, 2013 determined:

Item carried over to 9/25/13

The Members of the Authority at their regular meeting held at the Zone I New York City Office on SEPTEMBER 25, 2013 determined:

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF SEPTEMBER 10, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-02424V (OVER)  
2013-02526

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

OPERATION OF DRIZLY, INC.

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on SEPTEMBER 10, 2013 determined:

Item carried over to 9/25/2013

The Members of the Authority at their regular meeting held at the Zone I New York City Office on SEPTEMBER 10, 2013 determined:

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF SEPTEMBER 25, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-02537J

REASON FOR REFERRAL

REQUEST FOR DIRECTION

QUEENS CR 1150588  
LINDEN PLACE ENTERPRISES LLC  
3420 LINDEN PLACE  
FLUSHING, NY 11354

CASE NO. 72621 & 87736

(REPORT OF LITIGATION)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on SEPTEMBER 25, 2013 determined:

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF SEPTEMBER 25, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-02537R

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

PROPER MARKETING AND SALES OF "LIMITED  
AVAILABILITY" ITEMS AND "CLOSEOUT SALES"  
OF WINE AND/OR DISTILLED SPIRITS

(PROPOSED ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on SEPTEMBER 25, 2013 determined:

September 25, 2013

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## STATE OF NEW YORK LIQUOR AUTHORITY

To: All manufacturers, importers, wholesalers, retailers and agency staff

Subject: Proper marketing and sales of "limited availability" items and "closeout sales" of wine and/or distilled spirits

The purpose of this Advisory is to provide guidance to manufacturers, importers and wholesalers with respect to their ability under the Alcoholic Beverage Control Law ("ABCL") to properly price post and solicit sales for "limited availability" items and "closeout sales" of wine or distilled spirits. This advisory assumes compliance with Advisories #2012-5 and #2013-1.

For purposes of this advisory "limited availability" items are those items bearing the same brand or trade name, or combo packs pursuant to Advisory #2013-1, for which the manufacturer, importer or wholesaler has reason to believe market demand exceeds or will soon exceed available inventory. Such reasonable belief may be based upon the knowledge that the manufacturer, importer or wholesaler: (1) does not have sufficient inventory to meet demand; or (2) cannot purchase sufficient inventory to satisfy demand; or (3) does not intend to sell or purchase further inventory for a period of at least one year; or (4) has a seasonal item which is limited or for which the season is over; or (5) has an item that has been discontinued by the supplier; or (6) has price posted a subsequent vintage<sup>1</sup>; or (7) has terminated their business relationship.

For purposes of this advisory "closeout sales" occur when it is the intent of the manufacturer, importer or wholesaler to sell its entire remaining inventory, and there is a reduction in the posted price of at least 10% from the previous month. "Closeout sales" are one acceptable method of allocation for sales of "limited availability" items as further set forth below. "Closeout sales" are a special category of limited availability items created because the manufacturer, importer or wholesaler does not intend to sell additional inventory once the

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<sup>1</sup> The price filing of a later vintage does not, in and of itself, convert any prior vintage to a limited availability item.

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current inventory runs out. Except for seasonal items, no item should be subject to a "closeout sale" unless it has been offered for sale in New York for a period of at least six months.

Manufacturers, importers and wholesalers are required to notify the Authority in advance of all "limited availability" price postings. Beginning with the March, 2014 wholesale wine and wholesale liquor price postings (due January 25, 2014), manufacturers, importers and wholesalers will be required to specify a method of allocation for each "limited availability" posting. Said notification with a method of allocation specification shall be posted together with the monthly price filing in a manner prescribed by the Authority, which will enable the wholesaler to select "limited availability" and a method of allocation. At that time, manufacturers, importers and wholesalers will have the ability to utilize the new price posting system or continue to utilize the old price posting system (as well as the limited availability email inbox: [limited\\_availability@sla.ny.gov](mailto:limited_availability@sla.ny.gov)) at their discretion until the May, 2014 retail wine and retail liquor price postings (due April 5, 2014) when only the new price posting system will be available.

In the event that an item is not filed as a limited availability item, and a subsequent unexpected event (e.g., the item receives a high score from a trade or consumer publication or a celebrity endorsement) occurs during the month which creates a demand for the item which is greater than the existing inventory of the item, for the remainder of the month and upon notice to the Authority via the limited availability email inbox ([limited\\_availability@sla.ny.gov](mailto:limited_availability@sla.ny.gov)), a wholesaler may limit the amount which any customer may purchase to one purchase at the smallest quantity discount filed for the month in question. In the following month such an item must be filed as a limited availability item. For all allocation changes made after the initial filing and prior to the first day of the month for which the price posting is effective, the limited availability email inbox (previously utilized for all "limited availability" postings) will remain available and will now be utilized solely for allocation changes made during that period.<sup>2</sup> The below form for email submission of such mid-month "limited availability" price postings is required unless permission is obtained from the Authority to use an alternate form. With respect to such allocation changes, except as may be authorized in section 101-b of the ABCL, there shall be no price changes without permission from the Authority for good cause shown until the next month's price posting has been filed and is in effect. NOTE: (1) Once the month for which the prices are posted has begun, the method of allocation may not be changed without permission from the Authority; (2) any changes to the price posting must be properly price

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<sup>2</sup> Once a "limited availability" allocation is filed there may no longer be sales at the smallest quantity discount level. Additionally, quantity discounts may not be utilized with any "limited availability" allocation.

posted the following month; and (3) "closeout sales" may not be implemented via mid-month allocation changes and must be properly price posted.<sup>3</sup>

Manufacturers, importers and wholesalers are reminded that quantity discounts are not permitted for "limited availability" price postings. Manufacturers, importers and wholesalers are reminded that value added packs that are limited in nature must be price posted as "limited availability" items. All combination packages which are not intended to be delivered to the consumer intact are considered to be "limited availability" items with the exception of distributor assembled ("DA") items pursuant to paragraph 16 of Advisory #2013-1. Please refer to Advisory #2013-1 with regard to when a value added pack is to be considered a limited availability item.

The Authority recognizes that good cause has been shown to allocate "limited availability" items differently between on and off premises licensees, and a manufacturer, importer, or wholesaler may consider the nature of, and the consumer market for, a limited item when choosing a method of allocation. If a different method of allocation is used for a given channel (i.e., on-premises or off-premises), licensees within the same channel must have an equal opportunity to obtain the "limited availability" item.

#### PROPER TYPES OF "LIMITED AVAILABILITY" ALLOCATIONS:

The list below sets forth methods of allocation deemed permissible by the Members of the Authority. A different method of allocation may be used for each channel. Other methods of allocation than those set forth herein may be utilized. However, if the manufacturer, importer or wholesaler utilizes another method of allocation and does not obtain prior written approval from the Authority, it does so at its own risk.

- 1) Past sales history (within preceding 12 months) with 10% holdback allowance (i.e., set aside and held in inventory) for prospective new business as long as such past sales were not themselves discriminatory;
- 2) Lists of retailers published by respected third party sources such as: a listing as best wine list in Wine Spectator Magazine; a listing in Zagats as best restaurants; a listing in Michelin Guide or the like;
- 3) Unsold accounts (retailers that have not purchased the item within the past year);

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<sup>3</sup> All such changes to the "limited availability" postings will be published via the authority's website ([www.sla.ny.gov](http://www.sla.ny.gov).)

- 4) First come first served with a maximum per account;
- 5) Advance interest, provided all accounts are given reasonable notice and the opportunity to express their interest but no pre-ordering is entered into;
- 6) "Closeout sales" – The following method should be used for items designated for "closeout sales."
  - First month filing of maximum number of cases per retailer (not to exceed 10% of the available inventory) together with a notice that in the next month and thereafter the item will be marked "first come first served - no maximum."
  - Second and subsequent months, first come first served - no limit, until inventory of the item is depleted to zero. Manufacturers, importers and wholesalers may begin accepting such orders at 9:00 AM on the twenty-fifth day of the month preceding the second month in which any such posting goes into effect. NOTE: If the price is reduced in the second or any subsequent month, the process must be repeated from the beginning (with a new first month maximum case allocation filing) until inventory of the item is depleted to zero.

Regardless of the method of allocation utilized, if a 70/30 split between channels is utilized, the manufacturer, importer or wholesaler will be deemed to be operating within a safe harbor as pertaining to allocations between channels for any given month. If the 70/30 split allocation formula is deviated from, the burden will be on the manufacturer, importer or wholesaler to demonstrate that an approved method of allocation from the above list was utilized for any given month. Although price posting is done on a month by month basis, a manufacturer, importer, or wholesaler may create an allocation plan for a limited availability item that extends over a commercially reasonable period, not exceeding twelve months, provided there is no change in price during that period. If a price reduction is filed for any limited availability item that is so allocated, the 70/30 split between channels must occur at each price utilized during said commercially reasonable period. The manufacturer, importer or wholesaler is under an obligation to keep proper internal controls and records to justify the need to designate any item as limited availability as well as the method of allocation chosen.

Limited Availability Mid-Month Allocation Change Reporting Form

Wholesaler name (not d/b/a):

Wholesaler NYSLA license number:

Month and year for this report:

Name of person completing this report:

Contact person's name, phone number, email address:

Product and pricing information (as reported on the price posting noted above):

TTB/CoLA # or Brand Label Registration #:

Wholesaler Item #:

Regular / Combo / VAP (R, C, V):

Brand name and product description (including age if applicable):

Price per bottle and per case (BT \$, CS \$) (specify and list NYC if applicable) as reflected in the price posting:

Number of bottles per case:

Requested allocation changes details:

\*\*\*\*\*No quantity discounts allowed on Limited Availability items\*\*\*\*\*

Forward via electronic mail to: [limited.availability@sla.ny.gov](mailto:limited.availability@sla.ny.gov)

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF SEPTEMBER 25, 2013  
REFERRED FROM: COUNSEL'S OFFICE

2013-02537S

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

GROCERY STORE LICENSE STIPULATION

(PROPOSED ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on SEPTEMBER 25, 2013 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: Applicants for a license to sell beer for consumption off the premises or for a license to sell beer and wine products for consumption off the premises

SUBJECT: Grocery Store License Stipulation

The purpose of this Advisory is to provide guidance to applicants with respect to the issuance of Grocery Store license applications issued under Sections 54 & 54a of the Alcoholic Beverage Control Law. Divisional Order 826 (issued on April 10, 2010) is hereby rescinded.

Whether a grocery store is in compliance with the Grocery Store License Stipulation may be determined by measuring the number of square feet of floor space that is devoted exclusively to the Consumer Commodities listed in the Grocery Store License Stipulation, and by dividing this number by the number of square feet of floor space devoted to the display of retail commodities for the entire grocery establishment. A sample calculation for a hypothetical grocery store would appear as follows:

384 ←	Number of square feet of floor space devoted exclusively to the Consumer Commodities listed in the Grocery Store License Stipulation ( <b>excludes alcoholic beverages and carbonated beverages</b> ),
441 ←	<b>DIVIDED BY</b> the total number of square feet of floor space devoted to the display of retail commodities for the entire grocery establishment,
<b>0.87</b> →	<b>ESTABLISHES</b> that, <i>for this particular store</i> , the floor space exclusively occupied by Consumer Commodities constitutes <b>87%</b> of the Total Floor Space occupied by the applicant/licensee Grocery

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF SEPTEMBER 25, 2013  
REFERRED FROM: SECRETARY'S OFFICE

2013-02537T

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

CLOSING HOURS

WARREN COUNTY

PUBLIC HEARING: 9/05/2013

(RESOLUTION TO FURTHER RESTRICT THE HOURS OF SALE FOR ON-  
PREMISES ESTABLISHMENTS. CHANGE IN HOURS FROM 4:00 A.M. TO 3:00 A.M.)

The Members of the Authority at their regular meeting held at the Zone I New York City  
Office on SEPTEMBER 25, 2013 determined:



New York  
State Liquor Authority

MEMORANDUM  
Secretary's Office

State of New York  
Executive Department  
Division of Alcoholic Beverage Control  
Alfred E. Smith State Office Building  
80 South Swan Street – Suite 900  
Albany, NY 12210-8002

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TO: Members of the Authority

FROM: Jacqueline Held, Secretary to the Authority

SUBJECT: Request to amend hours of sale of alcoholic beverages for consumption on the premises in Warren County

DATE: September 18, 2013

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Section 106(5) of the Alcoholic Beverage Control Law (“ABCL”) sets the hours during which alcoholic beverages may be sold for retail for consumption on the premises. Those hours are Sundays from midnight to 4:00 a.m. and noon to midnight; Mondays through Saturday from midnight to 4:00 a.m. and 8:00 a.m. to midnight.

Pursuant to Section 17(9) of the Alcoholic Beverage Control Law, the Authority, upon receipt of a resolution from a county’s legislative body, may further restrict those hours. The Authority can approve or disapprove after notice and a hearing in that county.

The Authority’s records reflect that in 1971 the restricted hours of sale of alcoholic beverages for on premises consumption in Warren County were Sundays from midnight to 3:00 a.m. and noon to midnight; Mondays through Saturday from midnight to 3:00 a.m. and 8:00 a.m. to midnight. These hours corresponded with the hours set by ABCL 106(5) at that time. In 1974 the New York State Legislature passed a law which amended the statute to reflect a 4:00 a.m. closing time (Ch. 1036, L 1974).

The Authority is now in receipt of Resolution 328 of 2013 from the Warren County Board of Supervisors, requesting a change in the hours of sale of alcoholic beverages at retail for on premises consumption. This change will further restrict the hours of sale of alcoholic beverages at retail for on premises consumption and prohibit the sales of same during the following hours:

- On Sunday, from 3:00 a.m. until noon; and
- On Monday through Saturday from 3:00 a.m. until 8:00 a.m.

On September 5, 2013, a public hearing was held at the Warren County Municipal Center. Public Notice was posted in local newspapers and on the Authority’s website.

To: Members of the Authority  
From: Jacqueline Held, Secretary to the Authority  
Subject: Request to amend hours of sale – Warren County

Date: June 17, 2013

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Prior to the scheduled public hearing, the Warren County Attorney's Office forwarded the meeting minutes of the Warren County Board of Supervisors wherein the proposed resolution was publically discussed. A copy of those minutes are attached.

Chairman Rosen and myself held the hearing wherein 14 individuals placed their comments on the record. A digital copy of the hearing was made and forwarded to Commissioner Greene prior to the Full Board meeting. Nine persons were in favor of the change in hours, four persons were opposed to the change and one individual stated if the hours were change she would like to see an exception made for the Town of Lake George.

County Supervisor Bill Kenny spoke in support and expects the County of Saratoga to move to a 3:00 a.m. closing also. He claims there will be no significant economic impact in further restricting the hours of sale.

Michael O'Connor, a resident of Warren County, noted that the 3:00 a.m. closing time is a fair compromise to address the quality of life issues. Glens Falls is trying to bring in new residents and reducing the hours of sale of alcoholic beverages may help with revitalization of the area.

County Supervisor Bill Loeb agrees with Mr. Kenny and Mr. O'Connor. The change in hours will improve the quality of life.

Ben Driscoll, Glens Falls Common Council Member, supports the resolution and notes that it may be some time, after the change in hours, before results will be seen.

Bill Mason, Supervisor of the Town of Queensbury, spoke in support. The change is a commonsense approach and he forecasts that further restrictions in the hours of sale of alcoholic beverages will move south down the Hudson River. On second call for comments, he stated that the patrons of South Street bars are generally not resident of Glens Falls.

Mr. Cling made a brief statement. He is the father of a daughter who was killed by a drunk driver, the resolution is a step in the right direction.

Jack Diamond, Mayor of Glens Falls, spoke in support of the resolution. He initially advocated for a 2:00 a.m. closing time and the final resolution of 3:00 a.m. is a fair compromise. He stated that the City of Glens Falls has a population of 14,000 with 31 police officers. In the area of South Street there are eight bars located in a ¼ mile and restricting the hours of sale would reduce alcohol related incidents.

To: Members of the Authority  
From: Jacqueline Held, Secretary to the Authority  
Subject: Request to amend hours of sale – Warren County

Date: June 17, 2013

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Bud Taylor, Supervisor of the City of Glens Falls, also spoke in support of the change in hours. He stated that the majority of the population in Warren County is located in Queensbury and Glens Falls. He further stated that no Board Member was pressured to vote in favor of the change.

David Sanford spoke and stated he supported the change.

John Bailey, resident of Warren County, spoke in opposition. He stated the proposal of changing the hours of sale of alcoholic beverages was spearheaded by the Glens Falls Mayor. Statistics show that overall crime has increased in the county but assaults have decreased. If there was a larger police presence then Glens Falls crime rates would decrease.

Peter Kasin, a resident of Warren County and retired police officer, was not in support of the change. He claimed that closing the bars at 3:00 a.m. will only cause the problems that occur at 4:00 a.m. to shift to 3:00 a.m.

Doug Frost, Village of Lake George licensee, was not in support of the change. He indicated that he was also asked to speak on behalf of other licensees who could not attend the public hearing due to a National Hot Rod and Antique car event currently going on. He stated that the Board of Supervisors vote was not unanimous but passed by a weighted vote. He projected that his business would lose 10 to 15 percent of revenue if the resolution passed the SLA. He was present at the Board meetings and found it odd that there was never any statement or position received from the Warren County Sheriff's Department given that the change in hours were prompted by crime statistics.

An individual named Ralph of the Town of Horicon indicates that the resort areas would lose revenue as a result of the change. The whole county is being punished as a result of the improper activities in one city.

Holly Hahn, a resident of Lake George, would support the change in hours if the Town of Lake George would be exempt. She further feels that bar owners and bartenders need to be properly trained to prevent selling and serving to intoxicated patrons.

The record was left open, after the public hearing, to allow written submissions to be entered for those who were not able to attend. Attached please find written comments received along with a five page petition opposing the change.