

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of 200 Foot Law on property  
located at 18-01 26<sup>th</sup> Road, Astoria

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DECLARATORY  
RULING  
2016-01314

The Alcoholic Beverage Control Law [ABCL] prohibits the Authority from issuing a retail license for the sale or consumption of liquor for any premises which is on the same street and within 200 feet of a "building occupied exclusively as" a school or place of worship. This licensing restriction is commonly referred to as the "200 Foot Law."

The Members of the Authority are in receipt of a request from Michael J. Paleudis, Esq. on behalf of a current licensee, Astoria Craft LLC (Queens TW 1285215) for a declaratory ruling as to whether, under the facts presented, the location is subject to the 200 Foot Law. For the purposes of this request, Mr. Paleudis does not dispute that the location is on the same street as and within two hundred feet of two churches, the Iglesia De Dios Pentecostal Church (IDDPC), a one-story building located at 26-30 18<sup>th</sup> Street, and Primeira Igreja Batista Brasileira (PIBB) or the First Portuguese Speaking Baptist Church, a two-story building located at 26-13 18<sup>th</sup> Street. He seeks a ruling that the two church buildings are not occupied exclusively as churches.

Notwithstanding the general prohibition created by the 200 Foot Law, the building housing the church must be occupied exclusively as a church, ABCL §64(7)(a).

With respect to IDDPC, the applicant presents an on-line rental listing from StreetEasy.com showing an apartment for rent at 26-30 18<sup>th</sup> Street. Mr. Paleudis states that the IDDPC building contains "at least one apartment" that is offered to non-congregants.

With respect to PIBB, the applicant submits a two-page rental agreement for the social hall located on the second floor. Mr. Paleudis argues that since the agreement offers the option of hiring the church's kitchen director/chef to operate the stove, grill and fryer to cater the event, and that since the price of such catering services will be defined by the chef, that this is a commercial non-church related business being conducted on the premises and thereby "detracts from the predominant use of the building as a place of worship." Mr. Paleudis admits that he does not know what the fee-sharing arrangement is, if any, between the chef and PIBB.

In defining the term "exclusively" occupied as a place of worship the ABCL §§ 64 et seq. sets forth a myriad of activities which are considered to be incidental to and not detracting from the predominant character of a building used as a place of worship.

In 2007, the Legislature amended the ABC Law, including adding ABCL §64(7)(d-1) to provide that a place of worship does not cease to be so when it hosts: bingo or other games of chance as a means of raising funds for the not-for-profit religious organization; yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions. The building does not cease to be "exclusively" occupied where the payment of funds is accepted to defray costs related to another party's use of the building.

The Authority has previously ruled that where a church rents out an apartment in its building to a person not connected to the church, it effectively renders the use of the building as non-exclusive, and the 200 foot law does not apply. Here, the evidence submitted in regard to IDDPC, shows that there is a commercial rental listing for an apartment located at that address. Since a portion of the church building is rented out to the general public as an apartment, that building is not exclusively used as a place of worship.

PIBB offers its social hall for rent. The rental of portions of a church to third parties for private social functions is within the Legislature's 2007 amendment permitting use of the building by non-congregant members of the community for private social functions, even for remuneration. PIBB also has a kitchen. ABCL §64(7)(c) recognizes the ability of a place of worship to have permanent catering facilities. PIBB does not permit renters to utilize any cooking appliances unless the renter hires PIBB's kitchen director/chef. The rental agreement also states that alcohol is not permitted within the venue. The rental agreement clearly evinces the intent by the church to control its own catering facilities.

Compare, for example, the situation in *Rose Group Park Ave LLC v. NYSLA*, 93 AD3d 1 (1<sup>st</sup> Dept. 2012) where the Rose Group installed in a church the catering facilities for its own private and exclusive use, Rose Group events took priority over church events, and the lease provisions strictly limited church activities and permitted the Rose Group to so alter the building that little remained as evidence of its use as a place of worship. The court held that the Rose Group's catered events could not be characterized as "incidental uses."

Here, the church issues the rental agreement and has strict rules regarding the usage of its facilities. The prices for the rental and the use of the kitchen for cold preparation only are set forth. The fact that a renter has the option to hire the church's kitchen director to cater the event for hot food is further indicia that the catering is subordinate to the church. That the price for the catering is to be determined is simply of necessity since the extent of the catering that any particular renter may desire is unknown at that point. The rental of PIBB's second floor is clearly subordinate to and does not detract from the predominant character of the building as a place of worship. Accordingly, since one of the church buildings is occupied exclusively as a place of worship, the applicant is barred by the 200 foot law from applying for a full liquor license at 18-01 26<sup>th</sup> Road in Astoria.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on June 7, 2016.

  
Jacqueline Held  
Acting Secretary to the Authority