

“Measuring the Distance” The 200 and 500 Foot Rules

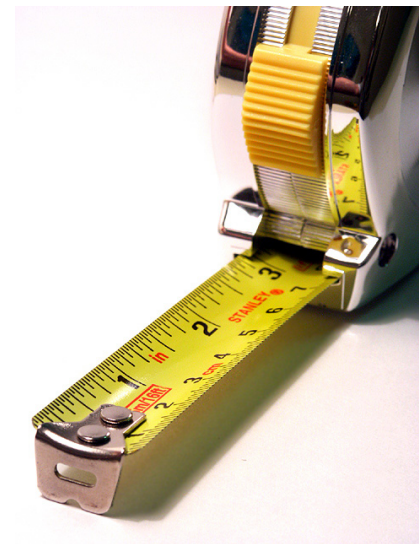


NEW YORK STATE
LIQUOR
AUTHORITY

DIVISION OF ALCOHOLIC
BEVERAGE CONTROL

The 200 Foot Rule

The Alcoholic Beverage Control Law prohibits certain licenses from being issued if the location of the establishment is on the same street and within 200 feet of a building that is used exclusively as a school, church, synagogue or other place of worship. This restriction is commonly called the 200 foot rule and applies to any retail establishment where liquor will be sold for on premises consumption and any retail establishment where liquor or wine will be sold for consumption off the premises.



Measurement of distance

The law provides that the measurement be taken in a straight line from the center of the nearest entrance of the school/place of worship to the center of the nearest entrance of the establishment. The distance is determined using only entrances that are regularly used to give ingress to (a) the students of the school, (b) the general public into the place of worship; and (c) patrons into the establishment. Emergency/fire exits, maintenance access, and doors to gain access to non-public areas are not used in the measurement. If the entrance is set back from the sidewalk by a walkway or doorway, the measurement is taken from the center of the line where the walkway/doorway meets the sidewalk. For an establishment in a multi-story building, the building entrance at street level is used.

Corner locations

The statute refers to the school/place of worship being on the same street as the licensed premises. The buildings do not have to be on the same block. With respect to an establishment or school/place of worship on a corner lot, the building is considered to be on both streets, whether or not there is an entrance to the building on both streets.



Exceptions to the rule

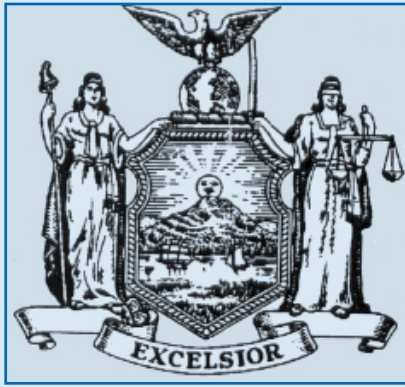
“Grandfather” clause

If the 200 foot rule applies to a particular location, the Authority does not have the discretion to grant the application. Even if the school/place of worship consents to the issuance of the license, the Authority cannot approve the application. If the Authority discovers that an establishment has been licensed in violation of the rule, it cannot allow the violation to continue when the license comes up for renewal.

The statute does, however, provide for certain exceptions to the rule:

- establishments in operation since December 5, 1933 (the end of prohibition);
- if the location was licensed before the school/place of worship existed, the Authority can renew the license and approve applications to transfer ownership;
- if a hotel has an existing “RL” [restaurant liquor] license, it may obtain a “HL” [hotel liquor] license;
- applications for a “CL” [club liquor] license when the club is affiliated with the school/place of worship;
- a legitimate theater operated by a not-for-profit organization; and
- the Authority may permit the licensee to move a licensed premises that has an exception to another location within 200 feet of the school/church, as long as the new location is not closer than the old location.





Eliot Spitzer
Governor

Daniel B.Boyle
Chairman

Noreen Healey
Commissioner

Joshua B.Toas
CEO

Exclusive use as school/place of worship

While the law uses the phrase “building used exclusively” as a school/place of worship, the courts have adopted a test that looks to whether the building is used primarily as a school/place of worship. The building will still be considered a school/place of worship as long as any use is incidental to, and are not inconsistent with or detracting from the predominant character of the building as a school/place of worship.

In 2007, the 200 foot rule was amended to clarify that the use of a building for certain purposes would be considered incidental to its primary use as a place of worship. Those uses include, but are not limited to:

- the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups;
- use of the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups;
- the use of the building by other religious organizations or groups for religious services or other purposes;
- the conduct of social activities by or for the benefit of the congregants;
- the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson’s disease, or Alzheimer’s disease; and
- the use of the building for blood drives, health screenings, health information meetings, 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.

In addition, the amendment also provided that a building would still be considered as “used exclusively” as a place of worship even when the not-for-profit religious organization occupying the place of worship accepts payments from those using the building to assist in defraying costs related to that party’s use of the building.



The 500 Foot Rule



Ordinarily, an application for an on-premises liquor license must be approved unless the Authority finds there is good cause not to issue the license. The Alcoholic Beverage Control Law, however, contains restrictions on the approval of certain on-premises liquor licenses if the location is within a 500 foot radius of certain other establishments with on-premises liquor licenses. The restrictions apply only in cities, towns or villages with a population of 20,000 or more. The restrictions are commonly referred to as the “500 foot rule.”

Establishments subject to the 500 foot rule

Applications for licenses under Section 64, 64-a, 64-c and 64-d of the Alcoholic Beverage Control Law are all, to some degree, subject to the 500 foot rule. These statutes provide for “full” (liquor, wine and beer) liquor licenses for the on-premises license.

A license under Section 64 can only be issued to a restaurant, hotel with a restaurant, catering establishment, club, vessel or aircraft. Establishments obtaining a license under this section must have a kitchen, with a chef, serving meals.

Section 64-a provides for the “special” on-premises license. The statute allows certain establishments to obtain an on-premises license without meeting the restaurant/kitchen requirement of Section 64. These establishments fall into two categories: 1) nightclubs, bars, taverns, etc, that do not have kitchen facilities and primarily serve alcoholic beverages rather than food; and 2) theaters and other entertainment facilities. Establishments obtaining a license under Section 64-a are not required to have kitchen facilities, but must regularly keep food (sandwiches, soups, etc.) available for sale to customers.

Section 64-c provides for the “restaurant-brewer” license. In addition to allowing the licensee to brew a limited amount of beer on the premises, the licensee must operate a restaurant at the establishment.

Pursuant to Section 64-d a “cabaret” license is required for any on-premises establishment that: (1) permits musical entertainment, singing, dancing or other forms of entertainment; and (2) has a capacity of 600 or more persons. This section primarily addresses large nightclubs. It should not be confused with the cabaret permit issued by the City of New York, which is required for certain establishments regardless of whether alcoholic beverages are served.



Exceptions to the rule

“Grandfather” clause

The 500 foot rule specifically excludes any licensed establishment that was licensed when the rule went into effect on November 1, 1993. If an application is received for an establishment at a location that has been continuously licensed since that date, it is not subject to the rule. “Continuously” means without interruption. If the location was not licensed for any period of time, it has not been continuously licensed. To obtain the protection of this exemption, it does not matter what kind of license was issued for the location, or whether it had been licensed to the same person or corporation.

Renewals

A renewal of a license cannot be denied because of the 500 foot rule. In addition, applications to approve corporate changes (new individuals taking over the existing licensed corporation) are not subject to the 500 foot rule since the corporation continues to hold the license.

Public Interest

If the location is subject to the 500 foot rule, and no other exception applies, the license cannot be issued unless the State Liquor Authority makes an affirmative finding that it is in the public interest to issue the license. This clearly creates a presumption that the license should not be issued. There is, however, no “public interest” exception for applications for a cabaret license.

The 500 foot rule requires that the Authority consult with the municipality or community board and conduct a hearing to gather facts to determine whether the public interest would be served by issuing the license. This is commonly referred to as the “500 foot hearing.” When considering whether it would be in the public interest to approve the application, the Authority may consider the following:

- the number, classes and character of other licensed premises not only in the area where the proposed establishment will be located but also in the particular municipality (or subdivision of the municipality);
- whether the applicant has obtained all other necessary governmental licenses and permits;
- the effect on vehicular traffic and parking in proximity to the location;
- the impact on the existing noise level;
- the history of ABC violations and reported criminal activity at the location; and
- any other factor specified by law or regulation that would be relevant to deciding whether public convenience and advantage, as well as the public interest, would be served by approving the application.

The hearing required by the 500 foot rule is conducted before designated staff in the Authority’s four offices. The Members of the Authority have delegated to specific licensing staff the ability to approve applications when, after the hearing is conducted, there is no community opposition and no other reason for disapproval. In cases where the application is opposed by the community, the matter is referred to the Members of the Authority for determination. However, the fact that the community opposes an application does not mean that the Authority must disapprove the application. Conversely, an application may be disapproved even if the community supports it.

When such matters are referred to the Members of the Authority, the applicant may come to an agreement with the “community opposition” on stipulations concerning the operation of the establishment. In such cases, the Members of the Authority may incorporate those stipulations into the approved method of operation of the licensed premises. These stipulations essentially become conditions of the license privilege. Failure to comply with those conditions subjects the licensee to disciplinary action.

OFFICE DIRECTORY

Executive Office – If you need to reach the Chairman, CEO, Office of Administration or Government Affairs Office, please call (518) 486-4767

Enforcement – If you would like to make a complaint or have questions on enforcement issues, please call (212) 961-8378 in Zone 1, (518) 474-0385 in Zone 2, (716) 847-3039 in Zone 3 or email: Enforcement@abc.state.ny.us

Licensing - If you have questions concerning how to obtain a license or permit please call (212) 961-8385 in Zone 1, (518) 474-3114 in Zone 2, (716) 847-3035 in Zone 3 or email: LicensingInfo@abc.state.ny.us

Wholesale – If you are a manufacturer, wholesaler, retailer or other interested party with questions concerning trade practices, price schedules, brand label registrations or delinquent/credit status, please call (518) 474-6820 or email: Wholesale@abc.state.ny.us

FOIL – If you would like to make a Freedom of Information request, please call (518) 486-4767 or email: FOIL@abc.state.ny.us

Legal - If you have a legal question, please call (518) 474-6750 or email: AlbanyCounsel@abc.state.ny.us

Office of the Secretary – If you have questions regarding the Full Board Calendar or questions on fines or penalties imposed by the Board please call (518) 402-4394 or email: Secretarys_Office@abc.state.ny.us

Information Technology – If you have questions or suggestions regarding the Agency’s use of Information Technology please call (518) 402-4070 or email: Web_Master@abc.state.ny.us

The State Liquor Authority maintains three Zone Offices and one Satellite Office. Please contact the Zone office that supports the county where your business is located.

Zone 1
317 Lenox Ave.
New York, NY 10027

Bronx
Kings
Nassau
New York
Queens
Richmond
Suffolk
Westchester

Zone 2
80 S. Swan St.
Albany, NY 12210-8002

Albany
Clinton
Columbia
Dutchess
Essex
Franklin
Fulton
Greene
Hamilton
Montgomery
Orange
Putnam
Rensselaer
Rockland
Saratoga
Schenectady
Schoharie
Sullivan
Ulster
Washington
Warren

Syracuse District
333 E. Washington St.
Syracuse, NY 13202

Broome
Cayuga
Chenango
Cortland
Delaware
Herkimer
Jefferson
Lewis
Madison
Oneida
Onondaga
Oswego
Otsego
St. Lawrence

Zone 3
535 Washington St.
Buffalo, NY 14203

Allegany
Cattaraugus
Chautauqua
Chemung
Erie
Genesee
Livingston
Monroe
Niagara
Ontario
Orleans
Schuyler
Seneca
Steuben
Tioga
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Wyoming
Yates