File #: Res 0746-2015, **Version:** *

Res. No. 746

Resolution calling upon the state to amend the Alcohol Beverage Control Law to require the New York State Liquor Authority to deny an application for a liquor license when the relevant state legislator, council member and community board are all united in opposition.

By Council Members Reynoso and Gentile

Whereas, The New York State Liquor Authority (SLA) is responsible for enforcing the Alcohol Beverage Control Law (ABC), which includes regulating and licensing establishments that sell and serve alcohol throughout the state; and

Whereas, Over the years, residents of the City of New York, local community boards, and elected officials have expressed concerns regarding the SLA's lack of response to community impacts when issuing a license to serve alcohol; and

Whereas, In response to community concerns, Chapter 670 of the Laws of 1993, known as the "Padavan Law," amended the ABC to create the "500 foot rule"; and

Whereas, The 500 foot rule applies whenever an application for an on premises liquor license is made for a location where there are already three or more alcohol serving establishments within 500 feet of one another; and

Whereas, The 500 foot rule requires the SLA to notify the community board and conduct a public hearing to consider whether granting a license would be in the public interest, including the consideration of community concerns such as traffic and noise; and

Whereas, Notwithstanding the 500 foot rule, many community boards feel their concerns are

inadequately represented in the SLA's process of issuing a liquor license; and

Whereas, There has been litigation related to this concern; and

Whereas, Prior to the Padavan Law, in 1997, in the *Matter of Soho Community v. New York State Liquor Authority*, the New York State Supreme Court found that the SLA had acted in an "arbitrary and capricious" manner in granting a liquor license despite community concerns, as demonstrated by the unanimous opposition of the local community board and the local city council member; and

Whereas, Post Padavan Law, in 2004, in the *Matter of Flatiron Community v. New York State Liquor Authority,* the New York State Supreme Court found that once again, the SLA failed to state the public interest that would be served by issuing a license for a proposed location where 21 such licensed businesses already existed within a 500 foot radius, and in spite of opposition from the local community board, the local council member and the local state senator; and

Whereas, In September 2009, the New York State Legislature's Law Revision Commission found that in reference to the ABC, "The law is fraught with ambiguities and deficiencies that challenge the agency's ability to interpret its requirements and to address the competing interests of the public's health, safety and welfare, and the desire for economic development;" and

Whereas, Elected officials, community boards and members of the community are often disappointed by their inability to impact the decision-making of the SLA through the established public hearing process; and

Whereas, The rights and concerns of the community require more weight in a process that may change a neighborhood in a way that significantly impacts the community; and

Whereas, The ABC Law should be amended to provide communities proper representation and protection from arbitrary applications of the law; and

Whereas, A unanimous rejection from a state and local legislator and the local community board, also known as a “triple no,” should result in the denial of a liquor license; now, therefore, be it

Resolved, That the Council of the city of New York calls upon the state to amend the Alcohol Beverage Control Law to require the New York State Liquor Authority to deny an application for a liquor license when the relevant state legislator, council member and community board are united in opposition.

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LS#4374
Date 3/3/2015
Time 5:44pm
Initials I.M.