

# Inside NYSABC

The official newsletter of the New York State Association of Beverage Centers



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## State Legislature Hearing on Recycling Crisis

The NY State Senate and Assembly Environmental Conservation Committees will be holding a joint public hearing to examine recycling-related issues, on **Monday, October 21, 11 a.m.**

at the Senate Hearing Room, 250 Broadway, 19th floor, Manhattan. Recycling markets were thrown into crisis last year when China cut back dramatically on the recyclables it would accept, with devastating impact, especially on the post-consumer plastic recycling market. According to the committees, the hearing will examine “the status of the State’s recycling markets, the effectiveness of municipal recycling planning and contracting including the role of State funding, and any potential alternatives that could help reinvigorate New York’s recycling efforts.” NYSABC will be making a presentation, highlighting our role as one of the key players in the state’s container recycling system, and using the occasion to push our plan for state-initiated deposits and state collection of empties, which would allow commingling of containers. For info on the hearing: Ashley Dougherty, Legislative Director and Counsel, Senate Standing Committee on Environmental Conservation, [doughert@nysenate.gov](mailto:doughert@nysenate.gov) 518.455.3401.



## Free Access to Capital Workshop

The New York Federal Reserve Bank, the New York State Department of Agriculture and Markets and a coalition of community groups are co-sponsoring a free workshop for NYC-based food, beverage and agricultural enterprises interested in learning about traditional, growth and alternative sources of financing. Attendees will hear from lenders on a wide range of topics, including which types of financing are most appropriate for their

needs, what lenders look for in potential borrowers and alternatives to traditional bank loans, and how to successfully deliver a business pitch. Date and Time

Thursday, October 24, 10 a.m.-2 p.m., Community Room, Borough Hall, 209 Joralemon St., Brooklyn 11201.

Free with advance registration, at <http://bit.ly/foodBevAg>

## Proposed SLA Rule Could Impact Delivery Service Charges

The SLA is considering new rules for arrangements with third parties, such as landlords, delivery services, websites, apps and other e-commerce platforms, when the third party’s compensation is tied to a share in the profits. The rule, which is intended to limit the charges imposed by food delivery services like Grub Hub and Uber Eats, which can run

from 15-30% of an order, has already drawn opposition from state lawmakers and the restaurant industry.

The SLA’s position has always been that anyone sharing in the profits of a licensed business must be disclosed and listed as a principal on the license. Over the years, though, a practice has devel-

oped where the authority allows third parties to get a limited share of a licensee’s profits without having to be included on the license. For example, a landlord does not have to be included on the license if payments do not exceed 10% of the gross profits (20% if the landlord is a non-profit or government agency) and

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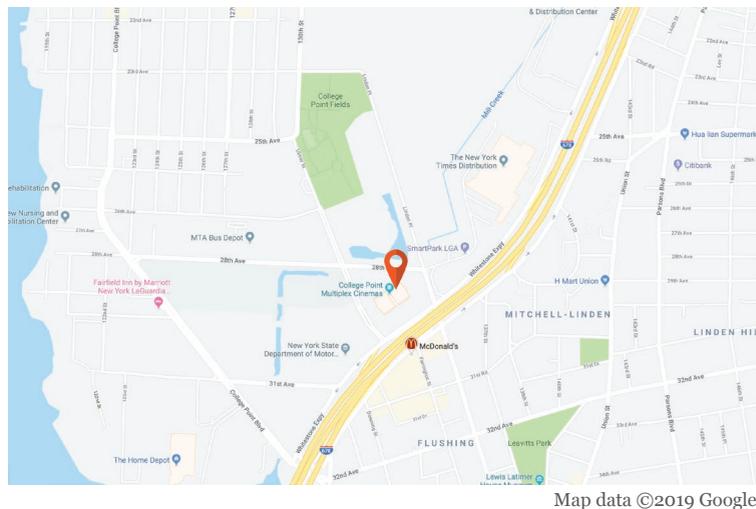


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# Court Upholds SLA Denial of Total Wine Westchester Superstore; New Battle Looms Over Queens Application

In a September 16, 2019 decision, the New York State Supreme Court upheld the State Liquor Authority's denial of Total Wine's application for a retail wine and liquor superstore (which they plan to combine with an A license for off-premises beer) in Hartsdale, in Westchester County. The court ruled that the SLA correctly determined that existing licensees in the area were adequately addressing consumer needs, that there was a downward trend in alcohol sales in the immediate area, along with lagging population growth and slow commercial development. Therefore, the court said, the SLA was correct in concluding that there was no reason to add a store with retail space 10 times the size of the nearest store and twice the size of all stores within two miles of the proposed location. Total Wine has already notified the court that it will be appealing the decision, claiming that the SLA's decision was influenced by "anti-competitive protectionism; political opposition" and Total's status as a "nonresident." The process could take a year or more.



Meanwhile, Total Wine is forging ahead with a new application for a similar superstore in Flushing, Queens, just off the Whitestone Expressway in a former Toys-R-Us, about 5 minutes from CitiField and 10 minutes from La Guardia Airport.

The application has not been formally filed with the SA, but it has already drawn opposition from elected officials, including Rep. Alexandria Ocasio-Cortez, in whose district the proposed store would be located, as well as several state lawmakers who withdrew their letters of support once they realized the impact the store would have on local mom-and-pops. Total Wine (known formally as Total Wine & More) is run by two brothers, Robert and David Trone, the latter a Maryland congressman, with 193 stores in 23 states and an estimated \$3 billion annual sales. They are known for aggressive marketing and pushing the envelope of state and local liquor licensing laws, often through litigation. Total Wine has one store in New York, in Westbury, but has been unsuccessful in their efforts to open locations in Stony Brook and Westchester.

## NY State Requires All Employers to Adopt Sexual Harassment Prevention Policy and Provide Employee Training

NY State law requires that every employer, regardless of size or number of employees, must adopt a sexual harassment prevention policy and provide sexual harassment prevention training to employees.

The policy must provide examples of prohibited conduct; include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws; include a complaint form and a procedure for the timely and confidential investigation of complaints; inform employees of their rights and all available forums for adjudicating sexual harassment complaints; clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory personnel who knowingly allow such behavior to continue; and clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

Copies of a state-approved model policy, a recommended Sexual Harassment Prevention Policy Notice and free employee training videos are available at <https://www.ny.gov/combating-sexual-harassment-workplace/employers>. The videos meet all state training requirements except one: they are NOT considered interactive. If you use the state videos, you must also: ask questions of employees as part of the program; accommodate questions, with answers provided in a timely manner; or require feedback from employees about the training and the materials.

NYSABC is looking into offering a reduced group rate for the required policy and employee training to make sure all members are in compliance with the state requirements.



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**SLA Rule** *cont. from front cover*  
the lease does not give the landlord any other financial interest in or control over the business.

The new policy would extend this rule to arrangements with other third parties that provide services to licensees, such as delivery services, websites, apps and other e-commerce platforms.

The proposed guidelines allow flat fee arrangements if they are “commercially reasonable,” and limit percentage

arrangements to 10% (20% for non-profits). The details:

An agreement that entitles a third party to a flat fee (i.e., a pre-determined amount that is not dependent on the value of sales) will not require the third party to be disclosed or listed as a principal on the license, provided the fee is “commercially reasonable”.

An agreement that entitles the third party to a percentage not exceeding 10% of the licensee’s profits (<20% if the

third party is a non-profit or governmental agency) is permissible and will not require the third party to be disclosed or listed on the license. Percentage arrangements are defined as agreements where the third party’s compensation is based on the monetary value of sales or the number of sales (whether the sales relate to alcoholic beverages or if the alcoholic beverages are excluded).

The SLA is expected to rule on the proposal later this year.

## Court Issues Temporary Halt to Governor’s Flavored Vape Ban

On Thursday, October 3, an appellate court put a temporary hold on Governor Andrew Cuomo’s emergency ban on the sale of flavored nicotine products, one of several executive actions designed to discourage vaping by children and teenagers, pending a hearing in Albany Supreme Court on Friday, October 18. It’s a moot point for C Licenses, who cannot sell e-cigs, based on a 2011 SLA declaratory ruling that they are not “tobacco products”, one of the specifically listed items Cs are authorized to sell. But the panic over vaping will likely derail, at least for a time, NYSABC’s pending legislation that would allow Cs to sell e-cigs and vaping supplies.





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## Government Ramps Up Crackdown on Underage Sales

On September 20, 2019, Governor Andrew Cuomo announced a statewide multi-agency enforcement campaign against underage alcohol sales, with the SLA, DMV and local law enforcement conducting intensified underage drinking checks at licensed retailers, including bars, restaurants, liquor stores and

grocery stores. The new enforcement push, which will target 500 locations across the state, builds on the Operation Prevent campaign to deter underage drinking and discourage the use of fake IDs. Since mid-June, over 400 tickets have been issued statewide, many at performance venues,

including Jones Beach Theater on Long Island, and fake IDs from 16 states and a Canadian province have been seized. Businesses charged by the SLA with underage sales face civil penalties of up to \$10,000 per violation, and repeat offenders could face license suspension or revocation.



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