

PESETSKY & BOOKMAN, P.C.
ATTORNEYS AT LAW
325 BROADWAY, SUITE 501
NEW YORK, N.Y. 10007

WARREN B. PESETSKY
ROBERT S. BOOKMAN
Partners
MAX BOOKMAN
Associate
MARC E. FLEISCHMAN
Of counsel

(212) 513-1988
(212) 385-0564 (fax)
www.PB.law

Writer's Email: max@pb.law

September 23, 2019

Re: **New York City Hospitality Alliance Testimony on**
Int. No. 1545, in relation to restricting the advertisement of alcoholic beverages
near schools

We represent the New York City Hospitality Alliance, a not-for-profit trade association that represents thousands of eating and drinking establishments throughout the five boroughs.

Underage drinking is a problem that we all stand against. There are many tools available to the City to advance its goals in this field. For example, when the Alliance collaborated with NYPD to create *Best Practices for Nightlife Establishments*, a first-of-its-kind publication utilized by hospitality businesses across New York City, we made sure to devote an entire section to educating operators on best age verification practices. Alcohol is appropriately an age-restricted product, and the Alliance supports efforts to keep it out of the hands of minors.

However, state law and relevant caselaw restrict the City's ability to regulate alcoholic beverages in the manner that is envisioned by Int. No. 1545. The Court of Appeals has held that the state Alcoholic Beverage Control Law occupies the field when it comes to efforts "to regulate and control the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance ... and obedience to law." *See People v. De Jesus*, 54 NY 2d 465 (1981). As the Court observed, "the Alcoholic Beverage Control Law is surely pre-emptive. For one thing, the regulatory system it installed is both comprehensive and detailed." *Id.*

When New York City previously passed legislation that interfered with the ABCL's comprehensive regulatory regime, the Court of Appeals struck it down, holding "the direct consequences of a local ordinance should be examined to ensure that it does not 'render illegal what is specifically allowed by State law.'" *See Lansdown Entertainment Corp. v. New York City Department of Consumer Affairs*, 74 NY2d 761 (1989).

The rule is clear: "local governments' prerogatives to enact local laws of general application which are aimed at other legitimate concerns of local government" are permissible, "so long as they do not intrude essentially on the State's exclusive control ... over the sale or distribution of alcohol." *Id.*

The ABCL and the regulations promulgated by the State Liquor Authority already address the issues of underage drinking, proximity to schools, and alcohol advertisements. For example: (1) it is a violation of the ABCL to sell alcohol to a minor; (2) full on-premises drinking establishments may not be situated within 200 feet of a building exclusively occupied as a school, and (3) manufacturers and retailers of alcohol are subject to complex rules regulating the content of alcohol advertisements. As the Court of Appeals has held in similar contexts, the City may not render illegal what the state ABCL and SLA permit.

In addition, we are concerned that vague language in the bill could be interpreted in an overbroad manner. While we appreciate the exemption for buildings owned or leased by businesses that sell alcohol, the bill as written would still appear to prohibit advertisements by eating and drinking establishments on billboards on other buildings. Envision, for example, an advertisement for an Italian restaurant on a billboard, depicting a family eating around a dinner table with a parent drinking wine. Under the current language, such an advertisement would be conceivably illegal. That is obviously not acceptable.

For these reasons, we ask that the Council reconsider the legality and utility of this bill.

Respectfully submitted,

PESETSKY & BOOKMAN, P.C.



By: Max Bookman, Esq.