

DATE ISSUED: April 8, 2004

REPORT NO. 04-074

ATTENTION: Public Safety and Neighborhood Services Committee
Agenda of April 14, 2004

SUBJECT: Alcohol Beverage Licenses

SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COUNCIL COMMITTEE.

BACKGROUND

Per the request of Council District Two, the City Manager was asked to prepare a report that explained the existing alcohol beverage license application process and to bring forward a discussion to the Public Safety and Neighborhood Services Committee to consider future action.

DISCUSSION

Local government controls retail alcohol businesses by using their zoning authority to regulate such businesses. Under California State law, the Department of Alcoholic Beverage Control (ABC) may not issue a liquor license if it violates an existing, valid local zoning ordinance. An applicant may obtain a state liquor license only after all zoning permits are issued.

In addition to zoning powers, a local government may exercise some control over an alcohol business by its role in the state licensing decision. Pursuant to Business and Professions Code section 23958, state law mandates that the ABC "shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in, or add to, an undue concentration of licenses". Business and Professions Code section 23958.4 indicates that notwithstanding the initial requirement to reject the liquor license application due to undue concentration, the ABC may issue a license if the "public convenience or necessity" would be served.

Business and Professions Code section 23958.4 does not provide any definition or guidelines for making the public convenience or necessity determination. Instead, the determination of public convenience or necessity and the factors to be considered in making that determination is left entirely to the local agency.

Nevertheless, courts have provided some guidance in determining the meaning of the words public convenience or necessity. "Public convenience or necessity" has been defined as "a public matter, without which the public is inconvenienced to the extent of being handicapped in the practice of business or wholesome pleasure or both, and without which the people of the community are denied, to their detriment, that which is enjoyed by others similarly situated." Public necessity does not mean indispensable to the public, but an urgency less pressing.

The determination of public convenience or necessity is made by either the ABC or the local governing body, depending on the license type. The ABC makes the determination of public convenience or necessity for bona fide eating places (restaurants), hotels, motels, other lodging establishments, and certain other establishments. The local government makes the determination of public convenience or necessity for any other license including off-sale licenses (i.e. liquor, convenience, and grocery stores) and bars. If the local agency makes the determination of public convenience or necessity, the ABC may issue the license despite the undue concentration.

If, however, the local agency finds that the public convenience or necessity would not be served by issuance of the license, that finding, by itself, precludes issuance of the license. Therefore, in areas of undue concentration, the local government may prevent issuance of a liquor license for off-sale establishments and bars by making the determination that the public convenience or necessity would not be served by issuance of the license. Nevertheless, if the local government agency fails to make the public convenience or necessity determination within a 90-day period, the decision making authority is returned to the ABC.

Since 2001, the Police Department's Vice Unit has made the public convenience or necessity determination for off-sale businesses for the City of San Diego

City of San Diego Regulations - Off-sale Businesses

Currently, Section 141.0502 is the ordinance governing alcoholic beverage outlets. This section also only pertains to off-sale businesses. Section 141.0502 provides that all alcoholic beverage outlet applications for areas within a census tract or within 600 feet of a census tract where the general crime rate exceeds the citywide average general crime rate by more than 20%, or the ratio of alcoholic beverage outlets exceeds the standards set forth in Business and Professions Code 23958.4, are not permitted by right and are only allowed pursuant to a Conditional Use Permit (CUP). The CUP is decided after the Police Department provides a recommendation on the proposed use and location of the alcoholic beverage outlet. Where the Police Department does not support the approval of the CUP, that position becomes the staff recommendation on the proposed project.

City of San Diego On-Sale Businesses

The City of San Diego does not, however, regulate on-sale businesses in the same way as the off-sale establishments. Bars or nightclubs greater than 5,000 square feet are required to get a CUP and eating and drinking establishments abutting residential zones may be required to get a Neighborhood Use Permit (NUP). Other on-sale businesses are not currently required to get a CUP or NUP.

For the state license determination, Business and Professions Code section 23958.4 provides that the ABC makes the public convenience or necessity determination for most on-sale establishments. The Police Department is an integral part of this process.

Businesses seeking to open a convenience store, package store restaurant, or gasoline station that sells alcohol undergo a review to determine the community's need for such establishment. An investigation to determine the public need and necessity is conducted by an experienced detective sergeant assigned to the Department's Vice Unit. The investigation considers the number of current liquor licenses within a census tract area; crime statistics (misdemeanor and felony crimes are reviewed, along with arrest statistics); solicited input from citizens living within close proximity of the proposed business; location of schools and community centers; churches; and rehabilitation organizations.

The ABC's San Diego District Office, as part of its core function to investigate and decide on alcohol license applications, sends all requests in San Diego to the Vice Unit for review. This is the same Vice Unit that reviews all CUP applications for off-sale businesses.

The Vice Unit sergeant reviews the number of ABC licenses within the census tract, and because of changes to state law, the number in adjacent census tracts. If there is a saturation of ABC licenses, high crime statistics, citizen concerns, or other related factors such as churches, schools, youth centers, or rehabilitation organizations, the Police Department will protest license issuance. Generally, the ABC will not issue a license if the local law enforcement agency submits a protest.

In cases where the Police Department protests a license, however, the license applicant is provided an appeal hearing and sometimes prevails. The hearings are normally held at the local ABC District Office in San Diego. During an appeal, the Police Department explains the protest and the license applicant explains why the license should be issued. The decision from the local office can be appealed to the Southern Region Office in Los Angeles. The regional decision can then be appealed to the ABC Headquarter Office in Sacramento. The majority of the appeals end, however, after the local decision is made.

The Police Department protests most ABC applications. A protest allows the Vice Unit the opportunity to meet with the ABC applicant and negotiate conditions to the permit for those applications the Police Department ultimately does not oppose. This is the only opportunity the Police Department has, on the City's behalf, to negotiate and set operating conditions within an ABC-approved establishment. Once an ABC permit is approved without conditions, it is difficult to add them at a later date. The Police Department will negotiate conditions with an ABC applicant if the location for the proposed establishment meets the City's public convenience and necessity determination. Otherwise, the application remains in protest until it is appealed or ultimately denied.

License Over-Concentration

In past Council discussions, stricter zoning provisions for these establishments have been considered. This has not, however, been recommended due to the large fees involved and

significant length of time it would take for processing these permits. Past direction also took into consideration the significant impact on the hospitality and restaurant business community that has not previously been subject to these requirements.

While off-sale businesses are currently regulated by the CUP process, on-sale businesses such as restaurants are not. Many of the on-sale issues identified by members of the community and the City Council are not directly related to land use regulation. Excessive noise, public drunkenness, vandalism, and other undesirable behaviors associated with the consumption of alcohol are addressed by existing regulations outside of the Land Development Code. Adding land use regulations to these existing regulations could be redundant and may not help reduce the identified problems.

CONCLUSION

The Police Department will continue to actively participate with Development Services Department staff in the CUP decision process. The Department will also continue to protest every application for an ABC permit, particularly in areas with an over-saturation of ABC licenses and where violent crime is on the rise. In addition, the Vice Unit will continue to investigate crimes that occur within an ABC-permitted establishment and to work with the local ABC office to hold the permit holder responsible for the criminal activity, when justified. This information will also be used in ABC disciplinary hearings for potential suspension or revocation of alcohol licenses and in CUP revocation hearings held by the City.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

William M. Lansdowne
Police Chief

Approved: P. Lamont Ewell
Assistant City Manager

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Note: The attachment is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachment: 1. City Attorney Report, October 22, 2002 Regarding Local Control of Alcohol Businesses