

DATE ISSUED: July 14, 2004

REPORT NO. 04-156

ATTENTION: Honorable Mayor and City Council

SUBJECT: Deemed Approved Ordinance

REFERENCE: Public Safety and Neighborhood Services Committee Agenda of April 14, 2004; City Manager's Report No. 04-074

SUMMARY

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

BACKGROUND:

On April 14, 2004, The Committee on Public Safety and Neighborhood Services of the City Council of the City of San Diego directed that the City Manager and Police Department work with Kevin Hauck, of the Alcohol Outlet Policy Group, regarding his proposal that the City of San Diego implement a Deemed Approved Ordinance. The Committee also directed the City Manager to prepare a draft amendment to the Conditional Use Permit (CUP) regulations that would require a CUP for on-premises alcohol sales establishments. Staff has prepared a draft ordinance (Attachment No. 1).

A series of informational meetings were held including Kevin Hauck and various Department representatives within the City of San Diego. Several issues were discussed with the primary focus being to determine if there was a need for a Deemed Approved Ordinance in the City of San Diego. The Deemed Approved Ordinances in the cities of Vallejo and Oakland were used as a model.

The workgroup considered that a Deemed Approved Ordinance would penalize those establishments that are following the rules by requiring them to pay fees to subsidize the enforcement/inspection teams that would be required under a Deemed Approved Ordinance. An additional consideration in implementing a Deemed Approved Ordinance was the staffing requirement to create inspection teams within the Police Department.

It was felt that even if the Deemed Approved Ordinance provided a revenue stream to pay for increased staffing, the current personnel shortages in the police department were prohibitive.

Additional ideas were discussed regarding the City of San Diego's current Business Tax Certificate and whether the Police Department had the ability to impose operating conditions pursuant to that certificate. A representative of the City Treasurer's Office explained that the Business Tax Certificate was not an equivalent of a business license and no such restrictions or conditions could be placed on the certificate.

A representative of the Department of Alcoholic Beverage Control (ABC) explained the ABC License revocation process. She stated that it could take more than one year to take enforcement action against a license and required substantial documentation. She stated her office is only staffed with five investigators creating a significant backlog of cases.

After discussions with attorneys from the City Attorney's Office, it appears that their abatement process (D.A.R.T.) may, in fact, accomplish the same objectives as a Deemed Approved Ordinance. (the Department of Alcoholic Beverage Control could shut a non-compliant business down independent of any action.)

PROPOSAL:

Prior to instituting a program of this magnitude, more research is needed to determine the extent of the problem and to more effectively evaluate the existing abatement process. This can best be achieved by completing a statistical analysis as follows:

1. Develop a complaint process for the public to utilize.
 - a. Design a Citizen Request Form similar to the one currently located on the San Diego Police Department website to include ABC licensed establishments. This new form would also be available on the website.
 - b. Develop a printed complaint form based on the website form. This form would be distributed to Community Relations Officers at each Area Command as well as community outreach groups such as the Alcohol Outlet Policy Group, via Kevin Hauck.
 - c. Establish a dedicated telephone line in the Vice Unit to receive complaints concerning ABC licensed establishments. This line would not be staffed, but the voice mail system would be monitored on a daily basis to collect complaints.
 - d. Increase public education to make them aware of this resource. Examples could include a press release and posting the information on the City of San Diego and/or the San Diego Police Department websites. Kevin Hauck has volunteered the resources of the Alcohol Outlet Policy Group to assist with this endeavor.

2. Assign the complaints to Vice Unit Investigators (ABC Enforcement Team) for investigation/resolution. This would include utilizing existing resources such as Neighborhood Code Compliance and the City Attorney's D.A.R.T. Team, if necessary.
3. Create a computer database to collect and track the complaint data.
4. Meet with interested parties and community groups (i.e. Food & Beverage Association, California Restaurant Association, Alcohol Outlet Policy Group, Discover PB) to inform them of this program. An initial meeting would be scheduled at the onset of the program. Quarterly progress meetings could also be scheduled to keep those groups apprised of the statistical information as it develops.

This program would operate for one year. At the end of one year the data would be reviewed to determine the extent of the problem and evaluate the need for a formal system such as a Deemed Approved Ordinance. This proposal has been reviewed and endorsed by Kevin Hauck, on behalf of the Alcohol Outlet Policy Group.

Staff would further propose that no amendment to the CUP regulations be made until the results of this program are reviewed. Like a deemed approved ordinance, requiring all on-premises sales establishments to obtain a CUP would add unnecessary cost and time to those business owners that are complying with existing nuisance regulations, without adding any additional enforcement tools to stop violations of City nuisance requirements.

Approved: P. Lamont Ewell
City Manager

Submitted by: William Lansdowne
Chief of Police
Police Department

Submitted by: Gary Halbert
Acting Director,
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Attachment 1 [Draft Conditional Use Permit Regulations](#)