



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Resolution of the Lodi City Council Delegating to the Planning Director for the City of Lodi the Responsibility for Determining the Public Convenience and Necessity of Alcoholic Beverage Licensing Applications

MEETING DATE: April 5, 1995

PREPARED BY: Community Development Director

RECOMMENDED ACTION: that the City Council adopt a Resolution delegating to the Planning Director for the City of Lodi the responsibility for determining the public convenience and necessity of alcoholic beverage licensing applications.

BACKGROUND INFORMATION: New state legislation effective on January 1, 1995 has added a new procedure for applicants for Alcoholic Beverage Control Licenses.

The applicant and Alcoholic Beverage Control Department must have a written position of the City on the proposed licenses. The Community Development Department has written ABC and indicated the City Council position on applications appearing on recent City Council agendas. ABC has indicated that the letter must come from the City Council or the person delegated the responsibility.

All ABC applications will continue to appear on City Council agendas. The Community Development Department will forward the Council's position to ABC.

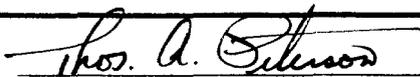
The attached letter from Kenton P. Byers, Chief Council, Alcoholic Beverage Control Board explains the procedure.

FUNDING: None required.


James B. Schroeder
Community Development Director

JBS/ck
Enclosure

APPROVED: _____



THOMAS A. PETERSON
City Manager



recycled paper

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

3810 ROSIN COURT, SUITE 150, SACRAMENTO, CA 95834
(916) 263-6900

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March 8, 1995

LEONARD H. FERRIN
CITY CLERK

To: County Board of Supervisors
City Councils
Mayors

During the 1994 Legislative Session amendments and additions were made to certain provisions of the Business and Professions Code relating to alcoholic beverage licensing which affect the local governing bodies of cities and counties.

Section 23958.4 was added to the Business and Professions Code to define "undue concentration" of licenses and to establish the procedure for determining if public convenience and necessity will warrant the issuance of a license notwithstanding a determination that there is an undue concentration of licenses. A copy of the chaptered Assembly bill creating Section 23958.4 is enclosed.

With respect to non-retail licenses, bona fide public eating place licenses, certain hotel, motel, or specified lodging establishments and retail licenses issued in conjunction with a beer manufacturing or winegrower's license, if the applicant shows that public convenience or necessity would be served, a license may be issued by the Department. In this situation the local governing body does not make a determination of public convenience and necessity. However, nothing would preclude a city or county from protesting the issuance of a license on these grounds or any other grounds.

With respect to all other retail licenses, most notably all off-sale beer and wine licenses, off-sale general licenses, and all other on-sale licenses, the determination of whether or not public convenience and necessity is met will be determined by the local governing body of the appropriate city or county. In other words, if there is an undue concentration of licenses in the area of a proposed licensed premises and the local governing body determines that issuance of the license would meet public convenience and necessity standards, the Department of Alcoholic Beverage Control will be bound by that determination and the license could be issued, assuming other factors, such as the personal qualification of the applicant, citizen protests and other non-public convenience and necessity factors do not preclude the issuance of the license. On the other hand, if the local governing body determines that public convenience and necessity would not be served, that determination by itself would preclude the issuance of the license by the Department.

The Department is asking that all determinations of satisfying public convenience and necessity be in writing and submitted to the local office of the Department.

As the local governing body you may elect to delegate the duties of determining whether or not public convenience and necessity are met to a subordinate agency such as a zoning, planning, or law enforcement official if desired. If this is your decision please submit a written notice of such delegation to the Department's Headquarters address within 30 days of the date of this notice. If such a delegation is not made within that period we will assume that the local governing body itself will be making these determinations

Please send all notifications of delegation of these duties to:

Department of Alcoholic Beverage Control
Office of the Director
3810 Rosin Court, Suite 150
Sacramento, CA 95834

We appreciate your cooperation in these matters and we feel that the changes in the law as outlined above will serve to give local officials the ability to better deal with alcoholic beverage licensing issues.

Sincerely,


Kenton P. Byers
Chief Counsel

Assembly Bill No. 2897

CHAPTER 630

An act to amend Section 23958 of, and to add Section 23958.4 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2897, Caldera. Alcoholic beverages: retail licenses: undue concentration.

Existing law provides that the Department of Alcoholic Beverage Control may deny an application for a license if the issuance would, among other things, result in or add to an undue concentration of licenses, and the applicant fails to show that public convenience or necessity would be served by the issuance. Existing regulatory law defines "undue concentration" with regard to applications for on-sale and off-sale retail licenses.

This bill would instead require the Department of Alcoholic Beverage Control to deny an application if issuance would tend to create a law enforcement problem, or would result in or add to an undue concentration of licenses. The bill would change the definition of undue concentration, and would provide that, notwithstanding the requirement that the department deny an application that would result in or add to an undue concentration of licenses, a license may be issued with respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance, and with respect to any other license, if the local governing body of the area in which the applicant premises are located determines that public convenience or necessity would be served by the issuance.

The people of the State of California do enact as follows:

SECTION 1. Section 23958 of the Business and Professions Code is amended to read:

23958. Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an

application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division.

The department further 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, except as provided in Section 23958.4.

SEC. 2. Section 23958.4 is added to the Business and Professions Code, to read:

23958.4. (a) For purposes of Section 23958, "undue concentration" means the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located determines that public convenience or necessity would be served by the issuance.

(c) For purposes of this section, the following definitions shall apply:

(1) "Reporting districts" means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county), that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.

(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) "Population within the census tract or census division" means the population as determined by the most recent United States decennial or special census. The population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) "Population in the county" shall be determined by the annual population estimate for California counties published by the Population Research Unit of the Department of Finance.

(5) "Retail licenses" shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A "premises to premises transfer" refers to each license being separate and distinct and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in the county shall be determined by the most recent yearly retail license count published by the department in its Procedure Manual.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued prior to April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply where the premises have been licensed and operated with the same type license within 90 days of the application.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Stockton District Office
31 East Channel Street, Room 168
P.O. Drawer 150
Stockton, CA 95201
(209) 948-7739



Dear PLANNING DIRECTOR:

Effective January 1, 1995, new law requires this Department to notify the City/County Planning Director of all applications filed for Alcoholic Beverage licenses.

Enclosed is an application filed in your jurisdiction. You will be receiving copies when an application is filed in your jurisdiction.

If you have any questions, please call the District Office at the number above.

A handwritten signature in cursive script that reads "John W. Patterson".

John W. Patterson
District Administrator

JWP:tn

RESOLUTION NO. 95-45

A RESOLUTION OF THE LODI CITY COUNCIL
DELEGATING TO THE PLANNING DIRECTOR FOR THE CITY OF LODI
THE RESPONSIBILITY FOR DETERMINING THE PUBLIC CONVENIENCE
AND NECESSITY OF ALCOHOLIC BEVERAGE LICENSING APPLICATIONS

WHEREAS, the State of California in 1994 added §23958.4 to the Business & Professions Code, allowing local agencies to determine if applications for alcoholic licenses would amount to an "undue concentration" of licenses; and

WHEREAS, said statute and the Department of Alcoholic Beverage Control allow the governing body of local agencies to delegate the duties of determining whether or not public convenience and necessity are met to a designated local official;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Lodi as follows:

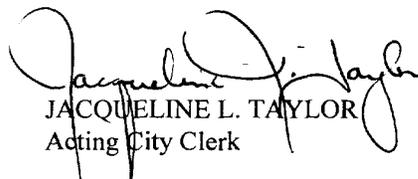
The Director of the Community Development Department, also referred to as the Planning Director, is hereby delegated the responsibility and authority pursuant to Business & Professions Code §23958.4 to determine on behalf of the City of Lodi whether or not the public convenience and necessity are met for the issuance of alcoholic beverage licenses within the City of Lodi.

BE IT FURTHER RESOLVED, that the City Council may act as the appeals board for decisions of the Planning Director in such matters, or may, on its own motion, direct and require that specific applications for alcoholic beverage licensing shall be determined by the Council itself.

Dated: April 5, 1995

I hereby certify that Resolution No. 95-45 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 5, 1995, by the following vote:

AYES:	COUNCIL MEMBERS -	Davenport, Pennino, Sieglock, Warner and Mann (Mayor)
NOES:	COUNCIL MEMBERS -	None
ABSENT:	COUNCIL MEMBERS -	None


JACQUELINE L. TAYLOR
Acting City Clerk