



CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 17, 2009

ITEM NUMBER:

SUBJECT: AMENDMENT TO CITY COUNCIL POLICY 500-8 RELATED TO APPROVAL OF ALCOHOLIC BEVERAGE LICENSES

DATE: NOVEMBER 4, 2009

FROM: DEVELOPMENT SERVICES DEPT.

**PRESENTATION BY: MINOO ASHABI, AIA, SENIOR PLANNER
KIMBERLY BRANDT, AICP, ACTING DIRECTOR**

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI (714) 754-5610

PURPOSE:

Amend Council Policy 500-8 to clarify delegation of City Council Authority to make findings for approval or issue a protest in respect to Alcoholic Beverage Control licenses.

BACKGROUND:

City Council Policy 500-8 was adopted in 1997 to establish the process for review of applications related to new Alcoholic Beverage Control (ABC) liquor licenses, transfers of existing licenses and filing of protest letters against ABC license applications.

The purpose of this policy revision is to clarify Council's delegation of its review authority to the Planning Commission or Zoning Administrator.

ANALYSIS:

The Public Convenience or Necessity (PCN) finding is the process in place by the Department of Alcoholic Beverage Control that allows local jurisdictions to support or reject a new application for off-sale and on-sale alcoholic beverage licenses in census tracts with an over-concentration of ABC licenses.

The State Alcoholic Beverage Control (ABC) Department has recently requested that Cities provide documentation specifying the authorized body to make public convenience or necessity findings for ABC licenses. This verification needs to be in the form of a resolution or letter from the Mayor. In addition, since the process for review and PCN finding is included in Council Policy 500-8; this policy needs to be updated to specifically refer to delegation of Council's review authority.

Business and Professions Code

Pursuant to Section 23958.4 of the Business and Professions Code, the governing body of a local jurisdiction (e.g. City Council) has the authority to determine PCN findings within ninety days of notification by the Department of Alcoholic Beverage

Control. However, Council has the authority to delegate the determination of PCN findings related to ABC licenses to a "designated subordinate officer."

City Council Policy 500-8

City Council Policy 500-8 includes procedures for processing ABC license requests and making PCN findings. This policy has been revised (Attachment 1) for City Council consideration to indicate the duties are delegated to the Zoning Administrator and Planning Commission for specified ABC license transactions. The proposed amendments are as follows:

- Delegation of City Council's authority related to review and, when necessary, PCN findings to the Zoning Administrator regarding new and transfer of on-sale licenses for bona fide eating places that do not require any discretionary review pursuant to the Zoning Code such as delis and cafes, and bona fide eating places that require a minor conditional use permit under the Zoning Code.
- Clarification of Planning Commission's duties related to review and, when necessary, PCN findings regarding new or transfer of on-sale licenses for businesses open past 11:00 p.m., new off-sale alcoholic beverage establishments and existing off-sale establishments, requiring a new conditional use permit.

As proposed, the City Council's authority is retained related to review of new on-sale licenses for bars open past 11 p.m. and exceptional cases for transfers of off-sale licenses.

ALTERNATIVES

City Council may consider the following alternatives:

1. Adopt the proposed amendment as recommended by staff.
2. Adopt the amendment with any modifications.
3. Retain the City's existing City Council Policy; receive and file the report.

LEGAL REVIEW

The City Attorney's office has approved the amendment as to form.

CONCLUSION

The proposed amendment of City Council Policy 500-8 clarifies delegation of City Council authority to the Planning Commission or Zoning Administrator in respect to review, and when necessary, PCN findings for ABC licenses.



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Assistant City Manager
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Public Services Director
City Clerk (2)
Staff (4)
File (2)

Truc Vo
State Department of Alcoholic Beverage Control
Bryan Rushing
605 W Santa Ana Blvd, Bldg 28, Suite 369
Santa Ana, CA 92701

Attachment: Amended City Council Policy 500-8

File: 111709ABCPolicy	Date: 110409	Time: 1:40 p.m.
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COUNCIL POLICY

SUBJECT: Review process for applications related to new and transfer of liquor licenses, and protest and accusation letters by City Council	POLICY NUMBER 500-8	EFFECTIVE DATE: REV. 11-17-09	Page 1 of 4
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PURPOSE:

The purpose of this policy is to establish a clear and efficient process for review of applications for new Alcoholic Beverage Control (ABC) liquor licenses and transfers of existing liquor ABC licenses, and for filing of protest and accusations letters by City Council. The authority of the City Council in the review of ABC licenses is delegated to Zoning Administrator or the Planning Commission where indicated.

PROCEDURE:

Sec. 1 When notice of an application for a liquor license, or transfer thereof, is received by any officer or employee of the City of Costa Mesa, the notice shall be stamped with the date received and promptly delivered to the Director of Development Services or his or her designee.

Sec. 2 Upon receipt of the notice, the Director shall transmit a copy of the notice to the Police Chief or his or her designee with a request for information necessary to make findings provided herein. The Police Chief and Director shall prepare a report on the application and shall transmit said report to the decision-making body or person, as provided herein.

Sec. 3 Upon receipt of the notice and report by the Director and Police Chief on the application, the decision-making body or person may make findings appropriate for the type of application or take no action within its sole discretion as provided herein.

Sec. 4 Council delegation of duties to Zoning Administrator or his/her designee. The following liquor license transactions shall be processed by the Zoning Administrator or his/her designee, after consultation with the Police Department, ~~no finding of public convenience or necessity is required; except for premise-to-premise transfer of a license for a business remaining in the same building but relocating to a different suite;~~

- Person-to-person transfer;
- Stock transfer;
- Drop partner(s);
- Add partners(s); and,
- New on-sale and off-sale licenses for businesses exempt from discretionary review pursuant to the Zoning Code;
- New or premise-to-premise transfer of on-sale license Types 41 and 47 for bona fide eating places that is a permitted use under the zoning code (the business is closed from 11 p.m. to 6 a.m. and does not have live entertainment) exempt from discretionary review pursuant to the Zoning Code.
- New or premise-to-premise transfer of on-sale license Types 41 and 47 for bona fide eating place that requires approval of a minor conditional use permit pursuant the Zoning Code.

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The Zoning Administrator or his/her designee may make a finding of public convenience or necessity as provided for in Business and Professions Code (BPC) Section 23816 or 23958.4(b)(2) for these license transactions if the business has been in operation consistent with the zoning code requirements and the new license has little or no effect on the operation of the business.

The Zoning Administrator shall transmit notice of his or her decision to both the Planning Commission and the City Council within five (5) days of the decision. Such decision may be appealed by an interested party or called up for review by the Planning Commission or City Council within seven (7) days of the date of the notice of the decision in accordance with procedures set forth in Costa Mesa Municipal Code Section 2-300 et seq.

If a finding of Public Convenience or Necessity is not required, one of the following two actions will occur:

- a. If the Planning Division and Police Department find that there has not been a history of problems related to the alcohol establishment or the applicant, the Planning Division shall forward the application to the City Clerk for inclusion in the City Council reading-folder.
- b. If the Planning Division and Police Department find that there has been a history of problems related to the alcohol establishment or the applicant, the Planning Division shall forward the application to the City Clerk for inclusion on the next available City Council agenda under "New Business."

Sec. 5 Council delegation of duties to Planning Commission. Land uses involving the following liquor license transactions require approval of a conditional use permit (CUP) or ~~minor conditional use permit (MCUP)~~ Planning Commission may make findings of public convenience and necessity as required for these license transactions:

- New or premise-to premise -transfer of on-sale establishment (restaurant, bar, nightclub, etc.) that will be open between 11 p.m. and 6 a.m. or that proposes live entertainment;
- Change of license from bona-fide eating, place to a "public premises" (bar) that is open between 11 p.m. and 2 a.m.;
- New mini-market, liquor store, or convenience store;
- Existing mini-market, liquor store, or convenience store that is subject to a new conditional use permit application in accordance with Title 13, Chapter IX, Section 13-200.71 requirements.
- Sale of alcoholic beverages in conjunction with the concurrent sale of gasoline; and,
- -Premise-to-premise transfer of off-sale license if in conjunction with an action requiring review by the ~~Zoning Administrator or~~ Planning Commission.

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The Planning Commission may make a finding of public convenience or necessity as provided for in Business and Professions Code (BPC) Section 23817.7 or 23958.4(b)(2), in conjunction with action on the CUP ~~or MCUP~~. The Planning Commission shall transmit notice of its decision to the City Council: within five (5) days of the decision. ~~The Zoning Administrator shall transmit notice of his or her decision to both the Planning Commission and the City Council within five (5) days of the decision.~~ Such decision may be appealed by an interested party or called up for review by the Planning Commission or City Council within seven (7) days of the date of the notice of the decision in accordance with procedures set forth in Costa Mesa Municipal Code Section 2-300 et seq.

Sec. 6 Duties for license transactions retained by City Council. The following liquor license transactions shall be referred to the City Council for determination of a finding of public convenience or necessity as provided for in BPC Section 23817.7 or 23958.4(b)(2):

- New on-sale licenses for existing bars that are open for customer service between the hours of 11:00 p.m. and 2:00 a.m.,
- New and off-sale licenses for businesses not included in section 4 or 5 of this policy.
- Premise-to-premise transfer of off-sale licenses not included in section 4 or 5 of this policy.

Sec. 7 Protest Letter. With regard to an application for an original liquor license or transfer of an existing liquor license not covered in Sections 4, 5 or 6 (including a person-to person transfer), or an existing licensed premises without a pending application, City Council ~~or the Police Chief~~ may file a protest letter pursuant to BPC Sec. 24013 or an accusation letter pursuant to BPC Sec. 24203, where ~~either the City Council or the Police Chief~~ find that reasonable or probable cause exist to request the denial of the application or revocation of an existing license pursuant to BPC Sec. 24013, 24200, and 24203.

Sec. 8 Where the thirty (30) day period to file a protest letter may expire before consideration by the City Council ~~or Police Chief~~ of those licenses discussed under Sections 4, 5, 6 or 7, the Police Chief or his or her designees is authorized to file a letter requesting an extension with the Department of Alcohol Beverage Control pursuant to BPC Sec. 23987.

Sec. 9 Upon the City Council making a determination to file a protest or accusation letter, the City Clerk ~~or Police Chief~~ shall promptly transmit a letter of such protest or accusation, signed by the authorized officer, to the Department of Alcoholic Beverage Control. The letter of protest or accusation should be in a form approved by the City Attorney. Upon filing of a letter of protest or accusation, all pertinent records on such premises and notices shall be transmitted to the City Attorney for prosecution at the protest or accusation hearing.

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Sec. 10 For a protest or accusation letter under Sections 7 and 8, the ground or grounds to support a denial of an application or revocation of a license include, but are limited to the following grounds:

- a) The continuance of the license would be contrary to the public welfare or morals;
- b) A violation of the Revenue and Taxation Code and any rules of the ABC Department;
- c) A misrepresentation of material fact by the applicant in obtaining a license;
- d) A conviction of a public offense involving moral turpitude or federal law relating to Alcoholic beverages;
- e) Failure to take reasonable steps to correct objectionable conditions at the licensed premises, any public sidewalk abutting the licensed premises, or immediately, adjacent area that is owned, leased or rented by licensee which constitutes a public nuisance, within a reasonable time after receipt of notice to correct such conditions by either ABC Department, District Attorney, City Attorney or County Counsel:

1) "Objectionable conditions" under subsection (e) includes, but is not limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passerby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise;

2) "Any public sidewalk abutting a licensed premises" under subsection (e) includes the publicly owned, pedestrian traveled way, not more than 20 feet from the premises, that is located between the licensed premises and immediately adjacent area owned, leased or rented by the licensee, and a public street;

3) "Reasonable steps" under subsection (e) include calling the police (timely calls to police cannot be construed as evidence of objectionable conditions) and requesting persons to leave the premises that are contributing to the objectionable conditions.

Sec. 11 Where desired, City Council, Planning Commission, or Zoning Administrator may recommend conditions of approval applicable to the sales of alcoholic beverages. These conditions shall be forwarded to ABC by ~~the City Clerk's office~~ the Planning Division.