



LEGISLATIVE ANALYST REPORT

TO: THE HONORABLE MEMBERS OF THE BOARD OF SUPERVISORS

FROM: Legislative Analyst staff

DATE: August 31, 2000

RE: **LIQUOR LICENSES**

SUMMARY OF REQUEST

The Board of Supervisors has requested the Office of Legislative Analyst (OLA) to conduct a study of the processes that are used for the consideration and approval of liquor license applications in other major California cities. Additionally, OLA should compare these processes, and make recommendations regarding ways of streamlining the process in San Francisco.

EXECUTIVE SUMMARY

In San Francisco, liquor licensing is a shared responsibility between the San Francisco Police Department (SFPD) and the Planning Department ("Planning"). SFPD reviews approximately 500-600 license applications per year. In those cases where a license is proposed for an "Undue Concentration Area" (UCA)¹, SFPD makes a recommendation to the Board of Supervisors (through the Small Business, Economic Vitality, and Consumer Services Committee) as to whether "Public Convenience and Necessity" (PCN) exists (see Background Section). In those cases when PCN is not required, SFPD's recommendation will be made directly to the California Department of Alcoholic Beverage Control (ABC). Additionally, Planning reviews applications from the standpoint of land use permissibility. In those areas where selling alcohol is not a permitted land use, Planning may condition (see Background Section) or outright ban new licenses. It also makes a recommendation directly to ABC.

As discussed in this report, cities around the State use various methods to process liquor license applications. The cities of Oakland, Sacramento, San Jose, Los Angeles and San Diego were surveyed. Its important to note that many cities delegate PCN determinations to city administrative officials (typically planning or police staff), and local legislative bodies hear PCN cases on appeal, if at all. This approach limits the amount of time such licenses take from the governing body. It is not mandatory that PCN determinations be made by a local legislative body (i.e., the Board), according to the City Attorney's

¹ "Undue concentration area" is present if the proposed license location is in a census tract where the ratio of licenses to population is higher than the countywide rate OR if the crime rate for that reporting district is 20% over the countywide average. There are some parts of the City where this is the case, such as the Tenderloin, Western Addition, Bayview and the Mission.

Office. In San Francisco, where the Board is responsible for making PCN determinations, delegating this authority may significantly streamline the licensing process.

BACKGROUND

Liquor licenses are issued only by the California Department of Alcoholic Beverage Control (ABC). Licenses fit into two broad categories -- on-sale and off-sale. On-sale are generally for bars and restaurants, while off-sale cover liquor stores and grocery stores which sell alcohol. As to the process, individuals seeking either type of license must apply with ABC. If the applicant's business is or will be located in an Undue Concentration Area (UCA), then the applicant must establish that Public Convenience or Necessity (PCN) would be served by granting the license. The statutes do not define what PCN specifically is, and local jurisdictions are free to develop their own standards as to this test. Even in those cases where PCN is not required, a local jurisdiction's strong recommendation or opposition tends to influence ABC, although not in all instances.

Many cities use the Conditional Use Permit (CUP) process to regulate the establishment of alcohol selling businesses. A conditional use is one which the City or County allows, by permission, in a given zone but is not required to grant (a "use by right"). An example of a use by right would be building a single family house in a single family zone. CUP restrictions may include restrictions on hours of operation, noise level standards, parking, litter pickup, lighting, and many others. Since this can be a more informal and subjective judgment, jurisdictions are freer to take into consideration local factors that may be unique.

There are two basic ways to control liquor licenses using the CUP process. Under a Non-Integrated CUP model, both the police and planning are involved, independently, in liquor license control. Planning makes its review from the standpoint of land use controls (which may include restrictions on businesses selling alcohol), and Police makes its review from the ABC standpoint (Does PCN exist? Is the applicant acceptable?) The advantage of this model is that two bodies look at license applications separately from different perspectives. Successful applications must receive both planning approval and police recommendation. The downside is that separate processes may lead to confusion and patchwork enforcement.

The Integrated CUP model is used to one degree or another by many California cities. The advantage of this model is that alcohol licensing is integrated with land use decisions, so it can be a "one-stop-shop" for both applicants and neighborhood activists. Most cities also delegate PCN determinations to planning or police officials, and local legislative bodies hear PCN cases on appeal, if at all. This limits the amount of time such licenses take from the governing body. The downside is that planning and police departments have probably developed expertise in their respective areas of the licensing process, and something may be lost if either department takes over the entire process. Therefore, typically one department will take the lead in the licensing process and make final decisions, with input from the other.

ANALYSIS

San Francisco's Practice

San Francisco does not integrate its licensing process with its planning process. Instead, these processes proceed separately. The San Francisco Police Department receives and reviews license applications (approximately 500-600 per year). In those cases where a license is proposed for a high

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crime area or a UCA, SFPD makes a recommendation to the Board of Supervisors (through the Small Business Committee) as to whether PCN exists. SFPD reports that it processes most applications without sending them to the Small Business Committee or the Board. This is because these applications do not involve PCN determinations or other unusual factors. SFPD estimates that it receives approximately 40-50 applications a month, and each month, it sends roughly 4-8 applications to the Small Business Committee (2-4 per meeting). In those cases when PCN is not required, SFPD's recommendation will be made directly to ABC and will not be sent up to the Small Business Committee or the Board for review and approval. Additionally, Planning reviews applications from the standpoint of land use permissibility. In those areas where selling alcohol is not a permitted land use, Planning may condition or outright ban new licenses. It also makes a recommendation directly to ABC.

It is important to note that for on-sale licenses other than bars (e.g., restaurants, hotels, clubs, etc.) the ABC is the ultimate authority as to whether PCN exists, although the local jurisdiction is notified and their response and/or recommendation weighs heavily on ABC's decision.

Practice in Other Jurisdictions

Cities around the State use various methods to consider liquor license applications. The cities of Oakland, Sacramento, San Jose, Los Angeles and San Diego were surveyed.

Oakland

Oakland integrates liquor license issues with its CUP process. The Planning Department takes the lead in administering the City's response to license applications and PCN determinations. Oakland prohibits new licenses or transfers within 1,000 feet of another license. This may only be waived with a variance, with the exception of establishments in the City's Central Business District.

The Planning Department renders a decision as to PCN and other liquor-license issues, whether planning-related or license-related. This decision is reviewed by the Planning Commission and may be appealed to the City Council, but this is rare (approximately one per year). Oakland receives approximately 20 applications annually that require PCN consideration or represent other land-use issues (like the 1,000 foot limit). PCNs are very rarely approved, according to Oakland officials. Oakland also coordinates its efforts at license control through the Alcohol Beverage Response Team (ABAT), which includes staff from Planning, Police and the City Attorney. Unusual cases are considered by ABAT, as well as improvements to enforcement, regulations, etc. Oakland also tends to impose conditions on those few new licensees it allows as to hours of operation, nuisance abatement issues, and so on.

Sacramento

Sacramento also integrates its licensing with its planning process, with some differences from Oakland. Sacramento does not oppose new licenses (assuming no UCA problem) for stores over 15,000 square feet of gross floor area where alcohol is no more than 10% of the retail space. This allows for supermarkets, large drug stores, etc., to obtain licenses relatively easily. Smaller outlets and businesses that wish to locate in a UCA apply to the Police Chief for a PCN finding. Sacramento reports that it has relatively few cases where a PCN finding is needed (approximately 4-5 cases per year). The Police Chief's recommendation may be appealed to the Planning Commission and then to the City Council. Sacramento also charges a very high fee for applicants (in addition to the ABC fees) – \$1,000 to apply and \$600 for each appeal. Sacramento reports that no appeals have been filed since 1996.

San Jose

San Jose also combines its licensing and planning process, but only for off-sale licenses. Uncontroversial on-sale licenses (e.g., restaurants) are processed in a fashion similar to San Francisco, where it is basically a Police Department review. However, a license to be located in a UCA has to go through the Planning Department, where, depending on the district, either the Planning Director or the Planning Commission renders a decision as to both the land use permissibility and the PCN findings. San Jose reports that it makes PCN findings only for bona fide grocery stores (not mini-marts). Decisions may be appealed to the City Council, or the Planning Commission in the case of a Planning Director decision. San Jose reports that appeals are rare. It has not yet responded to our request for information regarding the number and disposition of its applications.

Los Angeles

Los Angeles (LA) also integrates its licensing process with its CUP process. In LA, applicants for both on-sale and off-sale licenses must receive a CUP from the Office of the Zoning Administrator. The Zoning Administrator makes the decision based on land-use issues, with input from the Police Department as to the crime level and license concentration. Decisions are appealed to Area Planning Commissions. LA has not yet responded to our request for information regarding the number and disposition of its applications.

In LA, the PCN determination is informally made by the Council member in whose district the business is to be located. LA's City Council specifically reserved to itself the power to make all PCN finding decisions in 1995, and, by courtesy, the Planning Department reports that other Council members tend to respect their colleague's wishes except in very unusual circumstances. As a matter of course, Planning advises applicants who will need a PCN finding to ask their Councilmember first what their position will be. The Planning Department provides that Council member (and the whole Council) information and statistics relative to the PCN process (crime level, number of licenses, etc.), but does not make a recommendation to the Council member.

San Diego

San Diego is similar to Sacramento and San Jose, in that it does not require a CUP for on-sale licenses. However, the Police Department is required to make a PCN determination for on-sale licenses when they are to be located in a UCA or a high crime area. Like San Francisco, San Diego does not integrate its licensing process with its planning processes. Both the Planning Department and Police Department are involved, independently, in liquor license control. A hearing officer in Planning may grant a CUP for an off-sale permit (e.g. liquor stores, etc.) based solely on land-use issues, while the Police Department is responsible for determining whether PCN exists. The Planning Hearing Officer, with input from the Police, then makes a final decision regarding the permit. Decisions are appealable only to the Planning Commission. San Diego reports that each year, it handles 10-12 off-sale license applications that require both a CUP and a PCN finding.

OPTIONS

As shown above, cities around the State use various methods to process liquor license applications. Based upon those methods and after consulting with our City Attorney's Office, we've developed the following options for your consideration:

1. Retain the current process but place applications (with SFPD and Planning recommendations) on a consent calendar of the Small Business Committee. As noted earlier, the Committee reviews approximately 2-4 applications per meeting. The City Attorney's office estimates 1-2 applications per meeting would be moved to the regular calendar because they would likely involve public testimony. Therefore, this option would only marginally streamline the process.
2. Consider an integrated process where Planning makes the licensing decisions, including PCN determinations, as is the case in Oakland. Decisions would be reviewed by the Planning Commission and appealed to the Board. The City may lose SFPD's expertise if Planning takes over the process.
3. Consider Sacramento's version of the integrated process where Planning makes the licensing decisions, with PCN determinations for licenses in UCAs made by the Chief of Police. Decisions would be appealed to the Planning Commission and then the Board. Again, here, SFPD's expertise may be lost if Planning takes over the process.
4. Consider San Jose's version of the integrated process where SFPD would make the licensing decisions except when licenses are to be located in a UCA. These UCA license applications would go to Planning, where either the Planning Director or the Planning Commission would make a decision regarding land use permissibility and whether PCN exists. Decisions would be appealed to the Planning Commission and/or the Board. The City may lose SFPD's expertise in those cases when Planning makes a PCN determination.
5. Consider an integrated process where Planning makes the licensing decisions, with PCN determinations made by individual Board members, as is the case in Los Angeles. Decisions would likely be appealed to the Planning Commission. It is important to note that because San Francisco's Board members represent the entire city at this time, PCN determinations cannot be made by individual Board members on a district basis, as is the case in Los Angeles.
6. Consider San Diego's non-integrated approach which is basically what San Francisco does now. Planning would continue to review applications from the standpoint of land use permissibility. However, SFPD would make PCN determinations. Planning, with input from the Police, would then make final decisions. Decisions would be appealed to the Planning Commission. This option would entirely eliminate Board involvement.
7. Consider a variation on San Diego's non-integrated approach. Planning would continue to review applications for land use permissibility. However, SFPD would make all licensing decisions (including PCN determinations) with an appeal to the Small Business Committee (not the Planning Commission). Other major cities report that appeals are rare under this type of system. This option would likely require an ordinance delegating PCN determinations to SFPD and establishing a mechanism for appeals with the Board of Supervisors.