

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Community and Economic Development Agency
DATE: January 18, 2000
RE: Consideration of a proposal to amend City Zoning regulations regarding when "public convenience or necessity" is met by a new alcoholic beverage sales license where such a finding is required by the State; and consideration of a resolution establishing a City goal of no net increase in certain alcohol outlets in certain areas of the City

SUMMARY

At the request of the Public Safety Committee, staff and the Council's Legislative Analyst have prepared a report on additional measures for further limiting the number of alcohol outlets in Oakland. Presently, the California Alcoholic Beverage Control Department will not issue a license in an area with an overconcentration of alcohol outlets or high crime rates unless the local authority makes a finding of "public convenience or necessity". Oakland's Zoning Regulations also prohibit the issuance of a Conditional Use Permit or Major Variance without such a finding.

This report is a follow up to an earlier report submitted to the Public Safety Committee on June 15, 1999. Staff has prepared recommendations based on the direction given by the Public Safety Committee. This report contains specific recommendations regarding changes to the public review process, the finding of Public Convenience or Necessity, and increasing the burden of proof on the applicant. In response to the direction of the Public Safety Committee, staff has prepared a resolution creating a goal to limit the number of alcohol outlets. A draft of this policy statement, first presented at the June 15, 1999 meeting, has been refined and is attached to this report.

Oakland's regulations approach the question of public convenience and necessity by stating that a finding will be made "*if the proposal conforms to one or more of the following criteria...*" Staff now believes there are times when a finding should not be made if certain conditions exist. Further, enhanced public participation is recommended as part of the review process. In addition, the burden of proof, already incumbent upon the applicant, should be heightened. The applicant will be required to show that the proposal provides a community benefit, that the sales of alcohol is typically a part of the proposed business, and the overall project supports a positive quality of life for the community with economic benefits that outweigh anticipated negative impacts.

FISCAL IMPACTS

No fiscal impacts have been identified.

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BACKGROUND

For a number of years Oakland has been grappling with the overconcentration of Alcoholic Beverage Sales Licenses. Although the ratio of alcohol licenses per resident has fallen, and is closer to the state average of licenses per person, 36.2 % of the 105 census tracts in Oakland contain an overconcentration of alcoholic licenses when compared to the median for Alameda County. Oakland currently has 468 retail Alcoholic Beverage Sales licenses excluding restaurants (November-July 1999 ABC count), and 399,900 total population (per State Department of Finance estimates for January 1999). This translates to a ratio of one license per 854 residents. The statewide average is one license per every 958 residents (based on 35,227 retail licenses, excluding restaurants, per ABC records as of November 1999 and 33,773,000 total population per State Department of Finance estimates for January 1999). Therefore, Oakland has about 12% more non-restaurant ABC licenses per capita than the rest of the state.

In 1994, the State Legislature amended the criteria to define an area of overconcentration to include census tracts where the license to population ratio exceeds the County average or the crime rate is 20% or more above the City median. In order for a new license to be issued in these locations, the local jurisdiction is required to make a finding of "Public Convenience or Necessity" (PC or N finding), i.e. that a public need would be met by the new license. In response to the legislation, the Oakland City Council adopted three possible criteria to identify when a Public Convenience or Necessity finding could be made. The City Planning Commission has been responsible for making the required finding as part of the application for a planning permit. Pursuant to Section 17.102.210(B) 3, an applicant must show that the proposal meets one of the following criteria to make the finding of Public Convenience or Necessity:

- a. That the proposed project will serve an unmet or underserved need or population within the Oakland community; or*
- b. That the proposed project will enhance physical accessibility to needed goods or services; or*
- c. That the proposed project will further the city's economic development goals and will not place burdensome demands on existing public services, particularly public safety-related services.*

At the committee meeting of June 15, 1999, the Public Safety Committee reviewed a report outlining a number of alternatives to insure that nothing is being done to exacerbate the existing problems due to the overconcentration of alcohol related businesses in Oakland. The Public Safety Committee directed staff to bring back a staff report with specific recommendations and containing the following:

1. A review of policies of the City of Vallejo with appropriate policies modified for use as criteria for a finding of Public Convenience or Necessity in the City of Oakland.
2. Specific criteria for making a finding of Public Convenience or Necessity. The finding should be formatted such that a finding will not be made unless all of the criteria could be met.

3. An exemption to the above criteria allowing appropriate projects in the Central Business District, along the Hegenberger Corridor, and large retailers with 25 or more FTE employees and 20,000 square feet or more to be considered for approval.
4. A plan for enhanced public participation in the process of reviewing projects involving alcohol licenses (full service restaurants are already excluded).
5. A resolution adopting a City policy to see no net increase in certain retail alcoholic beverage sales licenses except in identified areas.

KEY ISSUES AND IMPACTS

Oakland has been attempting to stop the proliferation of Alcoholic Beverage Sale Establishments because the City has an overconcentration of such establishments, as defined by the State of California. The current approach to issuing use permits for this activity is oriented towards approval if a finding of Public Convenience or Necessity may be made when any of three criteria are met. This process has no formal role for the community yet it puts the burden on the community to demonstrate that a project is undesirable. The community has but one opportunity before the Planning Commission to make the case that the project will be detrimental to the area. Currently, additional public participation only occurs at the City Council level if member(s) of the public pay the appeal fee and file an appeal.

At the same time it is important to have some flexibility when it comes to projects that advance the City's economic development objectives. In cases where the sale of alcohol is peripheral to the main project activity, such as full-service restaurants, large retailers, supermarkets, and entertainment in entertainment zones, the policy should be able to permit these activities where they provide genuine benefit.

The conflict between the goal of limiting the proliferation of new alcohol beverage sales outlets and the desire to promote beneficial economic activity could be alleviated by reducing the threshold for making the Public Convenience or Necessity finding in areas of the city where the accessory sale of alcoholic beverages as part of a larger business would generate economic benefits.

RECOMMENDATION (S) AND RATIONALE

Finding of Public Convenience or Necessity

Overall, the criteria for Public Convenience or Necessity when applied uniformly across the city, may represent a restrictive approach which would likely prevent all new alcohol beverage sales activity in Oakland. This approach raises concerns that it could stifle desirable economic activity such as the establishment of new, full sized supermarkets in under-served areas of the city, new restaurants or even nightclubs in areas such as Jack London Square where such activities may be desirable and appropriate.

Therefore, it is recommended that a finding of Public Convenience or Necessity will not be made unless all of the findings described later in this report can be met, with the exception of projects

in the Central Business District and Hegenberger Corridor. The Central Business District is the area defined in the Zoning Regulations as the area bounded by I-980 and Brush Street to the west, 27th Street to the north, Harrison Street/Lake Merritt and the Lake Merritt channel to the east, and the Oakland Estuary to the south. The Hegenberger corridor is defined as that area shown on the Land Use Diagram as Regional Commercial adjacent to Hegenberger Road and the Coliseum complex from Doolittle Drive to San Leandro Street. These areas are shown on the attached map.

After reviewing current regulations and policies of the City of Oakland, staff discussed with City of Vallejo staff how their policies have worked. Vallejo has adopted a program that is similar to the Deemed Approved Program in Oakland. Prior to issuance of a finding of Public Convenience or Necessity, Vallejo requires applicants to answer questions related to need, quantity of alcohol sales to other goods, proximity to sensitive uses, level of calls for service, and the level of other city/county services. Since this is a policy, rather than legislation, the applicants are not bound to answer the questions to make the finding of Public Convenience or Necessity. In practice, no new licenses have been issued in Vallejo since the policies were adopted.

Staff recommends amending Section 17.102.210(B)(3) of the Oakland Planning Code to create new criteria for making a finding of Public Convenience or Necessity. Current text is in regular type, ~~deleted text is in strike through~~, and **new text is bolded**. Note that the first two existing criteria are now located within criteria number one below and are no longer separate criteria.

(A) For all projects, all of the following three criteria shall be met to make a finding of Public Convenience or Necessity:

1. That ~~the proposed project will~~ **a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the Oakland community, how the proposed project will would enhance physical accessibility to needed goods or services that the project would serve including, but not limited to alcohol; and**
2. That ~~the overall project will have a positive influence on the quality of life for the community in which it is located and will have economic benefits that outweigh anticipated negative impacts. In particular, the project will not result in a significant increase in calls for police service; and. the proposed project will further the city's economic development goals and will not place burdensome demands on existing public services, particularly public safety related services.~~
3. **Alcohol sales are typically a part of this type of business in the City of Oakland (for example and not by way of limitation, alcohol sales in a Laundromat would not meet this criteria).**

(B) In addition to the above criteria, projects outside the Central Business District and Hegenberger Corridor shall meet both of the following two criteria to make a finding of Public Convenience or Necessity. However, those projects that will result in 25 or more full time

equivalent (FTE) employees and will result in a total floor area of twenty thousand (20,000) square feet or more will be exempt from these two additional criteria. This exception is already in the existing Planning Code, and is consistent with furthering economic development goals of the City:

4. **The proposed project is not within 1000 feet of another alcohol outlet (except full service restaurants), school, licensed day care center, or public park or playground; and**
5. **Police department calls for service within the "beat," where the project is located do not exceed by 20% the average of calls for police service in police beats citywide during the preceding 12 months.**

Criteria number one should apply to all applications because State law requires some finding of Public Convenience or Necessity and the State Department of Alcoholic Beverage Control, as a matter of policy, considers public convenience or necessity in terms of meeting an unmet need or underserved population. Criteria number two should apply to all applications to meet Mayor and City Council goal number one mandating the creation of a safe and healthy city. Finally, criteria number three should apply to all applications to insure that inappropriate uses are not combined anywhere in the City of Oakland.

Currently, Section 17.102.210 B, prohibits alcohol outlets within 1000 feet of any other alcohol outlet. Criteria number four, essentially extends this prohibition to include schools, licensed day care centers, and, public parks or playgrounds. If criteria number four can not be met, a finding of Public Convenience or Necessity can not be made. The state will not approve a license where the local jurisdiction does not make a finding of Public Convenience or Necessity.

In developing criteria #4 and #5, staff used the Vallejo policies as a model, but modified them to be tailored to Oakland's needs, facilitates and data available. The Vallejo criteria #4 is worded:

The proposed project is within 1000 feet of a school, church, licensed day care facility, park, senior citizen facility or licensed alcohol or drug treatment facility,

Neither the state nor local agencies map churches, senior citizen facilities, and licensed alcohol or drug treatment facilities. Researching such facilities for 1000 feet surrounding each location would require significant time. Staff has kept language that the proximity of such facilities may be considered. Parks and licensed day care facilities are tracked and can be verified by staff.

In Vallejo, the calls for service threshold is set at 30% of average. Staff proposes a lower and more restrictive threshold of 20% for Oakland. It is more appropriate to Oakland's situation, and both the ABC and local police currently monitor the 20% threshold.

Two other criteria use by Vallejo do not seem necessary or appropriate for Oakland:

The use of other city/county services such as ambulance services, fire department services, health services for the area in which the project is to be located is 20% greater than the use of city/county facilities for the city/county as a whole.

Local agencies do not monitor the use of city/county services described above. Gathering such data for each case and each agency may not be possible and raw data collection is not under the control of staff.

The percentage of physical retail space devoted to the sale of alcohol in the proposed project will not exceed 10% of the total active physical retail space of the block on which the project is to be located.

Staff felt that, although this information is useful, the information is only valid at the time of the application and may not be meaningful over a long period of time as businesses come and go. In addition, some uses such as a large entertainment center may occupy one block or a majority of a block making this measurement useless. Community benefit is likely to be a better measure in such cases.

Public Participation/ Burden of Proof

The second important element of a revised policy is to facilitate greater public involvement. There are several potential approaches. The preferred option is to use the Neighborhood Crime Prevention Councils. These are already official bodies certified by the Community Policing Advisory Board. The NCPCs are primarily concerned with public safety and other quality of life issues and are organized into small enough geographic areas as to represent those residents and businesses most likely to be directly affected by a project.

The NCPC would hold a noticed meeting to consider the proposed project. The applicant would have the opportunity to make the presentation to be followed by a staff presentation of preliminary findings. In the event that the applicant chose not to appear before the NCPC, staff would present the project. The NCPC membership would then vote on whether to support or oppose the application. The result would be part of the record presented to the Planning Commission. Staff could conduct a well noticed meeting at a public facility near the proposed project in the event that an area does not have a functioning NCPC. Those in attendance would be polled on their opinion of the proposal with the results forwarded as part of the final staff report. This approach is direct and allows the possibility for meaningful public involvement at an appropriate scale by involved groups that meet on a regular basis.

Other alternatives considered include:

1. Holding the hearings for use permit applications in the affected community. This would be unwieldy for the Planning Commission but possible for a Zoning Administrator.
2. Applicants could be required to secure expressions of support from affected stakeholders such as merchant associations, neighbors or their associations. This method does not provide for a definite mechanism for review and a good faith effort would be difficult to monitor. In addition, this method does not insure a public review of the matter. Instruments for demonstrating community support such as petitions or letters pose problems with validation.

3. Solicit an advisory opinion from the affected Neighborhood Crime Prevention Council on whether a use permit should be issued. This would be similar to the preferred alternative but shares a lack of a definite mechanism with the alternative above.

The benefits of public participation include:

- 1) Increasing accessibility for the public.
- 2) Providing advance notification of a pending planning commission action to affected residents (particularly those concerned with public safety issues).
- 3) Giving residents direct input in a decision that affects their neighborhood.
- 4) Insuring that the intended recipients of the project's benefits concur that the project truly offers benefits such as increased accessibility to goods and service or neighborhood commercial revitalization.

The advantage of requiring applicants to demonstrate community support is that it places the burden of proof on the applicant to show that this is a desirable project. The difficulty lies in determining what groups are qualified in any given area to give their assent.

Guidelines for Determining Community Need

Regardless of the alternative used, specific benchmarks should be adopted to help staff determine if the applicant has demonstrated that a project meets a community need and if the project is a positive influence on the quality of life. Staff proposes that the applicant fill out a checklist to be submitted as part of the normal application process. The following is an example of such a check list.

To demonstrate that the project is a positive influence on the quality of life in this community please describe how the project will achieve one or more of the following:

- Improve community access to needed non-alcoholic goods; or
- Improve community access to needed non-alcoholic services; or
- Provide permanent public improvements; or
- Provide substantial public service; or
- Achieve other tangible positive influences on the quality of life in this community.

To demonstrate that the project meets a community need please describe how the project meets needs identified by one or more of the following studies:

- Use an existing needs assessment survey done by city or community organizations if one has been done within the previous 5 years; or
- Needs identified in specific plans or in the General Plan; or
- Needs identified in academic studies; or
- Needs identified in other community studies.

In all cases a copy of the source study shall be submitted for evaluation by Zoning staff.

No Net Increase Policy

The Public Safety Committee directed staff to prepare a resolution creating a formal policy to limit the number of alcohol outlets, particularly in areas of overconcentration. A draft of this

policy statement was presented at the June 15, 1999 meeting in resolution form. The resolution has been refined by staff to make the resolution more consistent with the proposed changes to the Planning Code. The current draft states that it is the intent of the City to see that there is no net increase in off-sale and on-sale retail alcoholic beverage sales licenses with exceptions for all restaurants and large retailers, and for all outlets in two identified areas of Oakland. The resolution allows for transfers of licenses within Oakland but not into Oakland.

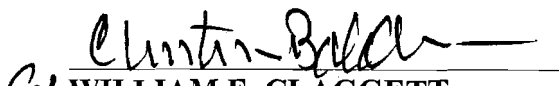
If adopted, the resolution will set goals for applicants, Planning Commission and City Council to aim for when making or reviewing applications. However, the resolution will not supersede the regulations set forth in the Planning Code or State law; rather, it sets forth goals of the City. The two goals stated in this resolution are:

1. To limit the expansion of retail alcohol outlets in general but allow Oakland to Oakland transfers, new restaurants, and new large retailers where applicable.
2. Allow for the development of entertainment uses in identified entertainment zones where uses that may include the consumption of alcohol are desired.

ACTION REQUESTED OF THE CITY COUNCIL

1. Direct staff to prepare a draft ordinance as outlined above regarding the finding of Public Convenience or Necessity. Refer this item to the City Planning Commission for public hearing.
2. Adopt the attached resolution, originally introduced in the previous report of June 15, 1999 and subsequently modified, creating a goal to see no net increase in certain retail alcoholic beverage sales in licenses except in identified areas, with exceptions for restaurants and large retailers.

Respectfully submitted,


WILLIAM E. CLAGGETT
Executive Director

Concurred by:
Leslie Gould
Director of Planning and Zoning

Prepared by:
Chris Candell, Planner II
Zoning

APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE:


OFFICE OF THE CITY MANAGER

14-1-14-1-1
2-1-00

OAKLAND CITY COUNCIL

DRAFT

RESOLUTION NO. _____ C.M.S.

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A RESOLUTION ADOPTING A CITY GOAL TO SEE NO NET INCREASE IN CERTAIN RETAIL ALCOHOLIC BEVERAGE SALES LICENSES EXCEPT WITHIN IDENTIFIED AREAS

WHEREAS, the City of Oakland currently contains 468 retail Alcoholic Beverage Sales licenses excluding restaurants) for a ratio of one license per every 854 residents (399,900 total population per State Department of Finance estimates for January 1999); and

WHEREAS, the State of California currently contains 35,227 licenses (excluding restaurants) for a ratio of one license per every 958 residents (3,773,000 total population per State Department of Finance estimates for January 1999); and

WHEREAS, based upon the State Business and Professional Code definition of areas of "overconcentration" of licenses as census tracts where the ratio of license to population exceeded the countywide average or police beats where the crime rate was 20% or more above the City median, the City of Oakland has many overconcentrated areas; and

WHEREAS, the City Council finds it in the best interest of the health, safety, and welfare that licenses in Oakland neighborhoods not be further increase, now, therefore be it

RESOLVED, that the City of Oakland adopts a goal that

New off-sale and on-sale retail alcoholic beverage sales licenses should be permitted only when there is compliance with the Planning and Municipal Codes and the application is for a project that meets one or more of the following:

1. Located in the Central Business District or Hegenberger Corridor; or
2. A full service restaurant in any area of the City; or
3. A large retailer with 25 or more FTE employees and 20,000 square feet or more in any area of the City; or
4. Where there is an Oakland to Oakland transfer of the same license type in any area of the City.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 19____

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MILEY, NADEL, REID, RUSSO, SPEES AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD

City Clerk and Clerk of the Council
of the City of Oakland, California

14-1-1
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