



“PUBLIC CONVENIENCE OR NECESSITY”

A GUIDE FOR LOCAL GOVERNMENT
AND INTERESTED CITIZENS



CALIFORNIA COUNCIL ON ALCOHOL POLICY • REVISED MARCH 2006



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BACKGROUND:

WHY WRITE THIS GUIDE?

As the title suggests, this guide is written for those who work in local government and for those community members seeking to engage in licensing and land use regulation of retail alcohol outlets in California. Limiting alcohol problems in our communities through environmental strategies can be highly effective, but understanding how to accomplish this can be daunting. We are committed to helping you be an effective participant in these strategies, particularly as they relate to public convenience or necessity, a relatively new tool that can directly engage communities and local government into state liquor licensing processes. This is our effort to deconstruct these processes and offer some experience-based input and advice.

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REGULATING RETAIL ALCOHOL OUTLETS IN CALIFORNIA: CHALLENGES AND OPPORTUNITIES

While the licensing and land use regulation of retail alcohol outlets in California is complex, local communities and their governments can exert some influence in newly proposed liquor license applications. However, perhaps the greatest challenge is curtailing the sheer number of retail alcohol licenses across the state. While many states place ceilings on the number of liquor licenses in a given community, California is still a state where on-sale beer and wine licenses enjoy no restrictions – see table below.

ordinance, your alcohol problems prevention efforts can be greatly aided by enacting such an ordinance. Additional resources include: <http://health.org/govpubs/PHD822/aar.aspx> and <http://resources.prev.org/documents/AlcoholViolenceGruenewald.pdf>.

“Public convenience or necessity” is an additional tool for local government and communities that directly ties them into the state liquor licensing process. Current state law limits the issuance of new licenses in geographical regions defined as high crime areas or in areas of “undue concentration” of retail alcohol outlets. However, the law also states

A CURRENT SNAPSHOT OF LIMITS IN RETAIL ALCOHOL AVAILABILITY -- CALIFORNIA		
LICENSES	ON-SALE	OFF-SALE
Beer, Wine and Distilled Spirits (“General License”)	1 license for every 2,000 residents	1 license for every 2,500 residents
Beer and Wine Only	No state limit	1 license for every 2,500 residents or 1 license for every 1,250 residents when combined with off-sale general licenses

And because there is no state limit placed upon on-sale beer and wine licenses, communities will continue to see new applications filed with the Department of Alcoholic Beverage Control on a regular basis. Some localities have filled this vacuum by utilizing their local land use powers. Under state law, the ABC may not issue a liquor license if it violates an existing local zoning ordinance (CA Business & Professions Code 23790). Thus, to obtain a state liquor license, the applicant must first have all necessary local zoning permits in order. This statutory scheme gives real power to localities with strong zoning ordinances specific to retail alcohol outlets. When properly constructed and deployed, local zoning laws can be a very powerful tool. It is generally easier to be successful at policy change at the local level than at the state level. Check to see if your city or county has a strong zoning ordinance that directly regulates retail alcohol outlets (bars, restaurants, liquor stores, convenience stores). If your locality does not have such an

these restrictions can be sidestepped in specified circumstances when the state ABC **or** the local jurisdiction makes a determination that the applicant license proves that the proposed outlet would serve “*public convenience or necessity*” (PC or N). In other words, “public convenience and necessity” is demonstrated when the liquor license applicant proves that the business operation will provide some kind of benefit to the surrounding community. Thus, in addition to making local zoning decisions about alcohol outlet locations and operations, localities now have formal say into the state liquor license process when they actively utilize their authority to make PC or N determination.

Although this phrase “*public convenience or necessity*” had been embedded in the “*undue concentration*” statute well before the adoption of the PC or N law in 1994, neither the ABC Department nor local governing bodies has established definitive and uniform guidelines for defining and applying any version of the “*public convenience or necessity*” doctrine.

In addition, state judicial and administrative decisions have shed little light on the development of definitions or guidelines. Further, there remains some confusion regarding the exact roles and responsibilities of local governing bodies designated to make the PC or N determination.

RETAIL ALCOHOL AVAILABILITY: PAINTING A REGULATORY PICTURE

In order to understand the implications of the concepts of PC or N, a general understanding of how California governs the commercial sale and service of alcoholic beverages is necessary.

A BRIEF OVERVIEW

The regulation of the sale and service of alcohol involves two separate levels of authority: *state* and *local*. The common-sense notion that retail alcohol businesses must be regulated (and be in proportion to the general population) in order to protect the public health and safety is an underlying assumption for each regulatory level. In California, license regulation is handled by a state agency, the Department of Alcoholic Beverage Control (ABC).

State ABC systems can be divided into two basic groups: control and license. In control systems, the state actually owns and operates alcohol retail outlets themselves. In license states (like California), all alcohol businesses must obtain a liquor license from the state as a condition of doing business.

Each state has also shaped its own relationship around local (city and county) power and authority over liquor licensing. States vary widely in defining local powers. Some states place most licensing power with local government; others give all of the power to the state agency. California's liquor licensing system relies primarily on state authority. There is, however, a major exception to the strong state ABC powers in California, one that has resulted in a great deal of regulatory and community activity at the municipal level. **Under California State law, the ABC Department may not issue a liquor license if it violates an existing, valid, local zoning ordinance (CA Business & Professions Code 23790).** In locales that have enacted such zoning laws, known as conditional use permits or CUP's, state liquor licenses may only be issued **after** all zoning permits are in order.

The CUP is a land use ordinance that provides communities and local governments control over where alcohol outlets may be located, how late they may operate, how they train their sellers/servers, and how citizens may participate in determining if new outlets should open in their

neighborhoods. Through the CUP, operating conditions may be placed on new outlets that minimize potential risks to health and safety. The ordinance also provides a simple mechanism for localities to revoke the use permits of outlets operating out of compliance with the conditions set forth in the CUP.

Localities with robust CUP's enjoy real and sustained benefits -- zoning applicants are thoroughly screened, public input is heightened, and the potentially risky element of retail alcohol sales in a community is explicitly debated. Such local processes allow communities to better shape their retail alcohol availability through active use of existing zoning powers-- both in intervening with problem outlets today and preventing undue concentration problems in the future.

PC OR N: A HISTORY LESSON ORIGINAL UNDUCE CONCENTRATION STATUTE (Before AB 2897 - - CALDERA)

State law attempted to curtail the intensity of too many retail outlets and the associated community problems through its definition of "*undue concentration*". The ABC-developed formula stated that undue concentration was proved when crime was 20% higher in the specific crime reporting district where the applicant outlet would be located when compared to all crime reporting districts across either the city or county. However, the statute (and its regulatory analogue -- Rule 61.3) was very challenging for potential ABC license applicants and protestants to understand.

The process was triggered by a single liquor license application. Simply put, interested protesters (i.e., individual community members or local government bodies) needed to prove mathematically that having too many liquor licenses in the vicinity had a nexus or relationship to higher crime statistics as described above.

Applying this formula was not impossible but took extensive legwork, and much cooperation from the police department. Some police departments were able to provide the necessary statistics, while others had record systems that make this data impossible to retrieve. However, even if the protester(s) clearly proved undue concentration using the crime statistic formula described above, complete discretion over liquor license issuance resided with the ABC if they found "*public convenience or necessity*".

Both public entities and communities grew frustrated with the state's broad administrative discretion. These frustrations led to various legislative proposals to change the definition of undue concentration and provide a formal role for local input in the determination of PC or N.

PUBLIC CONVENIENCE OR NECESSITY LEGISLATION:

In 1994, the California legislature enacted AB 2897 (Caldera). Business and Professions Code § 23958.4 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=23001-24000&file=23950-23962>) now prohibits the issuance of new alcohol retail licenses in any area that has an undue concentration of alcohol outlets **unless** a determination is made that the license would serve public convenience or necessity. The determination of “public convenience or necessity” is either made by the ABC or by a local governing body, depending on the license type.

Undue concentration was redefined in this legislation. Subsection (a) of the code defines “undue concentration” in two specific ways:

- Excess Crime
Excess Uniform Crime Reporting (UCR) Part 1 crimes (> 20%) reported within the crime reporting district (*similar to the prior definition in law*) **OR**
- Ratios (X number of licenses per X number of residents)
A higher alcohol license/population ratio within the census tract/division than the county alcohol license/population ratio.

Subsection (b) apportions the roles of the state ABC and local governing bodies based upon type of license. See table below for breakdown.

PUBLIC CONVENIENCE OR NECESSITY: A JURISDICTIONAL BREAKDOWN	
JURISDICTIONS	LICENSE TYPES
State Department of Alcoholic Beverage Control	On-Sale <ul style="list-style-type: none"> • Restaurants (bona fide eating places) • Lodging-based licenses • Non-retail licenses
Local Governing Body	Off-Sale <ul style="list-style-type: none"> • Liquor stores • Convenience stores • Bars

So, since 1995 local entities have been given an additional and direct role in the state ABC licensing process for a substantial portion of license types. How communities and their local government bodies can best flex this new muscle is described in detail below.

SUBSEQUENT LEGISLATION:

1995: The Thompson “Wrinkle” (SB 408) -- Moratorium Areas

SB 408 (Thompson) amended Business and Professions Code § 23817.5 in 1995. This provision imposes a moratorium on new off-sale retail beer and wine licenses in cities and counties where the number of such licenses exceeds one license for each 2,500 residents. Contact your local ABC office for a current listing of moratorium jurisdictions.

This amendment allows the ABC Department to potentially override the off-sale beer/wine moratorium if the applicant can demonstrate to the local governing body that public convenience or necessity would be served.

1996: The Hoge Amendment (AB 2841) - The 90 Day Limit

After enactment of the new *public convenience and necessity* provisions in 1994, various pieces of legislation were introduced in the 95-96 session to amend the statutory scheme. AB 2841 was the successfully enacted bill and essentially created a time limit for local governments to make their determination of public convenience and necessity. Local governing bodies now have 90 days in which to make such a determination. Failure to do so in that time frame will then give the ABC the right to make the determination.

Thus, localities and communities must be mindful of the time limits when designing and implementing PC or N processes; otherwise, they will lose the powers gained through the original Caldera bill.

IMPLEMENTATION STRATEGIES

The essence of this portion of the guide is to give the reader some tangible examples of how to implement the PC or N legislation at the local level. Substantive advice is provided that can assist localities and their communities to derive the most benefit from this important (but under-utilized) power.

DETERMINING A LOCAL GOVERNING BODY

Since the Caldera bill was enacted, local government has utilized a number of different options as the official “governing body.” We talked to many folks at the local level to determine if there were any preferred approaches. In short, there is no definitive answer at this juncture. Instead, we offer a guiding principle that applies across the

board, to choose a governing body that has functional linkages with other local agencies and, perhaps most importantly, the communities that make up that city or the unincorporated county.

See Appendix D for examples of locally designated entities.

DETERMINING PC OR N: MANDATORY & DISCRETIONARY MODELS

This discussion includes two main sections: (1) highlights of PC or N guidelines (both mandatory and discretionary), and (2) highlighting current procedural models which list both the pros and cons of each. It is important to remember that these are only guidelines or suggestions; control still resides at the local level as to how a community may choose to implement this local component of the state PC or N legislation.

However, the original PC or N legislation explicitly stated that the burden of proof is on the applicant, meaning that the applicant is obliged to demonstrate to the ABC or, if applicable, the local entity, how *public convenience* OR *necessity* will be served by the existence of this new retail outlet. Note the “OR” in the public convenience or necessity. The applicant does not need to prove both elements – just demonstrating one of the elements is enough to meet the burden of proof.¹

A number of potential applicant burdens or obligations have been gleaned from localities using the process around the state. These include:

- Demonstrate how the proposed use will not be detrimental to the character of development in the immediate neighborhood and will be in harmony with the overall objectives of the General Plan.
- Prove/demonstrate the economic benefit outweighs the negative impacts to the community as whole
- Demonstrate how issuance of license will provide a needed service not currently being met in the community
- Identify the special and unusual circumstances present here to justify a new retail alcohol outlet when there are already similar alcohol uses existing nearby
- Prove they cannot operate profitably without a liquor license
- Demonstrate reasonable efforts to seek community input
- Get the approval of redevelopment agency/committee when appropriate

After a local governing body has been identified and a procedural model selected (see SECTION 2, below) then the designated public entity moves on to the question of determining what constitutes public convenience or necessity for their community.

SECTION 1: PC OR N – RECOMMENDED GUIDELINES

There are two basic types of analyses for determining PC or N:

- MANDATORY (or absolute), and
- DISCRETIONARY.

These should not be seen as mutually exclusive; but rather are complementary. Note, however, that if both are to be used it would certainly make sense for the municipality to first assess the PC or N question under the MANDATORY analysis.

SUGGESTED MANDATORY GUIDELINES

Under this type of analysis the city or county should explicitly lay out in writing the criteria for which NO finding of PC or N will be made. Clearly this scenario requires special qualifying factors. Such circumstances can and have occurred. The following examples provide a beginning list of such factors used by some public entities as the basis for immediate rejection of the applicant’s bid to prove PC or N. Any one of these factors should be enough to warrant a no PC or N finding, but the presence of additional factors makes for a stronger finding and will provide less likelihood of a successful appeal.

- Proposed use to be located in an existing targeted law enforcement area
 - as documented by specific and abnormally high general health and safety indicators that have some nexus with alcohol use
 - see Appendix B for links to research findings linking alcohol availability with a variety of alcohol-related problems
- Elevated rates of alcohol-related crime in a defined area or reporting district that encompasses the proposed use
 - significantly higher than average, i.e., 20% greater
 - i.e., disturbing the peace, public intoxication., assault and battery, prostitution, vandalism, graffiti, loitering, pan-handling, all CA Business & Professions code violations, drug violations, driving under the influence (DUI) tracking

¹Note that some localities mistakenly substitute “and” instead of “or” in their PC or N policies and procedures documents. This can result in that locality creating a greater burden to the applicant than originally intended.

- Consistent history of undue concentration
-- i.e., 20% higher outlet density ratio than the state average for that particular license type
- Proximity to sensitive land uses
-- examples: schools, churches, residences, parks, senior housing, youth activity centers, hospitals, treatment centers, homeless shelters, child care facilities

NOTE: DISTANCE REQUIREMENTS SHOULD BE AT LEAST EQUIVALENT OR CLOSER TO STATE REQUIREMENTS – see Business and Professions Code § 23789

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=23001-24000&file=23770-23793>

- youth demographics in immediate area
-- i.e., “x” percentage of the population in the immediate vicinity of the proposed business is under the age of 21
- business operation variables
-- i.e., high percentage (more than 50%) of alcohol to non-alcohol sales, late night (after midnight) operations, high percentage (over 50%) of untrained staff, high percentage (over 50%) of underage staff, availability of single servings, sale of inexpensive fortified wines, size of facility, lack of adequate security, lighting.

BENEFIT (CONVENIENCE) VARIABLES

As discussed above, the initial inquiry involves determining (with some specificity) what potential benefits the proposed establishment will bring to the community. Again, the burden is on the applicant to provide this information. Some benefit variables include:

- net employment gain (especially of local residents)
- various business taxes
- unique business addition
- enhances and/or increases the public utilization of space
- contribution to the long-term economic development goals of the community
- positive (cultural) entertainment

SECTION 2: PC OR N PROCEDURAL ISSUES

The issue of determining PC or N is complicated by questions of procedure and timing.

TIMING

As many as three distinct processes may be in play with regard to retail alcohol outlets:

1. a local conditional use permit (if required);
2. a PC or N determination (required within 90 days of a completed PC or N application); and/or,
3. the state ABC liquor license process (protests need to be filed within 30 days of the initial posting date).

Unfortunately, these processes overlap, without any real standardization across localities. This lack of uniformity presents challenges to communities, localities, the state ABC and even the license applicant. Thus, the authors are unable to recommend any specific model. However, a key principle should be applied in all cases; namely, **promote transparency in the process in order to ensure maximum citizen input and participation.**

Another complexity is the situation where some localities are making “conditional PC or N” determinations – meaning that the determination is wholly contingent upon the ABC

SUGGESTED DISCRETIONARY GUIDELINES

It is strongly recommended that all local designated bodies should include at least this level of analysis. Here the designated public entity engages in a type of risk-benefit analysis. Note that license-specific factors are included as well.

It is suggested that the benefits side of the equation be examined first. If no tangible benefits can be discerned, the decision-making body should determine that public convenience or necessity would not be served. So, the applicant retains the burden of proof to make an initial case that there are discernible benefits to the particular use in question. If there are benefits, then the analysis should weigh the risks and focus on whether the business is designed to minimize those risks to the community.

To aid this important decision-making process the following variables should be considered when determining the relative merits and demerits of a proposed liquor license. The usual caveat to any promulgated state-wide guidelines must be applied here -- these are simply guidelines that require adaptation to local circumstances.

RISK VARIABLES

In addition to those circumstances cited in the MANDATORY section, the following variables also may be considered in making the PC or N evaluation:

- law enforcement calls for service and Uniform Crime Reporting (UCR) part 1 & 2 crimes higher than average
- ratio (all police service calls for service/alcohol-related service calls)
- possible increase in level of law enforcement capacity
- health indicators (alcoholism rates, homelessness, other)

placing specific conditions upon the liquor license. Consult your local ABC administrator to assess the possibility of using this particular strategy.

Models:

For those with existing conditional use permits (CUP’s) regulating retail alcohol outlets, there were at least three variations. For those without an existing CUP, at least two variations were delineated. All five variations are described here:

Existing CUP Jurisdictions -- Models:

- Administrative determination of PC or N
- Determination coordinated with CUP hearing process
- Determination subsequent to CUP hearing process

Non-CUP Jurisdictions – Models:

- Administrative determination of PC or N
- PC or N determination based on public hearing

PC OR N: PROCEDURAL OPTIONS

To reiterate, public entities must determine who shall serve as the designated local governing body. Appendix D provides current examples of various designated bodies.

A quick review of those local governing bodies that have begun to develop their own definitions of public convenience or necessity revealed no clear procedural model. Each local governing body should determine which model best fits their circumstances.

EXISTING VARIATIONS WITH CUP’S	
<p>A) ADMINISTRATIVE DETERMINATION OF PC OR N Here, staff of the designated department or agency makes a determination without any public hearing process.</p>	
<p>PRO:</p> <ul style="list-style-type: none"> • fast, simple, less expensive • individual agency representative can be utilized as “designated” department 	<p>CON:</p> <ul style="list-style-type: none"> • no input from community at front end of procedure • lack of public process may give business applicant unfair advantage • more difficult for community to appeal
<p>B) DETERMINATION COORDINATED WITH CUP HEARING PROCESS² Public notification and hearing are needed for both matters at hand (PC or N and zoning). Staff input can be directed to both questions.</p>	
<p>PRO:</p> <ul style="list-style-type: none"> • most efficient process when faced with mandatory public hearing processes • other interested departments able to provide formal input • allows formal input from community on both CUP and PC or N findings. 	<p>CON:</p> <ul style="list-style-type: none"> • may confuse CUP issue (for staff, community, and members of relevant decision-making board) • difficult to untangle the two processes, possibly creating sense of not having a fair hearing on the part of the applicant

² *NOTE: If this variation is to be used, it is suggested that the issue of public convenience or necessity be taken up first. If PC or N is determined not to exist, the local zoning issue becomes moot.*

PUTTING THIS HANDBOOK TO USE

DISSEMINATION

As with the original handbook, it is anticipated that this document will be broadly disseminated across a number of key sectors, including but not limited to:

- Chiefs of Police
- Planners
- City Managers
- City Attorneys
- City Councils
- County Supervisors Association & all related organizations including sheriffs, planners, boards of supervisors, city administrators
- American Planning Association
- California Peace Officers Association
- Interested businesses and business trade associations
- Alcohol prevention groups and organizations
- Interested citizens and community activists

GETTING STARTED IN YOUR COMMUNITY

If you are interested in getting your local government to pay more attention to the issues of retail alcohol availability, we suggest contacting the Community Prevention Institute for possible support for technical assistance and training. They can be found at <http://www.ca-cpi.org> or by calling 916.983.8929.

IMPROVING THE STATE ABC LICENSING PROCESS: POSSIBLE ADMINISTRATIVE AND POLICY REMEDIES

A recent statewide meeting of ABC constituents and interested individuals representing neighborhoods and organizations using the PC or N process was held in order to shape the revision of this document. Emerging from the discussion was a number of key policy issues of concern to the participants. Of course, in any policy development process, one must first define the problem or issue area. In this arena, there are two overarching themes: 1) strengthening the information flow from state ABC to communities; and, 2) better demarcation of the state liquor licensing process and the local PC or N process.

The ideas listed below are not necessarily endorsed by any particular organizations but do point out areas of debate and concern. These ideas could take the shape of bills, rules changes, or simply shifts in operational policy. Sketches of several ideas include:

- ABC should require applicants to mail notice of license applications to a broader spectrum of community members. Participants expressed that the notices often fail to get into the hands of the residents that live nearby and also frequently leave insufficient time for community members to act should they wish to protest the license.
 - ✓ Specific ideas include: expand the area that applicants are required to disseminate the notices; provide a more timely process for distribution; and develop multiple communication avenues to ensure actual resident notification.
- Communities are confused about the interface between licensing and local land use powers. Examples of ABC District Offices initiating the processing of license applications before local government bodies have had time to determine if a Conditional Use Permit will be awarded were raised and discussed.
 - ✓ One solution offered was for the ABC not to begin processing (or even accepting) liquor license applications until local land use decisions are made.
- Participants agreed that the posting of ABC transmittals (updated information on pending license applications, transfers, etc.) and master list of conditions on the ABC Website would be a very useful tool.
- Also discussed was the possibility of using a different baseline for the calculation of population ratios for the determination of “undue concentration.”
 - ✓ Suggestions included using population ratios derived from multiple sources (e.g., census tracts, zip codes, planning districts, crime reporting districts, etc.) rather than solely the County population at large.
- Participants felt the ABC should have the statutory authority to place conditions on license even when an applicant disagrees with the conditions.
- ABC licensees are allowed to make annual requests to have current conditions removed from their license. Similarly, localities and communities would like a similar process established to request additional conditions on a license, when justified.
- Given the interface between licensing and exercising of local land use prerogatives, participants would like the ABC to take a supportive or, at worst, a neutral position in reference to the land use conditions that a local jurisdiction may choose to place on a use permit.

APPENDICES

APPENDIX AGLOSSARY

**APPENDIX BSAMPLE OF WEB LINKS TO CITIES
WITH ACTIVE PCORN PROCESSES**

**APPENDIX C.....KEY RESEARCH FINDINGS RELATED TO
RETAIL ALCOHOL AVAILABILITY**

**APPENDIX DEXAMPLES OF DESIGNATED AGENCIES
AND DEPARTMENTS**

APPENDIX E.....LIST OF ABC-APPROVED CONDITIONS



APPENDIX A

GLOSSARY

ABC:

The Department of Alcoholic Beverage Control, the state agency responsible for licensing and regulation of alcoholic beverages <http://www.abc.ca.gov>.

Alcohol:

Includes alcohol (distilled spirits, liqueur, wine, wine coolers, or beer) in any liquid or solid containing at least one-half of 1 percent (0.05%) or more of alcohol by volume.

Alcohol Availability:

A public health term referring to how alcohol is made available or accessible in a defined area or community. Availability may be based on location, price, advertising, and promotion.

Alcohol Outlet:

A retail business that sells alcohol beverages to the public or to a select membership. Under the 21st Amendment, each state has the power to control the means by which alcohol is made available to the public. (See also Off-sale & On-sale Outlets)

Applicant:

One who is applying for a state liquor license.

Bona Fide Public Eating Place:

A technical name for “restaurant.” The business must have full kitchen facilities and serve meals on a regular basis.

California Department of Alcoholic Beverage Control:

The state agency that has the constitutional authority to regulate the manufacturing, wholesaling, and retailing of alcohol. See also “ABC” <http://www.abc.ca.gov>.

Conditions:

Those agreed upon conditions of doing business that are attached to either a liquor license or a zoning permit.

Fortified Wines:

Products made from both wine and spirits. Can include very inexpensive products generally found only in economically depressed communities or more expensive products (i.e., ports and brandies) found in most liquor stores.

General License:

A license to sell or serve beer, wine, and distilled spirits.

ID:

Identification used to verify a person’s age.

Incident Log:

A daily record of any events occurring in an establishment that could result in legal action.

Intoxication:

The condition of physical and mental impairment resulting from consumption of alcohol and/or other drugs.

Licensee:

An individual who has applied for and received a liquor license from the State of California.

License Exchange:

When a retail alcohol outlet changes its liquor license type from one kind to another (for example, from a beer and wine license to a general license).

License Transfer:

When a retail alcohol outlet transfers from one location to another and takes the liquor license with them.

License Types:

A specific kind or class of license. For instance, Type 20 refers to an off-sale beer and wine license and Type 21 refers to an off-sale general license.

Local Control:

Local city or county governments have many powers to establish laws and policies regarding retail alcohol establishments and sales. Local control refers to this particular arena of local policymaking.

Malt Liquor:

A beer product with higher alcohol content (e.g., Olde English, St. Ides, Schlitz Malt Liquor).

Minor:

Any person less than 21 years of age.

Off-Sale Outlets:

Those establishments licensed by the state to sell alcohol for consumption away from the premises (e.g., liquor stores, convenience stores, grocery stores).

On-Sale Outlets:

Those establishments licensed by the state to sell alcohol for consumption on the premises (e.g., bars, restaurants, nightclubs).

Premises:

Any business establishment that has a license to sell alcohol.

Protestants:

Individuals who are formally protesting either a zoning permit at the local level or a liquor license application at the state level.

Responsible Beverage Service (RBS) Training:

A professional training program for managers, sellers, and servers of alcohol. Some cities and states require training as a precondition for employment or even as a condition preceding the issuance of a local zoning ordinance. As of March 2006, there are no state laws that require training in California.

Sale or Service:

Any transaction where alcohol is exchanged for something of value from one person to another.

Undue Concentration:

Subsection (a) of the code defines “undue concentration” in two specific ways:

- Excess Crime
Excess Uniform Crime Reporting (UCR) Part 1 crimes (> 20%) reported within the crime reporting district (*similar to the prior definition in law*) **OR**
- Ratios (X number of licenses per X number of residents)
A higher alcohol license/population ratio within the census tract/division than the county alcohol license/population ratio.

Zoning:

The means by which cities and counties regulate the different types of land uses (residential or commercial) within their boundaries.

APPENDIX B

SAMPLE OF WEB LINKS TO CITIES WITH ACTIVE PCORN PROCESSES:

Citrus Heights:

http://www.ci.citrus-heights.ca.us/docs/item_12-east_meets_west_asian_imports.pdf#search='public%20convenience%20or%20necessity%20alcohol'

Concord:

<http://www.ci.concord.ca.us/citygov/agendas/za/2001/06-27-01/rpt06-27-01-1.pdf>

Davis:

<http://www.city.davis.ca.us/cmo/citycode/detail.cfm?p=40&q=2073>

Diamond Bar:

<http://www.ci.diamond-bar.ca.us/docs/15331913120068.1.pdf>

Encinitas:

<http://www.ci.encinitas.ca.us/NR/rdonlyres/EBEE7F0B-4BA8-4FC4-85BA-DA319305A440/0/WEBPUBCONVABCFORM.pdf>

Manhattan Beach:

<http://www.ci.manhattan-beach.ca.us/agenda/1999/Ag-Min19990601/19990601-13.html>

Salinas:

http://www.ci.salinas.ca.us/Admin/MuniCodes/CodeFiles/_DATA/CHAP33/Sec_33_21_1_Requirements_for.html

San Mateo:

<http://www.ci.sanmateo.ca.us/dept/codes/ch10-38.html>

San Diego City:

http://clerkdoc.sannet.gov/RightSite/getcontent/local.pdf?DMW_OBJECTID=090014518007d1f4

San Diego County:

<http://www.sdcounty.ca.gov/cob/policy/policyupdatelist.html>
(I-121 amended 6/23/04)

Temecula:

<http://www.cityoftemecula.org/cityhall/CommDevDivision/Planning/Permits/pdfs/Public%20Convenience%20and%20Necessity-Revised%2009-05.pdf>

Yucca Valley:

<http://www.yucca-valley.org/pdf/planning/publicconvenecess.pdf>

APPENDIX C

KEY RESEARCH FINDINGS RELATED TO RETAIL ALCOHOL AVAILABILITY – WEB LINKS:

- <http://www.health.org/govpubs/PHD822/aar.aspx>
- <http://www.udetc.org/documents/accesslaws.pdf>
- <http://www.udetc.org/documents/strategies.pdf>
- <http://modelprograms.samhsa.gov/pdfs/Details/Community%20Trials.pdf>
- http://www.publicstrategies.org/pdfs/fact_sheet_outlet_density_2_03.pdf
- <http://www.hawaii.edu/hivandaids/Alcohol%20Availability%20and%20Targeted%20Advertising%20in%20Racial%20Minority%20Communities.pdf>
- <http://www.edc.org/hec/pubs/annotated-bib/alcohol-availability.html>



APPENDIX D

EXAMPLES OF DESIGNATED AGENCIES AND DEPARTMENTS	
DESIGNATED AGENCY OR DEPARTMENT	CITY OR COUNTY
AGENCY	
Law Enforcement	Alameda (city); Hemet; Mendocino County (Sheriff); Oceanside; Sacramento (city); San Diego (city); Santa Rosa; Ventura (city)
City Manager	Bakersfield; Berkeley
City Attorney	Simi Valley
Director of Public Works/City Engineer	La Palma
Community Development/ Neighborhood Services	Union City; San Francisco
Planning	Colusa County; Larkspur; Los Angeles County; Oakland; San Ramon; Vallejo
ELECTED:	
City Council	Long Beach; Los Angeles City; Reedley; Vista
Board of Supervisors	Fresno County; Kern County; Ventura County
OTHER:	
Shared	San Leandro (Community Services Director/ Chief of Police)

APPENDIX E

List of ABC-approved conditions. This list is not exhaustive. Local officials may request the ABC place additional conditions on a new or transferred license; these conditions would not be ABC approved, but would be used at the local level as part of a conditional use permit process.

ON SALE PREMISES:

TO BE USED FOR LOCATIONS WHICH HAVE DIFFERENT HOURS ON DIFFERENT DAYS OF THE WEEK

Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of ___ and ___.

TO BE USED FOR ON SALE LOCATIONS WITH THE SAME HOURS EACH DAY OF THE WEEK.

Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of ___ and ___ each day of the week.

Sales, service and consumption of alcoholic beverages shall be permitted in the patio area only between the hours of ___ and ___, each day of the week.

OFF SALE PREMISES:

TO BE USED FOR LOCATIONS WHICH HAVE DIFFERENT HOURS ON DIFFERENT DAYS OF THE WEEK

Sales and service of alcoholic beverages shall be permitted only between the hours of ___ and ___.

TO BE USED FOR OFF SALE LOCATIONS WITH THE SAME HOURS EACH DAY OF THE WEEK.

Sales and service of alcoholic beverages shall be permitted only between the hours of ___ and ___ each day of the week.

The sale of distilled spirits by the bottle for same day or future consumption is prohibited.

There shall be no bar or lounge area upon the licensed premises maintained for the purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption.

If the premises do not open until 9:00 p.m., full and complete meals must be served whenever the privileges of the license are being exercised.

The premises shall be maintained as a bona fide food restaurant and shall provide a menu containing an assortment of foods normally offered in such restaurants.

The petitioner(s) shall stock and offer for sale a substantial assortment of food and/or merchandise commonly associated with and sold to persons in the community of extraction.

Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within hours of being applied.

No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed.

No refrigerated or otherwise chilled alcoholic beverages shall be sold or maintained on the licensed premises.

The use of any amplifying system or device is prohibited on ____, and the use of any such system or device inside the premises shall not be audible outside the premises.

During normal meal hours, at least the premises seating shall be designed and used for and must possess the necessary utensils, table service, and condiment dispensers with which to serve meals to the public.

At all times when the premises are open for business the sale of alcoholic beverages shall be made only in conjunction with the sale of food to the person ordering the beverage.

There shall be no amplified music on the premises at any time.

Sales, delivery and consumption of alcoholic beverages will be restricted to and within the confines of the building portion of the premises and sales or delivery of alcoholic beverages through any pass-out window is prohibited.

The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.

There will be no dancing allowed on the premises.

The door(s) shall be kept closed at all times during the operation of the premises except in cases of emergency. Said door(s) not to consist solely of a screen or ventilated security door.

The door(s) shall be kept closed at all times during the operation of the premises except in cases of emergency and to permit deliveries. Said door(s) not to consist solely of a screen or ventilated security door.

The rear doors of the premises shall be equipped on the inside with an automatic locking device and shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies does not constitute a violation.

There shall be no amusement machines or video game devices in the premises at any time.

There shall be no more than ___ amusement machine or video game devices in the premises at any time.

No pool or billiard tables may be maintained on the premises.

A single jukebox or stereo may be maintained upon the premises; however, the music shall not be audible outside the premises.

Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as defined on the ABC-257 dated and ABC-253 dated ____.

Live entertainment provided shall be limited to _____. No noise from said entertainment shall be heard beyond feet from the exterior of the premises in any direction.

There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows.

There shall be no ___ permitted on the premises at any time.

Between the hours of ___ and ___ or at any time the premises are providing ___, the petitioner(s) shall provide ___ licensed uniformed security guard(s)³ in the parking lot and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby residents.

Petitioner(s) shall provide uniformed security guard(s) between the hours of ___ to ___.

Petitioner(s) shall provide uniformed security guard(s) from ___ to ___ after closing.

Between the hours of ___ and ___ or at any time the premises are providing ___, the petitioner(s) shall provide security personnel in the parking lot and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby residents. Said personnel shall be clothed in such a manner as to be readily identifiable as security.

The sale of alcoholic beverages for consumption off the premises is strictly prohibited.

The subject alcoholic beverage license shall not be exchanged for a public premises type license nor operated as a public premise.

The petitioner(s) shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control, as depicted on the ABC-257 dated and ABC-253 dated ____.

The petitioner(s) shall provide off-street parking spaces for vehicles for use by patrons of the premises.

The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot. Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residences.

Trash shall not be emptied between the hours of ___ nor later than ____.

Trash pickup at the premises will be made no earlier than ___ nor later than ____.

Trash shall not be emptied into outside trash containers between the hours of ___ nor later than ____.

The petitioner(s) shall construct and maintain a solid block or brick fence not less than ___ feet along the boundary of the premises parking lot.

No wine shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles.

No beer or malt beverage products shall be sold, regardless of container size, in quantities of less than six per sale.



³ If you want guards in full uniform, use the phrase "licensed uniform guards(s)". If full uniforms are not required, use the phrase "security personnel".

The sales of beer or malt beverages in quantities of quarts, 22 oz., 32 oz., 40 oz., or similar size containers is prohibited. No beer or malt beverages shall be sold in quantities of less than six per sale.

Beer, malt beverages, and wine coolers in containers of 16 oz. or less cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.

There shall be no cups, glasses, or similar receptacles commonly used for the drinking of beverages, sold, furnished, or given away at the petitioner's premises in quantities of less than twenty-four in their original multi-container package.

No alcoholic beverages shall be sold in bottles or containers smaller than ____.

Wine shall not be sold in bottles or containers smaller than 750 ml. and wine-coolers, beer coolers, or pre-mixed distilled spirit cocktails (if allowed by the license) must be sold in manufacturer pre-packaged multi-unit quantities.

No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 dated and ABC-253 dated ____.

There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

No person under the age of 21 shall sell or deliver alcoholic beverages.

No pay phone will be maintained on the interior or exterior of the premises.

All ice shall be sold at or about prevailing prices in the area and in quantities of not less than ____ pounds per sale and shall not be given away free.

Sales and delivery of alcoholic beverages to customers shall be made from behind a counter where a clerk will obtain the product; no self-service of alcoholic beverages will be permitted.

Not more than ____% of the square footage of the premises will be used for the display of alcoholic beverages.

The licensee(s) or an employee of the licensee(s) will be present in the patio at all times that alcoholic beverages are being served or consumed.

No person shall be excluded from membership in the club on the basis of race, color, sex, religion, ancestry, disability, marital status or national origin.

Petitioner(s) shall furnish four additional keys and/or passes to the Department of Alcoholic Beverage Control. Such keys or passes shall not be marked or prepared in any manner so as to distinguish the bearer's official capacity. In addition, said keys or passes shall contain random, non-consecutive numbers, various dates of issuance and shall not be identified on any membership lists so as to distinguish the listed member's official capacity.

Petitioner(s) shall police the area under their control in an effort to prevent the loitering of persons about the premises as depicted on ABC-253, dated ____.

Loitering is prohibited on or around these premises or this area under the control of the licensee(s) as depicted on the ABC-257 dated and ABC-253 dated ____.

The possession of alcoholic beverages in open containers and the consumption of alcoholic beverages is prohibited on or around these premises as depicted on ABC-253, dated _____.

The licensee shall keep the property, adjacent to the licensed premises and under the control of the licensee(s) as depicted on ABC-253, dated ____, clear of newspaper racks, benches, pay telephones, bicycle racks, and any other objects which may encourage loitering.

There shall be no sales of alcoholic beverages while the boat is at any dock, except sales to passengers one-half hour prior to departing on scheduled trips or charters, and one-half hour after returning to designated commercial docks pursuant to (A) or (B).

- (A) In addition to its primary home port dock, a licensee may designate up to ten (10) commercial docks each year at which it intends to embark or disembark passengers.
- (B) A licensee may designate any public commercial dock within the state. Such designation shall be in writing.

The applicant corporation shall report to the Department in writing any changes in directors, managing officers, and/or the issuance or transfer of shares of stock which results in a person or entity not previously approved owning 10% or more of its stock. This report shall be made within 30 days of issuance, transfer, or change.

The Department of Alcoholic Beverage Control will be notified in writing of any change in the trustees under Trust dated ____.

That ___ shall have no interest directly or indirectly in the ownership nor act as a manager or consultant in the operation or control of the licensed premises or business activities conducted in said premises.

That ___ shall not be employed in any capacity in the operation or control of the licensed premises.

That ___ shall not violate any laws or have any determination by law, by plea of guilty, bail forfeiture, conviction, or nolo contendere of any crime or commit any act involving the intemperate use of alcohol for a period of ___ years from the signing of this petition.

The sale of products, other than beer & wine, measured by gross receipts on an annual basis, shall exceed the annual sales of beer & wine products, measured by gross receipts.

Off-sale privileges under this license are restricted to sale of malt and vinous beverages containing not more than 3.2 percent of alcohol by weight, and to the sale of beer.

Peace officers, as listed in Section 830.1 of the California Penal Code, and the Director and other persons employed by the Department of Alcoholic Beverage Control for the administration and enforcement of the Alcoholic Beverage Control Act are hereby authorized to visit and inspect the proposed premises as outlined in red on form ABC-257 dated ___, at any time the undersigned is exercising the privileges authorized by the license on such premises.

Subject premises will be solely a business office and no alcoholic beverages will be possessed, stored, or delivered from this location, nor will there be any direct sales to consumers or retailers from this location.

Sales of alcoholic beverages from a mobile cart are permitted provided there are a substantial assortment

of non-alcoholic beverages and snacks offered for sale on the same cart.

Sales of alcoholic beverages from the mobile cart are only permitted at no more than two designated and approved sites on the golf course.

The mobile cart must remain at each designated site for a minimum of four hours.

There is maintained upon the drive-in premises a building or other suitable enclosed structure to be licensed as provided in Section 24040 of the Act, and all sales of alcoholic beverages shall be made from within the licensed enclosure.

No alcoholic beverages shall be sold to any person while such person is in a motor vehicle.

No alcoholic beverages shall be consumed on any portion of the licensed premises or any portion adjacent thereto which is under the control of the licensee.

The sale and delivery of alcoholic beverages shall be made to persons who are within the licensed premises only and not through a pass-out window, or a slide-out tray to the exterior of the premises.

Alcoholic beverages offered for sale at the licensed premises shall be displayed and available for convenient inspection and purchase within the premises by the general public.

No wine tasting is to be permitted at this location.

No retail sales of alcoholic beverages to consumers shall be permitted at this location.

There shall be no importation of beer or malt beverages.

No retail sales of alcoholic beverages to consumers shall be permitted at this location.

CLUB:

Membership in the club shall be non-discriminatory and will not exclude persons because of race, creed, color, sex, religion or national origin.

The sale, service and consumption of alcoholic beverage shall be made only to or by members of the club and bona fide guests.

The sale of alcoholic beverages for consumption off the premises is prohibited.

Keys and/or passes, and/or membership cards shall be furnished to the Department. Such keys, passes and/or membership cards shall not be marked or coded in any way such as to distinguish a bearer’s official capacity.

DRIVE IN:

There is maintained upon the drive-in premises a building or other suitable enclosed structure to be licensed as provided in Section 24040 of the Act, and all sales of alcoholic beverages shall be made from within the licensed enclosure.

No alcoholic beverages shall be sold to any person while such person is in a motor vehicle.

No alcoholic beverages shall be consumed on any portion of the licensed premises or any portion adjacent thereto which is under the control of the licensee.

The sale and delivery of alcoholic beverages shall be made to persons who are within the licensed premises only and not through a pass-out window, or a slide-out tray to the exterior of the premises.

OTHER:

Petitioner shall not share any profits, or pay any percentage or commission to a promoter or any other person, based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders, or the sale of drinks.

Petitioner(s) shall not require an admission charge or a cover charge, nor shall there be a requirement to purchase a minimum number of drinks.

The licensee shall not sell and/or offer for sale or display any magazine, video or other printed material which contains pictures depicting:

- ✓ Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
- ✓ Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.
- ✓ Scenes wherein a person displays the vulva or the anus or the genitals.
- ✓ Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any other prohibited activities described above.

No obstructions shall be attached, fastened or connected to the partitions or ceiling to separate the booths/dining areas within the interior space of the licensed premises.

Partitions separating the booths/dining areas shall not exceed 52” in height.

VIP/Hospitality alcoves constructed on the premises and depicted on diagram dated____, shall have the following characteristics:

- (a) No physical obstruction shall be attached, fastened, or connected in any manner to any section of the wall or ceiling at the alcove openings.
- (b) No physical obstruction, including but not limited to planters, partitions or items of decor, shall be placed or attached to any section of the floor at the alcove openings.

The licensee(s) shall not maintain or construct any type of enclosed room intended for use by patrons or customers for any purpose.

The licensee shall not permit “Taxi Dancing” to occur on the licensed premises wherein partners are provided for dancing or social purposes. Social purposes include but are not limited to the soliciting or accepting of any alcoholic beverages from any customers while in the premises.

No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the premises, nor shall the licensee(s) provide or permit, or make available either gratuitous or for compensation, male or female persons who act as escorts, companions, or guests of and for the customers.

No employee or agent shall solicit or accept any alcoholic or non-alcoholic beverage from any customer while in the premises.

Petitioner(s) shall make no changes in the premises interior without prior written approval from the Department.

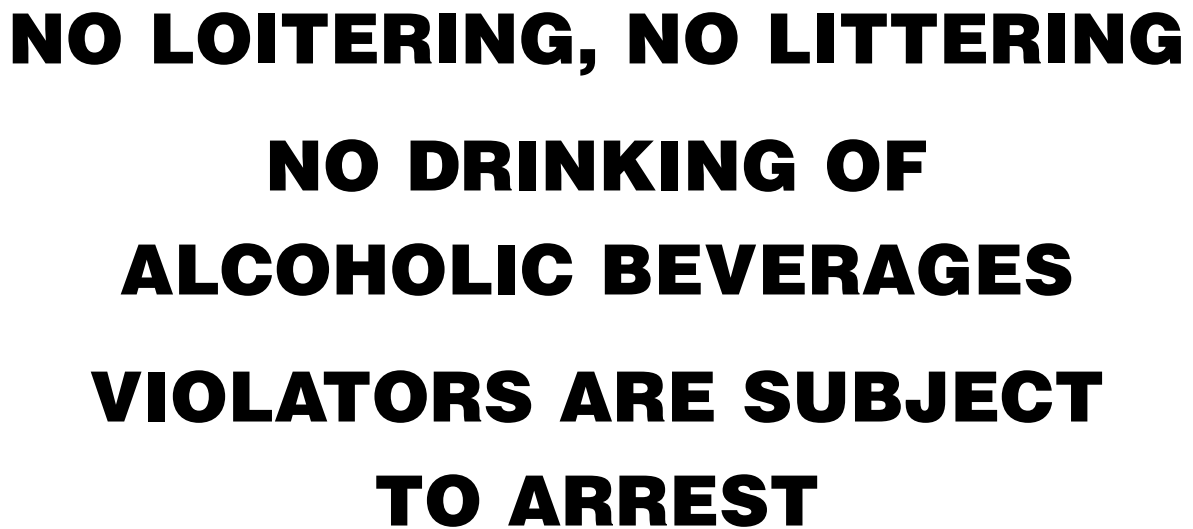
The Petitioner(s) shall post and maintain a professional quality sign facing the premises parking lot(s) that reads as follows:

The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.

No distilled spirits shall be sold by the bottle.

There shall be no selling of alcoholic beverages for future consumption.

No open bottles of distilled spirits shall be stored on the premises for specific customers.



NO LOITERING, NO LITTERING
NO DRINKING OF
ALCOHOLIC BEVERAGES
VIOLATORS ARE SUBJECT
TO ARREST

PRODUCTION NOTES

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