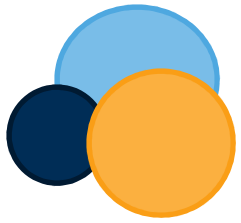


Undue Concentration & Alcohol License Restrictions

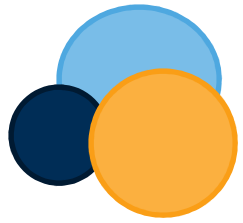
Useful Links:

<http://www.abc.ca.gov/cbnpc.html>



Definitions

- **On-sale:** Establishments that sell alcohol for on-site consumption. i.e. restaurants, bars
- **Off-sale:** Establishments that sell alcohol for off-site consumption. i.e. liquor stores, grocery stores
- **Beer and wine licenses:** ABC licenses that allow the sale of beer and wine, not distilled spirits.
- **General licenses:** ABC licenses that permit the sale of distilled spirits in addition to beer and wine.



Population

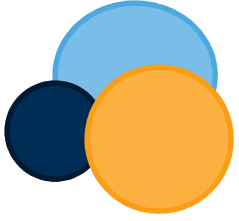
There are two important limits to consider in the licensing process.



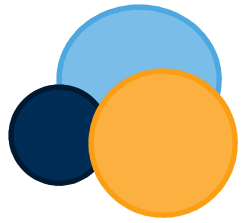
1. **County limit:** Limits on the number of licenses available in **each county** based on the entire **county population**.



2. **Census tract limits:** Limits on the number of outlets authorized in one area using the **census tract population** in comparison to the **county population**.



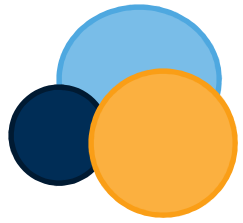
Off-Sale Licenses



State Limits on General Licenses

- Reference: California Business and Professions Code **23815**.
- “It is hereby determined that the public welfare and morals require that there be a limitation on the number of premises licensed for the sale of distilled spirits.”

Off-Sale: County Limit



Limits for Off-Sale General

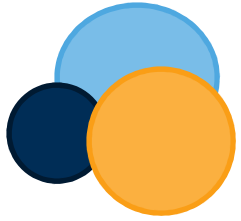
2,500 county residents

=

1 license

(Business and Professions Code 23817)

Off-Sale: County Limit



Limits for Off-Sale General

In San Diego County, that means:

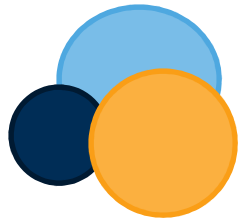
3,118,876 residents / 2500

=

1,248 off-sale general outlets authorized

We have 1,036

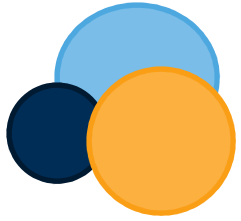
Off-Sale: County Limit



Limits for Off-sale Beer and Wine

- California Business and Professions Code **23817.4**.
- The Legislature finds and declares that the public welfare and morals require that there be a limitation on the number of premises licensed for the off sale of beer and wine.

Off-Sale: County Limit



Limits for Off-sale Beer and Wine

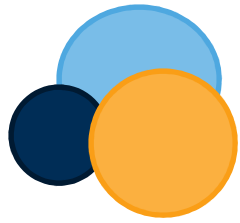
2,500 *county or city* residents

=

1 license

Business and Professions Code 23817.5. (a) (1)

Off-Sale: County Limit



Limits for Off-sale Beer and Wine

In San Diego County that means:

3,118,876 county residents / 2500

=

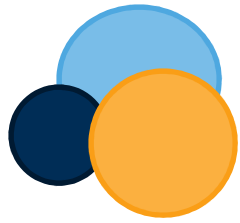
1,248 off-sale beer and wine outlets authorized

We have 970

(Population Calif. Dept. of Finance. Total retail outlets from ABC's June 30, 2011 Count of Retail Licenses.)



Off-Sale: County Limit



Limits for Off-Sale Beer and Wine

The ABC can issue additional off-sale beer and wine licenses if the location is:

1. Not high crime

AND

2. Not high density

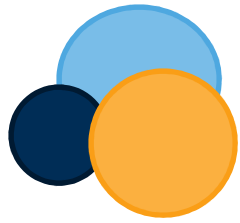
AND

3. The local governing body determines public convenience or necessity

(Business and Professions Code [23817.7](#))

Off-Sale: County Limit

ALCOHOL POLICY PANEL
OF SAN DIEGO COUNTY



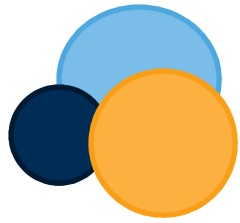
Off-sale Beer and Wine

Off-sale general
+
Off-sale beer and wine
=
1 outlet per
1,200 county residents

(Business and Professions Code 23817.5. (a) (2))

Off-Sale: County Limit

ALCOHOL POLICY PANEL
OF SAN DIEGO COUNTY



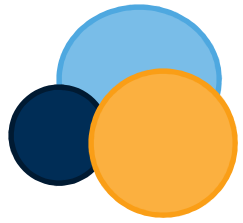
Limits for Off-sale

In San Diego County that means:

$$3,118,876 \text{ residents} / 1 \text{ per } 1,200 = \\ 2,600 \text{ off-sale authorized}$$

$$1,036 \text{ off-sale general} \\ + \\ 970 \text{ Off-sale beer and wine} \\ = 2,006 \text{ actual}$$

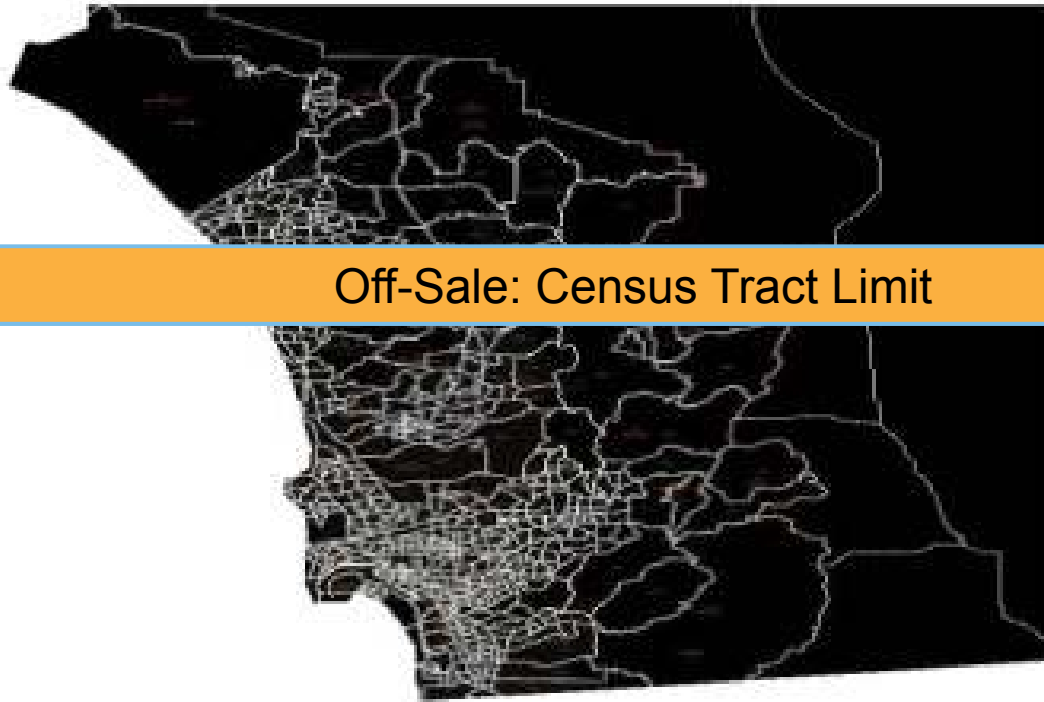
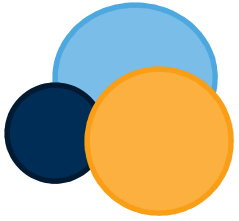
Off-Sale: County Limit



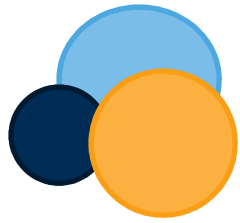
What else is considered?

- ABC Considers:
 - Applicant
 - Location
 - Public welfare and morals
- An application must be denied if the issuance of that license would tend to **create a law enforcement problem**, or if issuance would **result in or add to an undue concentration** of licenses, except as provided in Section 23958.4.

(Business and Professions Code 23958)



Off-Sale: Census Tract Limit



Undue Concentration

Undue concentration applies to original and premises-to-premises transfers when any of the following exists:

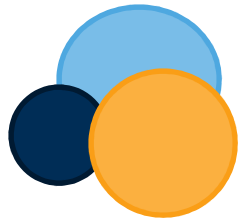
1. **High Crime: At least 20 percent higher than average**
 - a) Premises located in crime reporting district with 20 percent greater number of reported crimes compared to entire law enforcement jurisdiction.
2. **Too many outlets: More than the county average.**
 - a) As to on-sale, the ratio of on-sale retail licenses to population in the census tract exceeds the ratio of on-sale retail licenses to county population.
 - b) As to off-sale, the ratio of off-sale retail licenses to population in the census tract or census division exceeds the ratio of off-sale retail licenses to county population.

(Business and Professions Code 23958.4(a) (1)-(3))



Off-Sale: Census Tract Limit

ALCOHOL POLICY PANEL
OF SAN DIEGO COUNTY



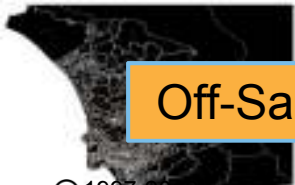
Off-Sale Undue Concentration

County off-sale retail outlet average:

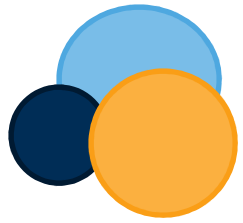
3,118,876 county residents \div 2,006 total off-sale
retail outlets

= 1 off-sale outlet per 1,555 residents

(Population Calif. Dept. of Finance. Total retail outlets from ABC's June 30, 2011 Count of Retail Licenses.)



Off-Sale: Census Tract Limit



Example



Population: 3,098

Census Tract 11:

County average for off-sale:
1 outlet / 1,555 residents

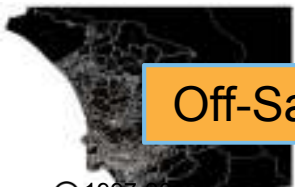


Undue concentration trigger:
Population / County average =
 $3,098 / 1,555$

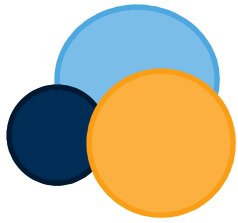
= 2 off-sale authorized

Actual number of off-sale outlets = 4

2 < 4 = Unduly concentrated

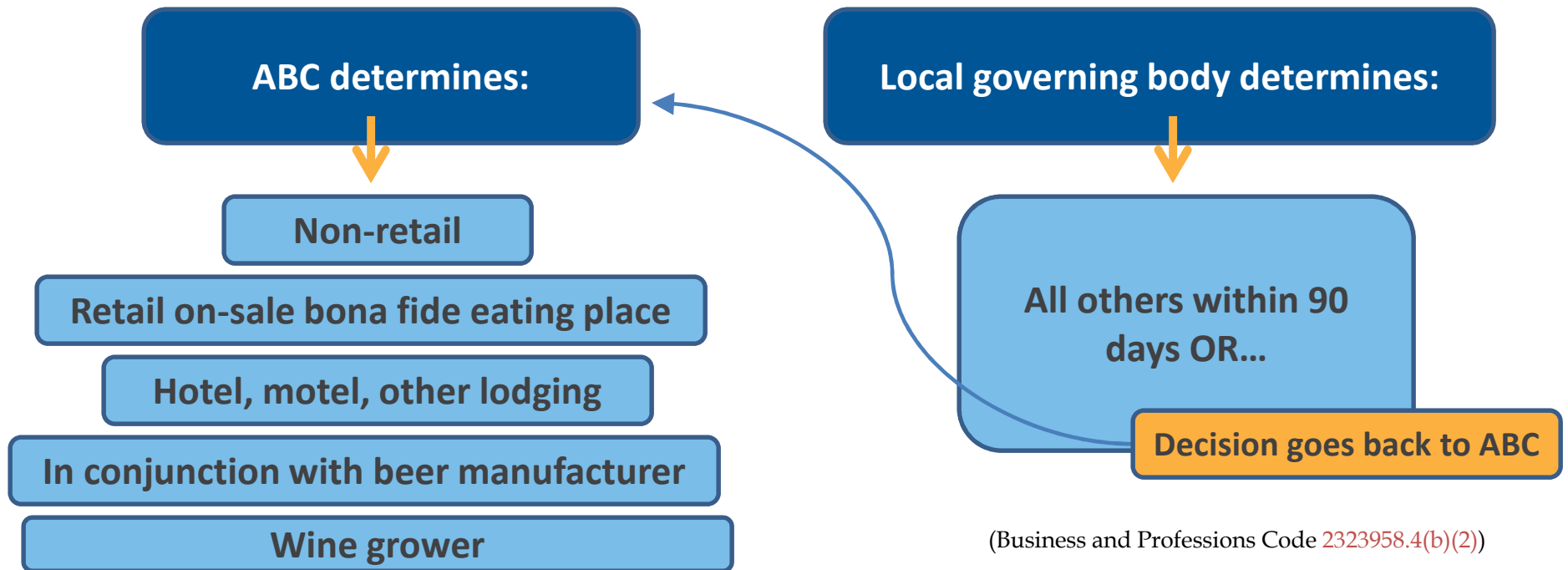


Off-Sale: Census Tract Limit



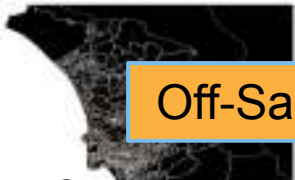
Public Convenience or Necessity (PCorN)

ABC still can issue a license if PC or N is determined. Who determines PC or N?

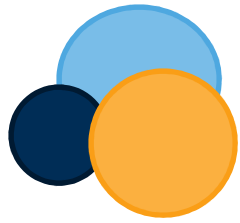


(Business and Professions Code 2323958.4(b)(2))

(Business and Professions Code 23958.4(b)(1))



Off-Sale: Census Tract Limit



Examples

An applicant intends to sell beer and wine at Small Town Market in unincorporated San Diego County.



The county has not yet reached its limit of one off-sale beer and wine license for each 2,500 residents.



Small Town Market is located in a census tract with 5,000 residents and 1 off-sale license.



Undue Concentration exists. Public Convenience or Necessity must be determined by the local governing body.

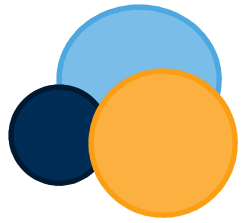


Small Town Market has a crime rate 50 percent higher than the average.



5,000 residents / 1555 county ratio for undue concentration = 4 allowed
 $1 < 4$

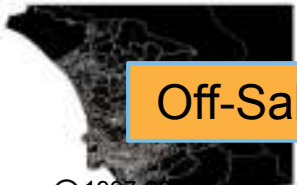
Off-Sale: Census Tract Limit



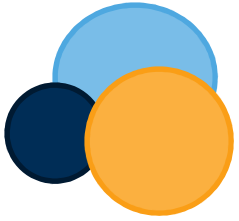
Examples

What if...

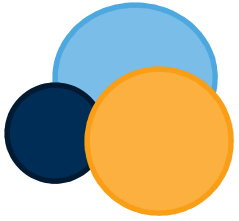
- Small Town Market was in a census tract with a crime rate 50 percent lower than the average?
 - No undue concentration
 - No PC or N determination necessary



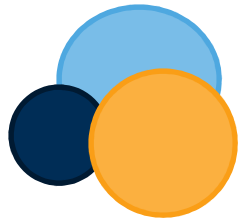
Off-Sale: Census Tract Limit



On-Sale Licenses



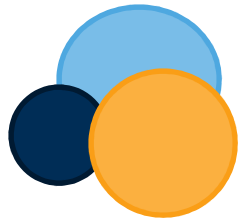
On-Sale: County Limit



Limits on General Licenses

- Reference: California Business and Professions Code **23815**.
- “It is hereby determined that the public welfare and morals require that there be a limitation on the number of premises licensed for the sale of distilled spirits.”

On-Sale: County Limit



On-Sale General

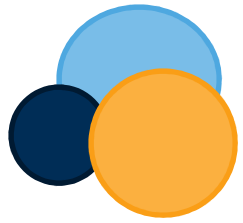
2,000 county residents

=

1 license

(Business and Professions Code 23816)

On-Sale: County Limit



On-Sale General

In San Diego County that means:

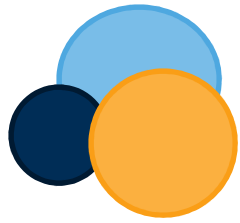
3,118,876 county residents /

1 outlet per 2,000

=

1,560 on-sale general licenses

On-Sale: County Limit

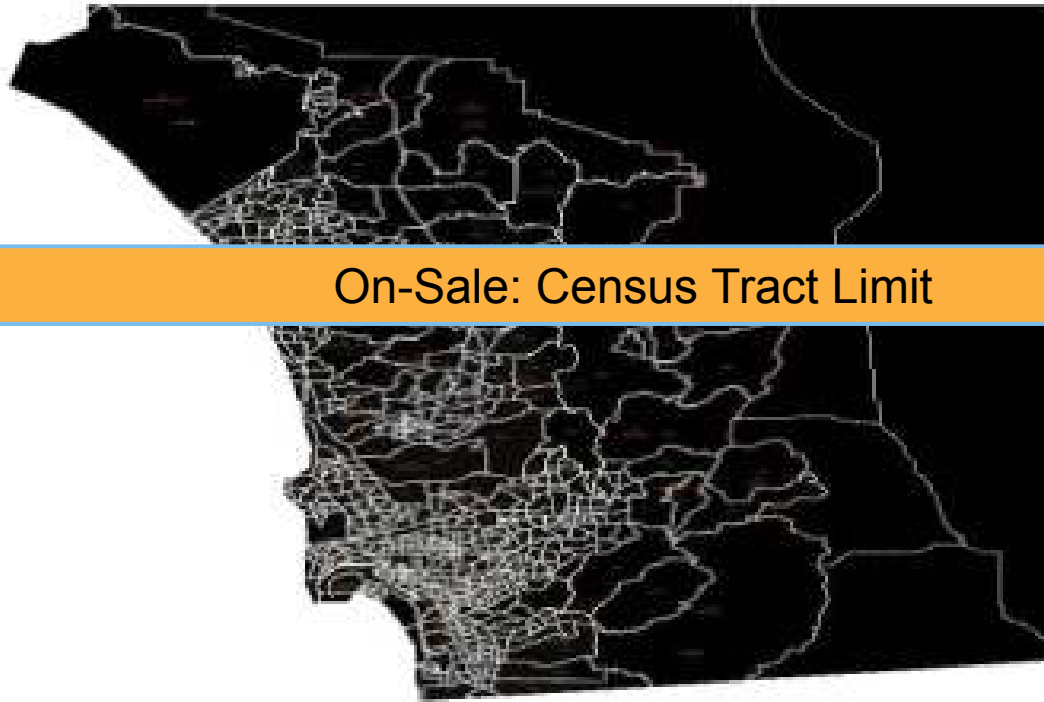
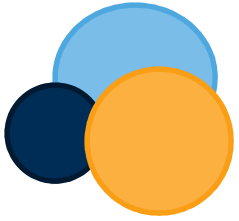


Limits on Beer and Wine Licenses

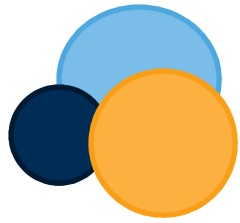
- **No specific county population-based limit for on-sale beer and wine.**
- “Undue concentration” limits do apply to original or premises-to-premises transfers. (Business and Professions Code **23958.4**)



On-Sale: County Limit



On-Sale: Census Tract Limit



Undue Concentration

Undue concentration applies to original and premises-to-premises transfers when any of the following exists:

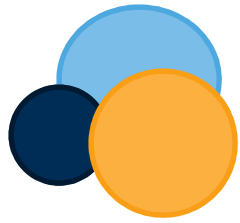
1. **High Crime: At least 20 percent higher than average**
 - a) Premises located in crime reporting district with 20 percent greater number of reported crimes compared to entire law enforcement jurisdiction.
2. **Too many outlets: More than the county average.**
 - a) As to on-sale, the ratio of on-sale retail licenses to population in the census tract exceeds the ratio of on-sale retail licenses to county population.
 - b) As to off-sale, the ratio of off-sale retail licenses to population in the census tract or census division exceeds the ratio of off-sale retail licenses to county population.

(Business and Professions Code 23958.4(a) (1)-(3))



Off-Sale: Census Tract Limit

ALCOHOL POLICY PANEL
OF SAN DIEGO COUNTY



On-Sale Undue Concentration (cont.)

County on-sale retail outlet average:

$$1,616 \text{ On-sale General} + 2,606 \text{ On-sale Beer and Wine} = \\ 4,222 \text{ total on-sale outlets}$$

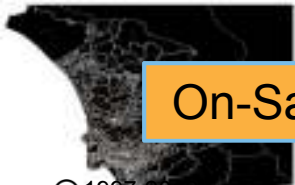
3,118,876 county residents



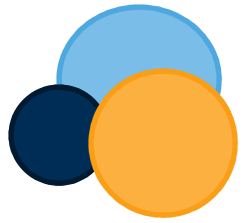
4,222 total on-sale outlets

= 1 on-sale outlet per 739 residents

(Population from 2010 US Census. Total retail outlets from ABC's June 30, 2011 Count of Retail Licenses.)



On-Sale: Census Tract Limit



Example



Population: 3,098

Census Tract 11:

County average for on-sale:
1 outlet / 739 residents



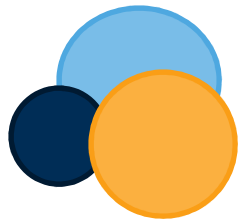
Undue concentration trigger:
Population / County average =
 $3,098 / 739$

= 5 on-sale authorized

Actual number of on-sale outlets = 9

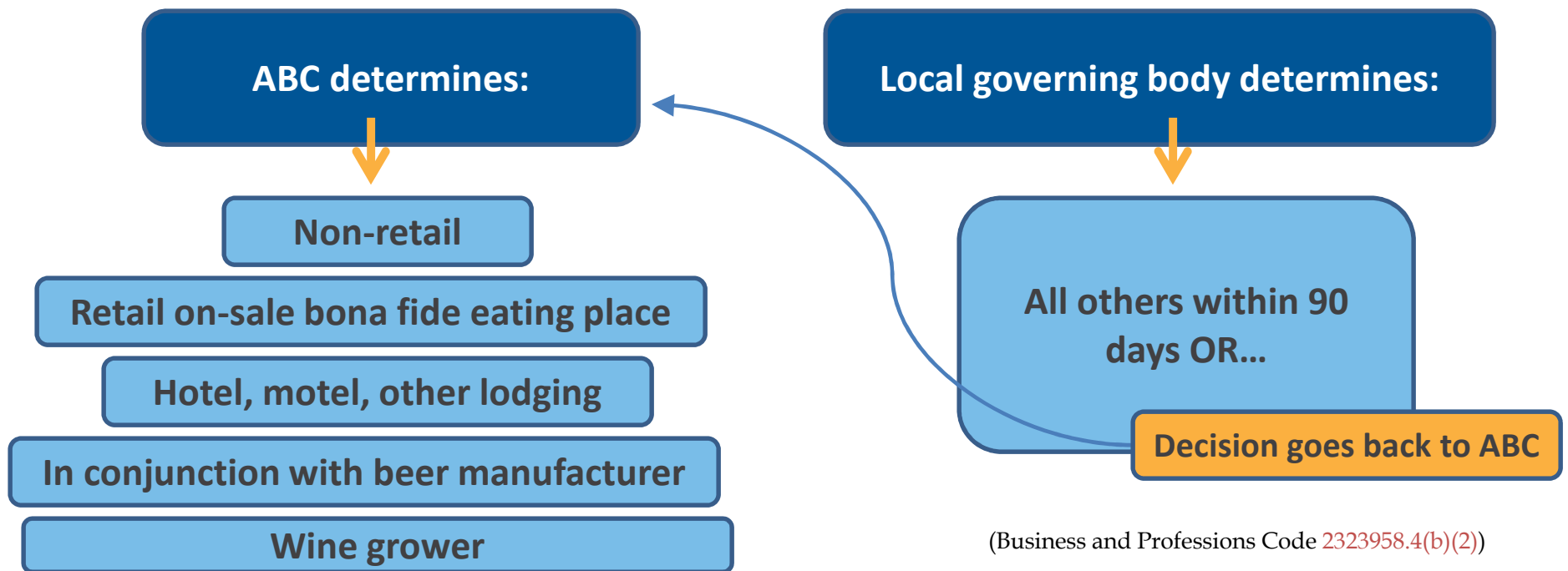
5 < 9 = Unduly concentrated

On-Sale: Census Tract Limit



Public Convenience or Necessity (PCorN)

ABC still can issue a license in an unduly concentrated area if PC or N is served.
Who determines PC or N?

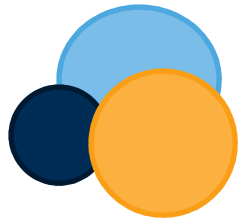


(Business and Professions Code 2323958.4(b)(2))

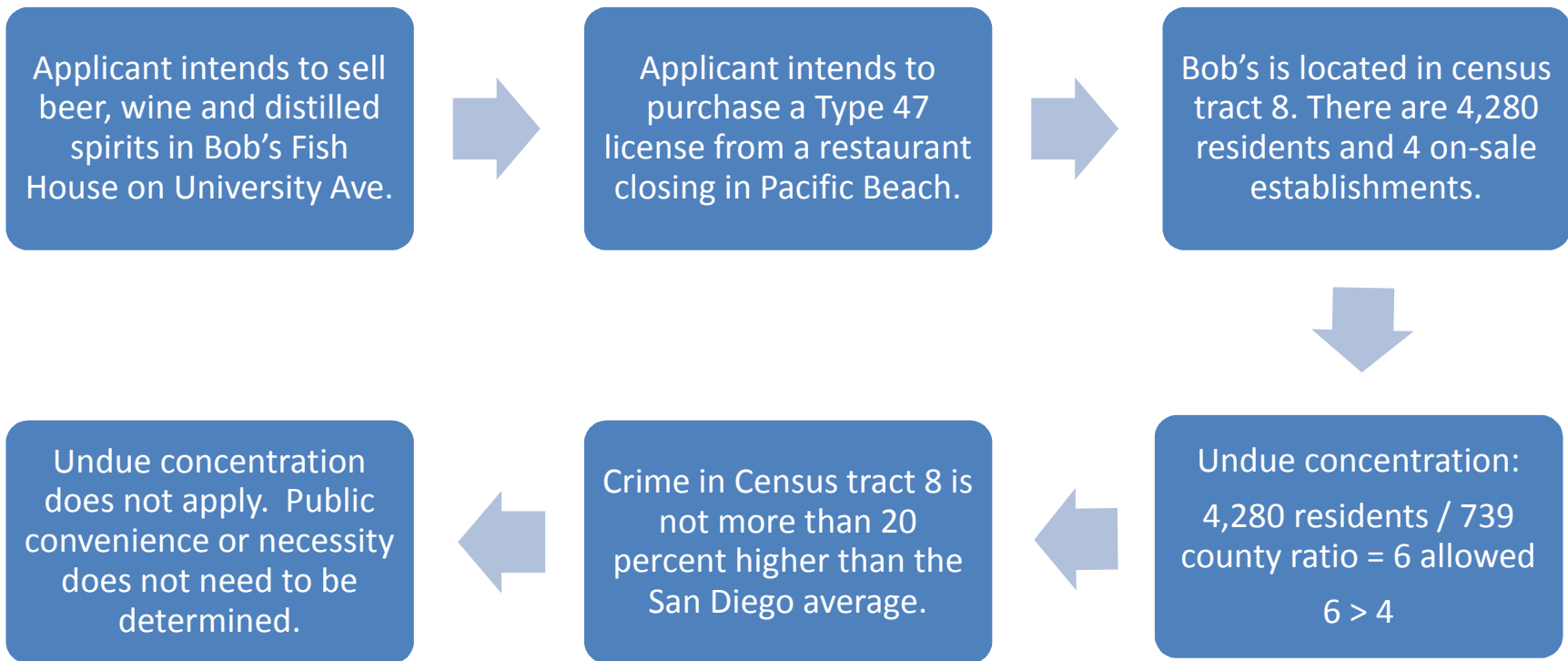
(Business and Professions Code 23958.4(b)(1))



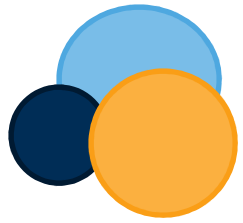
On-Sale: Census Tract Limit



Examples



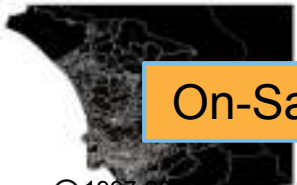
On-Sale: Census Tract Limit



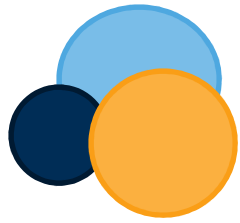
Examples

What if...

- Census tract 8 had more than 20 percent greater crime than the average for San Diego?
 - There is undue concentration because it is high crime.
 - The applicant would need to prove public convenience or necessity to ABC.



On-Sale: Census Tract Limit



Undue Concentration

Undue concentration applies to original and premises-to-premises transfers when any of the following exists:

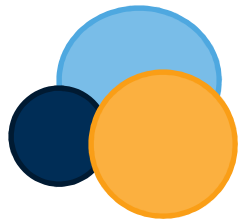
1. **High Crime: At least 20 percent higher than average**
 - a) Premises located in crime reporting district with 20 percent greater number of reported crimes compared to entire law enforcement jurisdiction.
2. **Too many outlets: More than the county average.**
 - a) As to on-sale, the ratio of on-sale retail licenses to population in the census tract exceeds the ratio of on-sale retail licenses to county population.
 - b) As to off-sale, the ratio of off-sale retail licenses to population in the census tract or census division exceeds the ratio of off-sale retail licenses to county population.

(Business and Professions Code 23958.4(a) (1)-(3))



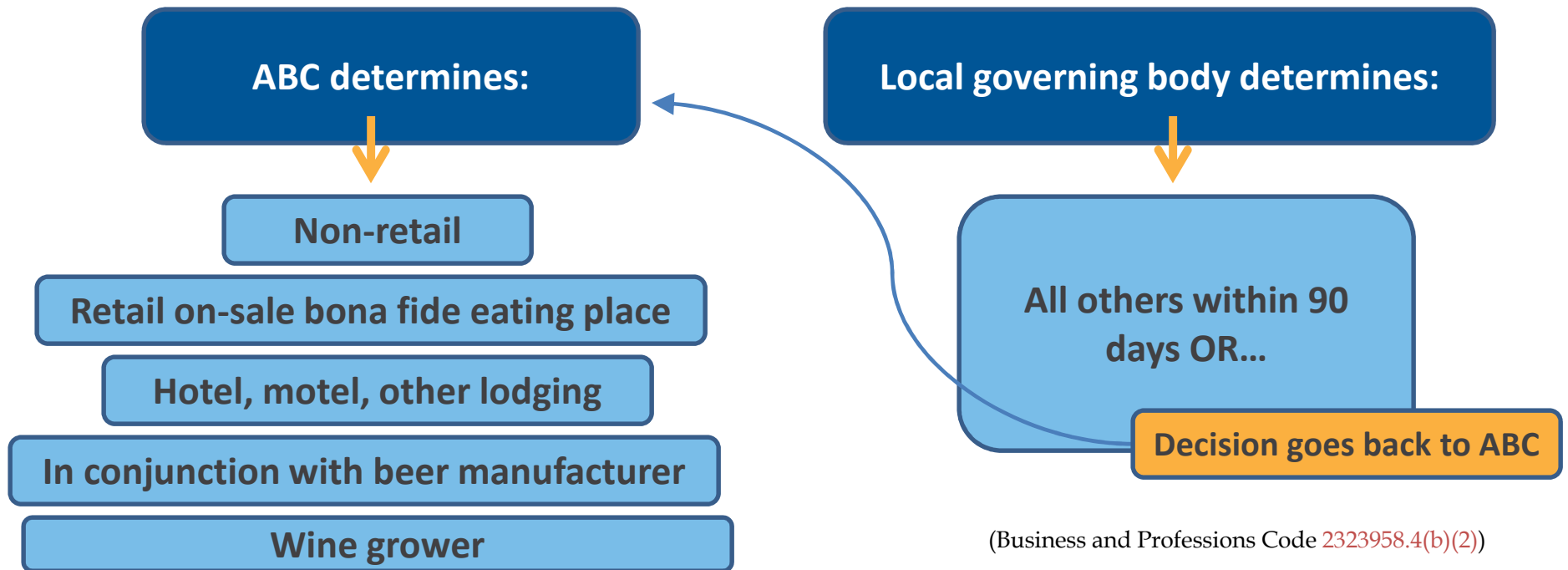
Off-Sale: Census Tract Limit

ALCOHOL POLICY PANEL
OF SAN DIEGO COUNTY



Public Convenience or Necessity (PCorN)

ABC still can issue a license in an unduly concentrated area if PC or N is served.
Who determines PC or N?

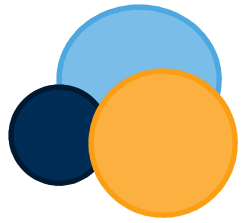


(Business and Professions Code 2323958.4(b)(2))

(Business and Professions Code 23958.4(b)(1))



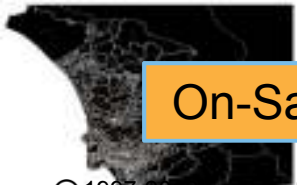
On-Sale: Census Tract Limit



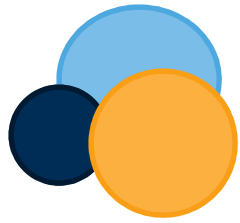
Examples

What if...

- Census tract 8 had an undue concentration of off-sale licenses?
 - Off-sale licenses have no bearing on an on-sale application.



On-Sale: Census Tract Limit



Undue Concentration

Undue concentration applies to original and premises-to-premises transfers when any of the following exists:

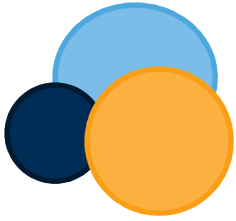
1. **High Crime: At least 20 percent higher than average**
 - a) Premises located in crime reporting district with 20 percent greater number of reported crimes compared to entire law enforcement jurisdiction.
2. **Too many outlets: More than the county average.**
 - a) As to on-sale, the ratio of on-sale retail licenses to population in the census tract exceeds the ratio of on-sale retail licenses to county population.
 - b) As to off-sale, the ratio of off-sale retail licenses to population in the census tract or census division exceeds the ratio of off-sale retail licenses to county population.

(Business and Professions Code 23958.4(a) (1)-(3))



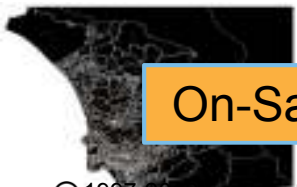
Off-Sale: Census Tract Limit

ALCOHOL POLICY PANEL
OF SAN DIEGO COUNTY

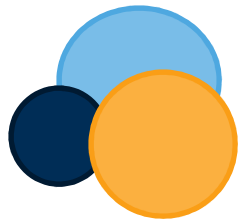


What if...

- Bob wanted a Type 50 license to open a club instead of a restaurant and there is an undue concentration of on-sale outlets?
- The local governing body would need to determine public convenience or necessity.

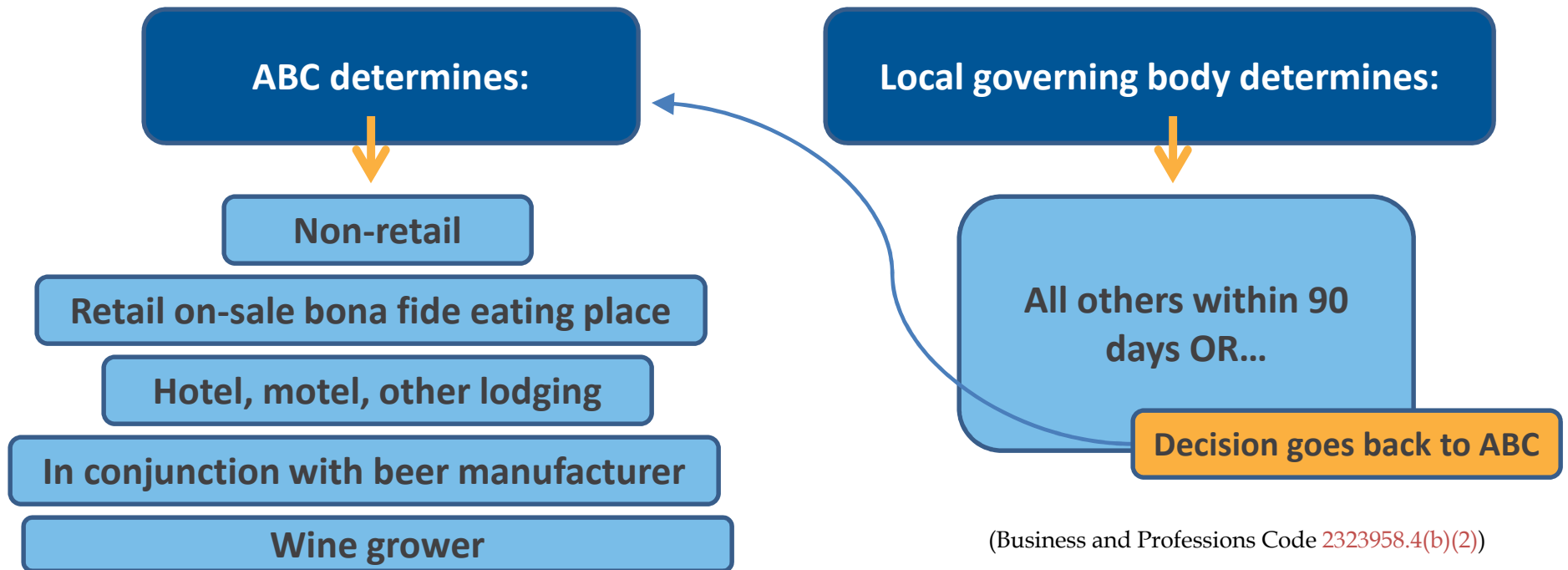


On-Sale: Census Tract Limit



Public Convenience or Necessity (PCorN)

ABC still can issue a license in an unduly concentrated area if PC or N is served.
Who determines PC or N?

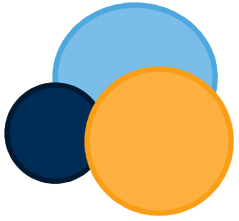


(Business and Professions Code 2323958.4(b)(2))

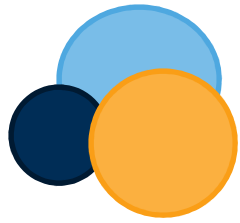
(Business and Professions Code 23958.4(b)(1))



On-Sale: Census Tract Limit



Density vs. Undue Concentration



Density vs. Undue Concentration

Undue Concentration:

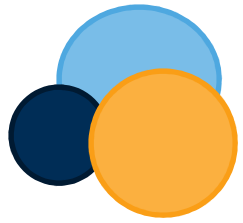
- The legal term used by the ABC that considers the number of outlets compared to residents and crime in a census tract.
 - Off-sale outlets: 1 per 1,555 residents
 - On-sale outlets: 1 per 739 residents
 - Crime: More than 20 percent higher than the average

High Density:

- This is not a legal term used by the ABC. For prevention purposes, we could use it to describe the number of outlets in a census tract without considering crime.
 - Off-sale outlets: 1 per 1,555 residents
 - On-sale outlets: 1 per 739 residents

High density always indicates undue concentration.

Undue concentration does not always indicate high density.



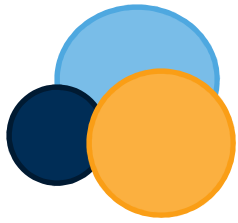
High Density vs. Undue Concentration

All census tracts in San Diego County

Undue Concentration

High
Crime

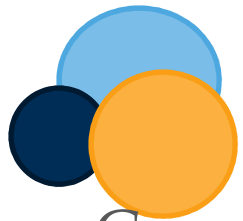
High
Density



Density and Undue Concentration in the County

Census Tract	Population (2010)	Off-sale General Actual	Off-sale Beer and Wine Actual	Total Off-sale Actual	Total Off-sale Authorized
1	3029			0	2
2.01	1801			0	2
2.02	4208			0	3
3	4732	2	5	7	4

Census Tract	Population (2010)	Off-sale General Actual	Off-sale Beer and Wine Actual	Total Off-sale Actual	Total Off-sale Authorized
8	4280	3	0	3	3
12	5660	3	2	5	4
13	6197	2	0	2	4
14	3084	3	2	5	2
15	3934	4	3	7	3
16	5651	2	2	4	4
17	4772	1	1	2	4



Example

Census Tract 8

Population: 4280

Off-sale general: 3

Off-sale beer and wine: 0

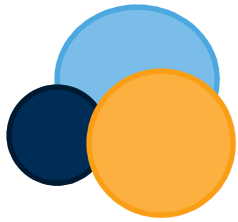
Off-sale total: 3

Off-sale undue concentration $(4,280 / 1,555)$: 3

No high density

Might have undue concentration

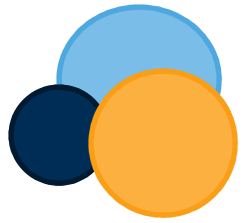




Density and Undue Concentration in the County

Census Tract	Population (2010)	Off-sale General Actual	Off-sale Beer and Wine Actual	Total Off-sale Actual	Total Off-sale Authorized
1	3029			0	2
2.01	1801			0	2
2.02	4208			0	3
3	4732	2	5	7	4

Census Tract	Population (2010)	Off-sale General Actual	Off-sale Beer and Wine Actual	Total Off-sale Actual	Total Off-sale Authorized
9	5178	2	3	5	4
11	3078	2	2	4	3
12	5660	3	2	5	4
13	6197	2	0	2	5
14	3084	3	2	5	2
15	3934	4	3	7	3
16	5651	2	2	4	4
17	4772	1	1	2	4



Example

Census Tract 9:

Population: 5178

Actual: Off-sale general: 2

Actual: Off-sale beer and wine: 3

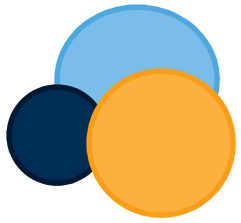
Actual: Off-sale total: 5

Authorized: Off-sale undue concentration (5,178 / 1,555): 4

High density ✓

Undue concentration ✓

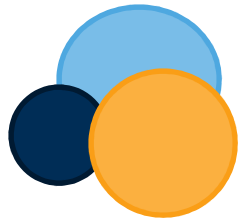




Undue Concentration in San Diego County

Census Tract	Population (2010)	On-sale General Actual	On-sale Beer and Wine Actual	Total On-sale Actual	Total On-sale Authorized
1	3029	2	1	3	5
2.01	1801			0	3
2.02	4208			0	6
3	4732	15	27	42	7
4	3669	15	21	36	5
5	2722	3	3	6	4

Census Tract	Population (2010)	On-sale General Actual	On-sale Beer and Wine Actual	Total On-sale Actual	Total On-sale Authorized
10	47333	3	11	14	7
12	5660	1	4	5	8
13	6197	7	15	22	9
14	3084	6	18	24	5
15	3934	1	1	2	6
16	5651	2	2	4	8
17	4772			0	7



Example

Census Tract 10:

Population: 4733

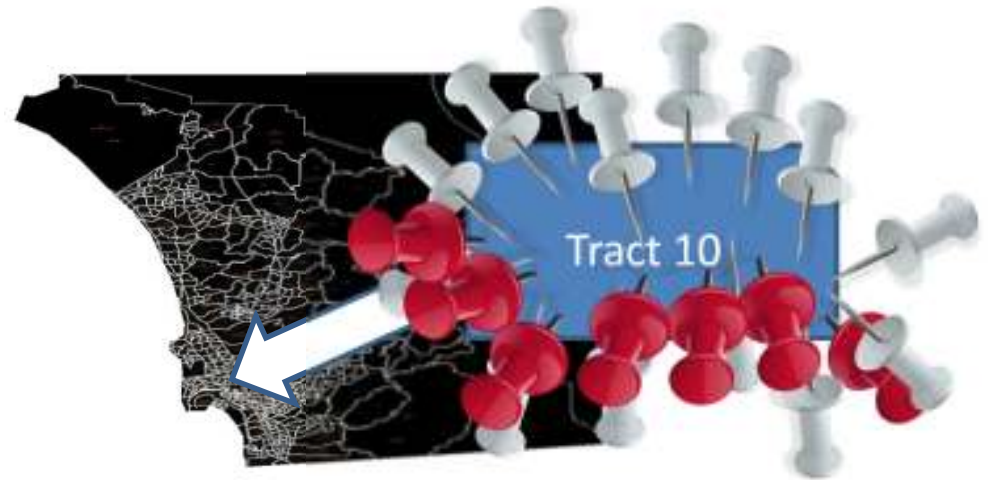
On-sale general: 3

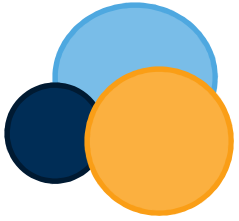
On-sale beer and wine: 11

On-sale total: 14

On-sale undue concentration $(4,733 / 739)$: 7

High Density ✓
Undue Concentration ✓





Questions & Discussion