

# Agenda Report

TO: City Council through Council Legislative Policy Committee      DATE: December 14, 2004

FROM: City Attorney

SUBJECT: Request the State Legislature to Amend the Business and Professions Code Relating to Alcohol Retail Sales Licenses

## **RECOMMENDATION**

It is recommended that the City Council:

1. Request the State Legislature to amend Business and Professions Code Section 23790 requiring Retail Liquor Sales Licensees to comply with zoning regulations which a city or county has adopted after the Licensee obtained its license.
2. Request the State Legislature to amend Business and Professions Code Section 24070 so that violations are not expunged from the Retail Liquor Sales License upon its transfer.

## **BACKGROUND**

On September 13, 2004, the City Council received the final report and adopted the recommendations of the Pasadena Nuisance Off-Premises Working Group. One of those recommendations was to request that the State Legislature amend the Business and Professions Code. We have been in contact with representatives from the offices of State Senator Jack Scott, Assemblywoman Carol Liu and County Supervisor Michael Antonovich regarding this matter. It has been suggested that other cities, counties and organizations throughout the State be contacted to provide further support to assist in assuring passage of proposed legislation. Such organizations include, but are not limited to, the League of California Cities, California Counties Association, and non-profit organizations in various communities statewide which focus on alcoholic beverage uses.

As a result of recent discussions with representatives of our local elected officials, it has been concluded that it would be appropriate to request legislative amendments as discussed below.

## **DISCUSSION**

### **Zoning**

Currently **Business and Professions Code Section 23790** requires that a license for a liquor establishment be issued in accordance with local zoning ordinances but prevents a municipality from enforcing any type of zoning requirements which were enacted *after* the issuance of the ABC license to a premises. Many cities have found that previously allowed uses, such as off-site liquor licensed premises, may no longer fit into the planning scheme which surround their location and have enacted legislation which would make such licensed premises a nonconforming use. Accordingly, a city may wish to make such a use subject to a conditional use permit or even terminate the retail liquor use at that location. Although, generally, a city has the power to terminate a nonconforming uses by providing for a reasonable amortization period, commensurate with the investment involved (see *Elysium Inst. Inc. v County of Los Angeles* (1991) 232 Cal App 3d 408), this section prevents a city from doing so.

Pursuant to this recommendation, the State Legislature would be requested to amend Business and Professions Code Section 23790 to provide that local zoning requirements enacted *after* the issuance of an ABC license to a premises could apply to those premises upon the expiration of a reasonable amount of time. This would allow cities and counties the ability to apply local zoning provisions in a manner consistent with other types of uses which provide for applicability of zoning ordinances after reasonable amortization periods. Possible statutory language which provides for such applicability of local zoning provisions is attached, although the State's Legislative Counsel's Office would draft the legislation. As with other amortization schedules, local agencies would determine appropriate timelines for required compliance with zoning provisions based on studies of economic return based on investment in a retail liquor business. As an example, a nonconforming liquor store would have to apply for a conditional use permit or other regulatory requirement within 5 years, or other specified time, after enactment of an ordinance. Alternatively or additionally, the local ordinance could specifically allow for termination of the retail liquor sale use after a reasonable amortization period.

### **Record of Violations Transferred with Liquor License Transfers**

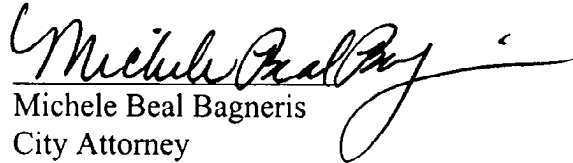
**Business and Professions Code Section 24070** (attached) provides for the transferability of ABC licenses. The section, however, does not currently contain any provisions relating to the effect of violations upon transfer of the license. Cities and counties have observed that the ABC licenses of problem locations are frequently transferred among family members or "friends" when there have been violations. Thus a licensee will transfer a license in a "bona fide transfer" where there is no evidence that the prior licensee has any control or ownership of the license once transferred, as opposed to resolving the problem. Currently such a transfer has the effect of expunging all violations that may have occurred at the licensed premises. The result is that the location continues to be a problem and there is no accountability. The proposed amendment to this section would not allow violations to be expunged but would require that violations "run"

with the license upon transfer. This would provide incentive to resolve the problems and allow for better control of problem locations. We would need to consult further with ABC officials to determine the appropriate language for such an amendment and appropriate sections of the Statute and regulations which would need to be amended.

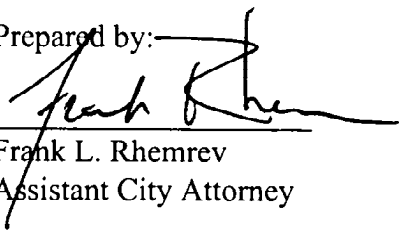
**FISCAL IMPACT**

Approval of the recommendation would not have a fiscal impact.

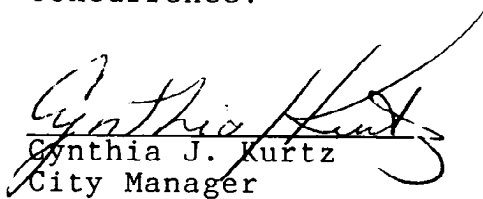
Respectfully submitted,

  
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Concurrence:

  
Cynthia J. Kurtz  
City Manager

Proposed Language

Section 23790. Retailer's License; zoning

No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city.

**(a)** Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions:

**(1)** The premises retain the same type of retail liquor license within a license classification.

**(2)** The licensed premises are operated continuously without substantial change in mode or character of operation.

**(b)** For purposes of subdivision **(a)**, a break in continuous operation does not include:

**(1)** A closure for not more than 30 days for purposes of repair, if that repair does not change the nature of the licensed premises and does not increase the square footage of the business used for the sale of alcoholic beverages.

**(2)** The closure for restoration of premises rendered totally or partially inaccessible by an act of God or a toxic accident, if the restoration does not increase the square footage of the business used for the sale of alcoholic beverages.

**(c) *Notwithstanding subdivision (a), counties or cities may provide for a reasonable amortization period and termination of, or imposition of conditions on legal nonconforming uses pursuant to a validly enacted zoning ordinance***

*Current language.*

**§ 23790. Retailer's license; zoning**

✓ No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions:

(a) The premises retain the same type of retail liquor license within a license classification.

(b) The licensed premises are operated continuously without substantial change in mode or character of operation.

For purposes of this subdivision, a break in continuous operation does not include:

(1) A closure for not more than 30 days for purposes of repair, if that repair does not change the nature of the licensed premises and does not increase the square footage of the business used for the sale of alcoholic beverages.

(2) The closure for restoration of premises rendered totally or partially inaccessible by an act of God or a toxic accident, if the restoration does not increase the square footage of the business used for the sale of alcoholic beverages.

(Added by Stats.1953, c. 152, p. 978, § 1. Amended by Stats.1982, c. 474, p. 2076, § 1; Stats.1989, c. 95, § 1.)

**Historical and Statutory Notes**

The 1982 amendment rewrote the section which had read:

"No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges

conferred by the license is contrary to a valid zoning ordinance of any county or city unless the premises had been used in the exercise of such rights and privileges at a time prior to the effective date of the zoning ordinance."

Current Language

ISSUANCE AND TRANSFER OF LICENSES  
Ch. 6

§ 24070

Article 5

TRANSFER OF LICENSES

- Section**  
24070. Transferability; persons; premises; counties; conditions.  
24070.1. On-sale licenses; transferability from licensee to another person.  
24070.2. Off-sale general license; county transfer; fee.  
24070.5. Winegrowers; authority to transfer license.  
24071. Spouses, revocable living trusts, partners, fiduciaries, limited liability companies, and corporations.  
24071.1. Newly constituted corporation or limited partnership; fees; notice.  
24071.2. Transfer of ownership of limited liability company; notice; credit.  
24072. Transfer fees.  
24072.1. On-sale licenses; transferability to other premises.  
24072.2. On-sale licenses; exchange.  
24072.5. On-sale general license and special on-sale general license; exchange.  
24073. Transfer of licenses; application; notice of intention; contents; filing.  
24074. Escrow.  
24074.1. Duties of escrow holder.  
24074.2. Release of funds by escrow holder in exchange for consideration of lesser value.  
24074.3. Statement of deposit of consideration with escrowholder; filing; time; application of section.  
24074.4. Corporate guarantors; application of section.  
24075. Fiduciaries; exemption from notice of intended transfer and escrow provisions.  
24076. Pledge of transfer as loan security prohibited.  
24077. Transfer of license into county having less than 35,000 population prohibited.  
24078. Special onsale general license; transfer.  
24079. Maximum purchase price or consideration for transfer of on-sale or off-sale general license during certain time period.  
24080. Application for transfer of on-sale or off-sale general license; disclosure of consideration by transferee.  
24081. Temporary premises.  
24082. Transfer without fee; grounds.

*Article 5 was added by Stats.1953, c. 152, p. 985, § 1.*

**§ 24070. Transferability; persons; premises; counties; conditions**

Each license is separate and distinct and is transferable upon approval by the department from the licensee to another person and from one premises to another premises.

(a) All off-sale general licenses may be transferred from one county to another county, subject to the following provisions:

1. The number of off-sale general licenses in existence in any county on June 1 of any year shall not be increased by more than 25 new original off-sale general licenses during the following 12-month period, provided further that the number of new original off-sale general licenses that may be issued in any county during any 12-month period shall not increase by more than 10 percent the number of off-sale general licenses in existence in such county on the June 1 with which that 12-month period began.

§ 24070

ALCOHOLIC BEVERAGES

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2. After the department computes the number of new original off-sale licenses that may be issued in any county during any 12-month period as provided by the foregoing paragraph, if the department determines that the ratio established by Section 23817 will permit, during such 12-month period, additional off-sale general licenses in any county, off-sale general licenses may be transferred into such county in a number not to exceed by more than 10 percent the number of off-sale general licenses in existence in such county on the June 1 with which that 12-month period began, but in no event to exceed 25 such transfers during that 12-month period.

3. Under no circumstances shall the combined total number of new original off-sale general licenses that may be issued in any county during any 12-month period and the number of off-sale general licenses that may be transferred into such county during that 12-month period, exceed the limitation set forth in Section 23817.

(b) All on-sale general licenses may be transferred from one county to another county, subject to the following provisions:

1. The number of on-sale general licenses in existence in any county on June 1 of any year shall not be increased by more than 10 percent by the issuance of new original on-sale general licenses, but in no event to exceed 25 such licenses, during any 12-month period. The number of on-sale general licenses shall be limited by the provisions of Section 23816.

2. After the department computes the number of new original on-sale licenses that may be issued in any county during any 12-month period as provided by the foregoing paragraph, if the department determines that the ratio established by Section 23816 will permit, during such 12-month period, additional on-sale general licenses in any county, on-sale general licenses may be transferred into such county in a number not to exceed by more than 10 percent the number of on-sale general licenses in existence in such county on the June with which that 12-month period began, but in no event to exceed 25 such transfers during that 12-month period.

3. Under no circumstances shall the combined total number of new original on-sale general licenses that may be issued in any county during any 12-month period and the number of on-sale general licenses that may be transferred into such county during that 12-month period, exceed the limitation set forth in Section 23816.

4. The transfer fee for transfer of an on-sale general license from one county to another county shall be the same as the fee prescribed in subdivision (d) of Section 24072 for transfer of an off-sale general license from one county to another county.

(c) No retail license subject to the provisions of Section 23816 or 23817 issued as a new original license on or after June 1, 1961, and no off-sale general license or on-sale general license transferred from one county to another county on or after August 17, 1967, shall be transferable from the licensee to another person, or if the licensee is a corporation a controlling interest in the stock ownership of the licensee shall not be, directly or indirectly, sold, transferred, or hypothecated unless the licensee be a corporation the

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**§ 24070**

stock of which is listed on a stock exchange in this state or in the City of New York, State of New York, or which is required by law to file periodic reports with the Security Exchange Commission, for a period of two years from date of issuance of the license, except as provided in Section 24071, and except when the department determines that the transfer is necessary to prevent undue hardship.

(d) No off-sale general license or on-sale general license that is transferred from one county to another county pursuant to this section shall be transferred thereafter for a purchase price or consideration to the transferor or from the transferee in excess of ten thousand dollars (\$10,000), except that if the off-sale general license or on-sale general license was originally issued on or after June 1, 1961, the purchase price or consideration to the transferor or from the transferee shall not exceed six thousand dollars (\$6,000), as provided by Section 24079.

(e) Notwithstanding the provisions of subdivision (d) of this section any off-sale general license or on-sale general license transferred from one county to another county pursuant to this section may be transferred with no restrictions as to the purchase price or consideration to the transferor or from the transferee after a period of five years from the date of the intercounty transfer of the license.

(Added by Stats.1961, c. 783, p. 2048, § 9, eff. June 10, 1961. Amended by Stats.1967, c. 1222, p. 2986, § 2, eff. Aug. 17, 1967; Stats.1968, c. 1273, p. 2398, § 1; Stats.1968, c. 1382, p. 2716, § 2; Stats.1971, c. 1072, p. 2039, § 1.)

**Historical and Statutory Notes**

Section 3 of Stats.1968, c. 1382, p. 2716, provided:

"It is the intent of the Legislature, if amendments to Section 24070 of the Business and Professions Code proposed by both this bill and S.B. 595 are enacted [Stats.1968, c. 1273, p. 2398], that both amendments be given effect and incorporated in Section 24070 in the form set forth in Section 2 of this act. Therefore, in the event S.B. 595 is enacted and amends Section 24070 [section was so amended], Section 2 of this act shall become operative at the same time that Section 24070 as amended by S.B. 595 becomes operative, and at that time, Section 24070 of the Business and Professions Code as amended by Section 1 of this act is repealed."

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Former § 24070, added by Stats.1953, c. 152, p. 985, § 1, amended by Stats.1955, c. 447, p. 915, § 84; Stats.1957, c. 1821, p. 3218, § 1, relating to the transferability of a license from the licensee to another person and for the payment of a transfer fee, was repealed by Stats. 1961, c. 783, p. 2048, § 8. See this section and Business and Professions Code § 24072.

**Derivation:** Former § 24070, added by Stats. 1953, c. 152, p. 985, § 1, amended by Stats. 1955, c. 447, p. 915, § 84; Stats.1957, c. 1821, p. 3218, § 1.

Former § 24072, added by Stats.1953, c. 152, p. 985, § 1, amended by Stats.1955, c. 447, p. 915, § 85; Stats.1957, c. 2307, p. 4023, § 6.

Stats.1935, c. 330, p. 1128, § 7; Stats.1937, c. 758, p. 2137, § 10; Stats.1941, c. 1145, p. 2852, § 1; Stats.1945, c. 1401, p. 2629, § 8; Stats.1947, c. 1566, p. 3220, § 3; Stats.1949, c. 1348, p. 2358, § 3; Stats.1949, c. 1418, p. 2474, § 1.

**Forms**

See West's California Code Forms, Business and Professions.

**Cross References**

Fees, see Business and Professions Code § 24072.

Fewer applicants than licenses available, reception of applications, see Business and Professions Code § 23962.