

## **INSTRUCTIONS FOR FILING FOR A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY**

### **BACKGROUND**

A Determination of Public Convenience or Necessity (DPCN) is required for liquor license applicants that have been denied or that may be denied by the Department of Alcoholic Beverage Control (ABC) pursuant to the AB2897 (the Caldera Bill).

As of January 1995, the State of California Legislature implemented AB2897 by amending the Business and Professions Code (Section 23958) to require the Department of ABC to deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses." Undue concentration is defined as follows:

The premises of the proposed license is located in an area that has 20 percent more reported crimes than the average number of reported crimes for the City as a whole,

or

The premises of the proposed license is located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio of retail on-sale/retail off-sale licenses to population in the County of the proposed premise.

If the Department of Alcoholic Beverage Control has determined that your application falls under one or both of the above described conditions, you may request that the City grant a Determination of Public Convenience or Necessity Permit based on "public convenience or necessity."

If you wish to make a request for a determination of "public convenience or necessity" by the City, then you must submit an application for Determination of Public Convenience or Necessity.

### **ZONING AND ALCOHOL RELATED USES**

Your request for an alcohol related use must be legal per Title 20, the City's Zoning Code and must have the required land use permits in order to qualify for a Determination of Public Convenience or Necessity. **The Determination of Public Convenience or Necessity application must be accompanied by documentation that the use is legal as follows:**

Copy of the Conditional Use Permit (CUP) or Planned Development Permit (PD) allowing the alcohol related use (drinking establishments, off-sale of alcohol beverages)

or

Documentation that alcohol use is legal non-conforming.

or

Documentation that alcohol sales are incidental to a legal use.

If your alcohol use is not already permitted (by a CUP or PD Permit) and is not a legal non-conforming use per Title 20, then your application for a Determination of Public Convenience or Necessity must be submitted together with a Conditional Use or Planned Development Permit Application.

### **INSTRUCTIONS**

Please complete the attached application and return it, by appointment, to the Department of Planning, Building and Code Enforcement along with the following:

1. **Noticing the Neighborhood.** Refer to the Public Outreach Policy for a full description of the City's public notification procedures. Public Hearing notices will be mailed for development proposals at least 10 calendar days before the date set for hearing for a project. Notices will be sent to all property owners and residents within 300 feet for Very Small projects, 500 feet for Standard Development Proposals and a minimum of 1,000 feet for large or controversial projects as detailed in the Public Outreach Policy.
2. **Location Map.** An Assessor's Parcel Map showing the location of the property. This can be obtained from the Santa Clara County's Assessor's Office at (408) 299-5500 or the Planning Divisions at (408) 535-3555.
3. **Fees.** An application fee and associated public noticing fees (see fee schedule).

### **CRITERIA FOR REVIEW OF REQUESTS FOR A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY:**

1. If the premises of the proposed license is located in:
  - a. The Downtown Core Area/Downtown Entertainment District, **a Determination of Public Convenience or Necessity may be granted.**
  - b. In existing Project Crackdown/Weed and Seed areas or in similar areas which would qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria, **a Determination of Public Convenience or Necessity may not be granted.**
  - c. Proximity to schools: **a Determination of Public Convenience or Necessity may be considered** if there is at least a 300-foot separation from any public or private school (preschool through high school)
  - d. An existing business: **a Determination of Public Convenience or Necessity may be considered** if the

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business has been in continuous existence without a substantial change in the method of operation.

2. If the City's Police service investigative information (including but not limited to site specific neighborhood analysis of calls for service) indicates that the use would pose a detriment to the immediate neighborhood or continue current law enforcement problems, **a Determination of Public Convenience or Necessity should not be granted.**
3. If the use is legal per Title 20 (including legal nonconforming uses) and has the required land use permits, **a Determination of Public Convenience or Necessity may be considered.**

**PROCESSING SCHEDULE:**

The Planning staff will review your application for conformance with the criteria and request input from other City departments. Planning staff will then process your request and provide you with a response.

**Applicant:**

1. Submits completed application to the Director of Planning requesting a Determination of Public Convenience or Necessity.
2. Submits required fee.

**Planning Staff:**

1. Logs in application, assigns File Number, collects application fee.
2. Reviews application with other City Departments and the State Department of Alcoholic Beverage Control.
3. Confirms if proposed alcoholic use is legal per Title 20. If a CUP or PD Permit is required, review of the Determination request will be concurrent with review of the associated permit. If the alcoholic use is already allowed (by a Conditional Use, PD Permits or a Legal Nonconforming use), then the Determination of Public Convenience or Necessity application will be reviewed separately.

4. Confirms the requirement for CUP or PD Permit for alcohol related use. For uses that have a CUP/PD Permit or are legal without a CUP/PD Permit (legal non-conforming), the request for a Determination is considered by the Director of Planning. For uses requiring a new CUP, the Determination of Public Convenience or Necessity and the CUP are considered concurrently by the Planning Commission.
5. If the Determination request is reviewed by the Director of Planning, a public hearing is conducted on Wednesday at 9:00 a.m. to approve or deny the request. If the Determination of Public Convenience or Necessity is reviewed by the Planning Commission, a public hearing is typically conducted the second and fourth Wednesdays of the month at 6:30 p.m. to approve or deny the request. Notice of the action is mailed to the applicant (with a copy to ABC) within several days of the hearing.

**APPEAL:**

1. Any action by the Director may be appealed by the Applicant, the property owners or adjacent property owners to the Planning Commission within ten (10) days after said notice of action is mailed to Applicant. The Planning Commission will consider and act upon the appeal. The Planning Commission decision shall be final. If the appeal is granted, the Commission's decision shall be effective immediately.
2. Any action by the Planning Commission may be appealed by the Applicant, the property owners or adjacent property owners to the City Council within ten (10) days after said notice of the Commission action is mailed to the Applicant. The City Council will consider and act upon the appeal. The City Council decision shall be final. If the appeal is granted, the Council's decision shall be effective immediately.

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## DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY APPLICATION

TO BE COMPLETED BY PLANNING STAFF		
FILE NUMBER <b>ABC</b>	COUNCIL DISTRICT	RECEIPT #: _____
PREMISES/ADDRESS		AMOUNT: _____
ZONING		DATE: _____ BY: _____

TO BE COMPLETED BY THE APPLICANT (PLEASE PRINT OR TYPE)
FOR THE PROPERTY/PREMISES LOCATED AT:
ASSESSOR'S PARCEL NUMBER(S) (APN)
EXISTING USE OF PROPERTY
PROPOSED USE OF PREMISES AS IT RELATES TO DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY REQUEST
PROPOSED ALCOHOL USE COMPLIANCE WITH TITLE 20, THE SAN JOSE ZONING CODE: <ul style="list-style-type: none"> <li><input type="checkbox"/> LEGAL NON-CONFORMING USE: ATTACH DOCUMENTATION OR LETTER (PREVIOUSLY ISSUED) FROM THE DEPARTMENT CONFIRMING THAT USE IS LEGAL NON-CONFORMING.</li> <li><input type="checkbox"/> ALCOHOL USE IS A PERMITTED USE BY AN APPROVED CONDITIONAL USE OR PLANNED DEVELOPMENT PERMITS: ATTACH COPY OF CONDITIONAL USE PERMIT OR PLANNED DEVELOPMENT PERMIT.</li> <li><input type="checkbox"/> ALCOHOL USE IS A PERMITTED USE WITH A CONDITIONAL USE OR PLANNED DEVELOPMENT APPLICATION: ATTACH APPLICATION OF CONDITIONAL USE PERMIT OR PLANNED DEVELOPMENT PERMIT.</li> <li><input type="checkbox"/> ALCOHOL SALES ARE INCIDENTAL TO A LEGAL USE.</li> </ul>

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**AFFIDAVIT OF OWNERSHIP**

<b>PROPERTY OWNER</b>			
PRINT NAME OF PROPERTY OWNER		DAYTIME TELEPHONE # (    )	
ADDRESS	CITY	STATE	ZIP CODE
NAME OF FIRM, IF APPLICABLE		TITLE OR OTHER OFFICIAL CAPACITY☼	
SIGNATURE <b>X</b>		DATE	
<b>LIQUOR LICENSE APPLICANT (If different than property owner)</b>			
PRINT NAME OF PROPERTY OWNER		DAYTIME TELEPHONE # (    )	
ADDRESS	CITY	STATE	ZIP CODE
NAME OF FIRM, IF APPLICABLE		TITLE OR OTHER OFFICIAL CAPACITY☼	
SIGNATURE <b>X</b>		DATE	
☼ PLEASE STATE IF YOU ARE A PARTNER, PRESIDENT, VICE-PRESIDENT, ETC...			
<b>CONTACT PERSON (If different from property owner or liquor license applicant)</b>			
<b>That for the purpose of processing and coordination of this application, the following person is my (our) designated representative/contact person:</b>			
PRINT NAME			
ADDRESS	CITY	STATE	ZIP CODE
NAME OF FIRM, IF APPLICABLE		DATE	
DAYTIME TELEPHONE # (    )	FAX TELEPHONE # (    )	E-MAIL ADDRESS	

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