

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Edgardo Garcia
Kim Walesh

SUBJECT: SEE BELOW

DATE: March 19, 2020

Approved

Edgardo Garcia

Date

3/19/2020

INFORMATION

SUBJECT: UNDUE CONCENTRATION CRITERIA FOR ON-PREMISE ALCOHOL SALES IN THE DOWNTOWN ENTERTAINMENT ZONE

The purpose of this information memorandum is to update the City Council on the creation of a local set of criteria utilized by the San José Police Department when considering an application for on-premise alcohol sales in the Downtown Entertainment Zone.

BACKGROUND

On July 31, 2019, the Rules and Open Government Committee approved a memorandum by Councilmember Peralez directing staff to report back to City Council with recommendations to create a local set of criteria regarding on-premise alcohol sales in the Downtown Entertainment Zone, bounded by HWY 87, Julian Street, Fourth Street, and Interstate 280. Councilmember Peralez sought an alternative to what is defined in the Business and Professions Code Section 23958(c). Staff agreed that investigation into how a local set of criteria could be implemented and what those criteria might be could be incorporated into its existing work plan and would take approximately six months.

Per Business and Professions Code Section 23958, California's Department of Alcohol Beverage Control shall deny an application for an Alcohol Beverage Control License if the issuance of that license is in a "high crime" area or adds to an undue concentration of licenses as described in Business and Professions Code Section 23958.4 (a)(1) and (a)(2). However, the State can issue a license per Business and Professions Code Sections 23958.4 (b)(1) and (b)(2) if the local governing body determines that the public convenience or necessity would be served. Staff from the Police Department, Office of Economic Development and the City Attorney's office have met to determine the feasibility of establishing a local set of criteria as well as what those criteria should be. This information memo is intended to fulfill the directive approved by the Rules and Open Government Committee at its July 31, 2019 meeting.

ANALYSIS

The San José Police Department uses two standards when evaluating Alcohol Beverage Control (ABC) license applications. These standards are undue concentration or proximity of existing ABC licenses and crime statistics over a 20% average. Typically, if a location is both over concentrated and over the 20% crime average the San José Police Department will protest the ABC application.

The first standard, “undue concentration” or proximity of ABC licenses, is determined by census tracts. The City of San José is divided into geographical areas by population and provides the San José Police Department with a suggested number of “on-sale” or on-premise and “off-sale” licenses for the city. On-sale licenses are issued to establishments where alcohol is purchased and consumed on the premise (e.g. bar, restaurant, coffee shop, etc.). Off-sale licenses are issued to establishments where alcohol is purchased on site but consumed elsewhere (e.g. grocery or convenience store). This standard also takes into consideration the proximity of other ABC licenses to the applicant. Most of downtown San José is divided into two ABC census tracts and the suggested number of establishments per tract, three and five, is unrealistically low for what is expected in a developing urban city center.

The second standard used to evaluate ABC licenses are crime statistics. A location can be unduly concentrated because of its crime statistics. Per Business and Professions Code Sections 23958.4 (a) (1), “undue concentration” means the applicant’s premise is in a Police Beat that has a 20% greater number of reported crimes compared with the average number of reported crimes within all the San José Police Department’s Police Beats. Reported crimes include both felony and misdemeanor crimes.

Utilizing only these two criteria resulted in the Police Department regularly protesting applications for on-premise alcohol sales in downtown San José, counter to the city’s stated General Plan strategy of creating a “vibrant urban center for living, working, (and) entertaining.” Creating a vibrant urban center typically entails having a concentration and variety of eating, drinking and entertainment establishments.

After thoughtful consideration, staff proposes that the Police Department consider additional criteria when determining its position on a proposed on-sale ABC license application. These criteria are the following:

1. Type of business – Historically, a variety of businesses have applied for on-sale licenses in the downtown core. These include but are not limited to restaurants, bars, nightclubs, coffee and sandwich shops, grocery and convenience stores, tasting rooms, hair salons and arcades. Each type of business has a specific operating model and business protocols that caters to a target audience. These factors will be considered in the Police Department’s application evaluation process.

2. Hours of operation – The hours of operation of an applicant business will be reviewed within the larger context of existing ongoing downtown activity and police staffing.
3. Concentration of similar businesses in the immediate area - The Police Department will consider the concentration of similar businesses in the immediate area and assess the impact this concentration will have on the department's ability to perform its regulatory duties as well as how the concentration of similar businesses supports the development of Downtown as outlined in the City's 2040 General Plan.
4. Input from stakeholders – As part of the ABC liquor license application process, both ABC and the applicant conduct community outreach on the proposed application. Applicants are required to notify businesses and residents within a 500-foot radius of the location in question of their desire to obtain a liquor license. This notification is conducted via mail and gives stakeholders the opportunity to protest the issuance of a proposed license. The Police Department's Vice Unit is informed of the results of these outreach efforts and considers them in the Department's comments regarding the application. The Police Department may conduct additional outreach with downtown business owners and residents, the San Jose Downtown Association, the Downtown Residents Association, and engaged staff from other city departments as needed.
5. Applicant's prior business history - If applicable, the applicant's history of doing business in either San José or in another city will be taken into consideration. Typically, the way in which an operator has conducted his/her previous business operations is a strong indicator of future performance.
6. Feedback from Patrol - Downtown patrol officers will be asked for input regarding the existing conditions in the area proximate to the applicant premise and the existing number and types of calls for service in the area will be examined.
7. Impact on Police department staffing - Because San José Police personnel play a significant role in regulating and monitoring ABC compliance, the impact of a business providing on-premise alcohol sales must be considered within the context of real-time police staffing levels.

In addition, staff proposes to expand the boundaries within which these criteria are utilized to determine the Police Department's position on an ABC license application from the Downtown Entertainment Zone to the Downtown Growth Area designated in the 2040 General Plan. While the largest concentration of downtown's dining and entertainment options are currently situated east of HWY 87, the vast majority of downtown's future development will occur west of HWY 87 in the Diridon Station Area. Exhibit A attached to this memorandum outlines the boundaries of the Downtown Growth Area.

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Moving forward, the San José Police Department will utilize the criteria described in this informational memorandum to determine their position regarding on-premise alcohol sales in the Downtown Growth Area.

/s/

EDGARDO GARCIA

Chief of Police

/s/

KIM WALESH

Deputy City Manager/

Director of Economic Development

For questions please contact Sgt. Rick Galea, Police Department at (408) 277-4322 or Blage Zelalich, Downtown Manager, at (408) 535-8172.

Attachment: Exhibit A - Downtown Growth Area

Exhibit A - Downtown Growth Area

