

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 471 (Ting) – As Amended April 6, 2017

SUBJECT: Alcoholic beverages: neighborhood-restricted special on-sale general licenses

SUMMARY: Beginning on January 1, 2017, in the City and County of San Francisco, the Department of Alcoholic Beverage Control (ABC) may issue no more than a total of five new original neighborhood-restricted special on-sale general licenses per year to premises located in any of the census tracts, as defined, until a total of 30 licenses are issued. Specifically, **this bill:**

- 1) States that in any county of the sixth class, ABC may issue no more than a total of five new original neighborhood-restricted special on-sale general licenses to premises located in any of the census tracts, as defined, per year beginning on January 1, 2017, until a total of 30 new licenses are issued.
- 2) Specifies the total number neighborhood-restricted special on-sale general licenses that shall be concurrently held at premises located within a grouping of census tracts, as defined in the bill.
- 3) States a person who currently holds an on-sale general license for a premises, who currently holds any interest in an on-sale general license for a premises, who has held an on-sale general license, or who has held any interest in an on-sale general license for a premises within the 12 months prior to the date of the drawing, as required, shall not apply for a license issued pursuant to this section for that licensed premises.
- 4) States prior to the issuance of a license, the applicant shall conduct a minimum of one pre-application meeting to discuss the application with neighbors and members of the community within the census tract in which the premises are located.
- 5) Provides that following the cancellation or revocation of a license issued pursuant to this section, ABC may issue one additional new original neighborhood-restricted special on-sale general license, as defined.

EXISTING LAW:

- 1) Establishes ABC and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control Act in accordance with laws enacted by the Legislature. This involves licensing individuals and businesses associated with the manufacture, importation and sale of alcoholic beverages in this state and the collection of license fees.
- 2) Provides that the ABC must deny an application for a license if issuance would create a law enforcement problem, or if issuance would result in, or add to, an undue concentration of licenses in the area where the license is desired. For liquor stores and other specified retail licenses, however, the ABC is authorized to issue a license if the respective local government determines that public convenience or necessity would be served by granting the license.
- 3) Caps the number of new on and off-sale general licenses issued by ABC at one for every 2,500 inhabitants of the county where the establishment is located (2,000:1 for on-sale licenses).

4) If no licenses are available from the state due to the population restrictions, those people interested in obtaining a liquor license may purchase one from an existing licensee, for whatever price the market bears. In 1994, the Legislature approved a three-year moratorium on the issuance of new off-sale beer and wine licenses, which at the time was not bound by any population to license restriction. In 1997, this moratorium was made permanent.

5) Defines “bona fide public eating place” to mean a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local Department of Health.

6) Defines an “on-sale” license as authorizing the sale of all types of alcoholic beverages: namely, beer, wine and distilled spirits, for consumption on the premises (such as at a restaurant or bar). An “off-sale” license authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.

8) Authorized, beginning January 1, 2017, ABC to issue no more than a total of five new original “neighborhood-restricted” special on-sale general licenses, for premises located within specified City and County of San Francisco neighborhoods, subject to certain requirements and restrictions.

9) Provides for 58 counties and 58 "classes" of counties – one county to each class based on their 1970 Census populations – the City and County of San Francisco is a county of the 6th class. (Government Code Section 28020)

FISCAL EFFECT: Unknown

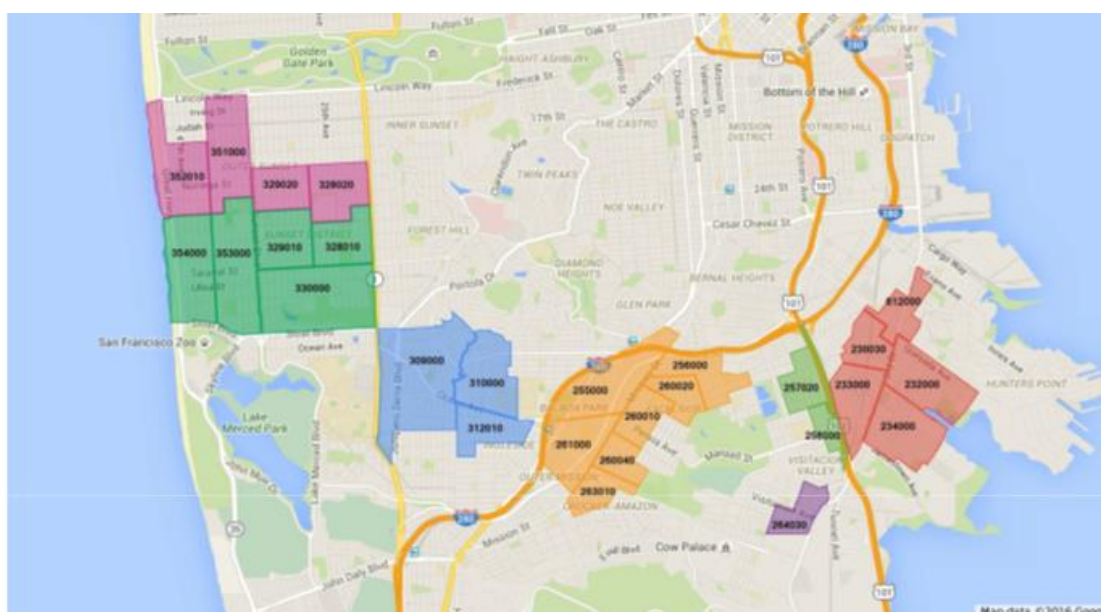
COMMENTS:

Background. As noted above, existing law provides for a limitation on the number of new on-sale general licenses that may be issued in a given year by ABC based on the population growth of the county in which the licensed premises are located (one licensee for every 2,000 residents). Thus, if a county grows by 10,000 people in a given year, ABC will sell five new licenses in that county. ABC holds a drawing if there are more buyers than licenses available. The cost of these new licenses is \$13,800 each. According to ABC, currently there are approximately 15,360 (Type 47) licenses statewide. Individuals seeking to open a full-service restaurant with a bar or cocktail menu who fail to obtain a liquor license through this process typically must locate an existing licensed owner willing to sell his/her license. Usually, that is done by contacting a liquor license broker. The cost of obtaining a license on the secondary market is driven by supply and demand and potential sellers may ask for \$150,000 to \$200,000.

In 1995, the Act was amended to allow a local government to comment on a pending alcohol license application. This raised the standard for an on-sale or off-sale licensee in an area of high crime or an over-concentrated census tract to get their license application approved. ABC license applicants need to have the local government indicate that the pending license is a public convenience or necessity. Before a license can be issued, ABC requires an applicant to obtain any zoning permits that may be required by a local municipality. These zoning permits are most

often called Conditional Use Permits (CUP) and, the CUP process may occur concurrently with the state process.

SB 1285 (Leno), Chapter 790, Statutes of 2016, granted an exception beginning January 1, 2017, to the license limitation for a county of the 6th class, as specified, for 5 new original neighborhood-restricted special on-sale general licenses for premises located within specified census tracts (neighborhoods) in that county. The bill provided that the new general license may exercise all of the privileges, and be subject to all the restrictions, of an on-sale general license for a bona fide eating place. The census tracts are as follows: (1) Third Street in Bayview; (2) San Bruno Avenue in Portola; (3) Leland Street and Bayshore in Visitacion Valley; (4) Mission Street in the Excelsior; (5) Ocean Avenue; (6) Taraval Street in the Sunset; and, (7) Noriega Street in the Sunset.



AB 471 seeks to revise this exception by authorizing ABC to issue 5 new original neighborhood-restricted special on-sale general licenses, each year until a total of 30 of these licenses are issued and sets a limit to how many neighborhood-restricted special on-sale general licenses may be issued per a census tract or tracts within that county. AB 471 would include additional restrictions as to who may apply for the license.

Purpose of the bill. According to the author's office, despite a strong economy, some commercial corridors in San Francisco's outer neighborhoods are struggling to both support existing restaurants and to attract new ones to vacant storefronts. One barrier that hinders the success of businesses in these neighborhoods is the prohibitively high cost of a full liquor license that allows a restaurant to serve spirits in addition to beer and wine.

Because state law has capped the number of full liquor licenses available in San Francisco, licenses can only be purchased from existing business owners in the city. Due to this scarcity, full liquor licenses are currently being sold for around \$300,000, which makes full liquor licenses inaccessible to small business owners in the city's outer neighborhoods where lower foot traffic and lower prices prevent the high revenues needed to recoup such an investment.

The author adds that this bill is in response to widespread interest in the special neighborhood-restricted liquor license program and simply builds on last year's legislation by adding five new licenses each year until a total of 30 new licenses have been issued.

The author states, in San Francisco, our outer neighborhoods need an economic boost. Successful restaurants help build our communities by creating jobs, fueling foot traffic for small businesses, and providing important spaces for neighbors to meet. Restaurants located in our outer corridors require a liquor license to compete but need relief from affordability challenges.

In support. The City and County of San Francisco writes in support, San Francisco is committed to ensuring that every commercial corridor within the city has all the elements of a healthy and vibrant neighborhood, including successful neighborhood restaurants. One of the biggest challenges for neighborhood restaurants is the high cost of a full liquor license. These licenses will be directly available from the ABC for a reasonable application fee; additionally, they are not transferable, so that when a license holder closes his or her business, the license must be returned to ABC's pool of available neighborhood-restricted licenses. This legislation holds the promise of stimulating economic activity and creating vibrant neighborhoods.

In opposition. The California Council on Alcohol Problems states, "our members are concerned about expanding the current state limits on undue concentration of alcohol on-sale outlets. The limitation to only San Francisco does not change our policy concerns. Nor do we believe ABC has sufficient resources to monitor even more on-sale premises in our state, particularly in highly concentrated San Francisco."

Policy statement. It should be noted, this bill would not diminish the value of any existing liquor license because these new licenses would not be transferrable to a new business owner or a new location. Furthermore, the owners of existing full liquor licenses across San Francisco would remain able to sell or transfer their licenses citywide and reap the value of their investment on the private market.

Policy consideration. The author might consider revisiting the requirement for an applicant to, among other things, "submit signed verification that states that the applicant has completed a required pre-application meeting regarding the issuance of the license." AB 471 changes the signed verification from the "*local government body*" to "*San Francisco Police Department*". This is rather broad and could induce an administrative conflict. In order to stay consistent with how CUPs are dealt with at the local level, the bill should be amended to state that the signed verification form should be signed by "*the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body*"

In addition, the current version of the bill changes the requirement of when the applicant shall conduct at least pre-application meeting to discuss the application with neighbors and members of the community within the census tract in which the premises is located from "*prior to submitting the application*" to "prior to the issuance" by ABC. AB 471 is inconsistent with the goal of last year's bill, which was structured to ensure that the applicants who pursue these licenses would engage with the local community through a pre-application vetting process, as specified. To ensure local community input from the start of the process, the author should consider amending this provision back to current law.

Prior legislation. SB 1285 (Leno), Chapter 790, Statutes of 2016. Authorized, beginning January 1, 2017, ABC to issue no more than a total of five (5) new original “neighborhood-restricted” special on-sale general licenses, for premises located within specified City and County of San Francisco neighborhoods, subject to certain requirements and restrictions.

AB 1558 (Mathis), Chapter 256, Statutes of 2016. Authorized ABC to issue, over a two-year period, five additional new on-sale general licenses for restaurants, with a seating capacity of 50 or more, in Inyo County.

AB 1670 (Dodd), Chapter 347, Statutes of 2016. Authorized ABC to issue a maximum of five new original on-sale general licenses, over a one-year period, for bona fide public eating-places in the County of Napa.

AB 461 (Achadjian, Chapter 110, Statutes of 2013). Authorized ABC to issue no more than a total of five new original on-sale general licenses, over a three-year period, for bona fide public eating-places in the County of San Luis Obispo.

AB 1320 (Allen, Chapter 467, Statutes of 2012). Authorized ABC to issue a maximum of 15 new original on-sale general licenses, over a three-year period, for bona fide public eating-places in the County of Marin.

AB 2266 (Evans, Chapter 130, Statutes of 2008). Authorized ABC to issue five additional new original on-sale licenses, per year for a period of three years, for bona fide public eating-places having a seating capacity for 50 or more diners in Napa County.

SB 762 (Cox, Chapter 193, Statutes of 2007). Authorized ABC to issue 10 new original on-sale general licenses for bona fide public eating-places in the County of Mono.

AB 1252 (N. Waters, Chapter 753, Statutes of 1977). Permitted ABC to authorize the conversion of any on-sale general license for “seasonal business” to an on-sale general license, as specified.

SB 1092 (Berryhill, Chapter 571, Statutes of 1975). Authorized ABC to issue five additional new original on-sale general licenses for bona fide public eating places (seating for 100 or more diners) in any county where the inhabitants number less than 5,000 but more than 3,000 (Mono County) according to the 1970 federal census and where the major economy of that county is dependent upon the year-round use of that county’s recreational facilities.

SB 784 (Berryhill, Chapter 407, Statutes of 1975). Authorized ABC to issue three additional original off-sale general licenses in a county of the 58th class (Alpine County).

REGISTERED SUPPORT / OPPOSITION:

Support

City and County of San Francisco
Family Winemakers of California

Opposition

Alcohol Justice

California Council on Alcohol Problems

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