

**DETERMINATION OF CONVENIENCE OR NECESSITY FOR
ALCOHOLIC BEVERAGE PREMISES**

Purpose

This Policy establishes the review authority and criteria for considering a request for a determination of public convenience or necessity in granting, upgrading, or transferring a retail alcohol sales license, so as to ensure and promote the community's health, safety, and general welfare.

Background

California Business and Professions Code Section 23958.4, or any successor statute, requires the City of Newport Beach under certain conditions to make a determination regarding the public convenience or necessity prior to the granting, upgrading, or transferring of retail alcohol sales licenses (ABC license types 20, 21, 42, 48 and 61). This determination is required when the premise is located in any one of the following:

- A. The premise is located in a Police Department crime reporting district that has a twenty percent (20%) greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the City.
- B. For on-sale retail alcohol sales license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the premise is located exceeds the ratio of on-sale retail alcohol sales licenses to population in Orange County.
- C. For off-sale retail alcohol sales license applications, the ratio of off-sale retail alcohol sales licenses to population in the census tract or census division in which the premise is located exceeds the ratio of off-sale retail alcohol sales licenses to population in Orange County.

Determination Authority

The Chief of Police or his/her designee is authorized to make a determination of public convenience or necessity for the sale of alcoholic beverages. It shall be the responsibility of the applicant for the premise to demonstrate that a determination of public convenience or necessity is consistent with this Policy.

The provisions of this Policy shall not apply to transfers that are the result of the death or incapacity of the licensee, any order of a court of competent jurisdiction, or the operation of law.

Review Criteria

Review criteria for requests for a determination of public convenience or necessity are listed below. The terms “area” and “vicinity” are generally considered those properties lying within the same Police Department crime reporting district as the premise as well as the adjacent crime reporting district(s).

- A. Whether or not the area within which the use is proposed experiences elevated rates of crime such as criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations. If the frequency of such crimes in the vicinity is significantly higher than the average for the community, a determination of public convenience or necessity may conflict with the Intent of this Policy. The term “significantly higher” is to mean a twenty percent (20%) greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the City.
- B. Whether or not the area within which the use is proposed experiences elevated rates of alcohol-related crime such as public intoxication, driving under the influence, disturbing the peace, assault and battery, vandalism, drug violations and prostitution. If the frequency of such alcohol-related crimes in the vicinity is significantly higher than the average for the community, a determination of public convenience or necessity may conflict with the Intent of this Policy. The term “significantly higher” is to mean a twenty percent (20%) greater number of reported alcohol-related crimes than the average number of reported crimes as determined from all crime reporting districts within the City.
- C. A review of the type and volume of calls for service within the same and adjacent crime reporting district(s).
- D. The number, proximity, type, and operating characteristics of other alcohol-licensed premises in the vicinity.
- E. The proposed hours of operation and operating characteristics of the applicant premises.
- F. The level of retail alcohol sales license saturation in the area as defined by the California Department of Alcoholic Beverage Control. Undue concentration of certain license types may conflict with this Policy more than others. Such license types include what are currently known as Types 21 (sale of beer, wine, and distilled spirits for off-site consumption), 42 (sale

of beer and wine for on-site and off-site consumption), and 48 (sale of beer, wine, and distilled spirits for on-site consumption).

- G. The proximity of the proposed use to sensitive land uses such as schools, parks, residences, libraries, houses of worship, medical facilities, and other sensitive facilities.
- H. The potential for the proposed use to provide increased employment.
- I. Whether or not the proposed use would represent a unique business or cultural addition to the community.
- J. Whether or not the proposed use would contribute to the long-term economic goals of the community.
- K. Whether or not the proposed use would contribute to the long-term planning goals of the community.

Whether or not the applicant, has agreed to comply with any and all conditions as may be recommended by the Chief of Police or his/her designee.

Notice of Determination and Appeal Period

The Chief of Police shall notify the California Department of Alcoholic Beverage Control and applicant of his/her determination within the time period specified by the California Business and Professions Code. Any applicant not satisfied with the determination of the Chief of Police may appeal to the City Council by filing a written appeal with the City Clerk within fourteen (14) days. The City Council shall render its decision within thirty (30) days after the filing of an appeal.

The City Clerk shall ensure that this Policy, as amended, is transmitted to the appropriate official in the California Department of Alcoholic Beverage Control as the notification of delegation of authority to make a determination of convenience or necessity pursuant to the California Business and Professions Code.

History

Adopted K-7 - 5-8-1995
 Amended K-7 - 2-24-1997
 Amended K-7 - 4-23-2002
 Amended K-7 - 9-27-2011
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