

Martha Alvarez, MMC

From: rmcquillin@mcqcorp.com
Sent: Tuesday, May 17, 2022 7:59 AM
To: City Clerk
Subject: [EXTERNAL] Public Comment 2 for NOTICE OF A PUBLIC HEARING DE NOVO on May 17

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Hello City Clerk,

This is my second public comment email.

This addresses conditions at the 7-11 site. I have met with Raman (franchisee/owner), Kia (regional manager), and spoken with Bruce (attorney) of 7-11. They are very nice and reasonable people. However, they don't maintain the property at a reasonable standard for the neighborhood.

Thank you,

Richard McQuillin
1281 Tennyson Street
Manhattan Beach, CA 90266
310-947-1759

THE TRASH BIN ENCLOSURE IS ROTTING AND FALLING APART:





THE LOT IS NOT KEPT CLEAN: Yesterday's litter will still be there the next day. The lot is smeared with liquids. The sidewalks appear to have never been washed.





Splattered paint that has been there indefinitely:



THE TRASH FROM THE STORE OVERFLOWS INTO THE STREET AND DOWN THE STREET.



Martha Alvarez, MMC

From: Deborah Blair Porter <deborah.blair.porter@gmail.com>
Sent: Tuesday, May 17, 2022 2:13 PM
To: Hildy Stern; Steve Napolitano; Richard Montgomery; Suzanne Hadley; Joe Franklin
Cc: City Clerk; Deborah Blair Porter
Subject: [EXTERNAL] Item K 18 - Military Equipment

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Dear City Council Members Stern, Napolitano, Montgomery, Hadley and Franklin:

I am writing to provide input regarding the resolution related to Military Equipment, Item K 18 on this evening's City Council agenda. I have several comments, which follow.

First, I am shocked a local municipality such as Manhattan Beach has or is even considering having the items in inventory it does.

I read AB 481 whose purpose is to let the community know what a local agency has or plans to have in its possession in terms of military equipment, how it is to be used and has been used and to engage with the community to let it know it can provide input.

Given the importance of this issue, I am not sure sufficient time and notice to the community has been provided so as to ensure they can provide input. I may be wrong, but I believe if the community were aware of this resolution, ordinance, plan, and inventory, they would find it concerning. While I believe MBPD has followed the steps outlined, I don't feel the spirit of the AB 481 has been met, particularly when the Legislature's findings note:

"The acquisition of military equipment and its deployment in our community adversely impacts the public's safety and welfare, including increased risk of civil deaths, significant risks to civil rights, civil liberties, and physical and psychological well-being, and incurment of significant financial costs."

I am therefore expressing my personal concerns and objections to this policy and ask that the City Council open it up for greater community discussion as to whether we want or need this equipment here.

I am also personally expressing my objection to MBPD having military equipment of this nature in its inventory for several reasons:

Public safety does not warrant it. While I totally understand items such as bullet proof vests and car armor being defensive in nature, rifles of the sort identified on the list are not of a "personal defensive nature" and events here in our community do not require them. While most of these high velocity weapons are designated as "personal defensive" I do not know anyone with such weapons who have them in their home or use such for personal defense.

Perhaps I am an exception. Again, while I fully understand the need of our police to feel “protected” and “confident” arming ourselves to the teeth is not the best or most cost-effective way to do this.

The actual inventory says we have various weapons that can be used for crowds that are disruptive or out of control. In my entire seventy (70) years of living in South Bay beach communities I can recall only one instance when South Bay police were called out in anything approaching a militarized format that would call for such weaponry. That was a 4th of July in Hermosa that got a little too rowdy, with a police response that itself was an overreaction.

The extraordinary costs outweigh the benefits. Our nation’s defense budget is a history of overspending on all sorts of weaponry that takes away from needed domestic priorities and ends up gathering dust on the shelves of armories. It leads to an escalating trend that is hard to stop once started. I don’t believe this is what we should be spending our taxpayer dollars on, particularly when we have other more pressing areas in which we could focus scarce resources.

I can’t help but think “Do we really need these items?” and frankly see the desire to acquire such weaponry as a reflection of the old adages, “boys and their toys” and “he has one, I want one too!”

The nature of this weaponry is by its own term “military” in nature. We do not have military exercises in Manhattan Beach. We do not have to defend our city in a military manner – we have never had to. This is the same over militarization we are seeing of our nation. I searched for some of the items in our inventory online. Again, these are weapons of war. The people in the pictures holding these weapons are NOT police officers, they are soldiers. <https://www.combinedsystems.com/penn-arms-launchers-40mm-launchers/>. It is well documented that there has been an over militarization of America’s police with weapons of war. <https://www.aclu.org/press-releases/aclu-analysis-reveals-reforms-controversial-1033-program-gives-police-weapons-war-had>

I understand the desire on the part of police officers to have defensive items to protect themselves and their fellow officers, including armor for cars. But the notion MBPD needs this list of weapons to feel “confident” is an approach based on what I believe is baseless fear.

Is the City Council prepared to assert that the assault type weapons on this list are actually necessary in this community? That the provisions of AB 481 are met where this “military equipment is necessary because there is no reasonable alternative”? Will such weapons safeguard the public’s welfare, safety, civil rights, and civil liberties? It has been my personal experience MBPD is not sufficiently trained in areas of civil rights and civil liberties generally or in its policies and procedures in this area. Adding these weapons to a work force that would benefit from additional training on civil rights matters adds a combustible component that does not bode well for the community or individuals within it.

AB 481 speaks of the disproportionate impact this militarization has on “marginalized” communities, and while the legislation refers to “low income Black and Brown communities” I

personally see the applicability of this issue to persons with disabilities in our community, whose disabilities are often misunderstood, marginalized, and criminalized, so that they are at greater risk from such so-called “defensive” weapons.

I also question the appropriateness of having this sort of “equipment” at the ready when it is not used with sufficient regularity that would enable skill and facility through repeated usage.

The inventory and equipment we presently maintain appears to be a function of “fear” something will happen, or some local event will spin out of control. I don’t know if this is an appropriate way to plan. I have seen and experienced MBPD act out of fear instead of sound knowledge based in policies and procedures. Personally, I believe a better approach would be to invest in increased training and better engagement and de-escalation techniques for situations described as a justification for this weaponry. I’ve seen civil rights violated in this city without this sort of weaponry. Having it here and readily available simply increases the chance it will be used in exactly the manner AB 481 seeks to prevent.

While I know many believe our crime rate is rising, it is not rising in a manner that justifies this sort of weaponry and equipment nor do the crimes we are experiencing justify them. I also find it troubling that in a small city such as this we are spending our money on flash bang weapons and assault weapons. Also, the legislation specifically references “sheriffs,” implying that we are talking about counties, not small cities such as Manhattan Beach that may need to retain such an arsenal. If an incident arises that actually calls for this sort of equipment, we can access it from other, larger neighbor agencies such as LA County Sheriffs or even LAPD, both of which encounter larger demonstrations.

I believe if the citizens of Manhattan Beach knew our police had these weapons within our City’s arsenal for regular access and use, they would be dismayed, particularly since whatever they have can be used against us as citizens.

In the same way I oppose guns in the home, I oppose them in our community. While I have no choice or voice regarding weapons my neighbors keep, I do have a voice regarding what the City keeps and that is why I am speaking now in the hopes of common-sense de-escalation. Beyond what are truly defensive weapons and equipment (the bullet proof vests, cars, etc.), we are better off using the extraordinary amounts of funding on better training in crowd control, understanding behaviors, and how to employ de-escalation techniques, not more and bigger guns and weapons to be used on citizens in what is a dangerous escalating trend.

While I understand the Police Department has prepared this documentation to comply with AB 481, I don’t think it meets the spirit or purpose of the legislation which calls for a full-throated discussion of a public agency’s militarization. For that reason, as well as those stated above, I am asking the City Council to consider reagendaing this issue and providing greater notice to the community.

I oppose these weapons being in our community as I believe that as AB 481 says, military equipment and its use in our communities adversely impacts public safety and welfare, risks civilian deaths and civil rights and liberties as well as our community’s psychological well-being. The

significant costs outweigh the benefit and can detrimentally impact those within our community who are marginalized through no fault of their own. I urge the City Council to significantly reduce the number of such weapons and wherever possible eliminating this inventory, i.e., demilitarizing Manhattan Beach. I also urge the City Council to require more and better police training on crowd control, behavioral techniques and de-escalation methods that are a better use of our resources, and far more in keeping with our city's efforts toward inclusion and equity.

While I understand the legislation and draft ordinance require an annual reporting, I encourage the City Council to require MBPD to provide a report up front on how many of the items within the inventory list have ever been used and the overall cost the City has spent in acquiring these items before proceeding with this approval.

Thank you for your time in reading these comments and your service to our community.

Deborah Blair Porter
Manhattan Beach, CA

Martha Alvarez, MMC

From: Suzanne Lerner @ Michael Stars <slerner@michaelstars.com>
Sent: Tuesday, May 17, 2022 10:13 AM
To: Hildy Stern; Joe Franklin; Steve Napolitano; Suzanne Hadley; Richard Montgomery; City Clerk
Cc: Carrie Tai, AICP; Quinn Barrow; Bruce Moe
Subject: [EXTERNAL] Encroachments of Parking Spaces and Sidewalks for Restaurants and Bars

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Dear Mayor Stern, Councilmembers Napolitano, Franklin, Hadley and Montgomery:

I am sorry that I will not be able to speak tonight as I am out of town.

I am writing stating my opposition to the continuation of outdoor dining - taking parking spaces and sidewalks for business use.

This has been my stated opinion throughout COVID restrictions.

Of course I was all on board with the restaurants utilizing the parking space DURING COVID and their inability to utilize their indoor dining.

Now these restaurants have double and more tables to utilize as they have no more restrictions and have 100% indoor dining available to them.

Enough is Enough.

That some of our residents love outdoor dining does not change this fact.

It is exhausting trying to walk in between waiters and bus people running back and forth, getting hit and stopped from actually physically walking on the sidewalk.

To have BLOCKED sidewalks COMPLETELY - it is just out of hand.

To see shops that have a use permit per ABC for wine tasting turning into outdoor bars with full bottles of wine being sold...outside the permission of their license with nothing being done about it.

It is like the Wild West has come to Manhattan Beach.

As i have previously stated, Please do the right thing.

Start with the full blown studies and surveys that should be done involving the entire community,. Everyone!

Do the wonderful teams at City Hall have the time to work on this project? We are talking a couple of years to go thru this process. We have already done this as in the end the Coastal Commission rejected our stance.

Are we strategizing and debating the realist possibilities of this being upheld and approved by the commission before we spend \$100ks or millions of our precious budget.

Are certain stakeholders threatening the small businesses that is creating so much distrust and fear of speaking up by these same small business owners? We know this is happening.

So you as a City Council are not hearing from all stakeholders.

Please check out the regulations of ABC and Coastal Commission. Are we complying with their regulations?

Are our sidewalks just too narrow in our town? Forget anyone in a wheelchair from being able to get past the tables on so many of our sidewalks right now! We must comply and appreciate and WANT to comply with ADA federal law, Are we, the able-bodied not carrying about the disabled population? Ableism is not pretty to see in our community.

It is impossible to turn into Manhattan Avenue from most alleys in the downtown due to the large decks that block sight of the street....traffic backed up from blocks creating more pollution.

The density of people now driving around looking for parking that no longer exists. The use of these parking spaces for coastal access as well as being able to shop in our small stores,

Trash piling up everywhere.

Please consider all angles when you are making these decisions - it's not about "i love eating outdoors"

Thanks so much

Suzanne Lerner

124 Tenth Street

Manhattan Beach, CA 90266

Martha Alvarez, MMC

From: rmcquillin@mcqcorp.com
Sent: Tuesday, May 17, 2022 7:40 AM
To: City Clerk
Subject: [EXTERNAL] Public Comment 1 for NOTICE OF A PUBLIC HEARING DE NOVO on May 17

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Hello City Clerk,

Since you have my appeal already, that is my main written document.

Please accept this email as another public comment for the May 17 hearing.

These are pictures of some of the unsightly refuse I've seen on our street in the past year. We want to avoid increases in the type of 'activity' that sales of distilled spirits might produce.

I will send another email about the condition of the 7-11.

Sincerely,

Richard McQuillin
1281 Tennyson Street
Manhattan Beach, CA 90266
310-947-1759



Graffiti, on electrical box, Tennyson Street



Looks like feces, on the curb, Tennyson Street



Used condoms with tissues on the curb,
Tennyson Street



Bag of urine, at the curb, Tennyson Street



Graffiti on the 7-11, in two places.

Martha Alvarez, MMC

From: Gary McAulay <gary.mcaulay@gmail.com>
Sent: Tuesday, May 17, 2022 4:28 PM
To: List - City Council; City Manager
Subject: [EXTERNAL] 22-0194 Support for the Senior and Scout Community Center Memorandum of Understanding

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Hello Council and Mr. City Manager -

I urge Council to move forward with the memorandum of understanding for completion of the Senior and Scout Community Center, which is long overdue.

Scouting is by far the oldest youth recreational service in the City's history, having begun slowly in 1920 but building rapidly from there. The Boy Scouts and Girl Scouts have in turn served Manhattan Beach (and the nation during WWII) with numerous community projects through the decades. Character building and service are cornerstones of the Scouting movement.

Although an important historic site in MB (the location of the very first Pinewood Derby, in 1953) the facility has been considered undersized since the 1960s. The building will celebrate its 70th anniversary next year, and has clearly outlived its functionality. The new facility will double its role by serving not only the Scouting community, but our seniors as well (seniors are some 23% of the city's population).

I support completing the memorandum of understanding.

Thank you,
Gary D. McAulay

Martha Alvarez, MMC

From: Claudia Elliott <cfell123@aol.com>
Sent: Tuesday, May 17, 2022 3:55 PM
To: List - City Council
Cc: steve.debaets@gmail.com
Subject: [EXTERNAL] Community Center

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Sent from my iPad

Please vote to approve finances and to begin work on the new Community Center . M.B. needs space for numerous activities ,both for Seniors, Scouts etc. This has been in the planning stage for a fairly long time . Time to get started with this project.

Claudia Elliott

Martha Alvarez, MMC

From: dmcphersonla@gmail.com
Sent: Tuesday, May 17, 2022 3:23 PM
To: Hildy Stern; Joe Franklin; List - City Council; Richard Montgomery; Steve Napolitano; Suzanne Hadley
Cc: Bruce Moe; Quinn Barrow; Paige Meyer; Liza Tamura, MMC; Martha Alvarez, MMC; Carrie Tai, AICP; Talyn Mirzakhanian; Ted Faturous; 'Lauren Tyson'
Subject: [EXTERNAL] McPherson Testimony, Public Comment and 7-11 Appeal
Attachments: 220517-McP-CC-Testimony-PublicComment.pdf; 220517-McP-CC-Testimony-7.11.pdf

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Please find attached my testimony on eat & drink encroachments during public comment and the 7-Eleven appeal.

Don McPherson
1014 1st St, Manhattan Beach CA 90266
Cell 310 487 0383
dmcphersonla@gmail.com

From: dmcphersonla@gmail.com <dmcphersonla@gmail.com>
Sent: Monday, 16 May, 2022 16:30
To: 'Hildy Stern' <hstern@citymb.info>; 'Joe Franklin' <jfranklin@citymb.info>; 'MB Council' <citycouncil@citymb.info>; 'Richard Montgomery' <rmontgomery@citymb.info>; 'Steve Napolitano' <snapolitano@citymb.info>; 'Suzanne Hadley' <shadley@citymb.info>
Cc: 'Bruce Moe' <bmoie@citymb.info>; 'Quinn Barrow' <qbarrow@citymb.info>; 'Paige Meyer' <pmeyer@manhattanbeach.gov>; 'Liza Tamura' <LTamura@citymb.info>; 'Martha Alvarez' <malvarez@citymb.info>; 'Carrie Tai' <ctai@citymb.info>; 'Talyn Mirzakhanian' <tmirzakhanian@citymb.info>; 'Ted Faturous' <tfaturous@citymb.info>; Lauren Tyson <lauren@theliquorlicenseadvisor.com>
Subject: Eat & Drink Encroachments Allegedly Illegal, Revised

Hildy Stern, Mayor
City of Manhattan Beach
Via Email: citycouncil@citymb.info

Subject: Eat & Drink Encroachments Allegedly Violate Penal Code Section § PEN-370

Mayor Stern and Councilmembers,

Please find attached my revised accusation that the eat & drink encroachments in the Downtown and the North End allegedly violate the California Penal Code.

The revision includes the expert opinion by former ABC official Lauren Tyson that the encroachments do not comply with regulations of the Alcoholic Beverage Control Department.

Specifically, Ms. Tyson has determined that the encroachments violate terms of the 8 October 2021 amendment to the ABC Act for the COVID-19 Temporary Catering Authorization, which expires in July 2024.

Thanks for your consideration,

Don McPherson
1014 1st St, Manhattan Beach CA 90266

Cell 310 487 0383
dmcphersonla@gmail.com

From: dmcphersonla@gmail.com <dmcphersonla@gmail.com>

Sent: Wednesday, 11 May, 2022 16:29

To: 'Hildy Stern' <hstern@citymb.info>; 'Joe Franklin' <jfranklin@citymb.info>; 'MB Council' <citycouncil@citymb.info>; 'Richard Montgomery' <rmontgomery@citymb.info>; 'Steve Napolitano' <snapolitano@citymb.info>; 'Suzanne Hadley' <shadley@citymb.info>

Cc: 'Bruce Moe' <bmoe@citymb.info>; 'Quinn Barrow' <qbarrow@citymb.info>; 'Paige Meyer' <pmeyer@manhattanbeach.gov>; 'Liza Tamura' <LTamura@citymb.info>; 'Martha Alvarez' <malvarez@citymb.info>; 'Carrie Tai' <ctai@citymb.info>; 'Talyn Mirzakhanian' <tmirzakhanian@citymb.info>; 'Ted Faturos' <tfaturos@citymb.info>

Subject: Eat & Drink Encroachments Illegal

Hildy Stern, Mayor
City of Manhattan Beach
Via Email: citycouncil@citymb.info

Subject: Eat & Drink Encroachments Violate Penal Code Section § PEN-370

Mayor Stern and Councilmembers,

The attachment provides evidence that the eat & drink encroachments in the Downtown and North End violate Penal Code § PEN-370 and ABC regulations. At the May 17 council meeting during public comment, I will summarize these accusations as follows.

As of 31 March 2022, all pandemic relief measures issued by the Department of Alcoholic Beverage Control ["ABC"] lapsed. All such measures that specifically addressed eat & drink service outdoors lapsed as of 1 January 2022.

In late 2021, the state legislature approved SB-314 and AB-61, which permit outdoor eat & drink use that complies with all other law, so that premises owners can obtain enabling ABC license modifications.

Eat & drink encroachments in the Downtown and in the North End do not comply with law, specifically, for coastal-access parking and for accessible sidewalks. If that the case, then the encroachments violate Penal Code § PEN-370, regarding unlawful obstruction of the public right of way, a misdemeanor. As result, city officials and premises owners responsible for maintaining the illegal encroachments risk substantial fines and jail time.

After presenting this information at the May 17 meeting, I will file complaints with the LA County District Attorney, the ABC and the Coastal Commission. Additionally, I will request attorney Douglas Carstens to file for injunctive relief from impacts by the encroachments on public coastal access.

Don McPherson
1014 1st St, Manhattan Beach CA 90266
Cell 310 487 0383
dmcphersonla@gmail.com

CITY COUNCIL TESTIMONY: 7-11 APPEAL HEARING, 17 MAY 2022

Condition 6 in the draft CUP states, *“Sales of alcoholic beverages are allowed from 6 A.M. to 2 A.M. or as specified by the alcohol license issued by the Department of Alcoholic Beverage Control.”*

This project with its parking lot adjoins residences on the north and faces the Journey of Faith church across Prospect Ave. Per California Code of Regulations Section 61.4 for Proximity to Residences, these facts may result in denial of the Type 21 license for distilled spirits, and at a minimum, will result in conditions on operating hours.

The ABC will condition the license only because Rick McQuillin has protested it. If he had not, the ABC would have applied the default 6 AM to 2 AM operating hours every day.

Condition 6 represents the city policy for alcohol licenses of 6 AM to 2 AM each day, regardless of where the premises located.

Essentially, the city abdicates its authority for regulating alcohol use to the ABC. The Department funded solely by annual licensing fees. Overworked and underpaid investigators have hundreds of licenses each to manage. If a resident protests as McQuillin has, then the Department conditions the license. If not, then the license gets approved lightly conditioned regardless of where located.

Review of the staff report discloses that Community Development did not confer with ABC Long Beach-Lakewood as to appropriate conditions for a premises within 100 feet of a residence and across the street from a church.

If staff had checked the facts, they would have learned that the Department might condition the hours to 8 AM-9 PM seven days a week, as they have for Uncaffe north of the Kettle. If so, that will kill the 7-Eleven Type 21 license, thereby wasting taxpayer money.

Staff could have suggested reasonable hours: 7 AM-10-PM weekdays and 7AM-Midnight Friday and Saturday, but they did not.

I request the council to set those hours, which gives everyone something.

CITY COUNCIL TESTIMONY: EAT & DRINK ENCROACHMENTS, 17 MAY 2022

During 2021-2022, the city council has repetitively addressed the temporary eat & drink encroachments. At the December 7 meeting, City Manager Moe stated the permits for the encroachments would lapse January 3. At the December 21 meeting, however, the council extended the eat & drink encroachments until the California state of emergency lifted, perhaps years from now.

This action blatantly violates state legislation that replaced the ABC notices of COVID relief, which expired December 31. Late in 2021, Sacramento amended the ABC Act to permit alcohol service on unlicensed outdoor areas, both the public right of way and outside private premises, so owners had time for alcohol-license modification. The amendment requires, however, that the patios comply with all other state and city laws, which the Downtown and North End encroachments do not, regarding parking, ADA accessibility and ABC regulations. Such violations may constitute misdemeanors, punishable by \$1,000 fines and jail time for each count, amounting to \$100's of 1,000's for owners and millions for councilmembers and city officials. The penal code prohibits unlawful blocking of the public right of way, visibly apparent by the parking-space decks and sidewalk seating. Staff states that the encroachments reduce parking by 300 spaces, which also includes increased demand from roughly doubled occupancy. The latter violates the premises conditional use permits.

As former ABC official Lauren Tyson will testify, ABC regulations require physical separation between patrons and the public. It not possible to fit in a fenced patio alongside the required four-foot accessible walkway on the city ten-foot-wide sidewalks. As result, the encroachments violate ABC regulations, also possible misdemeanors.

In April, the council voted not to consider the alleged illegal temporary encroachments until September. Because of potential fines and jail time penalties, the city should order the encroachments removed now.

Martha Alvarez, MMC

From: Ken Thompson <kentfrmca@gmail.com>
Sent: Tuesday, May 17, 2022 12:37 PM
To: List - City Council
Cc: Steve Debaets
Subject: [EXTERNAL] New Community Center aka Scout House

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Please support this effort, best you can. I've been involved with it since the beginning. I'm 72 now and would like to see it built before I pass.

Kenneth Thompson
720 13th Street

Don't let aging get you down. It's too hard to get back up again!

Martha Alvarez, MMC

From: Lori Ford <lori@gumtreela.com>
Sent: Tuesday, May 17, 2022 12:03 PM
To: List - City Council
Cc: will@gumtreela.com
Subject: [EXTERNAL] Downtown MB Budget Items

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Hello Honorable City Council,

I'm writing today to let you know how important we believe the following two budget items are to the future of Downtown Manhattan Beach.

- a) Public Works is requesting \$525,000 for improvements and repairs in North MB and Downtown
- b) Community Development is requesting \$250,000 for a consultant to manage community engagement, vision and design for a more pedestrian-friendly Downtown MB, including outdoor dining.

At Gum Tree we believe the future of downtown MB should absolutely include outdoor dining and a more pedestrian friendly downtown. And just as we maintain our commercial buildings where our shops reside, we trust that you'll understand how important prioritizing the maintenance and repairs are to the downtown and north MB areas.

We hope you will vote in favor of getting both of the above items approved in the upcoming budget.

Thanks for your time.

Lori and Will Ford
Gum Tree



Lori Ford

CEO/CO-Founder

3103768744 | Lori@gumtreela.com | www.gumtreela.com

Think Globally, Shop and Eat locally!



Martha Alvarez, MMC

From: dmcphersonla@gmail.com
Sent: Monday, May 16, 2022 4:30 PM
To: Hildy Stern; Joe Franklin; List - City Council; Richard Montgomery; Steve Napolitano; Suzanne Hadley
Cc: Bruce Moe; Quinn Barrow; Paige Meyer; Liza Tamura, MMC; Martha Alvarez, MMC; Carrie Tai, AICP; Talyn Mirzakhanian; Ted Faturous; Lauren Tyson
Subject: [EXTERNAL] Eat & Drink Encroachments Allegedly Illegal, Revised
Attachments: 220517-Prosecution-Encroach-FinalCompiled-v2.pdf

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Hildy Stern, Mayor
City of Manhattan Beach
Via Email: citycouncil@citymb.info

Subject: Eat & Drink Encroachments Allegedly Violate Penal Code Section § PEN-370

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Specifically, Ms. Tyson has determined that the encroachments violate terms of the 8 October 2021 amendment to the ABC Act for the COVID-19 Temporary Catering Authorization, which expires in July 2024.

Thanks for your consideration,

Don McPherson
1014 1st St, Manhattan Beach CA 90266
Cell 310 487 0383
dmcphersonla@gmail.com

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Sent: Wednesday, 11 May, 2022 16:29
To: 'Hildy Stern' <hstern@citymb.info>; 'Joe Franklin' <jfranklin@citymb.info>; 'MB Council' <citycouncil@citymb.info>; 'Richard Montgomery' <rmontgomery@citymb.info>; 'Steve Napolitano' <snapolitano@citymb.info>; 'Suzanne Hadley' <shadley@citymb.info>
Cc: 'Bruce Moe' <bmoie@citymb.info>; 'Quinn Barrow' <qbarrow@citymb.info>; 'Paige Meyer' <pmeyer@manhattanbeach.gov>; 'Liza Tamura' <LTamura@citymb.info>; 'Martha Alvarez' <malvarez@citymb.info>; 'Carrie Tai' <ctai@citymb.info>; 'Talyn Mirzakhanian' <tmirzakhanian@citymb.info>; 'Ted Faturous' <tfaturous@citymb.info>
Subject: Eat & Drink Encroachments Illegal

Hildy Stern, Mayor
City of Manhattan Beach
Via Email: citycouncil@citymb.info

Subject: Eat & Drink Encroachments Violate Penal Code Section § PEN-370

Mayor Stern and Councilmembers,

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Don McPherson

1014 1st St, Manhattan Beach CA 90266

Cell 310 487 0383

dmcphersonla@gmail.com

**EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY ALLEGEDLY ILLEGAL;
TITLE 10. OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY, PEN § 370**

Summary: Alleged Illegal Eat & Drink Encroachments.

As of 31 March 2022, all pandemic relief measures issued by the Department of Alcoholic Beverage Control ["ABC"] lapsed. All such measures that specifically addressed eat & drink service outdoors lapsed as of 1 January 2022.

In late 2021, the state legislature approved SB-314 and AB-61, which permit outdoor eat & drink use that complies with all other law, so that premises owners can obtain enabling ABC license modifications. The legislature also amended the Alcoholic Beverage Control ["ABC"] Act to permit temporary unlicensed outdoor uses until July 2024.

Eat & drink encroachments in the Downtown and in the North End appear not to comply with law, specifically, for coastal-access parking and for accessible sidewalks. If that case, then the encroachments may violate Penal Code § PEN-370 regarding unlawful obstruction of the public right of way, a misdemeanor. As result, city officials and premises owners responsible for maintaining the alleged illegal encroachments could risk substantial fines and jail time.

Applicable Regulations

Early in the pandemic, the Department of Alcoholic Beverage Control ["ABC"] issued relief measures, 18 in all, to lessen economic impacts on license holders. Specifically, eat & drink places could expand alcohol service outdoors to the adjacent public right of way and to unlicensed outdoor areas belonging to the premises. Compliance with state law and city zoning not required. These permissions only in the ABC notices, not in the state executive orders.

Per Exhibit-p.1, however, all ABC measures related to alcohol service on unlicensed outdoor areas lapsed as of 1 January 2022. Consequently, eat & drink encroachments on the public right of way must now comply with ABC and Coastal Commission regulations, as well as with other state and city law.

In late 2021, the state legislature approved two measures that permit alcohol service outdoors, until applicants can obtain amendments to their ABC licenses. [SB-314 and AB-61, Exhibit-p.3 and Exhibit-p.8, respectively] These bills do not permit violations of ABC and Coastal Commission regulations, nor of other state and city law. AB-61 lapses January 2024 and SB-314 lapses July 2024.

On 8 October 2022, the legislature amended the ABC Act to permit alcohol service and consumption on unlicensed public right of way adjacent to the premises and in outdoor premises areas. (Exhibit p.12, Business & Professions Code § 25750.50) This COVID-19 Temporary Catering Authorization, which lapses July 2024 along with SB-314, requires compliance with: 1) Coastal access per the city Local Coastal Program ["LCP"]; 2) Assessability provisions in the California Building Code; and, 3) All other ABC regulations.

AB-61 also requires local jurisdictions to address whether the new outdoor eat & drink uses comply with parking regulations, and if not, to correct discrepancies. In local coastal programs, however, the Coastal Commission has jurisdiction over parking, not city councils. It takes a year or more to get on Coastal's calendar. For Manhattan Beach, it appears that the city and premises owners have made little progress in the alcohol license permitting processes.

**EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY ALLEGEDLY ILLEGAL;
TITLE 10. OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY, PEN § 370**

Any person who **unlawfully** blocks the public right of way commits a misdemeanor, per Penal Code § PEN-370 [Exhibit-p.13 Such action also constitutes grounds for denial of an ABC license. [Exhibit-p.15 Grounds 4] Presumably, if a license holder unlawfully blocks the public right of way, that also violates ABC regulations, an additional misdemeanor count.

ABC regulations require a physical barrier between an outdoor alcohol service area and an adjoining public area. On the city narrow sidewalks, such barriers impact accessibility on sidewalks adjoining premises, which violates the American Disabilities Act, as embodied in the 2019 California Building Code, Title 24, Part 2. [“CBC” § 1113A.1.1, § 1138A]

Potential Misdemeanors by City Officials and Premises Owners.

In Manhattan Beach, the eat & drink encroachments on the public right of way appear to constitute multiple misdemeanors, namely:

- 1) Street-parking decks and sidewalk tables block the public right of way, which appears to violate PEN-370. This statute approved in 1872 has remained unchanged ever since. Violation also constitutes grounds for denying an ABC license, so presumably that would count as an additional misdemeanor. Without question, visibly, the decks occupying street-parking block the right of way. [Exhibit-p.17; and,
- 2) In violation of ABC regulations, some encroaching alcohol service-areas lack physical barriers between patrons and the public, for example, sidewalk tables and those parking-space venues completely open to the sidewalk. [Exhibit-p.18, p.1 & p.20 Additionally, the encroachments often not continually occupied by employees, as required. Former ABC official Lauren Tyson has provided expert opinion that such encroachments violate ABC regulations. [Exhibit-p.21 This nullifies the COVID-19 Temporary Catering Authorization, which requires compliance “*with state or local public health directives.*” **PEN 370 located in Penal Code Part 1 Title 10, Crimes Against the Public Health and Safety, so it prohibits unlawful eat & drink encroachments in the Downtown and the North End.**

Encroachment 300 Parking Space Deficit at Beach Violates Local Coastal Program..

City staff has stated that the encroachments result in over a 300-parking-space deficiency, which impacts coastal access. [Exhibit-p.33 The city council has not addressed the parking deficit issue as required by AB-61, nor can they.

In their 6 April 2022 decision in Keen v. MB City, the appellate court stated, “*The City argues the trial court erred in interpreting the Coastal Act to require it to provide short-term rentals in residential areas. **This is incorrect. The key provision is the one requiring Commission approval of amended laws.**” [Emphasis added]*

The council may not modify parking regulations to account for additional demands by encroachments that impact coastal access. Only the Coastal Commission can do that.

Although the unlawful 300 parking-space reduction not a crime, the city dedication of 57 street spaces for eating and drinking use appears to violate PEN-347, which would count as a misdemeanor for each encroachment per day.

**EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY ALLEGEDLY ILLEGAL;
TITLE 10. OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY, PEN § 370**

Sidewalks too Narrow for Eat & Drink Decks.

It not possible for the city to move the parking-space encroachments onto the sidewalks because the latter too narrow. The ABC requirement for fenced-in patios and ADA requirements for accessible sidewalks result in a total required width of over ten feet.

This approximately the width of Downtown sidewalks, which additionally must provide room for parking meters, trees, fire hydrants, streetlights, and signs between the accessible sidewalk and the curb. [Exhibit-pp.35-36]

Penalties for Eat & Drink Misdemeanors.

Misdemeanors can incur penalties of \$1,000 and six-months jail time per count. As of the council meeting on 17 May 2022, since 1 January 2022, each alleged encroachment has accrued 137 counts and possibly multiples of that, when violating more than one statute. Misdemeanors have a one-year statute of limitations, so the encroachments can result in a maximum running total of 365 counts for all premises officials listed on the ABC licenses.

City officials responsible for maintaining the unlawful encroachments may have incurred roughly forty times the above numbers, considering the aggregate violations by all premises.

Conclusions.

The Covid state of emergency does not authorize the city council to maintain the eat & drink encroachments in violation of law, such as Penal Code PEN-370, ABC regulations and the Local Coastal Program.

The city council may not amend the Local Coastal Program to resolve the parking-space deficiencies because only the Commission can do that, per Keen v. MB City.

Since 1 January 2022, the city council has addressed eat & drink encroachments at several meetings and could have ordered them removed but chose not to take that action. Therefore, by maintaining the alleged illegal encroachments, both councilmembers and other responsible city officials risk prosecution by the LA County district attorney.

The city manager can order the alleged illegal temporary encroachments removed, per Manhattan Beach Municipal Code Section § 7.36.110 Revocation. It not necessary for the city council to take any further action.

Even if the alleged illegal encroachments removed now, the resulting misdemeanors possibly committed by city officials and premises owners since 1 January 2022 will remain on the books for one year each as crimes.

CA



Apr 6, 2022

Notice of the Expiration of Regulatory Relief

This Notice is to remind licensees that all regulatory relief measures implemented by the Department during the COVID-19 pandemic have ended.

The Department previously issued 18 different relief measures intended to provide flexibility to licensed businesses impacted by restrictions caused by the spread of COVID-19. While most of these relief measures were rescinded effective either June 30, 2021, or December 31, 2021, one measure, authorizing craft distillers to ship or deliver distilled spirits directly to consumers away from the licensed premises (subject to the 2.25 liters per consumer per day), was extended for a short period of time. As stated in the Ninth Notice of Regulatory Relief, this expired on March 31, 2022.

Business and Professions Code section 23504 provides that Type-74 craft distiller licensees may sell up to 2.25 liters, for consumption off the licensed premises, per consumer per day of distilled spirits manufactured or produced by the licensee. These sales may only be made to consumers in person at the licensed premises. This means that existing law does not authorize craft distillers to deliver such alcoholic beverages to consumers away from the licensed premises by any means, including by direct shipment via common carrier, delivery by employees of the licensee, or by third party delivery companies. Violation of these statutory requirements may subject a licensee to disciplinary action by the Department.

CORONAVIRUS (COVID-19) UPDATES

Expiration of Regulatory Relief

Renewal Fee Waiver

CONTACT

Additional information may be obtained by contacting:

Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Email us at headquarters@abc.ca.gov

Call (916) 419-2500


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SB-314 Alcoholic beverages. (2021-2022)

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Date Published: 10/11/2021 02:00 PM

Senate Bill No. 314

CHAPTER 656

An act to amend Sections 23399 and 25607 of, and to add and repeal Section 25750.5 of, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 314, Wiener. Alcoholic beverages.

(1) The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law generally provides that a violation of the Alcoholic Beverage Control Act is a misdemeanor.

Existing law authorizes the issuance of a caterer's permit, upon application to the department, to a licensee under an on-sale general license, an on-sale beer and wine license, a club license, or a veterans' club license, that authorizes the holder of the permit to sell alcoholic beverages at specified locations and events, including, among others, conventions, sporting events, and trade exhibits. Under existing law, licensees are required to first obtain consent from the department for sales of alcoholic beverages at each event in the form of a catering or event authorization. The department, pursuant to its powers and in furtherance of emergency declarations and orders of the Governor under the California Emergency Services Act regarding the spread of the COVID-19 virus, has prescribed temporary relief measures to suspend certain legal restrictions relating to, among other things, the expansion of a licensed footprint, sales of alcoholic beverages to-go, and delivery privileges.

This bill would prohibit the issuance of a catering authorization for use at any one premises for more than 36 events in one calendar year, except as specified.

This bill would authorize the department, for a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, to permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department, as specified. The bill would also authorize the department to extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires. The bill would make these provisions effective only until July 1, 2024, and repeal them as of that date.

EXHIBIT. EVIDENCE OF ALLEGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

(2) Existing law, with exceptions, prohibits a licensee from having, upon the licensed premises, any alcoholic beverages other than the alcoholic beverage that the licensee is authorized to sell at the premises under their license, and makes a violation of this prohibition punishable as a misdemeanor.

This bill would, as an exception to that prohibition, authorize a licensed manufacturer to share a common licensed area with multiple licensed retailers, subject to specified provisions, including, but not limited to, that (A) a licensee sharing the common licensed area with a licensed manufacturer is prohibited from selling or serving any alcoholic beverages that are manufactured, produced, bottled, processed, imported, rectified, distributed, represented, or sold by the manufacturer, as provided, (B) the licensed manufacturer may, in connection with the operation of the shared common area only, advertise or promote the common licensed area, provided that each retailer pays its pro rata share of the costs of such advertising or promotion, as specified, (C) no thing of value may be given or furnished by the manufacturer to the retailers, except as specified, (D) the manufacturer may have on the area of its licensed premises that encompass the shared common licensed area alcoholic beverages that would not otherwise be permitted on the manufacturer's licensed premises, as provided, (E) all licensees sharing the common licensed area are required to hold the same license type retailers, (F) all licensees holding licenses within the shared common licensed area are jointly responsible for compliance with all laws that may subject their license to discipline, and (G) the manufacturer maintains records necessary to establish its compliance, as specified.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The COVID-19 pandemic has had a huge financial impact on restaurants, bars, retailers, and small businesses throughout the state, including sidewalk vendors who are only now beginning to return to local streets, boardwalks, and piers.

(b) Senate Bill 946 (Chapter 459 of the Statutes of 2018) established a statewide framework for the local regulation of sidewalk vendors to sell food or merchandise.

(c) Nothing in this measure should unintentionally roll back existing protections given to these microbusinesses under the existing sidewalk vendor law, create additional restrictions, limitations, or requirements on local sidewalk vendors, or limit any local authority from creating, maintaining, and enforcing a local sidewalk vendor program.

(d) These protections ensure that entrepreneurial microbusinesses, many of whom come from low-income and immigrant communities, are protected and promoted in our collective push for statewide economic revitalization and resumption of commercial activities, post-pandemic.

SEC. 2. Section 23399 of the Business and Professions Code is amended to read:

23399. (a) An on-sale general license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold. Any licensee under an on-sale general license, an on-sale beer and wine license, a club license, or a veterans' club license may apply to the department for a caterer's permit. A caterer's permit under an on-sale general license shall authorize the sale of beer, wine, and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under an on-sale beer and wine license shall authorize the sale of beer and wine for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under a club license or a veterans' club license shall authorize sales at these events only upon the licensed club premises.

(b) Any licensee under an on-sale general license or an on-sale beer and wine license may apply to the department for an event permit. An event permit under an on-sale general license or an on-sale beer and wine license shall authorize, at events held no more frequently than four days in any single calendar year, the sale of beer, wine, and distilled spirits only under an on-sale general license or beer and wine only under an on-sale beer and wine license for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public.

EXHIBIT. EVIDENCE OF ALLEGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

(c) (1) This section shall in no way limit the power of the department to issue special licenses under the provisions of Section 24045 or to issue daily on-sale general licenses under the provisions of Section 24045.1. Consent for sales at each event shall be first obtained from the department in the form of a catering or event authorization issued pursuant to rules prescribed by it. Any event authorization shall be subject to approval by the appropriate local law enforcement agency. The daily fee for each catering or event authorization shall be based on the estimated attendance at each day of the event, as follows:

(A) One hundred dollars (\$100) when anticipated attendance is less than 1,000 people.

(B) Three hundred twenty-five dollars (\$325) when anticipated attendance is at least 1,000 people and less than 5,000 people.

(C) One thousand dollars (\$1,000) when anticipated attendance is 5,000 people or more.

(2) All fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

(d) At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises.

(e) The fee for a caterer's permit for a licensee under an on-sale general license, a caterer's permit for a licensee under an on-sale beer and wine license, or an event permit for a licensee under an on-sale general license or an on-sale beer and wine license shall be the annual fee as specified in subdivision (b) of Section 23320, and the fee for a caterer's permit for a licensee under a club license or a veterans' club license shall be as specified in Section 23320, and the permit may be renewable annually at the same time as the licensee's license. A caterer's or event permit shall be transferable as a part of the license.

(f) A catering authorization shall not be issued for use at any one premises for more than 36 events in one calendar year, except when the department determines additional events may be catered to satisfy substantial public demand.

SEC. 3. Section 25607 of the Business and Professions Code is amended to read:

25607. (a) Except as provided in subdivisions (b), (c), (d), and (e), it is unlawful for any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell at the premises under their license. It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom the licenses were issued. Every person violating the provisions of this section is guilty of a misdemeanor. The department may seize any alcoholic beverages found in violation of this section.

(b) Except as provided in subdivision (c), a bona fide public eating place for which an on-sale beer and wine license has been issued may have upon the premises brandy, rum, or liqueurs for use solely for cooking purposes.

(c) (1) A licensed winegrower, licensed beer manufacturer that holds a small beer manufacturer's license, and a licensed craft distiller, in any combination, whose licensed premises of production are immediately adjacent to each other and which are not branch offices, may, with the approval of the department and under such conditions as the department may require, share a common licensed area in which the consumption of alcoholic beverages is permitted, only under all of the following circumstances:

(A) The shared common licensed area is adjacent and contiguous to the licensed premises of the licensees.

(B) The licensed premises of the licensees are not branch offices.

(C) The shared common licensed area shall be readily accessible from the premises of the licensees without the necessity of using a public street, alley, or sidewalk.

(D) Except as otherwise authorized by this division, the alcoholic beverages that may be consumed in the shared common licensed area shall be purchased by the consumer only from the licensed winegrower, the licensed beer manufacturer, or the licensed craft distiller.

EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

(E) The licensed winegrower, the licensed beer manufacturer, and the licensed craft distiller shall be jointly responsible for compliance with the provisions of this division and for any violations that may occur within the shared common licensed area.

(2) Nothing in this subdivision is intended to authorize the licensed winegrower, the licensed beer manufacturer, or the licensed craft distiller to sell, furnish, give, or have upon their respective licensed premises any alcoholic beverages, or to engage in any other activity, not otherwise authorized by this division, including, without limitation, the consumption on the premises of any distilled spirits purchased by consumers for consumption off the premises pursuant to Section 23504 or the consumption of distilled spirits other than as permitted by Section 23363.1.

(d) The holder of a beer manufacturer's license, winegrower's license, brandy manufacturer's license, distilled spirits manufacturer's license, craft distiller's license, any rectifier's license, any importer's license, or any wholesaler's license, that holds more than one of those licenses for a single premises, may have alcoholic beverages that are authorized under those licenses at the same time anywhere within the premises for purposes of production and storage, if the holder of the licenses maintains records of production and storage that identify the specific location of each alcoholic beverage product within the premises. Nothing in this subdivision is intended to allow a licensee to hold licenses, alone or in combination, or to exercise any license privileges, not otherwise provided for or authorized by this division.

(e) Notwithstanding any provision to the contrary, a licensed manufacturer may share a common licensed area with multiple licensed retailers, subject to the provisions of this subdivision.

(1) No retail licensee sharing the common licensed area with a licensed manufacturer shall sell or serve any alcoholic beverages that are manufactured, produced, bottled, processed, imported, rectified, distributed, represented, or sold by the manufacturer, directly or indirectly. This prohibition shall apply to all licensed premises owned or operated, in whole or in part, by the retail licensee anywhere in the state. No wholesaler shall be responsible for compliance with this paragraph.

(2) The licensed manufacturer may, in connection with the operation of the shared common area only, advertise or promote the common licensed area, including, but not limited to, any advertising or promotion related to the licensed retailers sharing the common licensed area, provided that each retailer pays its pro rata share of the costs of that advertising or promotion. The cost attributed to each retailer's pro rata share shall not be less than the current market price for that advertising or promotion.

(3) The licensed manufacturer may, in connection with the operation of the shared common area only, pay its pro rata share of the cost of the operation of the shared common area, including, but not limited to, the cost of renting, utilities, or any other operating costs for the area.

(4) Except as provided in paragraphs (2) and (3), no other thing of value may be given or furnished by the manufacturer to the retailers.

(5) The manufacturer may have on the area of its licensed premises that encompass the shared common licensed area alcoholic beverages that would not otherwise be permitted on the manufacturer's licensed premises. This provision does not authorize the possession of alcoholic beverages not otherwise permitted on the manufacturer's licensed premises that is not part of the shared common licensed area.

(6) All retailers sharing the common licensed area shall hold the same license type. Nothing in this subdivision shall authorize any of the retailers to exercise license privileges that are not authorized by their license.

(7) All licensees holding licenses within the shared common licensed area shall be jointly responsible for compliance with all laws that may subject their license to discipline.

(8) A wholesaler does not directly or indirectly underwrite, share in, or contribute to any costs related to the common licensed area.

(9) The manufacturer maintains records necessary to establish its compliance with this section.

(10) (A) This subdivision does not authorize a licensed manufacturer to share a common licensed area with a single retailer or with multiple retailers under common ownership, in whole or in part.

(B) This subdivision is intended to be a narrow exception to the separation of manufacturers and retailers. This subdivision shall be narrowly construed.

EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

(11) The Legislature finds and declares both of the following:

(A) It is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques.

(B) Any exception established by the Legislature to the general prohibition against tied interests must be limited to the express terms of the exception so as to not undermine the general prohibitions.

SEC. 4. Section 25750.5 is added to the Business and Professions Code, to read:

25750.5. (a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization authorizes the on-sale consumption of those alcoholic beverages for which the licensee has on-sale privileges on property that is adjacent to the licensed premises, under the control of the licensee. The department may extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires.

(b) The COVID-19 Temporary Catering Authorization approved by the department shall be subject to those terms and conditions established by the department and as stated in the Fourth Notice of Regulatory Relief and the related application form, including, but not limited to, that the authorization may be canceled as determined by the department, as provided in the Fourth Notice, which includes, but is not limited to, upon objection by local law enforcement or if operation of the temporarily authorized area is inconsistent with state or local public health directives.

(c) Notwithstanding any other provision of law, if the department determines that any licensee is found to be abusing the relief provided by this section, or if the licensee's actions jeopardize public health, safety, or welfare, the department may summarily rescind the relief as to that licensee at any time.

(d) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the economic loss restaurants and bars have sustained after being hit extremely hard by COVID-19 and to protect against further loss, which will help ensure public health and safety, it is necessary for this act to take effect immediately.



AB-61 Business pandemic relief. (2021-2022)

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Date Published: 10/11/2021 02:00 PM

Assembly Bill No. 61

CHAPTER 651

An act to add and repeal Section 25750.5 of the Business and Professions Code, to add and repeal Section 65907 of the Government Code, and to amend Section 114067 of the Health and Safety Code, relating to business pandemic relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 08, 2021. Filed with Secretary of State
October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 61, Gabriel. Business pandemic relief.

(1) Existing law, the Alcoholic Beverage Control Act, is administered by the Department of Alcoholic Beverage Control and regulates the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state. The act requires the department to make and prescribe rules to carry out the purposes and intent of existing state constitutional provisions on the regulation of alcoholic beverages, and to enable the department to exercise the powers and perform the duties conferred upon it by the state constitution and the act, not inconsistent with any statute of this state. The act makes it unlawful for any person other than a licensee of the department to sell, manufacture, or import alcoholic beverages in this state, with exceptions. The department, pursuant to its powers and in furtherance of emergency declarations and orders of the Governor under the California Emergency Services Act regarding the spread of the COVID-19 virus, has established prescribed temporary relief measures to suspend certain legal restrictions relating to, among other things, the expansion of a licensed footprint, sales of alcoholic beverages to-go, and delivery privileges.

This bill would authorize the department, for a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, to permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief Issued by the department, as specified. The bill would also authorize the department to extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires. The bill would make these provisions effective only until July 1, 2024, and repeal them as of that date.

(2) The Planning and Zoning Law authorizes the legislative body of any city or county to adopt ordinances that regulate zoning within its jurisdiction, as specified. Under that law, variances and conditional use permits may be granted if provided for by the zoning ordinance.

This bill would, to the extent that an outdoor expansion of a business to mitigate COVID-19 pandemic restrictions on indoor dining interferes with, reduces, eliminates, or impacts required parking for existing uses,

EXHIBIT. EVIDENCE OF ALLEGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

require a local jurisdiction that has not adopted an ordinance that provides relief from parking restrictions for expanded outdoor dining areas to reduce the number of required parking spaces for existing uses by the number of spaces that the local jurisdiction determines are needed to accommodate an expanded outdoor dining area. Because the bill would require local officials to perform additional duties, the bill would impose a state-mandated local program. The bill would make these provisions operative on January 1, 2022, and repeal them on July 1, 2024.

(3) Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities. Existing law restricts satellite food service to limited food preparation in a fully enclosed permanent food facility that meets specified requirements. Existing law requires a permanent food facility, prior to conducting satellite food service, to submit to the enforcement agency written operating standards.

This bill would, for a period of one year after the end of the state of emergency proclaimed by the Governor on March 4, 2020, related to the COVID-19 pandemic, or until January 1, 2024, whichever occurs first, authorize a permitted food facility within any local jurisdiction that is subject to retail food operation restrictions related to a COVID-19 public health response to prepare and serve food as a temporary satellite food service without obtaining a separate satellite food service permit or submitting written operating procedures. This bill would require the written operating procedures to be maintained onsite for review, upon request, by the local jurisdiction.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25750.5 is added to the Business and Professions Code, to read:

25750.5. (a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization authorizes the on-sale consumption of those alcoholic beverages for which the licensee has on-sale privileges on property that is adjacent to the licensed premises, under the control of the licensee. The department may extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires.

(b) The COVID-19 Temporary Catering Authorization approved by the department shall be subject to those terms and conditions established by the department and as stated in the Fourth Notice of Regulatory Relief and the related application form, including, but not limited to, that the authorization may be canceled as determined by the department, as provided in the Fourth Notice, which includes, but is not limited to, upon objection by local law enforcement or if operation of the temporarily authorized area is inconsistent with state or local public health directives.

(c) Notwithstanding any other provision of law, if the department determines that any licensee is found to be abusing the relief provided by this section, or if the licensee's actions jeopardize public health, safety, or welfare, the department may summarily rescind the relief as to that licensee at any time.

(d) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.

SEC. 2. Section 65907 is added to the Government Code, to read:

~~**65907.** (a) To the extent that an outdoor expansion of a business to mitigate COVID-19 pandemic restrictions on indoor dining interferes with, reduces, eliminates, or impacts required parking for existing uses, a local~~

EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

jurisdiction that has not adopted an ordinance that provides relief from parking restrictions for expanded outdoor dining areas shall reduce the number of required parking spaces for existing uses by the number of spaces that the local jurisdiction determines are needed to accommodate an expanded outdoor dining area.

(b) This section shall become operative on January 1, 2022.

(c) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3. Section 114067 of the Health and Safety Code is amended to read:

114067. (a) Satellite food service is restricted to limited food preparation.

(b) Satellite food service shall only be operated by a fully enclosed permanent food facility that meets the requirements for food preparation and service and that is responsible for servicing the satellite food service operation.

(c) Prior to conducting satellite food service, the permitholder of the permanent food facility shall submit to the enforcement agency written standard operating procedures that include all of the following information:

(1) All food products that will be handled and dispensed.

(2) The proposed procedures and methods of food preparation and handling.

(3) Procedures, methods, and schedules for cleaning utensils, equipment, structures, and for the disposal of refuse.

(4) How food will be transported to and from the permanent food facility and the satellite food service operation, and procedures to prevent contamination of foods.

(5) How potentially hazardous foods will be maintained in accordance with Section 113996.

(d) All food preparation shall be conducted within a food compartment or fully enclosed facility approved by the enforcement officer.

(e) Satellite food service areas shall have overhead protection that extends over all food handling areas.

(f) Satellite food service operations that handle nonprepackaged food shall be equipped with approved handwashing facilities and warewashing facilities that are either permanently plumbed or self-contained.

(g) Notwithstanding subdivision (f), the local enforcement agency may approve the use of alternative warewashing facilities.

(h) During nonoperating hours and periods of inclement weather, food, food contact surfaces, and utensils shall be stored within any of the following:

(1) A fully enclosed satellite food service operation.

(2) Approved food compartments where food, food contact surfaces, and utensils are protected at all times from contamination, exposure to the elements, ingress of vermin, and temperature abuse.

(3) A fully enclosed permanent food facility.

(i) Satellite food service activities shall be conducted by and under the constant and complete control of the permitholder of the fully enclosed permanent food facility, or the duly contracted personnel of, or third-party providers to, the permitholder.

(j) For purposes of permitting and enforcement, the permitholder of the permanent food facility and the permitholder of the satellite food service shall be the same.

(k) (1) A permitted food facility within any local jurisdiction that is subject to retail food operation restrictions related to a COVID-19 public health response may prepare and serve food as a temporary satellite food service without obtaining a separate satellite food service permit or submitting written operating procedures pursuant to subdivision (c). The written operating procedures shall be maintained onsite for review, upon request, by the local jurisdiction.

~~EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY~~

(2) This subdivision shall remain operative for a period of one year following the end, pursuant to Section 8629 of the Government Code, of the state of emergency proclaimed by the Governor on March 4, 2020, related to the COVID-19 pandemic, or until January 1, 2024, whichever occurs first.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide relief to California businesses at the earliest possible time, it is necessary that this act take effect immediately.

Power to make rule prohibiting retail licensee from permitting any female employee to accept from patron upon licensed premises proffered drink of alcoholic beverage. 23 Ops. Cal. Atty. Gen. 199.

Power to make rule prohibiting ownership interest, direct or indirect, upon part of any law enforcement official in any license issued under Alcoholic Beverage Control Act or in any business operated under such license. 23 Ops. Cal. Atty. Gen. 203.

Power to make rule prohibiting delivery and transfer of alcoholic beverage licenses issued pursuant to § 24044 until such time as premises in connection with which license is sought are in fact equipped and completed for actual and legitimate retail sale of alcoholic beverages. 23 Ops. Cal. Atty. Gen. 206.

Authority to adopt rule barring licensees from maintaining insurance purporting to protect the holder of license from loss by suspension or revocation. 31 Ops. Cal. Atty. Gen. 79.

Department of Alcoholic Beverage Control is not authorized to adopt regulation allowing retail licensee to transport tax paid alcoholic beverages to retailer's out-of-state Free Port warehouse for "temporary retention" prior to delivery to retailer's licensed premises in California if such retention constitutes storage; Department is not authorized to adopt regulation allowing retail licensee to transport alcoholic beverages stored by retailer in a Free Port warehouse facility outside the state to retailer's licensed premises in California. 69 Ops. Cal. Atty. Gen. 191.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross References:

Alcoholic beverages control: Const Art XX § 22.
Administrative adjudication: Gov C §§ 11500 et seq.

Administrative Code and Agency References

Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 1 et seq.

Law Review Articles:

Liquor control. 38 CLR 79.
Some aspects of liquor control in California. 39 CLR 82.
Alcoholic control administration. 20 St BJ 59.

Treatises:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Right to attack validity of administrative regulations issued under licensing law. 65 ALR2d 660.

§ 25750.5. COVID-19 Temporary Catering Authorization [Effective until July 1, 2023; Repealed effective July 1, 2024]

(a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance

with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization authorizes the on-sale consumption of those alcoholic beverages for which the licensee has on-sale privileges on property that is adjacent to the licensed premises under the control of the licensee. The department may extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires.

(b) The COVID-19 Temporary Catering Authorization approved by the department shall be subject to those terms and conditions established by the department and as stated in the Fourth Notice of Regulatory Relief and the related application form, including, but not limited to, that the authorization may be canceled as determined by the department, as provided in the Fourth Notice, which includes, but is not limited to, upon objection by local law enforcement or if operation of the temporarily authorized area is inconsistent with state or local public health directives.

(c) Notwithstanding any other provision of law, if the department determines that any licensee is found to be abusing the relief provided by this section, or if the licensee's actions jeopardize public health, safety, or welfare, the department may summarily rescind the relief as to that licensee at any time.

(d) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.

HISTORY:

Added Stats 2021 ch 656 § 4 (SB 314), effective October 8, 2021, repealed July 1, 2024.

Editor's Notes—For legislation findings and declarations, see the 2021 Note following B & P C § 23399.

§ 25750.5. Temporary Catering Authorization [Effective until July 1, 2023; Repealed effective July 1, 2024]

(a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization au-



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PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] (Part 1 enacted 1872.)

TITLE 10. OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY [369a - 402c] (Title 10 enacted 1872.)

[370.] Section Three Hundred and Seventy. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.

(Amended by Code Amendments 1873-74, Ch. 614.)

Information Regarding Alcoholic Beverage License Applications and Protests

Public Notice of Application

A person or business (applicant) planning to open a new ABC-licensed business, change the ownership, or move an existing business to a new site must apply for the proper license at an ABC district office. As part of the process, notice must be given to the public and to local officials. This notice occurs in several ways:

- **Public Notice** — The applicant must post a white or yellow public notice (Form ABC-207 or -207-B) in a prominent place at the proposed premises for 30 days. (Bus. & Prof. Code § 23985.)
- **Written Notice by Mail** — ABC mails a copy of the application to the sheriff, chief of police, district attorney, and city council (or the board of supervisors if in an unincorporated area). In some cases, the applicant must also mail written notice to residents and owners of real property within a 500 foot radius of the proposed business. (Bus. & Prof. Code §§ 23985.5 & 23987.)

Filing Your Protest

Any person may protest an ABC license Application using this form. The deadline to file a protest is 30 days from whichever date is later:

- The date the Public Notice is first posted at the proposed business; *or*
- The date the applicant mails written notice to residents or owners of real property within a 500' radius.

You may mail, hand deliver, or fax your signed and dated protest. (Code of Civ. Proc. § 1013.) You may also e-mail a scanned signed protest, for example, in .pdf or .jpg format.

If sent by US Mail, the date of the postmark is deemed the filing date. If delivered by courier service (UPS, Fed Ex, etc.), or e-mail, your protest must be received by ABC by the 30th day. If the 30th day is a holiday or weekend, then your protest must be received on the next business day.

Any protest received after the 30 day deadline cannot be considered. (Bus. & Prof. Code § 24013.)

We encourage you to contact the local ABC district office to find out the exact deadline for filing your protest or to speak with the assigned staff member about your concerns. District office information is found on our website at: www.abc.ca.gov. Please provide the exact address of the proposed business and the applicant's name.

If you feel that there was insufficient notice posted, you must notify the Department within 10 days of becoming aware of the posting. An extension to file a protest may be granted by the Department, but the burden to show why the extension should be granted is on the person requesting the extension. An affidavit or other document submitted under penalty of perjury related to the facts should be submitted.

Please print legibly. Incomplete and/or illegible information will cause the protest to be rejected. The protest must be **signed**. Failure to do so will result in the protest being rejected.

Protests may be made only by individuals. If multiple people wish to file protests they must each complete their own form. Anonymous protests will be rejected. Protests must be location-specific.

A copy of valid protests will be provided to the applicant as part of the licensing process.

All protests submitted to the ABC are public records and are open to inspection pursuant to the California Public Records Act. (Gov. Code § 6254 *et seq.*)

Professional legal advice is not required to file a protest.

Public Officials

If the protest is made by a public officer acting in his or her official capacity, the attached form with the declaration under penalty of perjury is not required, but the protest should be on official letterhead and show the public official's capacity. Requests for time extensions are pursuant to Business & Professions Code section 23987. Contents of a protest submitted as a public official's official protest must meet all other requirements of this regulation.

Grounds for Protest

The California Constitution provides that the sale, purchase, and consumption of alcoholic beverages in licensed premises are legal. Therefore, ABC cannot deny a license solely because a protestant has personal beliefs against the use of alcoholic beverages - denial must relate to public welfare and morals. (Cal. Const. art. XX. Sec. 22) Some of the grounds of protest, which could relate to public welfare and morals, are as follows:

1. The premises is located within the immediate vicinity of a school, church, hospital, or children's playground and the normal operation of the licensed premises would interfere with their functions. (Bus. & Prof. Code § 23789.)

Be specific as to how the sale of alcoholic beverages will adversely affect the facility.

Mere proximity to such a facility is not sufficient legal grounds to deny the license.

2. The premises is located in a residential area and the normal operation of the licensed premises would interfere with the quiet enjoyment of their property by the residents of the area. (Dept.'s. Rule 61.4, found in tit. 4, Cal. Code Regs.) Be specific as to how the sale of alcoholic beverages will adversely affect the residents.

3. The premises or parking lot is located within 100 feet of a residence and the applicant has failed to establish that the operation of the licensed premises would not interfere with the quiet enjoyment of the property by the residents. (Rule 61.4.) This only applies to premises that have not been operated with the same type license within 90 days of the application.

4. Licensing the premises would create a public nuisance as defined in Penal Code Section 370. State specific facts leading to this conclusion.

5. Issuance of the license would result in or add to an undue concentration of licenses. (Bus. & Prof. Code 23958 & 23958.4.) List any problems that existing licensed businesses in the area may be causing. Note that this is not a valid ground of protest if the application is for a premises-to-premises transfer within the same census tract; if a current license is being exchanged for a different license type with fewer privileges; if the license applied for will be in the same location as a

current license; if the license will not add to the existing number of licenses within the census tract, or if the license will be a retail license type exempted in 23958.4, subdivision (c)(5)(B).

6. The applicant is not the true or sole owner of the business to be licensed. (Bus. & Prof. Code §§ 23300, 23355, 23950, *et seq.*) You must present testimony or other evidence as to the true ownership.

The following are grounds usually cited by city or county enforcement agencies only. But they can be used by persons who have independent, adequate evidence of same:

7. Issuance of the license to the premises would tend to create a law enforcement problem, or aggravate an existing police problem. (Bus. & Prof. Code §23958.)

8. Licensing the premises would be contrary to the provisions of a valid zoning ordinance of any city or county. (Bus. & Prof. Code § 23790.)

9. The applicant has been convicted of a felony, a crime involving moral turpitude, or one of the offenses listed in the Alcoholic Beverage Control Act section 24200, subdivision (b). (Bus. & Prof. Code § 23952.)

10. The applicant has a police record that disqualifies him or her for a license. (Cal. Const. art. XX., sec. 22.)

11. The applicant has misrepresented a material fact in obtaining a license. (Bus.& Prof. Code § 24299, subd. (c).)

Tips Before Filing a Protest:

For your protest to be more effective, it should be specific and not just a restatement of the above examples. Failure to be specific may cause the protest to be rejected.

Note - Parking or Traffic will not be considered a valid protest issue if the local jurisdiction has issued a Conditional Use Permit (CUP) for the premises OR if the local jurisdiction has confirmed that the use is appropriate to its zoning ordinances.

Some people find it worthwhile to meet with the applicant before filing a protest. This lets the applicant know that and gives the applicant a chance to respond to your concerns.

In some cases, the applicant may be willing to agree to certain conditions. For example, if there could be late-night noise, the applicant may be

willing to stop alcohol sales after a certain time. The parties should contact the ABC staff member assigned to the case if the applicant is willing to agree to conditions that alleviate the concerns of the protestant. ABC will then evaluate if the proposed condition is appropriate to impose on the license.

After Your Protest is Submitted

You will be notified by letter whether or not your protest is accepted or rejected. Accepted protests may be reassessed during the license investigation and may be subsequently rejected. If that happens, you will be notified. **If your protest is rejected**, you may request a hearing within 10 days following issuance of the license. It is your responsibility to determine when the license was issued; ABC will not notify you. (Bus. & Prof. Code § 24013.)

If you change your address, it is your responsibility to notify the Department. Letters returned by the Post Office without a forwarding address will be considered as an abandonment of the protest.

Failure to respond to communications from the Department to the protestant's address shall be considered abandonment of the protest.

Investigation

After a person or business applies for the ABC license, the Department conducts a thorough investigation, as required by law. The ABC agent or licensing representative looks into the applicant's personal history, the applicant's source of funds, the suitability of the proposed premises, and any issues raised in the protest(s). (Bus. & Prof. Code § 23958.)

Interim Operating Permit. If ABC recommends approval of a protested license application, the applicant may apply for an Interim Operating Permit. This allows the business to sell alcoholic beverages pending the protest hearing and any appeals. (Bus. & Prof. Code § Sec. 24044.5.)

Public Hearing

Purpose. Under the California Alcoholic Beverage Control Act (Bus. & Prof. Code § 23000 *et seq.*), a hearing may be held on a valid protest. This affords the applicant the right to meet the objections with any evidence he or she may have.

However, the submission of your protest does not complete the matter. You will be notified by letter regarding a hearing on your protest if a hearing is scheduled. Each protestant shall be considered a party under Government Code 11505. You or your authorized representative will need to attend the hearing to present testimony and/or evidence to support your protest. If you do not request a hearing or request a hearing but fail to appear, your protest will be considered withdrawn.

Time and Place of Hearing. The hearing will take place in the county seat for the business. However, if the governing body of a city files an official protest, the hearing shall be held within such city.

After the Hearing. After the hearing, the administrative law judge will take the protest under advisement. The judge will issue a proposed decision, which is a ruling, usually within 30 days, for review by the ABC Director. ABC may adopt or reject the proposed decision of the judge.

Once ABC has rendered a decision, any party to the matter may appeal the decision to the ABC Appeals Board, an independent, three-member Board appointed by the Governor.

The ABC Appeals Board decision can then be appealed to the State Courts of Appeal and to the State Supreme Court.

Tips for Public Hearing

- If there are multiple protestants, decide who will speak on behalf of the group at the hearing. An attorney is not needed for this role. In fact, local community members may be most effective in raising community issues.
- To be most effective, all presentations should be short and concise and not repeat other presentations.
- Protestants may submit testimony and other evidence such as graphs, tables, pictures, photographs, video, etc. These items do not need to be professionally done. However, because this hearing is a legal proceeding, any evidence submitted is subject to discovery rules and objection. The judge will keep and be able to study any materials entered into evidence.

For the location of the ABC district office nearest you, consult your phone directory or visit our website at: www.abc.ca.gov.

**PARKING-DECK ENCROACHMENTS INTO MB BLVD PARKING SPACES
NOT PERMITTED BY LOCAL COASTAL PLAN**



**900 CLUB UNLAWFUL SIDEWALK ENCROACHMENT
WITHOUT PATRON-PUBLIC PHYSICAL SEPARATION**



**UNCORKED UNLAWFUL SIDEWALK ENCROACHMENT
WITHOUT PATRON-PUBLIC PHYSICAL SEPARATION**



**ROCKEFELLOR UNLAWFUL PARKING-DECK EXPOSURE TO SIDEWALK
WITHOUT PATRON-PUBLIC PHYSICAL SEPARATION**



LIQUOR LICENSE ADVISOR®
23867 Corte Emerado
Murrieta, CA 92562-3539
Phone (951) 226-4038

May 16, 2022

Donald A. McPherson
1014 - 1st Street
Manhattan Beach, CA 90266

RE: 900 Manhattan Ave, Manhattan Beach (ABC License #399960)
1000 Manhattan Ave. #B, Manhattan Beach (ABC License #623043)

Dear Dr. McPherson:

This is in response to your request for my expert opinion on the referenced ABC-licensed premises. My comments and opinions are based on my 29 years of experience working at the Department of Alcoholic Beverage Control (ABC), including 24 years as a sworn peace officer (Investigator, Supervising Investigator, and District Administrator). Among other duties, I designed and managed the state's Licensee Education on Alcohol and Drugs (LEAD) Program that provides training to licensees on liquor laws, rules, regulations.

I have also been self-employed for 13 years a Liquor License Advisor®, an independent liquor license consultant and expert witness in alcohol licensing, compliance, and standard of care. In addition, as co-founder and partner in Alcohol Policy Advisors, LLC, I designed and provided certified *Nuisance-Free Bars* training to police and city planners to prevent and reduce alcohol-related problems at on-sale licensed premises.

Report Summary

Based on my review of the two photographs below (900 Club and Uncorked in Manhattan Beach), I conclude that these two licensed premises are not in compliance ABC regulations. Specifically, the outdoor eating and drinking areas are uncontrolled because they not physically separate from the public right of ways.

Donald A. McPherson
May 16, 2022
Page Two



Areas that May be Licensed

An ABC license is issued to a specific person for a specific premises. The relevant ABC policy reads, in pertinent part:

“1. Qualification of Retail Licensed Premises:

- A. The Department may license a location or that portion of a location where the applicant has sole control of sales and service of alcoholic beverages and shall be responsible for any violation of the Alcoholic Beverage Control Act occurring anywhere within the licensed premises.
- B. The following premises may be licensed provided they meet the requirements of A above: . . .

(6) A location where all businesses conducted within the boundaries of the premises are under the control of the applicant. The premises may consist of a portion of a building, a building, or buildings and contiguous property.

(a) Contiguous property may include, but is not limited to, patios, pavilions, pool-sides, or recreational facilities adjacent to buildings being licensed. These may be designated at the time of application as a portion of the licensed premises.

(b) All property providing access between partitions of such licensed premises must be specifically designated and included as part of the licensed premises.”¹

¹ Department of Alcoholic Beverage Control. Instructions, Interpretations & Procedures, L-189 paragraph 1, March 14, 1973.

Donald A. McPherson
May 16, 2022
Page Three

In some cases, sidewalks may be licensed. According to ABC policy:

“Public sidewalks contiguous to a licensed premises are not to be included as part of the premises unless the licensee has express permission from the municipality. Consent must be in writing with the precise area that may be used for the sale and service of alcoholic beverages clearly delineated.”²

The licensee is responsible for controlling alcohol sales, service, and consumption in all licensed areas both interior and exterior. Alcohol may not be consumed in a licensee’s parking lot or shared parking lot.

Typical physical control measures required by the ABC may include walls, fences, rope & stanchions, potted plants, and the like. Each licensed premises is unique and requires investigation prior to approval of any outside consumption areas and intended control measures. Other control measures, typically required via license conditions (operating restrictions), include for example:

- An employee must be on the patio when alcohol is served and consumed, and
- There must be a clear view of the exterior dining area from the inside of the premises

Information Required for ABC License Application

Every applicant for an ABC license must provide the ABC with certain information, including but not limited, a licensed premises diagram and a supplemental diagram, Forms ABC-257 and 253, respectively. (Exhibit 1)

Form ABC-257, licensed premises diagram, must depict the entrances, exits, interior walls, and exterior boundaries of the premises to be licensed, including dimensions and identification of each room (e.g., “storage,” “office,” “dining.”). The area to be licensed must be outlined in red. The reverse of Form ABC-257 consists of a “Planned Operation” questionnaire asking the applicant, among other things, whether the business has a patio, shares an area with another licensee, has a parking lot and if so, whether the parking lot is shared with other businesses.

Form ABC-257, Supplemental Diagram, must contain a sketch of the area on which the licensed premises is or will be located. It must show adjacent structures and nearest cross streets.

² Department of Alcoholic Beverage Control. Instructions, Interpretations and Procedures, L-191 paragraph 9, August 28, 1990

Donald A. McPherson
May 16, 2022
Page Four

ABC Must Pre-Approve Any Physical or Character Changes in a Licensed Premises

Once a person is licensed, any premises expansion (e.g., addition of outside dining) must be applied-for, investigated, and pre-approved by the ABC. Similarly, any change in premises designation (reduction of licensed area or change in character of the business) must be pre-approved.

COVID-19 Relief Measures

During the COVID-19 pandemic, ABC issued 18 relief measures to help licensees economically. One of them, *The Fourth Notice of Regulatory Relief*, allowed licensees to serve alcohol on sidewalks and parking lot areas upon application and approval of a COVID-19 Temporary Catering Authorization. Acceptable locations for a COVID-19 Temporary Catering Authorization included but were not limited to “sidewalks and other public thoroughfares that are closed to the public access during the period of service.”³ These relief measures, however, lapsed March 31, 2022. (Exhibit 3)

On October 8, 2021, the legislature amended the ABC Act to permit alcohol service and consumption on unlicensed public right of way adjacent to premises and in outdoor premises areas. (Exhibit 2, Business & Professions Code § 25750.50) This provision, which lapses July 1, 2024, provides licensees the opportunity to have their licenses amended to extend licensed areas outdoors if they had applied for a permanent expansion of their premises prior to March 5, 2021. As noted in Exhibit 2, however, the additional licensed area must comply with existing state and local government regulations.

Conclusions

The outside eating and drinking areas shown in the two Exhibit 1 photos reflect uncontrolled drinking spaces. There are not, but should be, physical separations between the licensed areas and the public sidewalk. Furthermore, employees must occupy the patios whenever alcohol is served or consumed. These features of the encroachments violate the Temporary Catering Authorization, ABC Act B&P § 25750.5.

Sincerely,

/s/ Lauren C. Tyson

Lauren C. Tyson

Enclosures (citations)

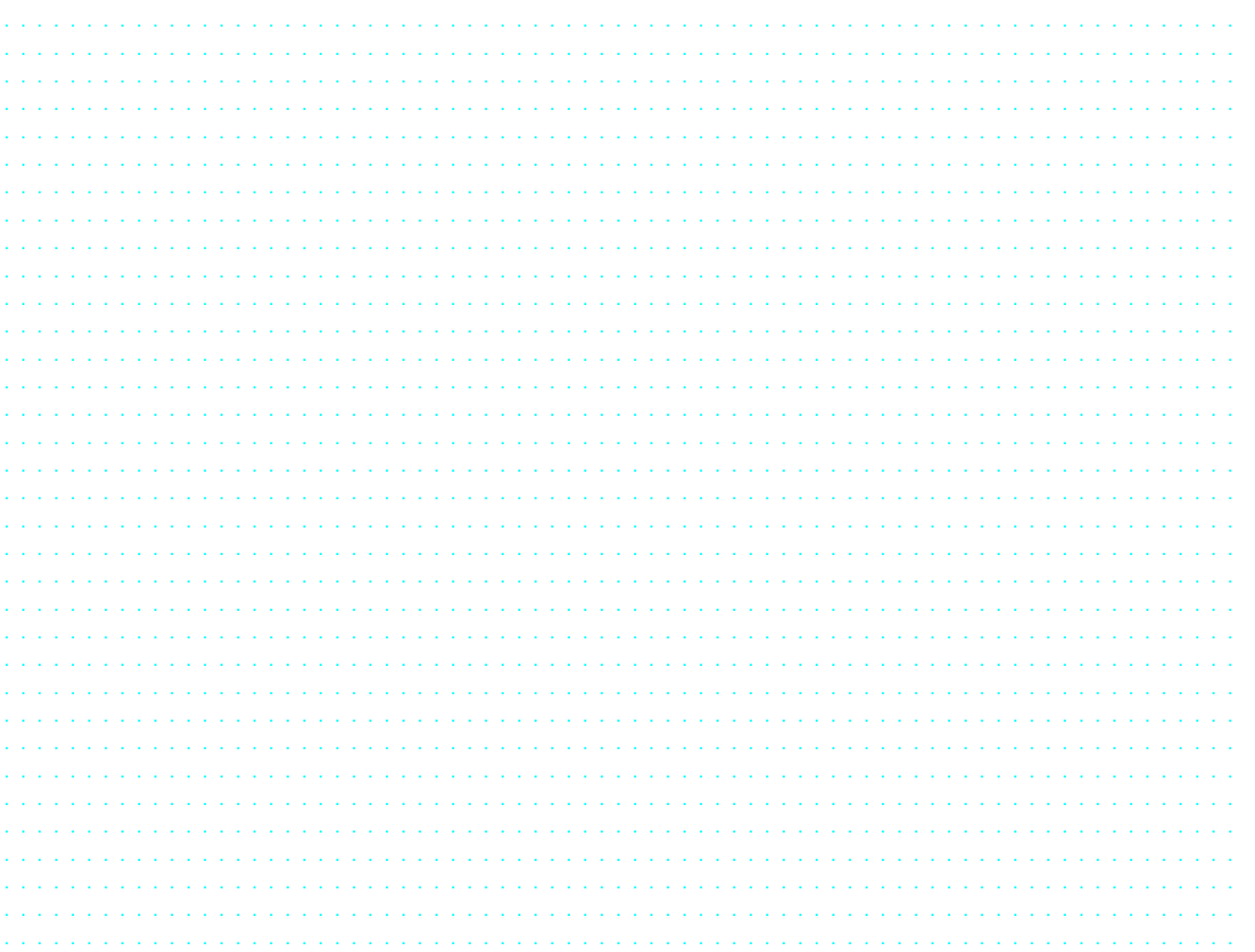
³ Form ABC 218-CV19 Instructions (10/21)

**EXHIBIT EVIDENCE OF ALLEGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY
LICENSED PREMISES DIAGRAM (RETAIL)**

1. APPLICANT'S NAME(S) (If an individual, last name, first name, middle name. Name of entity if corporation, limited partnership or limited liability company.)	2. LICENSE TYPE
3. PREMISES ADDRESS (Street number and name, city, zip code)	4. NEAREST CROSS STREET

The diagram below is a true and correct description of the entrances, exits, interior walls and exterior boundaries of the premises to be licensed, including dimensions and identification of each room (i.e., "storeroom", "office", etc.). **The area to be licensed must be outlined in red.**

DIAGRAM



It is hereby declared that the above-described premises and character of premises, as indicated on the reverse side, will not be changed in accordance with Rule 64.2 of the California Code of Regulations without first notifying and securing approval of the Department of Alcoholic Beverage Control. Substantial changes to the premises may require an application fee in accordance with Section 24072 of the Business and Professions Code. I declare under penalty of perjury that the foregoing is true and correct.

APPLICANT SIGNATURE (Only one signature required)	DATE SIGNED
---	-------------

FOR ABC USE ONLY

CERTIFIED CORRECT (Signature)	PRINTED NAME	INSPECTION DATE
-------------------------------	--------------	-----------------

EXHIBIT 1. FORMS ABC-257 AND ABC-253 ALLEGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

PLANNED OPERATION (RETAIL)

SECTION I - FOR ALL RETAIL APPLICANTS

1. APPLICANT'S NAME(S) If an individual, last name, first name, middle name. Name of entity if corporation, limited partnership or limited liability company. 2. LICENSE TYPE(S)

3. PREMISES ADDRESS (Street number and name, city, zip code) 4. NEAREST CROSS STREET

5. TYPE OF BUSINESS (Choose one that best describes the planned operation)

- Full Service Restaurant, Deli or Specialty Restaurant, Cafe/Coffee Shop, Bed & Breakfast, Cafeteria/Hofbrau, Comedy Club, Brew Pub, Theater, Cocktail Lounge, Night Club, Tavern, Wine Tasting Room, Private Club, Veterans Club, Fraternal Club, Supermarket, Liquor Store, Variety/Drug Store, Membership Store, Department Store, Gift Shop/Florist, Service Station, Convenience Market, Convenience Market w/Gasoline, Swap Meet/Flea Market, Drive-in Dairy, Other - describe:

6. FOOD SERVICE: None, Minimal, Full Meals 7. MEAL TYPE: Dinner House, Seafood, Fast Food/Deli, Pizza/Pasta, Other:

8. TYPE OF FOOD: American, Chinese, French, Greek, Indian, Italian, Japanese, Korean, Mexican, Thai, Other:

9. HOURS OF FOOD SERVICE: BREAKFAST HOURS - From: To: LUNCH HOURS - From: To: DINNER HOURS - From: To:

Table with 7 columns for days of the week (Sunday-Saturday) and rows for Opening Time and Closing Time.

11. ENTERTAINMENT: (One or more may apply. Please describe any entertainment with an asterisk (*) below) None, Recorded Music, Juke Box, *Other, *Amplified Music, *Live Entertainment, *Floor/Stage Shows, Karaoke, Patron Dancing, Bikini/Topless/Exotic, Pool/Billiard Tables, *Amateur/Pro Sports Events, Card Room, Movies, "Hot Spot"/Lottery, Video/Coin-Operated Games

12. YES OR NO QUESTIONS: a) Will you hire a manager? b) Will you have a food lessee? c) Do you intend to sell cocktails or servings of wine to go? d) Does your business have a pass-through window? e) Does your business have any fixed bars? f) Does your business have a patio? g) Will you share a common licensed area with another licensee? h) Does the premises have a parking lot?

13. What percentage of your total sales will be from alcoholic beverages?

14. Patron Capacity

15. PREMISES IS LOCATED ON: Major Thoroughfare, Secondary Street, Other:

16. PREMISES LOCATED IN: Free Standing Building, Shopping Center (name): 10 Units or Less, More than 10 Units

17. SURROUNDING AREA: Commercial, Industrial, Residential, Rural, Other:

18. TYPE OF STRUCTURE: Single Story, Two-Story, Multi-Story - Number of Stories:

FOR ABC USE ONLY

INFORMATION GIVEN (R-27, R-107, Sec. 25612.5, Sec. 23790.5, etc.)

SUPPLEMENTAL DIAGRAM

Instructions to Applicant:

Draw a sketch of the area on which the licensed premises is or will be located. Show adjacent structures and nearest cross streets. *If this is an event for a daily license, catering authorization, event authorization or miscellaneous use, show the area where sales and consumption of alcoholic beverages will occur. Post a copy of this diagram with Daily License, Catering Authorization or Event Authorization where the event is held. Sales and consumption of alcoholic beverages must be confined to the area designated in the diagram and supervised to prevent violations of the Alcoholic Beverage Control Act.*

1. APPLICANT NAME (Last, first, middle)	2. LICENSE TYPE
3. PREMISES ADDRESS (Street number and name, city, zip code)	4. NEAREST CROSS STREET

DIAGRAM

I have read the above instructions and I declare under penalty of perjury that the above diagram is true and correct.

APPLICANT SIGNATURE	DATE SIGNED
---------------------	-------------

FOR ABC USE ONLY

CERTIFIED CORRECT (Signature)	PRINTED NAME	INSPECTION DATE
-------------------------------	--------------	-----------------

Power to make rule prohibiting retail licensee from permitting any female employee to accept from patron upon licensed premises proffered drink of alcoholic beverage. 23 Ops. Cal. Atty. Gen. 199.

Power to make rule prohibiting ownership interest, direct or indirect, upon part of any law enforcement official in any license issued under Alcoholic Beverage Control Act or in any business operated under such license. 23 Ops. Cal. Atty. Gen. 203.

Power to make rule prohibiting delivery and transfer of alcoholic beverage licenses issued pursuant to § 24044 until such time as premises in connection with which license is sought are in fact equipped and completed for actual and legitimate retail sale of alcoholic beverages. 23 Ops. Cal. Atty. Gen. 206.

Authority to adopt rule barring licensees from maintaining insurance purporting to protect the holder of license from loss by suspension or revocation. 31 Ops. Cal. Atty. Gen. 79.

Department of Alcoholic Beverage Control is not authorized to adopt regulation allowing retail licensee to transport tax paid alcoholic beverages to retailer's out-of-state Free Port warehouse for "temporary retention" prior to delivery to retailer's licensed premises in California if such retention constitutes storage; Department is not authorized to adopt regulation allowing retail licensee to transport alcoholic beverages stored by retailer in a Free Port warehouse facility outside the state to retailer's licensed premises in California. 69 Ops. Cal. Atty. Gen. 191.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross References:

Alcoholic beverages control: Const Art XX § 22.
Administrative adjudication: Gov C §§ 11500 et seq.

Administrative Code and Agency References

Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 1 et seq.

Law Review Articles:

Liquor control. 38 CLR 79.
Some aspects of liquor control in California. 39 CLR 82.
Alcoholic control administration. 20 St BJ 59.

Treatises:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Right to attack validity of administrative regulations issued under licensing law. 65 ALR2d 660.

§ 25750.5. COVID-19 Temporary Catering Authorization [Effective until July 1, 2023; Repealed effective July 1, 2024]

(a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance

with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization authorizes the on-sale consumption of those alcoholic beverages for which the licensee has on-sale privileges on property that is adjacent to the licensed premises, under the control of the licensee. The department may extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires.

(b) The COVID-19 Temporary Catering Authorization approved by the department shall be subject to those terms and conditions established by the department and as stated in the Fourth Notice of Regulatory Relief and the related application form, including, but not limited to, that the authorization may be canceled as determined by the department, as provided in the Fourth Notice, which includes, but is not limited to, upon objection by local law enforcement or if operation of the temporarily authorized area is inconsistent with state or local public health directives.

(c) Notwithstanding any other provision of law, if the department determines that any licensee is found to be abusing the relief provided by this section, or if the licensee's actions jeopardize public health, safety, or welfare, the department may summarily rescind the relief as to that licensee at any time.

(d) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.

HISTORY:

Added Stats 2021 ch 656 § 4 (SB 314), effective October 8, 2021, repealed July 1, 2024.

Editor's Notes—For legislation findings and declarations, see the 2021 Note following B & P C § 23399.

§ 25750.5. Temporary Catering Authorization [Effective until July 1, 2023; Repealed effective July 1, 2024]

(a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization au-

CA



Apr 6, 2022

Notice of the Expiration of Regulatory Relief

This Notice is to remind licensees that all regulatory relief measures implemented by the Department during the COVID-19 pandemic have ended.

The Department previously issued 18 different relief measures intended to provide flexibility to licensed businesses impacted by restrictions caused by the spread of COVID-19. While most of these relief measures were rescinded effective either June 30, 2021, or December 31, 2021, one measure, authorizing craft distillers to ship or deliver distilled spirits directly to consumers away from the licensed premises (subject to the 2.25 liters per consumer per day), was extended for a short period of time. As stated in the Ninth Notice of Regulatory Relief, this expired on March 31, 2022.

Business and Professions Code section 23504 provides that Type-74 craft distiller licensees may sell up to 2.25 liters, for consumption off the licensed premises, per consumer per day of distilled spirits manufactured or produced by the licensee. These sales may only be made to consumers in person at the licensed premises. This means that existing law does not authorize craft distillers to deliver such alcoholic beverages to consumers away from the licensed premises by any means, including by direct shipment via common carrier, delivery by employees of the licensee, or by third party delivery companies. Violation of these statutory requirements may subject a licensee to disciplinary action by the Department.

EXHIBIT 3. ABC NOTICE OF THE EXPIRATION OF REGULATORY RELIEF

CORONAVIRUS (COVID-19) UPDATES

Expiration of Regulatory Relief

Renewal Fee Waiver

CONTACT

Additional information may be obtained by contacting:

Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Email us at headquarters@abc.ca.gov

Call (916) 419-2500

EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

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Details Reports

File #: 22-0150 **Version:** 1
Type: Gen. Bus. - Staff Report **Status:** Agenda Ready
In control: City Council Regular Meeting
On agenda: 4/19/2022 **Final action:**
Title: Continuation of Discussion of Restaurant Dining Occupancy Limits for Restaurants with Temporary Encroachment Permits and Outdoor Facility Permits Issued Under COVID-19 Emergency Orders (Community Development Department Tai). (Estimated Time: 2 Hr.) DISCUSS AND PROVIDE DIRECTION
Attachments: 1. [Staff Report - March 1, 2022](#), 2. [Restaurant Survey Results - April 4, 2022](#), 3. [City Outdoor Dining Survey Results](#)

History (2) Text

TO:
Honorable Mayor and Members of the City Council

THROUGH:
Bruce Moe, City Manager

FROM:
Carrie Tai, AICP, Community Development Department Director
Erik Zandvliet, T.E., City Traffic Engineer

SUBJECT: Title
Continuation of Discussion of Restaurant Dining Occupancy Limits for Restaurants with Temporary Encroachment Permits and Outdoor Facility Permits Issued Under COVID-19 Emergency Orders (Community Development Department Tai).
(Estimated Time: 2 Hr.)
DISCUSS AND PROVIDE DIRECTION
Line

Recommended Action

RECOMMENDATION:

Staff recommends that the City Council discuss and provide direction on existing occupancy limits for restaurants with Temporary Encroachment Permits and Outdoor Facilities Permits Issued under COVID-19 Emergency Orders.

Body

FISCAL IMPLICATIONS:

While empirical data is not available at this time, an increase in restaurant occupancy would be expected to incrementally increase local sales tax revenue from participating restaurants in proportion to the percentage increase in occupancy. Should the City Council choose to reinstate the fees for public right-of-way usage, additional revenue would be generated. Additional restaurant activity would generate additional patrons, incrementally increasing demand (and related costs) for public services, such as more frequent refuse pick-up, public infrastructure maintenance, and public safety resources.

BACKGROUND:

On February 15, 2022, the City Council requested a discussion on the occupancy limits for restaurants using outdoor dining allowed under the COVID-19 Emergency Orders. On March 1, 2022,

EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

the City Council discussed the possibility of increasing the dining occupancy limits for those restaurants with street encroachment areas in the public right-of-way (PROW) and Outdoor Facilities Permits on private property. After hearing public testimony, the Council continued the discussion and requested that staff survey the affected restaurant opinions on increased occupancy and use fees for use of the PROW. The City Council also suspended fees for use of the non-sidewalk public right-of-way areas for outdoor dining.

This report is a continuation of the March 1, 2022, discussion of dining occupancy limits with the survey results. Additional background information can be found in the attached March 1, 2022, staff report.

DISCUSSION:

Restaurant and City Dining Occupancy and Fees Surveys

Pursuant to Council direction, staff conducted a survey of restaurants using street encroachment areas for outdoor dining (see attachment), and asked their opinions on dining occupancy and fees for the use of the PROW. The survey asked the following questions, along with the summarized results from 24 respondents:

Question 1: How much additional dining capacity would you want to achieve using outdoor dining areas during the State of Emergency? Most common response = 25%, Range 0%-100%

Question 2: If you could have additional dining capacity, would you be able to pay a fee above the existing \$3.00 per square foot per month fee? Yes = 48%, No = 52%

Question 3: If so, what amount would you pay? Most common response = \$0, Range \$0-\$5 above the existing \$3.00 per square foot per month.

Given the relatively limited sample size, the results are simply a preliminary indicator of restaurant owner opinions and do not represent an at-large community opinion.

Staff also conducted a survey of surrounding cities to determine if they restrict seating occupancy or charge a regular fee for the use of the PROW. Of the five cities who responded to the survey, only City of Santa Monica restricts seating occupancy, and charges a per square foot fee for use of the PROW. (See attachment.)

Discussion Points

The following discussion points were previously presented in the March 1, 2022, staff report, and are reiterated here to help inform the City Council's determination on occupancy limits and fees for restaurants:

1. Existing Land Use and Coastal Zone Regulations:

Restaurants participating in the COVID-19 Program are limited to the number of seats shown on approved plans on file with the City. This was to provide an equalizing factor to the additional of outdoor dining, since the inability to expand seating capacity using outdoor space would also not equate to an expansion of square footage. Expansion of capacity beyond 100% pre-COVID-19 capacity is the functional equivalent of a square footage increase, constituting an expansion of use (requiring a Use Permit). Larger dining areas would require additional restroom facilities, larger refuse storage areas and other building code requirements. In the Coastal zone, this is typically considered to be an increase in the intensity of land use, which may require a Coastal Development Permit. On one hand, the Coastal Act encourages visitor serving uses such as restaurants to attract people to the coast and provide amenities. On the other hand, increasing the intensity may have an impact on the availability of parking. As mentioned above, Use Permit and Coastal Development Permits are subject to CEQA.

~~EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY~~

2. Parking:

An increase to the overall dining occupancy would be expected to increase parking demand. Based on approximately 10,757 square feet of additional restaurant areas created by outdoor dining spaces in the public right-of-way, the Municipal Code would require 215 additional parking spaces (one parking space per 50 square feet of seating area). This is not including the 57 parking spaces in the public right-of-way that the outdoor dining areas currently occupy. As indicated by field operations reports, historically, public parking supply reaches capacity on most weekends, particularly during special events and holidays. Additionally, approximately 28 private parking spaces are currently occupied by outdoor dining at 11 restaurants with Outdoor Facilities Permits throughout the City.

3. Increased Activity:

An increase in activity of various types would be anticipated in proportion to the amount of increased dining capacity, particularly if properties are on the PROW. Restaurant staff must traverse sidewalks to serve dining areas in the PROW, creating additional volume. Similarly, an incremental increase in ambient noise, lighting, placement of restaurant related apparatus (propane tanks, heat lamps, etc.) would be expected.

4. Public Resources:

Additional refuse, street cleaning and street maintenance services would be required to maintain the same level of cleanliness due to an overall increase in activity. An incremental increase in public safety, code enforcement and emergency incidents would also be expected.

5. Equity:

The City has received comments that it is not fair that some restaurants would be allowed to exceed their normal business operation (with or without an additional fee), while retail and service businesses would not be offered that same accommodation to recover from their pandemic-related losses. Additionally, some restaurants do not have the same ability to expand their capacity due to financial limitations or absence of available encroachment area.

POLICY ALTERNATIVES:

Staff presents the following alternatives for consideration. As a note, the State's State of Emergency remains in place and there is no scheduled end date at this time.

ALTERNATIVE 1:

No action. Restaurants would continue to be limited to a total indoor/outdoor seating of 100% pre-COVID seating capacity for the duration of the COVID-19 Program. Based on observations during regular City patrols of outdoor dining areas, occupancy limits are currently being exceeded on a regular basis. As such, there may be continued enforcement activity.

ALTERNATIVE 2:

Direct staff to pursue an increase in dining occupancy allowances for restaurants with Temporary Encroachment agreements and Outdoor Facilities Permits during the State of Emergency only. Staff would research the ability of City Emergency Orders to allow for expansions of use, increasing land use intensity, both in the PROW and on private property, and particularly in the Coastal zone.

PUBLIC OUTREACH:

City staff has informed the Chamber of Commerce, Downtown Business and Professional Association, North Manhattan Beach Business Improvement District, and the Downtown Residents Association of this agenda item. The City Council meeting has also been noticed in conformance with public meeting requirements.

ENVIRONMENTAL REVIEW:

EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

The modification of occupancy for temporary encroachment areas and outdoor facilities permits for outdoor dining and business uses during an emergency was reviewed for compliance with the California Environmental Quality Act (CEQA). Should the City Council direct staff to pursue Alternative #2, the activity could be deemed: 1) statutorily exempt from CEQA pursuant to Section 15269(c) of the State CEQA Guidelines as it constitutes a specific action to mitigate an emergency; and 2) categorically exempt pursuant to Section 15304(e) and 15311(c) due to its temporary nature with no permanent changes to the right-of-way. Thus, no environmental review would be necessary.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENTS:

1. Staff Report - March 1, 2022
2. Restaurant Survey Results - April 4, 2022
3. City Outdoor Dining Survey Results

DOWNTOWN SIDEWALKS TOO NARROW FOR PATIO AND SIDEWALK WIDTHS REQUIRED BY ADA



EXHIBIT. EVIDENCE OF ALLEDGED ILLEGAL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

DOWNTOWN SIDEWALKS TOO NARROW FOR FENCED-IN PATIOS REQUIRED BY ABC

Patio Plus Clear Sidewalk Minimum Width: 114 inches, per 2019 California Building Code

Premises	Address	Grade, in/in (Note 1)	Width to Parking Meters	4-Ft Sidewalk (Note 2)
Sugar Fish	12th St, 304		It's complicated	????
Izuka-Ya	Highland Ave, 1133	>1/48	90"	No
Un Caffè	Highland Ave, 1140	>1/48	81", 87", tree 96"	No
Uncle Bill's	Highland, 1306	????	????	????
Uncorked	Manhattan Ave, 1000	2.4/48	103"	No
Slay Italian Kitchen	Manhattan Ave, 1001		82"	No
El Sombrero	Manhattan Ave, 1005		78"	No
Ercoles	Manhattan Ave, 1101		102"	No
MB Creamery	Manhattan Ave, 1120		82"	No
Dash Dash	Manhattan Ave, 1127		84"	No
Tacolicious	Manhattan Ave, 1129		84"	No
Nando Milano	Manhattan Ave, 1131		86"	No
Slay, Steak and Fish	Manhattan Ave, 1141		80"	No
MB Post	Manhattan Ave, 1142		81", 11' for ≈15', 84"	No
Fishing with Dynamite	Manhattan Ave, 1148		80"	No
Rockefeller	Manhattan Ave, 1209		84", 851"	No
900 Club	Manhattan Ave, 900		109"	No
Arthur J's	Manhattan Ave, 903		85", 83"	No
Shell Back	MB Blvd, 116	5.8/48	79"	No
Strand House	MB Blvd, 117	5.8/48	80", 81"	No
Rock'N Fish	MB Blvd, 120	5.8/48	75"	No
Brewco	MB Blvd, 124	5.8/48	86"	No
Mangiano	MB Blvd, 128	6.8/48	91"	No
Manhattan Pizzeria	MB Blvd, 133	5.8/48	80"	No
Simmyz's	MB Blvd, 229	3.4/48	80"	No
Esperanza	MB Blvd, 309	2.4/48	80", 82"	No
Hennessey's	MB Blvd, 313	2.4/48	86", 90"	No
Love & Salt	MB Blvd, 317	2.4/48	90", 89"	No
Blue Stone	MB Blvd, 321	2.4/48	81"	No
Culture Brewing	MB Blvd, 327	1.7/48	96"	No

Notes: 2019 California Building Code

1. Maximum permitted grade: 1 inch per 48 inches; § 1138A.1.3.2 Surfaces of turning spaces.
2. Minimum accessible sidewalk width: 48 inches; § 1113A.1.1 Width.

Martha Alvarez, MMC

From: Jon Chaykowski <rideformbef@yahoo.com>
Sent: Saturday, May 14, 2022 11:30 AM
To: List - City Council
Cc: Steve Debaets
Subject: [EXTERNAL] Senior and Scout House

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Dear City Council Members,

I admit that I do not know all of the details of the upcoming proposal by the Friends of the Senior & Scout Community Center,

i.e., the **Tuesday May 17th** asking for approval on new terms of our agreement as well as additional financial support ...

However, I personally know that the present Community Center has been a tremendous asset/value to this community, from youths through senior citizens. I also know that the newly proposed/planned center will be of even greater value to our community and is widely wanted and anticipated by our community.

To prove my view, I have donated to the construction of our future center. And, I request that our City Council give the May 17th request favorable consideration.

Sincerely,
Jon Chaykowski

Martha Alvarez, MMC

From: Wayne Powell <waynepowellmb@yahoo.com>
Sent: Friday, May 13, 2022 9:24 PM
To: List - City Council
Cc: Mark Leyman; Bruce Moe; Jan Buike; Carrie Tai, AICP; Erick Lee
Subject: [EXTERNAL] Support for Senior and Scout Community Center

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Honorable Mayor Stern and Esteemed City Councilmembers,

As both a senior (also Senior Advisory Committee member) and an Eagle Scout, I strongly urge you to approve the May 17th Senior and Scout Community Center agenda items. The Senior and Scout Community Center is a much needed facility.

Warmest regards,
Wayne

Wayne Powell

- City of Manhattan Beach Senior Advisory Committee Member
- Board Member: MB CERT and MB Historical Society (V.P.)
- L.A. County Assessor Advisory Council Member
- Beach Cities Health District Finance Committee Member
- Former Two-Term Manhattan Beach Mayor/Councilmember
- Former L.A. County Beach Commission Chair

Email: WaynePowellMB@yahoo.com

[Sent from my iPad]

Martha Alvarez, MMC

From: dmcphersonla@gmail.com
Sent: Wednesday, May 11, 2022 4:29 PM
To: Hildy Stern; Joe Franklin; List - City Council; Richard Montgomery; Steve Napolitano; Suzanne Hadley
Cc: Bruce Moe; Quinn Barrow; Paige Meyer; Liza Tamura, MMC; Martha Alvarez, MMC; Carrie Tai, AICP; Talyn Mirzakhanian; Ted Faturios
Subject: [EXTERNAL] Eat & Drink Encroachments Illegal
Attachments: 220517-Prosecution-Encroach-Final.pdf

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Hildy Stern, Mayor
City of Manhattan Beach
Via Email: citycouncil@citymb.info

Subject: Eat & Drink Encroachments Violate Penal Code Section § PEN-370

Mayor Stern and Councilmembers,

The attachment provides evidence that the eat & drink encroachments in the Downtown and North End violate Penal Code § PEN-370 and ABC regulations. At the May 17 council meeting during public comment, I will summarize these accusations as follows.

As of 31 March 2022, all pandemic relief measures issued by the Department of Alcoholic Beverage Control ["ABC"] lapsed. All such measures that specifically addressed eat & drink service outdoors lapsed as of 1 January 2022.

In late 2021, the state legislature approved SB-314 and AB-61, which permit outdoor eat & drink use that complies with all other law, so that premises owners can obtain enabling ABC license modifications.

Eat & drink encroachments in the Downtown and in the North End do not comply with law, specifically, for coastal-access parking and for accessible sidewalks. If that the case, then the encroachments violate Penal Code § PEN-370, regarding unlawful obstruction of the public right of way, a misdemeanor. As result, city officials and premises owners responsible for maintaining the illegal encroachments risk substantial fines and jail time.

After presenting this information at the May 17 meeting, I will file complaints with the LA County District Attorney, the ABC and the Coastal Commission. Additionally, I will request attorney Douglas Carstens to file for injunctive relief from impacts by the encroachments on public coastal access.

Don McPherson
1014 1st St, Manhattan Beach CA 90266
Cell 310 487 0383
dmcphersonla@gmail.com

**EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY ILLEGAL;
TITLE 10. OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY, PEN § 370**

Summary: Illegal Eat & Drink Encroachments.

As of 31 March 2022, all pandemic relief measures issued by the Department of Alcoholic Beverage Control [“ABC”] lapsed. All such measures that specifically addressed eat & drink service outdoors lapsed as of 1 January 2022.

In late 2021, the state legislature approved SB-314 and AB-61, which permit outdoor eat & drink use that complies with all other law, so that premises owners can obtain enabling ABC license modifications.

Eat & drink encroachments in the Downtown and in the North End do not comply with law, specifically, for coastal-access parking and for accessible sidewalks. If that the case, then the encroachments violate Penal Code § PEN-370, regarding unlawful obstruction of the public right of way, a misdemeanor. As result, city officials and premises owners responsible for maintaining illegal encroachments risk substantial fines and jail time.

Applicable Regulations

Early in the pandemic, the Department of Alcoholic Beverage Control [“ABC”] issued relief measures, 18 in all, to lessen economic impacts on license holders. Specifically, eat & drink places could expand alcohol service outdoors to the adjacent public right of way and to unlicensed outdoor areas belonging to the premises. Compliance with state law and city zoning not required. State executive orders for the pandemic do not include such permissions.

Per Exhibit-p.1, however, all ABC measures related to alcohol service on unlicensed outdoor areas lapsed as of 1 January 2022. Consequently, eat & drink encroachments on the public right of way must now comply with ABC and Coastal Commission regulations, as well as with other state and city law.

In late 2021, the state legislature approved two measures that permit alcohol service outdoors, until applicants can obtain amendments to their ABC licenses. [SB-314 and AB-61, Exhibit-p.3 and Exhibit-p.8, respectively] These bills do not permit violations of ABC and Coastal Commission regulations, nor of state and city law. AB-61 lapses January 2024 and SB-314 lapses July 2024.

AB-61 does direct local jurisdictions to address whether the new outdoor eat & drink uses comply with parking regulations, and if not, to correct discrepancies. In local coastal programs, however, the Coastal Commission has jurisdiction over parking, not city councils. It takes a year or more to get on Coastal’s calendar. For Manhattan Beach, it appears that the city and premises owners have made little progress in the alcohol license permitting processes.

Any person who **unlawfully** blocks the public right of way commits a misdemeanor, per Penal Code § PEN-370 [Exhibit-p.12] Such action also constitutes grounds for denial of an ABC license. [Exhibit-p.13, Grounds 4] Presumably, if a license holder unlawfully blocks the public right of way, that violates ABC regulations, a misdemeanor.

ABC regulations require a physical barrier between an outdoor alcohol service area and an adjoining public area. On the city narrow sidewalks, such barriers impact accessibility on sidewalks adjoining premises, which violates the American Disabilities Act, as embodied in the 2019 California Building Code, Title 24, Part 2. [“CBC” § 1113A.1.1, § 1138A]

**EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY ILLEGAL;
TITLE 10. OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY, PEN § 370**

Potential Misdemeanors by City Officials and Premises Owners.

In Manhattan Beach, the eat & drink encroachments on the public right of way constitute two misdemeanors, namely:

- 1) Street-parking decks and sidewalk tables block the public right of way, which violates PEN-370. This statute, approved in 1872, has remained unchanged ever since. Violation also constitutes grounds for denying an ABC license, so presumably that counts as a misdemeanor. Without question, the unlawful decks occupying street-parking block the right of way. [Exhibit-p.16]; and,
- 2) In violation of ABC regulations, some encroaching alcohol service-areas lack physical barriers between patrons and the public, for example, sidewalk tables and those parking-space venues completely open to the sidewalk. [Exhibit-p.17, p.18 & p.19] Former ABC official Lauren Tyson has provided expert opinion that such encroachments violate ABC regulations. [Exhibit-p.20] If so, this also a violation of PEN-370.

Encroachment 300 Parking Space Deficit at Beach Illegal.

City staff has stated that the encroachments result in over a 300-parking-space deficiency, which impacts coastal access. [Exhibit-p.21] The city council has not addressed the parking deficit issue as required by AB-61, nor can they.

In their 6 April 2022 decision in Keen v. MB City, the appellate court stated, *“The City argues the trial court erred in interpreting the Coastal Act to require it to provide short-term rentals in residential areas. **This is incorrect. The key provision is the one requiring Commission approval of amended laws.**”* [Emphasis added]

The city council may not modify parking regulations to account for additional encroachment demand, which impacts coastal access. Only the Coastal Commission can do that. As result, the encroachments unlawful, thereby violating PEN-370 with misdemeanors.

Sidewalks too Narrow for Eat & Drink Decks.

It not possible for the city to move the parking-space encroachments onto the sidewalks because the latter too narrow. The ABC requirement for fenced-in patios and ADA requirements for accessible sidewalks result in a total required width of over ten feet. This approximately the width of Downtown sidewalks, which additionally must provide room for parking meters, trees, fire hydrants, streetlights, and signs. [Exhibit-pp.25-26]

Penalties for Eat & Drink Misdemeanors.

Misdemeanors can incur penalties of \$1,000 and six-months jail time per count. As of the council meeting on 17 May 2022, since 1 January 2022, each encroachment has accrued 137 counts and possibly multiples of that, when violating more than one statute. Misdemeanors have a one-year statute of limitations, so the encroachments can result in a running total of 365 counts.

These penalties may apply to all premises officials listed on the ABC licenses.

The many city officials responsible for maintaining the unlawful encroachments may have incurred roughly 40 times the above numbers, considering the aggregate violations by all premises.

**EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY ILLEGAL;
TITLE 10. OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY, PEN § 370**

Conclusions.

The Covid state of emergency does not authorize the city council to maintain the eat & drink encroachments in violation of state law, such as Penal Code PEN-370 and ABC regulations.

Since 1 January 2022, the city council has addressed eat & drink encroachments at several meetings and could have ordered them removed but chose not to take that action. Therefore, by maintaining the unlawful encroachments, both councilmembers and responsible city officials risk prosecution by the LA County district attorney.

The city manager can order the unlawful temporary encroachments removed, per Manhattan Beach Municipal Code Section § 7.36.110 Revocation. It not necessary for the city council to take any action.

CA



Apr 6, 2022

Notice of the Expiration of Regulatory Relief

This Notice is to remind licensees that all regulatory relief measures implemented by the Department during the COVID-19 pandemic have ended.

The Department previously issued 18 different relief measures intended to provide flexibility to licensed businesses impacted by restrictions caused by the spread of COVID-19. While most of these relief measures were rescinded effective either June 30, 2021, or December 31, 2021, one measure, authorizing craft distillers to ship or deliver distilled spirits directly to consumers away from the licensed premises (subject to the 2.25 liters per consumer per day), was extended for a short period of time. As stated in the Ninth Notice of Regulatory Relief, this expired on March 31, 2022.

Business and Professions Code section 23504 provides that Type-74 craft distiller licensees may sell up to 2.25 liters, for consumption off the licensed premises, per consumer per day of distilled spirits manufactured or produced by the licensee. These sales may only be made to consumers in person at the licensed premises. This means that existing law does not authorize craft distillers to deliver such alcoholic beverages to consumers away from the licensed premises by any means, including by direct shipment via common carrier, delivery by employees of the licensee, or by third party delivery companies. Violation of these statutory requirements may subject a licensee to disciplinary action by the Department.

CORONAVIRUS (COVID-19) UPDATES

Expiration of Regulatory Relief

Renewal Fee Waiver

CONTACT

Additional information may be obtained by contacting:

Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Email us at headquarters@abc.ca.gov

Call (916) 419-2500

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Date Published: 10/11/2021 02:00 PM

Senate Bill No. 314

CHAPTER 656

An act to amend Sections 23399 and 25607 of, and to add and repeal Section 25750.5 of, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 08, 2021. Filed with Secretary of State
October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 314, Wiener. Alcoholic beverages.

(1) The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law generally provides that a violation of the Alcoholic Beverage Control Act is a misdemeanor.

Existing law authorizes the issuance of a caterer's permit, upon application to the department, to a licensee under an on-sale general license, an on-sale beer and wine license, a club license, or a veterans' club license, that authorizes the holder of the permit to sell alcoholic beverages at specified locations and events, including, among others, conventions, sporting events, and trade exhibits. Under existing law, licensees are required to first obtain consent from the department for sales of alcoholic beverages at each event in the form of a catering or event authorization. The department, pursuant to its powers and in furtherance of emergency declarations and orders of the Governor under the California Emergency Services Act regarding the spread of the COVID-19 virus, has prescribed temporary relief measures to suspend certain legal restrictions relating to, among other things, the expansion of a licensed footprint, sales of alcoholic beverages to-go, and delivery privileges.

This bill would prohibit the issuance of a catering authorization for use at any one premises for more than 36 events in one calendar year, except as specified.

This bill would authorize the department, for a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, to permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department, as specified. The bill would also authorize the department to extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires. The bill would make these provisions effective only until July 1, 2024, and repeal them as of that date.

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

(2) Existing law, with exceptions, prohibits a licensee from having, upon the licensed premises, any alcoholic beverages other than the alcoholic beverage that the licensee is authorized to sell at the premises under their license, and makes a violation of this prohibition punishable as a misdemeanor.

This bill would, as an exception to that prohibition, authorize a licensed manufacturer to share a common licensed area with multiple licensed retailers, subject to specified provisions, including, but not limited to, that (A) a licensee sharing the common licensed area with a licensed manufacturer is prohibited from selling or serving any alcoholic beverages that are manufactured, produced, bottled, processed, imported, rectified, distributed, represented, or sold by the manufacturer, as provided, (B) the licensed manufacturer may, in connection with the operation of the shared common area only, advertise or promote the common licensed area, provided that each retailer pays its pro rata share of the costs of such advertising or promotion, as specified, (C) no thing of value may be given or furnished by the manufacturer to the retailers, except as specified, (D) the manufacturer may have on the area of its licensed premises that encompass the shared common licensed area alcoholic beverages that would not otherwise be permitted on the manufacturer's licensed premises, as provided, (E) all licensees sharing the common licensed area are required to hold the same license type retailers, (F) all licensees holding licenses within the shared common licensed area are jointly responsible for compliance with all laws that may subject their license to discipline, and (G) the manufacturer maintains records necessary to establish its compliance, as specified.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The COVID-19 pandemic has had a huge financial impact on restaurants, bars, retailers, and small businesses throughout the state, including sidewalk vendors who are only now beginning to return to local streets, boardwalks, and piers.

(b) Senate Bill 946 (Chapter 459 of the Statutes of 2018) established a statewide framework for the local regulation of sidewalk vendors to sell food or merchandise.

(c) Nothing in this measure should unintentionally roll back existing protections given to these microbusinesses under the existing sidewalk vendor law, create additional restrictions, limitations, or requirements on local sidewalk vendors, or limit any local authority from creating, maintaining, and enforcing a local sidewalk vendor program.

(d) These protections ensure that entrepreneurial microbusinesses, many of whom come from low-income and immigrant communities, are protected and promoted in our collective push for statewide economic revitalization and resumption of commercial activities, post-pandemic.

SEC. 2. Section 23399 of the Business and Professions Code is amended to read:

23399. (a) An on-sale general license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold. Any licensee under an on-sale general license, an on-sale beer and wine license, a club license, or a veterans' club license may apply to the department for a caterer's permit. A caterer's permit under an on-sale general license shall authorize the sale of beer, wine, and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under an on-sale beer and wine license shall authorize the sale of beer and wine for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under a club license or a veterans' club license shall authorize sales at these events only upon the licensed club premises.

(b) Any licensee under an on-sale general license or an on-sale beer and wine license may apply to the department for an event permit. An event permit under an on-sale general license or an on-sale beer and wine license shall authorize, at events held no more frequently than four days in any single calendar year, the sale of beer, wine, and distilled spirits only under an on-sale general license or beer and wine only under an on-sale beer and wine license for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public.

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

(c) (1) This section shall in no way limit the power of the department to issue special licenses under the provisions of Section 24045 or to issue daily on-sale general licenses under the provisions of Section 24045.1. Consent for sales at each event shall be first obtained from the department in the form of a catering or event authorization issued pursuant to rules prescribed by it. Any event authorization shall be subject to approval by the appropriate local law enforcement agency. The daily fee for each catering or event authorization shall be based on the estimated attendance at each day of the event, as follows:

(A) One hundred dollars (\$100) when anticipated attendance is less than 1,000 people.

(B) Three hundred twenty-five dollars (\$325) when anticipated attendance is at least 1,000 people and less than 5,000 people.

(C) One thousand dollars (\$1,000) when anticipated attendance is 5,000 people or more.

(2) All fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

(d) At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises.

(e) The fee for a caterer's permit for a licensee under an on-sale general license, a caterer's permit for a licensee under an on-sale beer and wine license, or an event permit for a licensee under an on-sale general license or an on-sale beer and wine license shall be the annual fee as specified in subdivision (b) of Section 23320, and the fee for a caterer's permit for a licensee under a club license or a veterans' club license shall be as specified in Section 23320, and the permit may be renewable annually at the same time as the licensee's license. A caterer's or event permit shall be transferable as a part of the license.

(f) A catering authorization shall not be issued for use at any one premises for more than 36 events in one calendar year, except when the department determines additional events may be catered to satisfy substantial public demand.

SEC. 3. Section 25607 of the Business and Professions Code is amended to read:

25607. (a) Except as provided in subdivisions (b), (c), (d), and (e), it is unlawful for any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell at the premises under their license. It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom the licenses were issued. Every person violating the provisions of this section is guilty of a misdemeanor. The department may seize any alcoholic beverages found in violation of this section.

(b) Except as provided in subdivision (c), a bona fide public eating place for which an on-sale beer and wine license has been issued may have upon the premises brandy, rum, or liqueurs for use solely for cooking purposes.

(c) (1) A licensed winegrower, licensed beer manufacturer that holds a small beer manufacturer's license, and a licensed craft distiller, in any combination, whose licensed premises of production are immediately adjacent to each other and which are not branch offices, may, with the approval of the department and under such conditions as the department may require, share a common licensed area in which the consumption of alcoholic beverages is permitted, only under all of the following circumstances:

(A) The shared common licensed area is adjacent and contiguous to the licensed premises of the licensees.

(B) The licensed premises of the licensees are not branch offices.

(C) The shared common licensed area shall be readily accessible from the premises of the licensees without the necessity of using a public street, alley, or sidewalk.

(D) Except as otherwise authorized by this division, the alcoholic beverages that may be consumed in the shared common licensed area shall be purchased by the consumer only from the licensed winegrower, the licensed beer manufacturer, or the licensed craft distiller.

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

(E) The licensed winegrower, the licensed beer manufacturer, and the licensed craft distiller shall be jointly responsible for compliance with the provisions of this division and for any violations that may occur within the shared common licensed area.

(2) Nothing in this subdivision is intended to authorize the licensed winegrower, the licensed beer manufacturer, or the licensed craft distiller to sell, furnish, give, or have upon their respective licensed premises any alcoholic beverages, or to engage in any other activity, not otherwise authorized by this division, including, without limitation, the consumption on the premises of any distilled spirits purchased by consumers for consumption off the premises pursuant to Section 23504 or the consumption of distilled spirits other than as permitted by Section 23363.1.

(d) The holder of a beer manufacturer's license, winegrower's license, brandy manufacturer's license, distilled spirits manufacturer's license, craft distiller's license, any rectifier's license, any importer's license, or any wholesaler's license, that holds more than one of those licenses for a single premises, may have alcoholic beverages that are authorized under those licenses at the same time anywhere within the premises for purposes of production and storage, if the holder of the licenses maintains records of production and storage that identify the specific location of each alcoholic beverage product within the premises. Nothing in this subdivision is intended to allow a licensee to hold licenses, alone or in combination, or to exercise any license privileges, not otherwise provided for or authorized by this division.

(e) Notwithstanding any provision to the contrary, a licensed manufacturer may share a common licensed area with multiple licensed retailers, subject to the provisions of this subdivision.

(1) No retail licensee sharing the common licensed area with a licensed manufacturer shall sell or serve any alcoholic beverages that are manufactured, produced, bottled, processed, imported, rectified, distributed, represented, or sold by the manufacturer, directly or indirectly. This prohibition shall apply to all licensed premises owned or operated, in whole or in part, by the retail licensee anywhere in the state. No wholesaler shall be responsible for compliance with this paragraph.

(2) The licensed manufacturer may, in connection with the operation of the shared common area only, advertise or promote the common licensed area, including, but not limited to, any advertising or promotion related to the licensed retailers sharing the common licensed area, provided that each retailer pays its pro rata share of the costs of that advertising or promotion. The cost attributed to each retailer's pro rata share shall not be less than the current market price for that advertising or promotion.

(3) The licensed manufacturer may, in connection with the operation of the shared common area only, pay its pro rata share of the cost of the operation of the shared common area, including, but not limited to, the cost of renting, utilities, or any other operating costs for the area.

(4) Except as provided in paragraphs (2) and (3), no other thing of value may be given or furnished by the manufacturer to the retailers.

(5) The manufacturer may have on the area of its licensed premises that encompass the shared common licensed area alcoholic beverages that would not otherwise be permitted on the manufacturer's licensed premises. This provision does not authorize the possession of alcoholic beverages not otherwise permitted on the manufacturer's licensed premises that is not part of the shared common licensed area.

(6) All retailers sharing the common licensed area shall hold the same license type. Nothing in this subdivision shall authorize any of the retailers to exercise license privileges that are not authorized by their license.

(7) All licensees holding licenses within the shared common licensed area shall be jointly responsible for compliance with all laws that may subject their license to discipline.

(8) A wholesaler does not directly or indirectly underwrite, share in, or contribute to any costs related to the common licensed area.

(9) The manufacturer maintains records necessary to establish its compliance with this section.

(10) (A) This subdivision does not authorize a licensed manufacturer to share a common licensed area with a single retailer or with multiple retailers under common ownership, in whole or in part.

(B) This subdivision is intended to be a narrow exception to the separation of manufacturers and retailers. This subdivision shall be narrowly construed.

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

(11) The Legislature finds and declares both of the following:

(A) It is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques.

(B) Any exception established by the Legislature to the general prohibition against tied interests must be limited to the express terms of the exception so as to not undermine the general prohibitions.

SEC. 4. Section 25750.5 is added to the Business and Professions Code, to read:

25750.5. (a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization authorizes the on-sale consumption of those alcoholic beverages for which the licensee has on-sale privileges on property that is adjacent to the licensed premises, under the control of the licensee. The department may extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires.

(b) The COVID-19 Temporary Catering Authorization approved by the department shall be subject to those terms and conditions established by the department and as stated in the Fourth Notice of Regulatory Relief and the related application form, including, but not limited to, that the authorization may be canceled as determined by the department, as provided in the Fourth Notice, which includes, but is not limited to, upon objection by local law enforcement or if operation of the temporarily authorized area is inconsistent with state or local public health directives.

(c) Notwithstanding any other provision of law, if the department determines that any licensee is found to be abusing the relief provided by this section, or if the licensee's actions jeopardize public health, safety, or welfare, the department may summarily rescind the relief as to that licensee at any time.

(d) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the economic loss restaurants and bars have sustained after being hit extremely hard by COVID-19 and to protect against further loss, which will help ensure public health and safety, it is necessary for this act to take effect immediately.



AB-61 Business pandemic relief. (2021-2022)

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Date Published: 10/11/2021 02:00 PM

Assembly Bill No. 61

CHAPTER 651

An act to add and repeal Section 25750.5 of the Business and Professions Code, to add and repeal Section 65907 of the Government Code, and to amend Section 114067 of the Health and Safety Code, relating to business pandemic relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 08, 2021. Filed with Secretary of State
October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 61, Gabriel. Business pandemic relief.

(1) Existing law, the Alcoholic Beverage Control Act, is administered by the Department of Alcoholic Beverage Control and regulates the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state. The act requires the department to make and prescribe rules to carry out the purposes and intent of existing state constitutional provisions on the regulation of alcoholic beverages, and to enable the department to exercise the powers and perform the duties conferred upon it by the state constitution and the act, not inconsistent with any statute of this state. The act makes it unlawful for any person other than a licensee of the department to sell, manufacture, or import alcoholic beverages in this state, with exceptions. The department, pursuant to its powers and in furtherance of emergency declarations and orders of the Governor under the California Emergency Services Act regarding the spread of the COVID-19 virus, has established prescribed temporary relief measures to suspend certain legal restrictions relating to, among other things, the expansion of a licensed footprint, sales of alcoholic beverages to-go, and delivery privileges.

This bill would authorize the department, for a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, to permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief Issued by the department, as specified. The bill would also authorize the department to extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires. The bill would make these provisions effective only until July 1, 2024, and repeal them as of that date.

(2) The Planning and Zoning Law authorizes the legislative body of any city or county to adopt ordinances that regulate zoning within its jurisdiction, as specified. Under that law, variances and conditional use permits may be granted if provided for by the zoning ordinance.

This bill would, to the extent that an outdoor expansion of a business to mitigate COVID-19 pandemic restrictions on indoor dining interferes with, reduces, eliminates, or impacts required parking for existing uses,

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

require a local jurisdiction that has not adopted an ordinance that provides relief from parking restrictions for expanded outdoor dining areas to reduce the number of required parking spaces for existing uses by the number of spaces that the local jurisdiction determines are needed to accommodate an expanded outdoor dining area. Because the bill would require local officials to perform additional duties, the bill would impose a state-mandated local program. The bill would make these provisions operative on January 1, 2022, and repeal them on July 1, 2024.

(3) Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities. Existing law restricts satellite food service to limited food preparation in a fully enclosed permanent food facility that meets specified requirements. Existing law requires a permanent food facility, prior to conducting satellite food service, to submit to the enforcement agency written operating standards.

This bill would, for a period of one year after the end of the state of emergency proclaimed by the Governor on March 4, 2020, related to the COVID-19 pandemic, or until January 1, 2024, whichever occurs first, authorize a permitted food facility within any local jurisdiction that is subject to retail food operation restrictions related to a COVID-19 public health response to prepare and serve food as a temporary satellite food service without obtaining a separate satellite food service permit or submitting written operating procedures. This bill would require the written operating procedures to be maintained onsite for review, upon request, by the local jurisdiction.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25750.5 is added to the Business and Professions Code, to read:

25750.5. (a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization authorizes the on-sale consumption of those alcoholic beverages for which the licensee has on-sale privileges on property that is adjacent to the licensed premises, under the control of the licensee. The department may extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires.

(b) The COVID-19 Temporary Catering Authorization approved by the department shall be subject to those terms and conditions established by the department and as stated in the Fourth Notice of Regulatory Relief and the related application form, including, but not limited to, that the authorization may be canceled as determined by the department, as provided in the Fourth Notice, which includes, but is not limited to, upon objection by local law enforcement or if operation of the temporarily authorized area is inconsistent with state or local public health directives.

(c) Notwithstanding any other provision of law, if the department determines that any licensee is found to be abusing the relief provided by this section, or if the licensee's actions jeopardize public health, safety, or welfare, the department may summarily rescind the relief as to that licensee at any time.

(d) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.

SEC. 2. Section 65907 is added to the Government Code, to read:

65907. (a) ~~To the extent that an outdoor expansion of a business to mitigate COVID-19 pandemic restrictions on indoor dining interferes with, reduces, eliminates, or impacts required parking for existing uses, a local~~

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

jurisdiction that has not adopted an ordinance that provides relief from parking restrictions for expanded outdoor dining areas shall reduce the number of required parking spaces for existing uses by the number of spaces that the local jurisdiction determines are needed to accommodate an expanded outdoor dining area.

(b) This section shall become operative on January 1, 2022.

(c) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3. Section 114067 of the Health and Safety Code is amended to read:

114067. (a) Satellite food service is restricted to limited food preparation.

(b) Satellite food service shall only be operated by a fully enclosed permanent food facility that meets the requirements for food preparation and service and that is responsible for servicing the satellite food service operation.

(c) Prior to conducting satellite food service, the permitholder of the permanent food facility shall submit to the enforcement agency written standard operating procedures that include all of the following information:

(1) All food products that will be handled and dispensed.

(2) The proposed procedures and methods of food preparation and handling.

(3) Procedures, methods, and schedules for cleaning utensils, equipment, structures, and for the disposal of refuse.

(4) How food will be transported to and from the permanent food facility and the satellite food service operation, and procedures to prevent contamination of foods.

(5) How potentially hazardous foods will be maintained in accordance with Section 113996.

(d) All food preparation shall be conducted within a food compartment or fully enclosed facility approved by the enforcement officer.

(e) Satellite food service areas shall have overhead protection that extends over all food handling areas.

(f) Satellite food service operations that handle nonprepackaged food shall be equipped with approved handwashing facilities and warewashing facilities that are either permanently plumbed or self-contained.

(g) Notwithstanding subdivision (f), the local enforcement agency may approve the use of alternative warewashing facilities.

(h) During nonoperating hours and periods of inclement weather, food, food contact surfaces, and utensils shall be stored within any of the following:

(1) A fully enclosed satellite food service operation.

(2) Approved food compartments where food, food contact surfaces, and utensils are protected at all times from contamination, exposure to the elements, ingress of vermin, and temperature abuse.

(3) A fully enclosed permanent food facility.

(i) Satellite food service activities shall be conducted by and under the constant and complete control of the permitholder of the fully enclosed permanent food facility, or the duly contracted personnel of, or third-party providers to, the permitholder.

(j) For purposes of permitting and enforcement, the permitholder of the permanent food facility and the permitholder of the satellite food service shall be the same.

(k) (1) A permitted food facility within any local jurisdiction that is subject to retail food operation restrictions related to a COVID-19 public health response may prepare and serve food as a temporary satellite food service without obtaining a separate satellite food service permit or submitting written operating procedures pursuant to subdivision (c). The written operating procedures shall be maintained onsite for review, upon request, by the local jurisdiction.

(2) This subdivision shall remain operative for a period of one year following the end, pursuant to Section 8629 of the Government Code, of the state of emergency proclaimed by the Governor on March 4, 2020, related to the COVID-19 pandemic, or until January 1, 2024, whichever occurs first.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide relief to California businesses at the earliest possible time, it is necessary that this act take effect immediately.



PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] (Part 1 enacted 1872.)

TITLE 10. OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY [369a - 402c] (Title 10 enacted 1872.)

[370.] Section Three Hundred and Seventy. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.

(Amended by Code Amendments 1873-74, Ch. 614.)

Information Regarding Alcoholic Beverage License Applications and Protests

Public Notice of Application

A person or business (applicant) planning to open a new ABC-licensed business, change the ownership, or move an existing business to a new site must apply for the proper license at an ABC district office. As part of the process, notice must be given to the public and to local officials. This notice occurs in several ways:

- **Public Notice** — The applicant must post a white or yellow public notice (Form ABC-207 or -207-B) in a prominent place at the proposed premises for 30 days. (Bus. & Prof. Code § 23985.)
- **Written Notice by Mail** — ABC mails a copy of the application to the sheriff, chief of police, district attorney, and city council (or the board of supervisors if in an unincorporated area). In some cases, the applicant must also mail written notice to residents and owners of real property within a 500 foot radius of the proposed business. (Bus. & Prof. Code §§ 23985.5 & 23987.)

Filing Your Protest

Any person may protest an ABC license Application using this form. The deadline to file a protest is 30 days from whichever date is later:

- The date the Public Notice is first posted at the proposed business; *or*
- The date the applicant mails written notice to residents or owners of real property within a 500' radius.

You may mail, hand deliver, or fax your signed and dated protest. (Code of Civ. Proc. § 1013.) You may also e-mail a scanned signed protest, for example, in .pdf or .jpg format.

If sent by US Mail, the date of the postmark is deemed the filing date. If delivered by courier service (UPS, Fed Ex, etc.), or e-mail, your protest must be received by ABC by the 30th day. If the 30th day is a holiday or weekend, then your protest must be received on the next business day.

Any protest received after the 30 day deadline cannot be considered. (Bus. & Prof. Code § 24013.)

We encourage you to contact the local ABC district office to find out the exact deadline for filing your protest or to speak with the assigned staff member about your concerns. District office information is found on our website at: www.abc.ca.gov. Please provide the exact address of the proposed business and the applicant's name.

If you feel that there was insufficient notice posted, you must notify the Department within 10 days of becoming aware of the posting. An extension to file a protest may be granted by the Department, but the burden to show why the extension should be granted is on the person requesting the extension. An affidavit or other document submitted under penalty of perjury related to the facts should be submitted.

Please print legibly. Incomplete and/or illegible information will cause the protest to be rejected. The protest must be **signed**. Failure to do so will result in the protest being rejected.

Protests may be made only by individuals. If multiple people wish to file protests they must each complete their own form. Anonymous protests will be rejected. Protests must be location-specific.

A copy of valid protests will be provided to the applicant as part of the licensing process.

All protests submitted to the ABC are public records and are open to inspection pursuant to the California Public Records Act. (Gov. Code § 6254 *et seq.*)

Professional legal advice is not required to file a protest.

Public Officials

If the protest is made by a public officer acting in his or her official capacity, the attached form with the declaration under penalty of perjury is not required, but the protest should be on official letterhead and show the public official's capacity. Requests for time extensions are pursuant to Business & Professions Code section 23987. Contents of a protest submitted as a public official's official protest must meet all other requirements of this regulation.

Grounds for Protest

The California Constitution provides that the sale, purchase, and consumption of alcoholic beverages in licensed premises are legal. Therefore, ABC cannot deny a license solely because a protestant has personal beliefs against the use of alcoholic beverages - denial must relate to public welfare and morals. (Cal. Const. art. XX. Sec. 22) Some of the grounds of protest, which could relate to public welfare and morals, are as follows:

1. The premises is located within the immediate vicinity of a school, church, hospital, or children's playground and the normal operation of the licensed premises would interfere with their functions. (Bus. & Prof. Code § 23789.)

Be specific as to how the sale of alcoholic beverages will adversely affect the facility.

Mere proximity to such a facility is not sufficient legal grounds to deny the license.

2. The premises is located in a residential area and the normal operation of the licensed premises would interfere with the quiet enjoyment of their property by the residents of the area. (Dept.'s. Rule 61.4, found in tit. 4, Cal. Code Regs.) Be specific as to how the sale of alcoholic beverages will adversely affect the residents.

3. The premises or parking lot is located within 100 feet of a residence and the applicant has failed to establish that the operation of the licensed premises would not interfere with the quiet enjoyment of the property by the residents. (Rule 61.4.) This only applies to premises that have not been operated with the same type license within 90 days of the application.

4. Licensing the premises would create a public nuisance as defined in Penal Code Section 370. State specific facts leading to this conclusion.

5. Issuance of the license would result in or add to an undue concentration of licenses. (Bus. & Prof. Code 23958 & 23958.4.) List any problems that existing licensed businesses in the area may be causing. Note that this is not a valid ground of protest if the application is for a premises-to-premises transfer within the same census tract; if a current license is being exchanged for a different license type with fewer privileges; if the license applied for will be in the same location as a

current license; if the license will not add to the existing number of licenses within the census tract, or if the license will be a retail license type exempted in 23958.4, subdivision (c)(5)(B).

6. The applicant is not the true or sole owner of the business to be licensed. (Bus. & Prof. Code §§ 23300, 23355, 23950, *et seq.*) You must present testimony or other evidence as to the true ownership.

The following are grounds usually cited by city or county enforcement agencies only. But they can be used by persons who have independent, adequate evidence of same:

7. Issuance of the license to the premises would tend to create a law enforcement problem, or aggravate an existing police problem. (Bus. & Prof. Code §23958.)

8. Licensing the premises would be contrary to the provisions of a valid zoning ordinance of any city or county. (Bus. & Prof. Code § 23790.)

9. The applicant has been convicted of a felony, a crime involving moral turpitude, or one of the offenses listed in the Alcoholic Beverage Control Act section 24200, subdivision (b). (Bus. & Prof. Code § 23952.)

10. The applicant has a police record that disqualifies him or her for a license. (Cal. Const. art. XX., sec. 22.)

11. The applicant has misrepresented a material fact in obtaining a license. (Bus.& Prof. Code § 24299, subd. (c).)

Tips Before Filing a Protest:

For your protest to be more effective, it should be specific and not just a restatement of the above examples. Failure to be specific may cause the protest to be rejected.

Note - Parking or Traffic will not be considered a valid protest issue if the local jurisdiction has issued a Conditional Use Permit (CUP) for the premises OR if the local jurisdiction has confirmed that the use is appropriate to its zoning ordinances.

Some people find it worthwhile to meet with the applicant before filing a protest. This lets the applicant know that and gives the applicant a chance to respond to your concerns.

In some cases, the applicant may be willing to agree to certain conditions. For example, if there could be late-night noise, the applicant may be

willing to stop alcohol sales after a certain time. The parties should contact the ABC staff member assigned to the case if the applicant is willing to agree to conditions that alleviate the concerns of the protestant. ABC will then evaluate if the proposed condition is appropriate to impose on the license.

After Your Protest is Submitted

You will be notified by letter whether or not your protest is accepted or rejected. Accepted protests may be reassessed during the license investigation and may be subsequently rejected. If that happens, you will be notified. **If your protest is rejected**, you may request a hearing within 10 days following issuance of the license. It is your responsibility to determine when the license was issued; ABC will not notify you. (Bus. & Prof. Code § 24013.)

If you change your address, it is your responsibility to notify the Department. Letters returned by the Post Office without a forwarding address will be considered as an abandonment of the protest.

Failure to respond to communications from the Department to the protestant's address shall be considered abandonment of the protest.

Investigation

After a person or business applies for the ABC license, the Department conducts a thorough investigation, as required by law. The ABC agent or licensing representative looks into the applicant's personal history, the applicant's source of funds, the suitability of the proposed premises, and any issues raised in the protest(s). (Bus. & Prof. Code § 23958.)

Interim Operating Permit. If ABC recommends approval of a protested license application, the applicant may apply for an Interim Operating Permit. This allows the business to sell alcoholic beverages pending the protest hearing and any appeals. (Bus. & Prof. Code § Sec. 24044.5.)

Public Hearing

Purpose. Under the California Alcoholic Beverage Control Act (Bus. & Prof. Code § 23000 *et seq.*), a hearing may be held on a valid protest. This affords the applicant the right to meet the objections with any evidence he or she may have.

However, the submission of your protest does not complete the matter. You will be notified by letter regarding a hearing on your protest if a hearing is scheduled. Each protestant shall be considered a party under Government Code 11505. You or your authorized representative will need to attend the hearing to present testimony and/or evidence to support your protest. If you do not request a hearing or request a hearing but fail to appear, your protest will be considered withdrawn.

Time and Place of Hearing. The hearing will take place in the county seat for the business. However, if the governing body of a city files an official protest, the hearing shall be held within such city.

After the Hearing. After the hearing, the administrative law judge will take the protest under advisement. The judge will issue a proposed decision, which is a ruling, usually within 30 days, for review by the ABC Director. ABC may adopt or reject the proposed decision of the judge.

Once ABC has rendered a decision, any party to the matter may appeal the decision to the ABC Appeals Board, an independent, three-member Board appointed by the Governor.

The ABC Appeals Board decision can then be appealed to the State Courts of Appeal and to the State Supreme Court.

Tips for Public Hearing

- If there are multiple protestants, decide who will speak on behalf of the group at the hearing. An attorney is not needed for this role. In fact, local community members may be most effective in raising community issues.
- To be most effective, all presentations should be short and concise and not repeat other presentations.
- Protestants may submit testimony and other evidence such as graphs, tables, pictures, photographs, video, etc. These items do not need to be professionally done. However, because this hearing is a legal proceeding, any evidence submitted is subject to discovery rules and objection. The judge will keep and be able to study any materials entered into evidence.

For the location of the ABC district office nearest you, consult your phone directory or visit our website at: www.abc.ca.gov.

**PARKING-DECK ENCROACHMENTS INTO MB BLVD PARKING SPACES
NOT PERMITTED BY LOCAL COASTAL PLAN**



**900 CLUB UNLAWFUL SIDEWALK ENCROACHMENT
WITHOUT PATRON-PUBLIC PHYSICAL SEPARATION**



**UNCORKED UNLAWFUL SIDEWALK ENCROACHMENT
WITHOUT PATRON-PUBLIC PHYSICAL SEPARATION**



**ROCKEFELLOR UNLAWFUL PARKING-DECK EXPOSURE TO SIDEWALK
WITHOUT PATRON-PUBLIC PHYSICAL SEPARATION**



EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY
PLACEKEEPER FOR FINAL EXPERT OPINION
FROM FORMER ABC OFFICER LAUREN TYSON

From: [Lauren Tyson](mailto:Lauren.Tyson)
To: dmcphersonla@gmail.com
Subject: Re: Enclosure for Eat & Drink in Sidewalk
Date: Thursday, 28 April, 2022 19:48:08

You are correct in your assumption. I can prepare a draft opinion.

On Wed, Apr 27, 2022 at 7:15 PM Lauren Tyson <lauren@theliquorlicenseadvisor.com> wrote:

Hi Don,
I'd be happy to help. I will start looking at this tomorrow
and get back to you asap.
Thank you,
Lauren

On Wed, Apr 27, 2022 at 4:38 PM <dmcphersonla@gmail.com> wrote:

I believe that outdoor alcohol service on sidewalks, such as illustrated in the attachments, require a means to separate the private use from the public right of way.

These photographs show encroachments permitted by the ABC prior to 1 January 2022, when all ABC emergency waivers lapsed. Manhattan Beach, however, continues to permit alcohol service on sidewalks and in street parking spaces without any separation between pedestrians and drinkers.

I plan on a presentation to the city council on May 17, and at that meeting, would like expert opinion that the sidewalk service area must have a fence or railing to prevent access by pedestrians to alcoholic beverages.

If that the case, wheelchairs require a 60-inch turning radius inside the enclosure. The tiled sidewalk areas in the attachments represent the 48-inch clear width required for ADA passage on the public right of way. Obviously, 11 to 12 feet of sidewalk and separate alcohol-service area will not fit.

Please advise if my assumption correct, regarding a required physical separation between service area and public right of way. If so, I would like an expert opinion to that effect.

Don McPherson
1014 1st St, Manhattan Beach CA 90266
Cell 310 487 0383
dmcphersonla@gmail.com

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

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File #: 22-0150 [Version: 1](#)

Type: Gen. Bus. - Staff Report

Status: Agenda Ready

In control: City Council Regular Meeting

On agenda: 4/19/2022

Final action:

Title: Continuation of Discussion of Restaurant Dining Occupancy Limits for Restaurants with Temporary Encroachment Permits and Outdoor Facility Permits Issued Under COVID-19 Emergency Orders (Community Development Department Tai). (Estimated Time: 2 Hr.) DISCUSS AND PROVIDE DIRECTION

Attachments: 1. [Staff Report - March 1, 2022](#), 2. [Restaurant Survey Results - April 4, 2022](#), 3. [City Outdoor Dining Survey Results](#)

[History \(2\)](#)

[Text](#)

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Carrie Tai, AICP, Community Development Department Director

Erik Zandvliet, T.E., City Traffic Engineer

SUBJECT: Title

Continuation of Discussion of Restaurant Dining Occupancy Limits for Restaurants with Temporary Encroachment Permits and Outdoor Facility Permits Issued Under COVID-19 Emergency Orders (Community Development Department Tai).

(Estimated Time: 2 Hr.)

DISCUSS AND PROVIDE DIRECTION

Line

Recommended Action

RECOMMENDATION:

Staff recommends that the City Council discuss and provide direction on existing occupancy limits for restaurants with Temporary Encroachment Permits and Outdoor Facilities Permits Issued under COVID-19 Emergency Orders.

Body

FISCAL IMPLICATIONS:

While empirical data is not available at this time, an increase in restaurant occupancy would be expected to incrementally increase local sales tax revenue from participating restaurants in proportion to the percentage increase in occupancy. Should the City Council choose to reinstate the fees for public right-of-way usage, additional revenue would be generated. Additional restaurant activity would generate additional patrons, incrementally increasing demand (and related costs) for public services, such as more frequent refuse pick-up, public infrastructure maintenance, and public safety resources.

BACKGROUND:

On February 15, 2022, the City Council requested a discussion on the occupancy limits for restaurants using outdoor dining allowed under the COVID-19 Emergency Orders. On March 1, 2022,

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY the City Council discussed the possibility of increasing the dining occupancy limits for those restaurants with street encroachment areas in the public right-of-way (PROW) and Outdoor Facilities Permits on private property. After hearing public testimony, the Council continued the discussion and requested that staff survey the affected restaurant opinions on increased occupancy and use fees for use of the PROW. The City Council also suspended fees for use of the non-sidewalk public right-of-way areas for outdoor dining.

This report is a continuation of the March 1, 2022, discussion of dining occupancy limits with the survey results. Additional background information can be found in the attached March 1, 2022, staff report.

DISCUSSION:

Restaurant and City Dining Occupancy and Fees Surveys

Pursuant to Council direction, staff conducted a survey of restaurants using street encroachment areas for outdoor dining (see attachment), and asked their opinions on dining occupancy and fees for the use of the PROW. The survey asked the following questions, along with the summarized results from 24 respondents:

Question 1: How much additional dining capacity would you want to achieve using outdoor dining areas during the State of Emergency? Most common response = 25%, Range 0%-100%

Question 2: If you could have additional dining capacity, would you be able to pay a fee above the existing \$3.00 per square foot per month fee? Yes = 48%, No = 52%

Question 3: If so, what amount would you pay? Most common response = \$0, Range \$0-\$5 above the existing \$3.00 per square foot per month.

Given the relatively limited sample size, the results are simply a preliminary indicator of restaurant owner opinions and do not represent an at-large community opinion.

Staff also conducted a survey of surrounding cities to determine if they restrict seating occupancy or charge a regular fee for the use of the PROW. Of the five cities who responded to the survey, only City of Santa Monica restricts seating occupancy, and charges a per square foot fee for use of the PROW. (See attachment.)

Discussion Points

The following discussion points were previously presented in the March 1, 2022, staff report, and are reiterated here to help inform the City Council's determination on occupancy limits and fees for restaurants:

1. Existing Land Use and Coastal Zone Regulations:

Restaurants participating in the COVID-19 Program are limited to the number of seats shown on approved plans on file with the City. This was to provide an equalizing factor to the additional of outdoor dining, since the inability to expand seating capacity using outdoor space would also not equate to an expansion of square footage. Expansion of capacity beyond 100% pre-COVID-19 capacity is the functional equivalent of a square footage increase, constituting an expansion of use (requiring a Use Permit). Larger dining areas would require additional restroom facilities, larger refuse storage areas and other building code requirements. In the Coastal zone, this is typically considered to be an increase in the intensity of land use, which may require a Coastal Development Permit. On one hand, the Coastal Act encourages visitor serving uses such as restaurants to attract people to the coast and provide amenities. On the other hand, increasing the intensity may have an impact on the availability of parking. As mentioned above, Use Permit and Coastal Development Permits are subject to CEQA.

~~EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY~~

2. Parking:

An increase to the overall dining occupancy would be expected to increase parking demand. Based on approximately 10,757 square feet of additional restaurant areas created by outdoor dining spaces in the public right-of-way, the Municipal Code would require 215 additional parking spaces (one parking space per 50 square feet of seating area). This is not including the 57 parking spaces in the public right-of-way that the outdoor dining areas currently occupy. As indicated by field operations reports, historically, public parking supply reaches capacity on most weekends, particularly during special events and holidays. Additionally, approximately 28 private parking spaces are currently occupied by outdoor dining at 11 restaurants with Outdoor Facilities Permits throughout the City.

3. Increased Activity:

An increase in activity of various types would be anticipated in proportion to the amount of increased dining capacity, particularly if properties are on the PROW. Restaurant staff must traverse sidewalks to serve dining areas in the PROW, creating additional volume. Similarly, an incremental increase in ambient noise, lighting, placement of restaurant related apparatus (propane tanks, heat lamps, etc.) would be expected.

4. Public Resources:

Additional refuse, street cleaning and street maintenance services would be required to maintain the same level of cleanliness due to an overall increase in activity. An incremental increase in public safety, code enforcement and emergency incidents would also be expected.

5. Equity:

The City has received comments that it is not fair that some restaurants would be allowed to exceed their normal business operation (with or without an additional fee), while retail and service businesses would not be offered that same accommodation to recover from their pandemic-related losses. Additionally, some restaurants do not have the same ability to expand their capacity due to financial limitations or absence of available encroachment area.

POLICY ALTERNATIVES:

Staff presents the following alternatives for consideration. As a note, the State's State of Emergency remains in place and there is no scheduled end date at this time.

ALTERNATIVE 1:

No action. Restaurants would continue to be limited to a total indoor/outdoor seating of 100% pre-COVID seating capacity for the duration of the COVID-19 Program. Based on observations during regular City patrols of outdoor dining areas, occupancy limits are currently being exceeded on a regular basis. As such, there may be continued enforcement activity.

ALTERNATIVE 2:

Direct staff to pursue an increase in dining occupancy allowances for restaurants with Temporary Encroachment agreements and Outdoor Facilities Permits during the State of Emergency only. Staff would research the ability of City Emergency Orders to allow for expansions of use, increasing land use intensity, both in the PROW and on private property, and particularly in the Coastal zone.

PUBLIC OUTREACH:

City staff has informed the Chamber of Commerce, Downtown Business and Professional Association, North Manhattan Beach Business Improvement District, and the Downtown Residents Association of this agenda item. The City Council meeting has also been noticed in conformance with public meeting requirements.

ENVIRONMENTAL REVIEW:

EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY

The modification of occupancy for temporary encroachment areas and outdoor facilities permits for outdoor dining and business uses during an emergency was reviewed for compliance with the California Environmental Quality Act (CEQA). Should the City Council direct staff to pursue Alternative #2, the activity could be deemed: 1) statutorily exempt from CEQA pursuant to Section 15269(c) of the State CEQA Guidelines as it constitutes a specific action to mitigate an emergency; and 2) categorically exempt pursuant to Section 15304(e) and 15311(c) due to its temporary nature with no permanent changes to the right-of-way. Thus, no environmental review would be necessary.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENTS:

1. Staff Report - March 1, 2022
2. Restaurant Survey Results - April 4, 2022
3. City Outdoor Dining Survey Results

DOWNTOWN SIDEWALKS TOO NARROW FOR PATIO AND SIDEWALK WIDTHS REQUIRED BY ADA



EXHIBIT. EVIDENCE OF UNLAWFUL EAT & DRINK ENCROACHMENTS IN PUBLIC RIGHT OF WAY
DOWNTOWN SIDEWALKS TOO NARROW FOR FENCED-IN PATIOS REQUIRED BY ABC
Patio Plus Clear Sidewalk Minimum Width: 114 inches, per 2019 California Building Code

Premises	Address	Grade, in/in (Note 1)	Width to Parking Meters	4-Ft Sidewalk (Note 2)
Sugar Fish	12th St, 304		It's complicated	????
Izuka-Ya	Highland Ave, 1133	>1/48	90"	No
Un Caffè	Highland Ave, 1140	>1/48	81", 87", tree 96"	No
Uncle Bill's	Highland, 1306	????	????	????
Uncorked	Manhattan Ave, 1000	2.4/48	103"	No
Slay Italian Kitchen	Manhattan Ave, 1001		82"	No
El Sombrero	Manhattan Ave, 1005		78"	No
Ercoles	Manhattan Ave, 1101		102"	No
MB Creamery	Manhattan Ave, 1120		82"	No
Dash Dash	Manhattan Ave, 1127		84"	No
Tacolicious	Manhattan Ave, 1129		84"	No
Nando Milano	Manhattan Ave, 1131		86"	No
Slay, Steak and Fish	Manhattan Ave, 1141		80"	No
MB Post	Manhattan Ave, 1142		81", 11' for ≈15', 84"	No
Fishing with Dynamite	Manhattan Ave, 1148		80"	No
Rockefeller	Manhattan Ave, 1209		84", 851"	No
900 Club	Manhattan Ave, 900		109"	No
Arthur J's	Manhattan Ave, 903		85", 83"	No
Shell Back	MB Blvd, 116	5.8/48	79"	No
Strand House	MB Blvd, 117	5.8/48	80", 81"	No
Rock'N Fish	MB Blvd, 120	5.8/48	75"	No
Brewco	MB Blvd, 124	5.8/48	86"	No
Mangiano	MB Blvd, 128	6.8/48	91"	No
Manhattan Pizzeria	MB Blvd, 133	5.8/48	80"	No
Simmy's	MB Blvd, 229	3.4/48	80"	No
Esperanza	MB Blvd, 309	2.4/48	80", 82"	No
Hennessey's	MB Blvd, 313	2.4/48	86", 90"	No
Love & Salt	MB Blvd, 317	2.4/48	90", 89"	No
Blue Stone	MB Blvd, 321	2.4/48	81"	No
Culture Brewing	MB Blvd, 327	1.7/48	96"	No

Notes: 2019 California Building Code

1. Maximum permitted grade: 1 inch per 48 inches; § 1138A.1.3.2 Surfaces of turning spaces.
2. Minimum accessible sidewalk width: 48 inches; § 1113A.1.1 Width.