

ALCOHOL-SPECIFIC CONDITIONS ON CONDITIONAL USE BEVERAGE (CUB) PERMITS, AND WHY THEY MATTER

Backgrounder

THE ISSUE

In 2012, the City of Los Angeles implemented a new practice prohibiting Zoning Administrators from imposing “alcohol-specific” conditions requested by LAPD, Council Offices, neighborhood councils and community councils at Conditional Use Beverage Permit (CUB) hearings.

In a letter dated January 9, 2014, in response to a request from the Venice Neighborhood Council for clarification about what kinds of conditions can be legally included on a CUB, the City Attorney stated “...The City, unlike the Department of Alcoholic Beverage Control (“ABC”), is prohibited (“preempted”) by State law from imposing these types of conditions on a CUB.”

The letter references two documents -- a 1996 memo from then-Chief Zoning Administrator Robert Janovici to all Zoning Administrators containing examples of prohibited alcohol-related conditions, and a 1990 Superior Court writ invalidating alcohol-specific conditions imposed on a Pacoima food market.

Both documents are cited as evidence that the City is preempted by state law from imposing conditions related to the sale of alcohol.

For reasons detailed below, and in the attached resolution, both of these documents are outdated and do not reflect the current state of the law or the practice of virtually every other municipality in the State of California.

WHY THIS MATTERS

The City’s relatively new position denies city agencies – including the LAPD, Zoning Administration, Council Offices, and Neighborhood Councils – the ability to prevent and abate public nuisances associated with the sale of alcohol by restricting the placement of conditions on, among other examples, hours of sale of alcohol, happy hours (rules and regulations), container sizes, and types of alcohol sold.

For decades, the City of Los Angeles allowed conditions to be placed on the sale of alcohol using its broad police powers under its land use and planning authority. The ability to place and then enforce such conditions has been crucial for mitigating adverse impacts of businesses selling and/or service alcohol.

Untold numbers of issues and concerns between community members and those businesses seeking CUBs have been amicably resolved through this process.

Unlike most retail products, alcohol has a direct and significant impact on public health, welfare and safety. Without the ability to place alcohol-related conditions, communities can no longer exert local control over the impacts of new alcohol-related businesses in their neighborhoods.

WHY THE CHANGE IN PRACTICE?

A policy change of this magnitude requires a vote from the City Council, and there has been no such vote. There is no clear understanding among the multiple affected parties (NCs, ZAs, community members) why the City is mandating such a strict departure from its decades-long practice.

Attempts to clarify the legal justification and rationale behind such a significant change in practice have been unsuccessful. Regardless, *without a public process and a vote from the City Council* mandating such a substantial change in long-standing City practice, various City agencies must be able to continue to place alcohol-specific conditions under the City's land use and planning authority.

NUMEROUS CALIFORNIA CITIES AND COUNTIES CONDITION THE SALE OF ALCOHOL

Unlike the City of Los Angeles, cities and counties throughout California allow alcohol-specific conditions to be placed on CUB permits for new businesses that sell or serve alcohol.

Ample California case law exists that calls into question the City's current practice. An examination of legal precedent indicates the City's position:

- overstates the breadth of the State's alcohol licensing authority;
- disregards recent case law; and
- ignores the practices of numerous other California jurisdictions.

In fact, to the best of our knowledge, the City of Los Angeles is the only jurisdiction in the State of California that takes the position that the City is powerless to regulate the impacts of alcohol with alcohol-specific conditions.

WHY THIS MATTERS TO BUSINESSES, TOO

Alcohol-specific conditions constitute a "path to yes" for restaurants, markets and liquor stores, allowing a process whereby applicants and communities can find mutually agreeable land use conditions which, once reached, allow business owners to enjoy the benefits of their CUB in their community.

Without the ability of Zoning Administrators to impose alcohol-related conditions to mitigate land use impacts, communities are forced to oppose projects they otherwise could support with proper conditions.

This impairs the ability of LAPD, Council Offices, and communities to negotiate with businesses to reach agreement on conditions that allow a project to move forward, which obstructs new business development.

WHO'S INVOLVED

A number of Los Angeles stakeholder organizations are mobilizing around this issue, including: the Brentwood Community Council, Brentwood Residents Coalition, Venice Neighborhood Council, Westwood Community Council, Westwood Neighborhood Council, as well as public health, safety and policy agencies Behavioral Health Services in Hollywood, Institute for Public Strategies in Venice, San Fernando Valley Partnership, and Social Model Recovery Systems, which is located in Skid Row.

WHAT YOU CAN DO

By voting 'Yes' on the Alcohol-Related Conditions motion, you are joining multiple other neighborhood community organizations and public health, safety and policy agencies in their efforts to reinstate Los Angeles communities' right to exert local controls over the sale and/or service of alcohol in their communities. You are also asserting that a policy change of this magnitude should not have been made without a full vote of the City Council after an opportunity for public review and comment.